

PART I

LEGAL PROTECTION OF

ADOLESCENT RIGHTS IN

EIGHT COUNTRIES OF

LATIN AMERICA AND THE

CARIBBEAN:

TRENDS AND RECOMMENDATIONS

UNICEF - Regional Office for Latin America and the Caribbean

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INTRODUCTION

This review focuses on adolescent rights in eight countries: Argentina, Brazil, Colombia, Dominican Republic, Honduras, Mexico, Peru and Trinidad and Tobago. It surveys and describes the basic rules and gaps in national legislation. Most legislation does not account for adolescents as a special legal category, and those that do set the age limit at 18. Adolescents older than 18, are treated legally as adults in the countries under consideration, and therefore this review, except where otherwise noted, reviews legislation that affects adolescents between 12 and 18 years of age. The legislation examined was: national constitutions, substantive penal law, child and adolescent codes, and family and labor laws. For most countries, this means a review of national laws. However since Brazil, Argentina and Mexico are Federal countries, sometimes the legislation of the capital city or major province is reviewed, especially in Mexico where penal law is competence of each state. Additionally, recent¹ UN human rights committee recommendations for each country are summarized in the aspects that are relevant to the legislation and its implementation in these areas, with special consideration of legislation that affects adolescent's enjoyment of the rights to health and to education. Special attention is also paid to minimum age protective legislation and to laws that affect adolescent's enjoyment of sexual and reproductive health, including sex education, HIV/AIDS prevention and treatment, contraception and adolescent pregnancy. Reports and information from other sources, such as UN reports by special rapporteurs and shadow and other reports by major NGO are sometimes included. The conclusion of this review is that national legal frameworks in the countries reviewed generally, reflect the international protection of the rights of adolescents, albeit with some gaps.

All of the countries reviewed are party to the major UN human rights treaties, as well as many ILO covenants. In the nineties, Constitutional and legal reforms incorporated the content of international human rights instruments and principles. There remain however, important gaps in the laws as well as serious problems of implementation of the rights and principles established in the new norms. Currently, there are bills pending in to correct the major gaps in some countries, such as Brazil's obsolete Penal Code and several countries' Child and Adolescent Codes.² It also seems probable that other gaps, such as low legal age for marriage with parental consent in some countries, will be reformed in the near future, since other similar countries have raised the minimum age recently without major opposition. Other gaps reported in this survey, such as the existence of the crime of raptó for kidnapping for sexual purposes, are norms of little or no application or purchase in social life, although they do reflect a sexist history. However there is one area which most committees agree is a human rights violation in the law, and yet there is great resistance to reform - the criminalization of abortion with few or no exceptions. Most committees mention it as related to high maternal mortality rates, and sometimes to high adolescent pregnancy rates as well, and suggest countries revise their legislation at least in the case of pregnancy that is the result of rape. However country reports mention no bills to reform the abortion laws, and the strong opposition of the Catholic Church in the region to this reform is common knowledge.

An unexplored area is the impact of special legislation on the status of ethnic and racial minorities.

¹ Recent means only the last available document was reviewed, unless it was older than ten years, in which case it was not considered relevant. For the dates of these documents, see Table 2.

² See next section for details on each country's legislation and pending bills.

The six Latin American countries reviewed all have special legislation for indigenous populations following ILO Covenant 169 (1989), and at least Colombia and Brazil have special legislation for afro-descendant population. However the legislation reviewed does not specifically address adolescents, and I found little to no information on them, besides general reports of exclusion and racism.

In spite of many positive legal reforms, UN human rights treaty bodies denounce a persistent lack of implementation of rights and impunity of rights violations. This is what the CCPR calls, in its recommendation on Colombia, "a significant gap between the legal framework and reality in the field of human rights."³ In addition, some countries also have particularly urgent egregious human rights violations that affect adolescents, such as the situation arising from Colombia's armed conflict or the massive deportations of Haitians in the Dominican Republic. It is difficult to assess, however, the impact of general human rights violations as well as the extent of the actual implementation of existing laws, because there are significant gaps in the available data about the implementation of laws, and little to no evaluation of existing programs. The Committees repeatedly ask the country to provide more and better information about various topics, and often lament the dearth of information on many issues of adolescent rights, except for the issues of juvenile detention and adolescent pregnancy, which are comparatively well documented.

The Committees have identified several obstacles to the implementation of human rights legislation, obstacles that appear repeatedly -although phrased in different ways- in their recommendations to these countries. The main obstacles are:

Lack of resources

The lack of resources is a serious threat to the implementation and enforcement of adolescent's human rights. It is related both to the historic poverty of the region and to recent events such as economic recessions, high unemployment, high indebtedness of the country, and structural adjustment policies that demand cuts in social spending. The lack of resources is manifested both in the poverty of the majority of the population and in the relatively small budgets and/or high indebtedness of many of these states. There are large poor and marginalized sections of the population with unmet health, education and justice needs, and the state often does not provide the services and legal protection indicated in national legislation. When it does, the available services are often inadequate due to lack of resources and to the insufficient training of the available human resources. Deficiencies in resources and in training are especially evident in the areas of law enforcement, such as the lack of training for police, judges, lawyers, and personnel in charge of juvenile detention centers and lack of rehabilitation centers and services for both victims and young people in conflict with the law. Deficiencies are also evident in the lack of gender sensitive and age-adequate reproductive and sexual health services and information and in the inadequate and insufficient free secondary education and/or vocational training programs for adolescents.

³ Colombia, Concluding Observations of the Human Rights Committee 05/05/97 CCPR/C/79/Add.76.

Misdistribution of resources

The Committees, especially the CESCR, point to an additional and related threat to the enjoyment of adolescent rights-the mal-distribution of resources. This mal-distribution has two aspects, one is the unequal distribution of wealth in the population at large, and the other is the meager budgetary allocation for social programs in general, which affects those social programs that benefit adolescents. Furthermore, as the Committee for Economic, Social and Cultural Rights often insists in its recommendations, structural adjustment policies have had negative effects on social spending and thus on the enjoyment of social and economic rights.

Persistence of discrimination and exclusion.

All Committees mention that the persistence of discrimination and exclusion of vulnerable populations is a significant obstacle to the full implementation of human rights in the regions, and this includes the rights of adolescents. Certain groups, such as ethnic and racial minorities, women and persons with disabilities are especially vulnerable to the negative effects of discrimination. There is also discrimination against rural populations and against people from certain regions, often linked with racial and ethnic discrimination, for example against Garifunas⁴ in Honduras and against Haitians in the Dominican Republic. This affects negatively the rights of adolescents belonging to these groups.

⁴ Garifunas are inhabitants of the Caribbean coast, of African descent and with a distinctive culture.

1. REGIONAL TRENDS

1.1. INTERNATIONAL COMMITMENTS

All of the countries reviewed have signed the major human right treaties, although not all are party to the relevant optional protocols. (See Table 1) Many of them have made reservations and declarations that limit the applicability of the conventional rights. Some of these declarations and reservations affect the applicability of rights that directly concern the rights of adolescents, especially Argentina, Honduras and Peru's declaration that 18 would be the minimum age for recruitment into the armed forces⁵ and Argentina's extension of the concept of child to the moment of conception and insistence of parental control over sexual education.⁶

TABLE 1: ENTRY IN FORCE OF INTERNATIONAL HUMAN RIGHTS TREATIES⁷

	ICCPR ⁸	OP1 ICPPR ⁹	OP2 ICCPR ¹⁰	CEDAW ¹¹	CEDAW OP ¹²	ICESCR ¹³	CRC ¹⁴	CRC OPAC. ¹⁵	CRC OPSC ¹⁶	CERD ¹⁷
ARGENTINA	08.11.86 R	08.11.86	No	14.08.85. R	Signature only 28.02.00	08.11.86	03.01.91 R, D	10.10.02 D	25.10.03 D	04.01.69
BRAZIL	24.04.92	No	No	02.03.84	28.09.02	24.04.92	24.10.90	27.01.04	27.02.04	04.01.69 D
COLOMBIA	23.03.76	23.03.76	04.11.97	18.02.82	Signature only 10.12.99	03.01.76	27.02.91 R	Signature only 06.09.00	11.12.03 D	02.10.81
DOMINICAN REPUBLIC	04.04.78	04.04.78	No	02.10.82	10.11.01	04.04.78	11.07.91	Signature only 09.05.02	No	24.06.83
HONDURAS	25.11.97	Signature only 19.12.66	Signature only 10.05.90	02.04.83	No	17.05.81	09.09.90	14.08.02 D	08.06.02	09.11.02
MEXICO	23.06.81 R, D	15.06.02	No	03.09.81 D	15.06.02	23.06.81 Comm.	21.10.90	15.04.02	15.04.02	22.03.75 D
PERU	28.07.78 D	03.01.81	No	13.10.82	09.07.01	28.07.78	04.10.90	08.06.02 D	28.06.02	29.10.71 D
TRINIDAD AND TOBAGO	21.03.79. R	26.08.98 R	No	11.02.90 R	No	08.03.79 R	04.01.92	No	No	03.11.73

R = reservation D= declaration

As per their conventional commitments, the eight countries reviewed have presented periodic reports to the Committees that oversee the implementation of each treaty. In the last eight years, all of the countries reviewed have presented at least two reports to UN human rights committees, and have received recommendations on how to improve implementation of the rights of the different covenants. (See Table 2 for dates of presentation of reports and dates of recommendations).

⁵ In the declarations to the first Optional Protocol to the CRC.

⁶ Both are interpretive declarations to the CRC.

⁷ The information in this table is in the website of the United Nations High Commissioner for Human Rights, in its useful treaty body database at: www.unhcr.ch/tbs/doc.nsf.

⁸ ICCPR: International Covenant for Civil and Political Rights.

⁹ OP1 ICPPR First Optional Protocol to the ICCPR, Which allows the Committee to receive communications about individual cases.

TABLE 2: REPORTING STATUS TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEES (STATE PARTY REPORT SUBMITTED ON YEAR/ CONSIDERED ON YEAR)¹⁸

	CCPR ¹⁹	CEDAW ²⁰	CERD ²¹	CESCR ²²	CRC ²³
Argentina	98/00	02/02	99/01*	97/99	99/02
Brazil	94/96	02/03	¾	01/03	03*
Colombia	02/04	97/99	98/99	00/01	98/00
Dominican Republic	99/01	97/98*	98/99	97/98	98/01
Honduras	No	91/92	No	98/01	97/99
Mexico	00/02	00/02	96/97	97/99	99/99
Peru	98/00	00/02*	98/99	95/97	98/00*
Trinidad	99/00	½	00/01	00/02	96/97*

* The asterisk means there is a later report that has been submitted, but the Committee has not yet published recommendations.

1.2. RIGHTS AND PRINCIPLES IN NATIONAL CONSTITUTIONS AND LAWS

1.2.1. Constitutional protection of the rights of adolescents and mechanisms for their direct application

Since the early nineties Latin America and the Caribbean has gone through a period of democratization that includes the drafting and reform of new national constitutions. Many of these constitutions have generous human rights provisions, which sometimes include the mechanisms for their direct application, as well as for the incorporation of human rights treaties into national legislation.²⁴ Among these provisions, some countries protect children and/or adolescent rights, while other have provisions that benefit children and /or adolescents with special protection in the areas of education, health, and work.

¹⁰ OP2 ICCPR Second Optional Protocol to the ICCPR on the abolition of the death penalty.

¹¹ CEDAW Convention on Elimination of Discrimination Against Women.

¹² CEDAW OP First Optional Protocol of the Convention on Elimination of Discrimination Against Women which allows the Committee to receive communications about individual cases.

¹³ ICESCR International Covenant on Economic Social and Cultural Rights.

¹⁴ CRC Convention on the Rights of Children.

¹⁵ CRC OPAC Optional Protocol to the Convention on the Rights of Children on the Involvement of Children in Armed Conflict.

¹⁶ CRC OPSC Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Child Prostitution and Child Pornography.

¹⁷ CERD Convention on the Elimination of Racial Discrimination.

¹⁸ See footnote 7.

¹⁹ Human Rights Committee .

²⁰ Committee for the CEDAW.

²¹ Committee for the CERD.

²² Committee for the ICESCR.

²³ Committee for the CRC.

²⁴ See section on individual countries for details.

Brazil, Honduras and Colombia have Constitutions that specifically mention and list children's rights (*see country sections for details*). Mexico's constitution also mentions children's rights in its Federal Constitution, but explains that the primary duty to fulfill children's right to food, health, education and recreation falls on the parents and only secondarily does it fall on the State. The Peruvian Constitution mentions that children and adolescents have the right to special protection by the community and the state, and that there must be special protection for working minors. The Constitutions of Argentina, the Dominican Republic and Trinidad and Tobago do not mention children's rights. However in Argentina, the Constitution of Buenos Aires has a generous protection of children and adolescent's rights.

Some countries allow persons whose constitutional rights are being breached to approach a court for protection that may or may not include a judicial injunction. This mechanism is known as *amparo* in Mexico, Peru, Honduras and Argentina, but it is known as *tutela* in Colombia, and the Brazilian constitution mentions it only as a judicial injunction. Each legislation has different rules for the application of this mechanism, and its actual implementation depends on the applicable rules. The mechanism presents the possibility of bypassing the slow and expensive procedures of ordinary justice by appealing to a fast track judicial decision for the protection of human rights. Except in Colombia, the use of this mechanism is limited by law to civil and political rights, especially to situations of illegal imprisonment. However in Colombia the legal provisions have allowed it to be widely used to ask for judicial injunctions for the protection of a wide variety of human rights and even against private persons in certain situations. Furthermore the *tutela* decisions of judges are revised by the Constitutional Court, which has set a progressive trend. The *tutela* decisions of Colombia's Constitutional Court have been mentioned positively by the UN Human Rights Committees. A 2001 study of *tutela* decisions shows that this mechanism has been used to protect the rights of adolescents in different occasions, such as to prevent pregnant girls from being expelled from school.²⁵

1.2.2. Major Areas of Concern in Child and Adolescent Codes

Three of the countries have new Children and Adolescent laws that focus on the rights of the child, and understand the child as a subject of rights and not as an object of protection and control. They are: Mexico, Brazil and Peru. Honduras and the Dominican Republic, also have new laws that in the one hand recognize rights and seem to take a rights-centered approach, but on closer examination according to the CRC Committee still maintain the doctrine of the irregular situation in many provisions.²⁶ Trinidad does not have a Code, but it does have recent reforms, including the creation of a Children's Authority, which still need to be evaluated by the CRC Committee. Colombia and Argentina have Codes that enshrine the doctrine of the irregular situation where children are viewed as objects rather than subjects of rights. In both countries, there have been several unsuccessful reform efforts. However, even in those countries where the Code is reformed the tradition of seeing children as objects is still prevalent, and often the UN Committees comment there is insufficient recognition of the rights of participation and the

²⁶The doctrine of the irregular situation views children as being either in "normal" situations (in homes with parental oversight and protection, or in "irregular" situations, which includes every thing from children who commit crimes to children who are victims of crimes, children who are begging or working or whose parents can't support them , who are not in school, etc. When a child is in an irregular situation the state (the judge or public official) can and must intervene to protect the child, without considering the child's wishes or without considering the child a subject of rights. Instead the child is seen as an object of state protection. While the laws give a variety of options by which the child can be protected, in practice institutionalization is the protection of choice. The length of the protection is also discretionary until the child can be placed in a "regular" situation or until the child is 18.

²⁵Colombia, Constitutional Court, Sentence T-420 of 1992.

primacy of the best interest of the child. An exception to this trend was the recent effort in Mexico to have a children's referendum. Other exceptions are Peru and Colombia, which have laws that are specific for youth, defined between the ages of 15 and 29 in Peru,²⁷ 14 and 26 in Colombia.²⁸ These laws establish policies for youth and the special protection of the state, and create national mechanisms for administering policies geared toward youth, to promote participation, employment and education. They also order the creation of youth councils where young people can participate. Numerous youth councils have been created some states in Colombia, mainly in Bogotá, under the auspices of "Colombia Joven," but this review did not find information about the implementation of these laws in Peru. The Committees in their recommendations do not mention these councils.

1.2.3. Adolescents in national laws: minimum ages for marriage, consent to sexual activity, work, mandatory education, and conscription into armed forces

While most Child and Adolescent Codes make the distinction between children and adolescents (with 12 being the age that divides one group from the other) this distinction does not significantly affect the contents of the laws themselves as they establish different age limits for different activities. This definition, like that of the youth laws, seems destined to orient policy rather than to affect the application of laws. Therefore the minimum ages are not generally 12 (the age at which a child is considered an adolescent), but instead vary according to the activity regulated. Fourteen is the average age at which a child can legally quit school, consent to sexual activity, marry (with parental approval) and begin to work (with a state permit). At eighteen, he or she can join the armed forces, and will be tried as an adult if he or she commits a crime. There are however some variations. Minimum ages for marriage with parental approval have slowly been rising to 16 although some countries keep the minimum age for girls at 12. None of the countries have implemented the CRC recommendation of 18 as the minimum age at marriage for both sexes, since children can marry with parental consent. In its country recommendations, the CRC only mentions that the age should be the same for boys and girls, but the General Comment on Adolescent Health recommends that it be 18 for both.²⁹

The age of consent for sexual activity also varies (between 12 and 14), and is determined by the age at which consensual sex is a crime for the adult who has sex with the minor. While fourteen is often the minimum age to consent to sex (but younger in Argentina and Mexico), all countries except Colombia establish an older age of consent for the crime of *estupro*,³⁰ where consensual sex with a minor is obtained through deception or the use of authority. In their country recommendations reviewed, the treaty bodies do not specifically refer to this issue. A positive aspect of national legislation of the countries reviewed is that almost all have 18 as the minimum age for the conscription into the armed forces. The exceptions are Brazil and Mexico, which have an earlier age (17 and 16) for voluntary enrolment into the armed forces. Additionally, Argentina, Honduras and Peru made declarations to the first optional protocol for the CRC on

²⁷Peru Law 27,802 Art.2.

²⁸Colombia Law 375 of 1997 and Decree 089 of 2000.

²⁹The Committee for the rights of the Child makes this recommendation in its observations to the reports of Argentina, the Dominican Republic and Mexico reviewed (see country section).

children in the armed forces, and these declarations said that they considered 18 to be the minimum age for enrolment into the armed forces.

The most difficult minimum age to ascertain for available data is the minimum age for mandatory education. Some laws do establish an age (14 or 15 generally) but others establish as a limit simply elementary education, or basic education, or a set number of years in school, usually eight or nine. The limit is usually the age at which the child finishes elementary education, but Mexico and Peru have mandatory secondary education as well. In their country recommendations reviewed the treaty bodies do not specifically refer to this issue. *See table and country section for details.*

³⁰Estupro is the crime of having consensual sex with a minor old enough to consent, but whose consent is nullified by special circumstances that vary from country to country but that are either the abuse of authority or dependence, or lies and deceit, or taking advantage of the person's lack of sexual experience and trust, or the promise of marriage. Estupro is a crime in the Latin American civil law legal tradition, but not in the English common law tradition, where the equivalent is statutory rape and there are no special requirements, only the age of consent. In Argentina estupro is called seducción.

TABLE 3: MINIMUM AGES FOR ADULT ACTIVITIES

	MARRIAGE (BOYS/GIRLS)	CONSENT TO SEXUAL ACTIVITY/ ESTUPRO	TRIED AS AN ADULT	MINIMUM LEGAL WORKING AGE	MANDATORY EDUCATION	MINIMUM AGE FOR ENTRY IN ARMED FORCES
Argentina	18/16	13/16	16***	14	14	18
Brazil	16/16	14/18	18	12	Elementary	17
Colombia	14*	14/14	18	12	15	18
Dominican Republic	18/15	None/ 18 if pregnancy results	18	14	Eight years of education	18
Honduras	18/16	14/18	18	14	15	18
Mexico	16/ 16	12/18	Not found.	14	Elementary and secondary	16
Peru	16/ 16	14/18	18	12	Elementary and secondary	18
Trinidad and Tobago	14/ 12**	14/16	14	14	12	18

*Until 2004 it was 12 for girls and 14 for boys, but was established at 14 for both by a decision of the Constitutional Court.

** These are the minimum ages but they vary according to personal status laws (Hindu, Muslim or Common Law)

*** 16 is the minimum age only for crimes that have public action and a minimum sentence longer than 3 years.

1.3. PROTECTION AND IMPLEMENTATION OF ADOLESCENT'S RIGHT TO HEALTH, ESPECIALLY REPRODUCTIVE HEALTH

1.3.1. National health systems and health insurance

Except for Brazil and Trinidad, all the countries reviewed all have a two-tiered public health system: on the one hand there is the *Seguridad Social* or *Obras Públicas*, institutions that provide services for workers and their families through mandatory health insurance. On the other hand, there are the public health facilities that provide health services to the uninsured population, often under the direction of the Ministry of Health; other times the direction of local governments. In the nineties, most countries changed from a system of state health insurance, to a system of state regulated private provision of mandatory health insurance. There are also subsidies for the poorest groups to have access to insurance, as generally, the public health facilities are overcrowded, and their services are deficient. Brazil has a unified public health system that serves all the population, regardless of whether they contribute to the mandatory (for workers) health insurance or not. Trinidad is reforming its health system from a system where the Ministry of Health provided for the health needs of the population to one that

includes the development of a national health insurance system, inaugurated in the year 2000. The committees sometimes mention the inefficiency of public health systems, and the OPS country reports consistently mention the inefficiency of public health systems.³¹ All countries have a private health sector as well, providing services and insurance.

Therefore, adolescents can have access to health services coverage in several ways. They can access the private health services, whether through private insurance or by paying for the services. They can also receive public health services available by mandatory health insurance if they have formal work, and are insured as a matter of course, or are covered by their working parent's insurance as a dependent. If they do not have health insurance, and cannot pay for private health services, then they depend on the public assistance health system (the only system in Brazil).³²

One potential major barrier to legal access urgently needs investigation: the potential lack of confidentiality of the adolescents' use of medical services when covered by their parents' insurance. This review had difficulty finding information on the legal age of consent to private medical services and on fulfillment of the right to confidentiality of adolescents. However, even in situations in which there is no prohibition against providing confidential sexual and reproductive health services to adolescents, provider attitudes often pose a barrier to adolescents' access.

1.3.2. Adolescent pregnancy

While the Committees are concerned about adolescent pregnancies, and suggest the countries address this issue, in many of the countries reviewed, only the Child and Adolescent Codes of Peru and Brazil³³ order that pregnant adolescents receive special care and that this care be free and comprehensive. Other countries' legislation reviewed does not have specific norms for adolescents on this topic. However adolescent pregnancy was a topic of concern for the UN committees in Argentina, Dominican Republic, Honduras and Trinidad.

Adolescent pregnancy is often high risk, and usually has a negative impact on the young woman's social and educational situation. Furthermore, many adolescent pregnancies outside of marriage, if not most, are unwanted, and an additional health risk arises from many adolescents' recourse to illegal and unsafe abortion. Abortion is a crime in all of the eight countries reviewed, although many make exceptions for saving the mother's life or health, and some do in case of rape. Experiences from many countries show that illegality creates resistance in health service providers to carry out those legal abortions that fall within the exceptions. The UN treaty bodies recommend that these countries review their legislation concerning abortion, usually to make it more lenient.³³ High rates of maternal mortality are linked to illegal, unsafe abortion in the recommendations for Brazil, Colombia, Mexico, Peru and Trinidad. Besides posing health risks, adolescent pregnancy also poses educational and social risks for adolescent girls. One area of concern for legislation in some countries has been the expulsion of girls from educational institutions for being pregnant. Argentina³⁴ and Peru³⁵ have specific laws prohibiting this

³¹More information on country health system and health system reforms in www.paho.org, the website for the Pan-American Health Organization.

³²Brazil, Statute of the Child and Adolescent Art. 8 and 11, and Peru Code of Minors Art. 2.

³³Committee Recommendations: see Part II on national legislations and committee recommendations in this review in the section about criminal law-abortion and on health for each country.

³⁴Argentina, Law 25.273.

³⁵Peru Law 26,941 (1998) Art. 14 Child and Adolescent Code.

TABLE 4: CRIMINALIZATION OF ABORTION

	ABORTION IS PROVIDED ON DEMAND AT ANY STAGE IN THE PREGNANCY	EXCEPTIONS TO THE CRIMINALIZATION OF ABORTION	PENALTY FOR A WOMAN WHO CONSENTS TO AN ABORTION
Argentina	No	To save the life or health of the woman, in case of the rape of insane or retarded (sic) woman	1 to 3 years
Brazil	No	To save the life of the woman or in case of rape	1 to 3 years
Colombia	No	None (but possibility of judicial reprieve in case of rape)	1 to 3 years
Dominican Republic	No	None	2 to 5 years
Honduras	No	In case of rape	3 to 6 years
Mexico D.F.	No	To save the life or health of the woman, in case of rape	1 to 3 years
Peru	No	To save the life or health of the woman	52 days of community service to 2 years in prison
Trinidad and Tobago	No	To save the life of the woman	4 years

expulsion, while in Colombia; the Constitutional Court has interpreted the Constitution as prohibiting the expulsion of pregnant girls from school.³⁶ As in most of the world, married adolescent girls often lose all opportunities to pursue their education.

1.3.3. HIV/AIDS

Most of the countries reviewed have legislation about HIV/AIDS that establishes anti discrimination penalties and the rights of persons with HIV/AIDS as well as government policies for the prevention and treatment of HIV/AIDS.³⁷ Sometimes these laws or other regulations include retroviral treatments in health insurance plans, or in free public health services. The laws however do not contemplate adolescents as a specific group in the law although Brazil has a specific program for adolescents.³⁸

³⁶Colombia, Constitutional Court, T-420 of 1992.

³⁷For AIDS laws see Part II on national legislations and committee recommendations in this review, in the section on health for each country.

³⁸See www.aids.gov.br.

In the U.N. Committee, recommendations, rising HIV/AIDS rates was a cause for concern for all countries except for Brazil, and they recommend that action be taken. However, in Brazil although rates have diminished, they have risen among young women, and that is a cause for concern. Infection rates have raised among young women in several of the countries reviewed, and were mentioned as a cause for concern in Committee recommendations for Argentina, Colombia Mexico, Peru and Trinidad.

1.3.4. Sex education and access to contraception and other reproductive and sexual health services

As matter of course, the CEDAW and the CRC recommendations to these countries insist on the need for better sex education and better services of sexual and reproductive health for adolescents. Generally there are no laws that require parental consent for contraceptives, and both the pill and barrier methods today are obtainable over the counter.³⁹ The HIV/AIDS laws of the following countries include sex education: Argentina, Colombia, Dominican Republic, and Honduras.⁴⁰ In Argentina, the reproductive health law⁴¹ and the Buenos Aires Constitution also mandate sex education.⁴² In Colombia, the national education law mandates sex education, and the Constitutional Court has made decisions on the constitutionality and need for sex education.⁴³ In Brazil, sex education is included in various policies and programs but not through laws.⁴⁴ In Mexico, the General Health law includes sex education and family planning education as part of the strategies for the national Population Council.⁴⁵

The CEDAW, CRC, and CESCRC Committees in their recommendations insist on the need for more sex education and for more reproductive and sexual health services and counseling for youth. This recommendation is linked to the concerns previously mentioned: high rates of adolescent pregnancy, increase in HIV/AIDS (especially among young women), and high maternal mortality linked to illegal abortion.

³⁹Center for Reproductive Rights (former Center for Reproductive law and Policy) *Women of the World Laws and Policies that Affect their reproductive health: Latin America Supplement 2000*. New York, 2000.

⁴⁰See country section for details.

⁴¹Argentina, Law 23,673 of 2002.

⁴²Argentina, Buenos Aires Constitution Art. 24.

⁴³Colombia, General Law of Education Law 115 of 1994. Constitutional Court decision T-440 of 1992, T-293 of 1998 and T-321 of 1993.

⁴⁴See: *CRLP Women of the World: Laws and Policies that affect their reproductive lives. Latin America and the Caribbean..* New York 1997 and 2000 supplement.

⁴⁵Mexico, General Health Law art. 67.

TABLE 4: UN HUMAN RIGHTS COMMITTEE* CONCERNS AND RECOMMENDATIONS ON ADOLESCENT SEXUAL AND REPRODUCTIVE HEALTH IN COUNTRY RECOMMENDATIONS**

*Each committee is represented by the acronym of the treaty it belongs to. Ex: the Committee for the International Covenant for Economic, Social and Cultural Rights (CESCR) is represented with the acronym CESCR. ** Not all countries have recommendations from all committees, and not all recommendations are recent, although most are not older than 5 years. See table 2 for dates of reports and recommendations.

	ADOLESCENT PREGNANCY	HIV /AIDS	HIV /AIDS AMONG YOUNG	MATERNAL MORTALITY	MATERNAL MORTALITY LINKED TO UNSAFE	NEED FOR MORE SEX EDUCATION	NEED FOR MORE SERVICES AND COUNSELING FOR YOUTH ON
			women		illegal abortion		sexuality and reproduction
Argentina	CEDAW CESCR	CEDAW CESCR	CEDAW	CEDAW CESCR			
Brazil			CEDAW CESCR	CEDAW	CEDAW	CEDAW	CEDAW
Colombia		CRC	CRC	CEDAW CRC	CRC		CRC
Dominican Republic	CESCR	CRC		CRC		CRC CEDAW	CRC
Honduras	CRC CESCR	CESCR				CESCR CRC	CESCR CRC
Mexico		CESCR CRC CEDAW	CEDAW CESCR CRC	CEDAW	CEDAW	CEDAW CRC CESCR	CEDAW CRC CESCR
Peru		CEDAW	CEDAW	CEDAW CRC CCPR	CEDAW CRC CCPR	CRC CEDAW	CEDAW CRC
Trinidad	CESCR CEDAW	CESCR	CESCR	CESCR	CCPR	CEDAW	CEDAW CESCR

1.4. PROTECTION AND IMPLEMENTATION OF THE RIGHT TO EDUCATION

National constitutions establish education to be free and mandatory, usually up to nine years of school starting in kindergarten, or the law says simply "primary education" while includes eight or nine grades and ends at age 14. This means that education for adolescents is not mandatory except in Mexico and Peru. Not all countries provide free secondary education: only Mexico, Peru, Trinidad, the Dominican Republic do, and all only in state institutions. In Mexico and Peru, university education is also free, as it is in the city of Buenos Aires.

In December 2003 the Special Rapporteur to the Human Rights Commission on the Right to

⁴⁶Special Rapporteur on the Right to Education Final Report. E/CN.4/2004/45.

Education presented her final report.⁴⁶ In it she emphasized two major obstacles to the fulfillment of the right to education that apply to the countries in this review: first, the existence of fees even for the poorest sectors and even for elementary education, and second, that secondary education is not mandatory. This occurs, among the countries reviewed, in Colombia, where fees are charged in elementary education. The report also highlighted pregnancy as a special obstacle for girls' education, and the lack of access to sex education as an element that maintains gender discrimination in education.

1.5. PROTECTION AND IMPLEMENTATION OF THE RIGHT TO BE FREE OF VIOLENCE

1.5.1. Laws against domestic violence

After 1994, year of the Interamerican Convention for the Prevention and Eradication of Violence Against Women (Belem do Para Convention) most regional countries adopted legislation against domestic violence, as did all of the countries reviewed.⁴⁷ Even though the Convention was specifically against violence against women, national legislations are against domestic violence so their mechanisms and institution are also meant to cover adolescents who are victims of violence in their family environments. For the most part these laws are similar in their definition of what constitutes domestic violence, and they include both physical and psychological violence, while some include sexual violence as well. Generally they cover violence between all members of a domestic unit, that all persons who live together as a family, but leave out other types of relationships unless the persons involved have a child together. They therefore leave out a form of violence that adolescents experience, which is dating violence, thus only protecting them against violence within the home. They also leave out stalking.⁴⁸ Among the country studied, only Brazil does not have domestic violence legislation, although there have been various proposed bills that have failed.⁴⁹

There are serious institutional problems in the implementation of domestic violence legislation.⁵⁰ One is the lack of resources to address diverse issues such as the lack of police support, medical and psychological services and support services for victims, and qualified expert witnesses. After passing the laws, most countries have destined insufficient resources to support the implementation of these laws, and have not properly trained the public officials and lawyers in charge of the application of the law.⁵¹ Adolescents face additional problems in the implementation of domestic violence legislation, which legally applies to them. One problem is the coexistence of these domestic violence laws with the Child and Adolescents Codes that allow for protective measures including that adolescent victim of violence be taken away from their aggressors and placed in institutional facilities. This creates a clash of competence between the judge and public official responsible for applying the domestic violence law and those responsible for applying the

⁴⁷See next section on national legislations, the section on domestic violence in each country.

⁴⁸Actions over a continuous period of time in which the stalker follows a person in order to harass, frighten, threaten and/or force himself or herself into the life and consciousness of the victim. See website: <http://www.ncvc.org/src/Main.aspx>

⁴⁹Brazil, *Informe de país al Comité CEDAW*. 2002. CEDAW/C/BRA/1-5. p. 36

⁵⁰Generally the domestic violence laws in Latin America establish one or all of the following types of procedure: criminal prosecution, a protection order or mandatory conciliation. Protection orders include measures such as eviction of the aggressor from the shared home, a restraining order, and a preliminary establishment of alimony and visiting rights when there are children. There is no diversion to treatment in the criminal prosecution, and thus the penalty is prison. In some countries, domestic violence is also a crime, different from assault, and is used for cases where the injuries are not serious enough to merit prosecution for assault. It is the implementation of these measures that are considered in this section.

⁵¹Luciano, D., Esim, S. and Duvvury, N. *How to Make the Law Work? Budgetary Implications of Domestic Violence Policies in Latin America*. International Center for Research on Women. Washington 2003.

Child and Adolescent Code and issuing the types of protection order contemplated in these Codes, one of which is institutionalization. Furthermore, in all of the countries reviewed the CRC consistently is concerned about the excessive use of institutionalization, and the situation of children in such institutions and the lack of alternatives such as foster homes. It recommends a further study of the situation because there is however little information on the use by adolescents of domestic violence legislation or on how it affects them.

1.5.2. Laws against sexual abuse, trafficking and exploitation

Except for Brazil, all of these countries have had recent reforms that update criminal law to abolish various grossly discriminatory dispositions such as the exemption for marriage, according to which if the victim married her rapist there was no crime. The reformed Penal Codes in the Spanish speaking countries reviewed generally eliminate this and other similar rules; increase the penalties for sexual offenses; rename the title of the crimes from crimes against morality to crimes against sexual freedom; include the possibility of male victims of sexual crimes; eliminate any mention of the chastity of the victim; increase the kinds of penetration that constitute rape to include anal penetration and fellatio, and force the state to investigate these crimes even if the victim does not report it. The reforms also generally increased the penalties when the victim is underage, and added different forms of dependence of the child on the rapist as reasons to increase the penalties, for example cohabitation or a student/teacher relationship. Trinidad has had reforms to its criminal legislation to eliminate norms that discriminate against women in sexual crimes, but it still keeps "buggery"⁵² as a crime in every case, and specifies the victim of most sexual crimes as female. A major advance in these reforms of national criminal legislation has been the establishment of sexual crimes as crimes prosecuted by public and not by private action.

Of the countries reviewed only Brazil still requires private action for sexual crimes.⁵³ Traditionally, these crimes were investigated and prosecuted only if the victim reported the crime (or his or her parents did so if he or she was a child). Investigation and prosecution could also be halted at any time if the victim so decided. This corresponds to a twofold logic: on the one hand, crimes which are prosecuted only by private action (*querellable or de acción penal privada o particular*) are considered to be of little to no harm to society, and it is therefore up to the victim to decide if there is prosecution. An example of a crime which is usually querellable is slander (*injuria and calumnia*⁵⁴). In this logic sexual crimes are querellable because they do not cause harm to the public and only to the individual. The other argument has been that the prosecution of sexual crimes exposes a victim's private life to public scrutiny so it should be up to him or her whether they want it prosecuted. In practice, crimes that are querellable are simply considered of no

⁵²An imprecise term from English legal tradition, usually referring to same-sex acts, and/or sex with animals.

⁵³This assertion comes from a revision of the Penal Codes of Argentina, Brazil, Colombia, the Dominican Republic, Honduras, Mexico and Peru and the Sexual Offences Act of Trinidad and Tobago. It also covers a revision of the Criminal Procedure Codes for Argentina, Brazil, Colombia, Mexico and Peru but not for Honduras or the Dominican Republic, and for no procedural laws for Trinidad and Tobago, as this review could not locate these laws.

⁵⁴*Injuria and calumnia* are crimes committed by falsely affirming or publishing that a person has committed a crime or other grossly immoral acts.

⁵⁵Brazil, Penal Code Art. 215 y 216.

⁵⁶Brazil, Penal Code Art. 107.

⁵⁷Brazil, Penal Code Art. 214.

weight by the authorities. Furthermore, leaving the decision to prosecute up to the victim makes him or her vulnerable to threats and intimidation to end the investigation or prosecution.

Brazilian legislation, because the bill to reform the Penal Code has not been approved, still keeps most of the discriminatory elements that were eliminated through reforms in the decade of the nineties in the other countries. For example, the victim of statutory rape has to be an "honest woman"⁵⁵ and there is no prosecution if a victim marries either her rapist or someone else after the crime.⁵⁶ Legally only women can be raped, not men: anal penetration of men receives a different name it is not considered rape⁵⁷ and all sexual crimes are prosecuted only if the victim reports the crime (*querrela, private action*) and not by state initiative (*de oficio, public action*). There is currently a bill for a new Penal Code in Brazil that has not been approved in spite of years of efforts.

In the other countries that have had reforms, the new Penal Codes still have gaps in the protection of adolescents. For example, the Argentinean legislation accepts an *avenimiento* between victims over 16 and their rapists, meaning an agreement between them that has as a result that when the victims freely give their consent to an agreement with the rapist, for example for monetary compensation, then the crime is not prosecuted.⁵⁸ The Dominican Republic does not have a minimum age for consent; consensual sex with a minor is only prosecuted if she is pregnant as a result.⁵⁹

Another issue is that some countries⁶⁰ have elements in addition to the victim being under age for the criminalization of *estupro*. In Honduras, there must also be a power disparity in the relationship between the two.⁶¹ In Argentina, *estupro* requires that there be a taking of advantage of sexual immaturity.⁶² This is problematic because the issue of the conduct and development of the victim is then on trial: was she dependent on this other person or was she a full adult? Was she sexually experienced and therefore could not be deceived about sexuality? This kind of inquiry usually exposes and humiliates the victim and opens up the trial for conservative ideas of proper female behavior in the tradition of requiring the virginity of a woman for there to be a sexual crime. Another anachronism is the crime of *rapto*, which remains in spite of the reform in all countries except Colombia and Peru (Trinidad never had it). *Rapto* is a crime that is committed when a person is kidnapped for sexual purposes. The penalties are lower than when a person is kidnapped for a ransom and often even lower if the person is returned to a safe place and no sexual advances are made. The crime implies that in the first place, it is different to kidnap a person for sexual purposes than for any other reason, and that this is almost excusable or understandable if the reason was sexual, therefore penalties are lower than in "normal" kidnapping. It also falls into the stereotype that women are as a matter of course "taken" from their homes to be married as a form of chattel, and that there is no crime or less of a crime if they are "returned" and are "undamaged". A less sexist way to prosecute this type of behavior is to consider it simply kidnapping no matter what the intention, and to prosecute sexual crimes

⁵⁵Argentina New Penal Code Law 25.087 of 1999.

⁵⁶Dominican Republic Penal Code Art.355.

⁶⁰Argentina, Brazil, Dominican Republic, Peru and Mexico

⁶¹Honduras, Penal Code Art. 142.

⁶²Argentina, Penal Code Art.120.

⁶³Honduras, Penal Code Art.147A.

⁶⁴Dominican Republic, Penal Code Art.333.

⁶⁵Mexico, D.F. Penal Code Art.259.

⁶⁶Cabal, Luisa, Lemaitre, Julieta, and Roa Mónica. *Cuerpo y Derecho: Legislación y Jurisprudencia en América Latina*. Editorial Temis Bogotá 2001.

separately if they are also committed. However in practice *rapto* is also an anachronism, that is, a remnant of the past.

Positive reforms included new sexual harassment laws in some countries and extended penalties for trafficking and exploitation of prostitution. Sexual harassment is not a crime in Argentina, Brazil, Colombia, and Peru. It is a crime in Honduras,⁶³ Dominican Republic,⁶⁴ and Mexico⁶⁵ when the harasser is in a position of authority, such as that derived from a pedagogical or a work relationship. All countries consider trafficking as a crime, as is forcing people into prostitution or participating in the prostitution of children. Some also include child pornography as a crime. (See country section for details). However there is little to no data about the enforcement if any of these crimes, especially of prostitution and trafficking. A 2001 study of the decisions of the higher courts in four of the countries in this review (Argentina, Colombia, Mexico and Peru) revealed that judicial decisions concerning sexual crimes often contained sexist prejudices, especially in matters of evaluating the evidence.⁶⁶ Impunity and high attrition rates are common.

Trinidad and Tobago has a different legal tradition from the other countries, and different legal provisions as well. While there was a 2000 criminal law reform in Trinidad that increased penalties for sexual crimes, it kept separate sexual crime according to the victim's sex, and excluded marital rape from rape.⁶⁷ When the victim is a male and the perpetrator female, the penalties are shorter.⁶⁸

1.5.3. Police brutality and "social cleansing"

There is no specific legislation against police brutality victimizing adolescents, or against hate crimes against adolescents. There are in several of the CRC recommendations concerns about police brutality against adolescents in detention and police violence against street children, mostly adolescents, and recommendations that this problem be addressed. In Colombia, "social cleansings" (the killing of marginal populations by vigilantes and/or paramilitaries) are targeted also against street children, who are mostly adolescents, and there are reports of "cleansings" in Honduras as well.⁶⁹ See section 8.2 for similar concerns in Brazil.

1.6. LABOR LAW PROTECTION OF ADOLESCENTS

All national legislations have a minimum age for lawful work with authorization, usually 14 (But 12 in Peru and Colombia under certain circumstances). Sometimes this minimum age is also in the Constitution. Most Codes limit adolescent work to certain types and times of work, prohibiting dangerous and night work. However, there is generalized concern about the enforcement and implementation of these laws and the CRC reports concern about the exploitation of working children in all countries and insists that countries should enforce at least

⁶⁷Trinidad, Sexual Offences Act Section 6.

⁶⁸Trinidad, Sexual Offences Act Section 8.

⁶⁹Reports of social cleansing in Colombia can be found in various human rights reports, including the recommendations by the Committee for Children's rights. For reports of social cleansing affecting children in Honduras, see: <http://www.casa-alianza.org/EN/noticias/lmn/noticia15> Last visited June 9, 2004.

⁷⁰International Labor Organization Convention 138 concerning the minimum age for admission to employment (age 14) and Convention 182 Concerning the prohibition and immediate action for the elimination of the worst forms of child labor.

the ILO conventions on minimum age for the work of children and on the elimination of the worse forms of child labor.⁷⁰

1.7. ADOLESCENTS IN DETENTION

The situation of adolescents in detention is a problematic issue in all of these countries, according to CRC recommendations. The detention of adolescents is governed by the Child and Adolescent Codes, which establish the systems of juvenile justice where the judges have a lot of discretion in their decisions concerning the minors in conflict with the law. Alternative measures to detention are rarely used, according to the CRC Committee recommendations to each country. Furthermore the conditions of detention do not provide the educational, health and recreation guarantees of national and international law. CRC Committee recommendations mention police brutality against children in Argentina, Honduras, and Mexico, and poor conditions of detention of minors in all the countries. It reports there are instances of illegal detention of minors with adults in the Dominican Republic and in Mexico, as well as of girls with adult women in Trinidad. It recommends to all countries improvement on these fronts and special training and education of the public officials in charge of juvenile detention. (See next section for conditions of detention in Brazil)

1.8. VIOLATIONS OF THE RIGHTS OF VULNERABLE POPULATIONS

The UN Committees, as well as the NGOs that present shadow reports and other Human Rights Reports, are worried not only about the way general conditions affect the implementation of adolescent's rights, but also about the situation of specific groups of vulnerable adolescents. The general conditions of poverty and unequal distribution of resources affects especially those from vulnerable groups, both due to poverty and due to discrimination based on sex, race, ethnicity or regional origin. These circumstances also feed into and aggravate the situation of street children and children in situations of prostitution and trafficking, about whom little is said because of lack of data.

The UN Committees consistently manifest concern about the way girls and young persons belonging to indigenous groups or racial and ethnic minorities are affected by persistent forms of discrimination, and by the violence that is inspired by discrimination, and recommend the countries implement antidiscrimination norms and principles. Consistently they are also concerned about the lack of information on the rights of persons with disabilities, including adolescents, and about the conditions of institutionalized adolescents. Likewise they are concerned about the impact war has on rights, especially in Colombia but to a lesser degree also in those parts of Mexico that are experiencing the appearance of irregular armed groups. All of the countries reviewed have general provisions that prohibit the discrimination of persons belonging to ethnic and racial minorities. An IDB review of the legislation of Latin American

⁷⁰Interamerican Development Bank. www.iadb.org/sds/IND/site_3152_s.htm.

Countries on indigenous rights shows that all six Latin American Countries reviewed for this report have special legislation for indigenous peoples.⁷¹ This special legislation enacts the provisions of ILO Covenant 169 (1989) and includes norms that benefit adolescents such as the existence of special indigenous jurisdictions, access to health care and to culturally adequate education. Only Brazil and Colombia have norms for the preferential access of indigenous peoples to health care, and for the respect of traditional medicine. Mexico and Peru have some norms but do not guarantee preferential access to health care. In terms of education I found no norms that have affirmative action in education, but there are norms in Colombia, Brazil, Argentina, and Peru that ensure education for indigenous youth that is culturally adequate and bilingual. The issue is again one of implementation of rights. There are certain instances in which the egregious conditions of certain groups of adolescents have come to the attention of Human Rights Organizations, and reports have been produced. Among the countries reviewed, three countries stand out: the first is Colombia, where armed conflict is affecting the rights of adolescents in various ways; the second is Brazil where there are reports of police brutality and the conditions of detention for adolescents; and the third is the Dominican Republic, where human rights violations of Haitians and Dominicans of Haitian descent affect adolescents as well.

1.8.1. Child Soldiers, Internally Displaced Adolescents and other adolescents affected by Colombia's Armed Conflict

The gravest concern is the persistence of armed conflict in Colombia and its coexistence with the illegal drug trade, which leads to systematic violations of adolescent's rights through death, recruitment into illegal armies, destruction of health and education infrastructure, internal displacement, and the widespread increase in violence.⁷²

Colombia has one of the world's largest problem of internally displaced people (IDP)⁷³, most of whom are young, most of whom come from disadvantaged and marginalized groups such as Afro and indigenous communities, and most of whom are women and children. All the committees express their concern for the rights of IDP who concentrate in urban centers in conditions of extreme poverty and recommend the state give this matter priority. Another concern is the children who are affected by armed conflict, either through recruitment into illegal armies, or through being victims of violence. They recommend these countries improve their response to this issue, since there are few to no programs to address the physical and psychological needs of children who have survived violence.⁷⁴ Law 387 of 1997 creates norms to prevent displacement and protect the displaced, and creates the national system for displaced population. It does not mention young people or adolescents. The Penal Code has a section on crimes against humanity, where forced displacement is included as a crime, but adolescents are not mentioned except in the crime of illegal recruitment of children.⁷⁵

⁷²Colombia, Country Recommendations by the Committees for the CESCRC and the CRC. See footnote 201 and 205.

⁷³Colombia, Concluding Observations of the Committee on the Rights of the Child 16/10/2000. CRC/C/15/Add.137. Henceforth: Colombia CRC.

⁷⁴Colombia, Concluding Observations of the Committee on the Rights of the Child 16/10/2000. CRC/C/15/Add.137. Henceforth: Colombia CRC.

⁷⁵Colombia, Penal Code Arts. 135 to 164. Crimes against people and persons protected by humanitarian law. Forced displacement is penalized by article 159, and illegal recruitment by article 162.

⁷⁶See: Michael Taussig, *Law in a Lawless Land*. 2003.

⁷⁷Colombia, Concluding Observations of the Committee on the Rights of the Child 16/10/2000. CRC/C/15/Add.137. Henceforth: Colombia CRC.

⁷⁸Colombia, Concluding Observations of the Committee for the Elimination of Racial Discrimination 20/08/1999. CERD/C/304/Add.76. Henceforth Colombia CERD.

⁷⁹Colombia, Concluding Observations of the Human Rights Committee 05/05/97 CCPR/C/79/Add.76. Henceforth: Colombia CCPR.

⁸⁰Special Rapporteur Education Colombia.

⁸¹www.hrw.org/reports/2004/childsoldiers0104/5.htm.

Related to the armed conflict is the phenomenon of "social cleansing" by which paramilitary groups murder persons considered socially undesirable by them, targeting prostitutes, street children, and young men in gangs. (The latter are not mentioned by committees, but are of common knowledge in Colombia.⁷⁶) There are also reports of street children tortured and ill-treated by the police as well as by paramilitary groups.⁷⁷ The CERD is concerned that these forms of violence are also related to race as they sometimes focus on Afro prostitutes and street children.⁷⁸ Impunity is a widespread phenomenon, especially of these crimes.⁷⁹

The conflict affects the enjoyment of rights even for children not directly involved with it. In 2003 the Special Rapporteur on the right to education visited Colombia and published a special report on the right to education.⁸⁰ Teachers are murdered and their murders remain in impunity- According to FECODE (the national union of school teachers) data, three teachers were killed on average each month in 2003. Teaching human rights has become understood as a subversive activity, and both teachers and students are threatened. Recently Human Rights Watch published a report on child soldiers in Colombia's armed conflict.⁸¹ It reported there are more than 11,000 child combatants fighting for guerrilla and paramilitary groups, accounting for one fourth of the group's armed forces. The report found no indication of under 18 recruitment in government forces, although it did find reports of children being used for intelligence work or as peasant soldiers in a militia type force that supports the regular army. In 2003, after the report came out, Decree 128 of 2003 prohibited the use of children in intelligence activities by any group. However, several non-state groups recruit and use children, including children younger than 15. The great majority of recruits are volunteers, although there are reports of forcible recruitment among the FARC⁸² and ELN⁸³ guerrillas. The AUC⁸⁴ also has child soldiers, but on June 2003 they demobilized and released 40 soldiers between 14 and 17 to the government and UNICEF. Female recruits, who make up to one third of the FARC's forces, are subjected to sexual harassment and forced to use birth control. If they become pregnant they are forced to have abortions. Comparably the paramilitaries have few females in their ranks, according to the HRW report.

HRW interviewed former child combatants revealed the atrocities these young people are forced to commit, including torture and murder of enemies and desertion of friends, conditioning them to commit the cruelest abuses. They also have to go on long marches with little food. Many are wounded or die in battles with the army. The FARC assigns children the same duties as adults, and shoots them if they desert, especially if they take their weapons.

1.8.2. Adolescents in Detention and in the Street in Brazil

Since the mid nineties, human rights organizations have denounced police brutality against adolescents in Brazil. The first reports referred to police participation in the murder of street children, most adolescents, and the later report concentrates on conditions of detention. Human Rights Watch Report published in April 2003 a report on Children in Detention in Brazil⁸⁵. It reports that the police routinely beat up the children they capture, and that they are sent to detention centers that do not safeguard their basic human rights Detention centers for children

⁸² Fuerzas Armadas Revolucionarias de Colombia, the largest group, of Marxist-Leninist orientation.

⁸³ Ejercito de Liberacion Nacional, much smaller than the FARC, of Maoist orientation.

⁸⁴ Autodefensas Unidas de Colombia. A more splintered coalition of right wing armed forces, often associated with right wing elements of the Army, but more frequently related to vigilante groups formed by landowners and some drug traffickers.

⁸⁵ www.hrw.org/reports/2003/brazil.

⁸⁶ Human Rights Watch. [O Brasil Atrás das Grades](http://www.hrw.org/Portuguese/reports/presos). 15 December 1998. www.hrw.org/Portuguese/reports/presos.

⁸⁷ HRW other news of violence. www.hrw.org/doc?+=americas&c=brazil.

often confine them to solitary confinement, and do not offer them education or opportunity to learn productive skills. Girls often lack medical care and suffer worse conditions than boys, and their centers of detention have fewer opportunities for exercise or recreation. In detention centers they are all vulnerable to violence from other detainees, and are often subject to violence from state military police, who ensure the security of detention centers.

This report is worrisome in the light of other HRW reports on police brutality and bad conditions of detention centers in Brazil, showing an apparent trend of institutional violence. In 1998 HRW reported on the conditions of detention in Brazil, characterized by severe overcrowding and institutionalized violence as the norm in Brazilian prisons.⁸⁶ There were many credible reports of torture, and inmates were not classified according to age and type of crime, leading to rampant prisoner on prisoner physical and sexual violence. These conditions are especially threatening for young offenders who are usually first-time offenders and are detained with older and more dangerous inmates. HRW reports HIV/AIDS had reached "epidemic levels" among Brazilian inmates.

In the nineties, there were also several reports of police brutality in urban Brazil, especially against street children.⁸⁷ Violence is often focused against the inhabitants of the slums or *favelas*, and includes torture, arbitrary detentions, and warrant-less searches. The CCPR in its 1996 recommendations was very concerned about reports of summary and arbitrary execution by security forces and death squads including street children. In 1996, the murder of street children in Rio led to reports that linked the murders to paramilitary forces and to the police. This violence focused on the most vulnerable Brazilian youth, poor and black or dark skinned, and mostly on adolescent boys. It recommends the country investigate these reports and bring the guilty persons to justice.

1.8.3. Haitian and Dominican Adolescents of Haitian descent in the Dominican Republic

In the Dominican Republic, Haitians live in deplorable conditions in the so-called *bateyes*. Haitians are regularly deported through mass expulsions. Although the Dominican constitution recognizes citizenship by birth on Dominican soil, it gives the exception of transient aliens, who do not benefit from this norm. Haitians working in the Dominican Republic are treated as transient aliens in principle, so the children are not registered, cannot attend school and have no citizenship rights.⁸⁸ Haitians and their descendants are strongly discriminated against.⁸⁹

In 2002 Human Rights Watch published a report on the situation of Haitian immigrants in the Dominican Republic.⁹⁰ They report how the Dominican government has, over the past decades, deported hundreds of thousands of Haitians to Haiti, and an unknown number of Dominicans of Haitian descent. Several have been in fact mass expulsions, rounding up thousands of people in a few weeks or months and forcibly expelling them, often without time to gather their belongings, contact their families or prepare in any way. They rarely have an opportunity to challenge the charge of being illegal immigrants. Furthermore they document how Dominicans of Haitian descent are refused proof of Dominican citizenship, beginning in the hospitals, where hospital staff often refuse to provide parents with proof of birth.

⁸⁶Dominican Republic, CERD Dominican Republic Concluding Observations of the Committee on the Rights of the Child 21/02/2001. CRC/C/15/Add.150. Dominican Republic, Concluding Observations of the Human Rights Committee 28/05/2002. CCPR/CO/71/DOM. Dominican Republic Concluding Observations of the Committee for the Elimination of Racial Discrimination 26/08/1999. CERD/C/304/Add.74.

⁸⁹Dominican Republic, Concluding Observations of the Committee on Economic, Social and Cultural Rights 12/12/1997. E/C.12/1/Add.16.

⁹⁰Human Rights Watch. Illegal People: Haitians and Dominicans in the Dominican Republic. www.hrw.org/reports/2002/domrep/.

2. NATIONAL LEGISLATION AND TREATY BODY RECOMMENDATIONS

The following section describes the national legislation that applies to adolescent's rights, and reviews the recommendations made by the UN Human Rights Committees to each country's last report. Sometimes it also includes information from NGO shadow reports or from reports written by major INGO. In order make reading easier each committee comments will be identified by the same acronym as its founding treaty. Thus for example the comments of the Human Rights Committee will be identified as written by the "CCPR", that is, the acronym for the Covenant for Civil and Political Rights. The comments of the Committee for the Elimination of all forms of discrimination against women will be identified as "CEDAW," and so on.

2.1. ARGENTINA

INTRODUCTION

Argentina has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 2002,⁹¹ the CEDAW comments are from 2002,⁹² the CCPR comments are from 2000,⁹³ the CERD comments are from 2001⁹⁴ and the CSECR comments are from 1999.⁹⁵ Generally the Committees congratulate Argentina for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. This section does not review the existence of National Plans and Institutions even when mentioned by the Committees, because they tend to be transitory and change from government to government, and in particular because due to the economic and political crisis, there have been many institutional changes in the last two years in Argentina. However these policies of course must be taken into account when developing specific policies in national offices. All the Committees were concerned with the increasing poverty in the country and the way it affected the full achievement and enjoyment of rights, both through the sudden impoverishment of large sections of the population, formerly in the middle class⁹⁶, and through the cuts in government programs in budgetary allocations to health and education. They were particularly concerned by the way the economic situation affected the situation of vulnerable groups, including indigenous people and immigrant from neighboring countries.⁹⁷

⁹¹Argentina, Concluding Observations of the Committee on the Rights of the Child: Argentina. 9/10/2002. CRC/C/15/Add.187. Henceforth: Argentina, CRC.

⁹²Argentina, Committee for the Elimination of All Forms of Discrimination Against Women, Concluding Observations: Argentina, In 2003 Annual Report: A/57/38. Henceforth: Argentina, CEDAW.

⁹³Argentina, Concluding Observations of the Human Rights Committee: Argentina. 03/11/2000. CCPR/CO/70/ARG. Henceforth: Argentina, CCPR.

⁹⁴Argentina, Concluding Observations of the Committee for the Elimination of Racial Discrimination: Argentina. 18/09/1997. CERD/C/304/Add.39. Henceforth: Argentina, CERD.

⁹⁵Argentina, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Argentina. 08/12/99. E/C.12/1/Add.38. Henceforth: Argentina, CDESCR.

⁹⁶"Nuevos pobres" according to Argentina, CDESCR.

⁹⁷Argentina, CERD.

2.1.1. International Commitments

Argentina is party to the major UN human rights treaties except for the second optional protocol to the CCPR on the abolition of the death penalty and the optional protocol for the CEDAW which allows the Committee to receive communications on individual cases. The country has signed but not ratified the later and taken no action in respect to the former. Argentina has made reservations and declarations to several of these instruments.⁹⁸ Some of these reservations are relevant for the protection of adolescent's right, especially its interpretive declarations to the Children's Convention and to the First Optional Protocol to the Children's Convention. Argentina's reservation to the protocol was that it should be stricter, making 18 years the minimum age for voluntary entrance into the armed forces. Its declarations to the Convention itself established first, that Argentina understood the rights of the child to begin in the moment of conception, and secondly that the child's right to family planning was the exclusive concern of parents.

2.1.2. Constitutional Protection of Adolescents' Rights

The Argentinean Federal Constitution does not have a provision about the rights of children or adolescents. It does contemplate the protection of the rights to education,⁹⁹ work,¹⁰⁰ and equality,¹⁰¹ but not specifically for children or adolescents. The protection mechanisms are an Ombudsman's Office for Human Rights,¹⁰² and the possibility of *amparo*,¹⁰³ by which anyone can ask a judge to declare that a provision that breaches a human right be declared unconstitutional. The Constitution of the City of Buenos Aires on the other hand has a very generous protection of rights, and a special section for children and adolescent's rights. It says the city recognizes boys, girls and adolescents as subjects of rights and guarantees they will be protected, informed and heard.¹⁰⁴ The city also guarantees its youth real equality of opportunities and the enjoyment of rights through affirmative actions, effective procedures and their participation in the decisions that affect them, and creates a Council for Youth for this purpose.¹⁰⁵

⁹⁸It made a reservation to the CCPR subjecting the application of the second part of Article 15 (application of humanitarian law) to the Argentinean Constitution. It also made a reservation to the arbitration clause (Article 29 par. 1) of the CEDAW. Argentina made reservations to the CRC, articles 21 (b), (c), (d) and e, arguing that before they can be applied there must be a mechanism for the legal protection in inter country adoption to prevent the trafficking and sale of children. Likewise it made a reservation to Article 38 by considering it to prohibit the use of children in armed conflict. Argentina also made a Declaration to article 24 (f) and to Article 1. The declaration in relation to article 1 is that for Argentina a child is every human being from the moment of conception to age 18. The Declaration to article 24 is that questions concerning family planning are the exclusive concern of parents in accord with ethical and moral principles, and it is a state obligation to provide guidance for parents and education for responsible parenthood. Argentina also made declarations to the Optional Protocols to the CRC. It made a declaration to the Protocol on Armed Conflict stating that Argentina understands 18 to be the minimum age for voluntary recruitment. It made a declaration to articles 2, 3 and 7 of the Second CRC Protocol, concerning definitions. Argentina wants broader definitions of sale of children.

⁹⁹Argentinean Federal Constitution Art. 14.

¹⁰⁰Argentinean Federal Constitution Art 14 bis.

¹⁰¹Argentinean Federal Constitution Art 16 and 37.

¹⁰²Argentinean Federal Constitution Art. 86.

¹⁰³Argentinean Federal Constitution Art. 43.

¹⁰⁴Argentina, Buenos Aires Constitution Art. 39.

¹⁰⁵Argentina, Buenos Aires Constitution Art.40. This review did not find any information on the implementation of this law.

2.1.3. Special Legislation that impacts adolescents

2.1.3.1 Criminal Law

Criminal Law on Abortion

Abortion is penalized unless it is practiced to save the mother's life, in case of serious threat to her health, or in the case of the rape of a retarded or insane woman.¹⁰⁶ However, criminalization of abortion deters professionals from providing it even in circumstances when it is legal.¹⁰⁷

Sexual Abuse, Trafficking and Prostitution

The Penal Code was reformed in 1999 to eliminate discriminatory provisions.¹⁰⁸ Generally all sexual crimes have higher penalties if the victim is under 16¹⁰⁹ and/or if the victim was under the authority of or a relative of the aggressor.¹¹⁰ Persons under 13 cannot legally consent to sexual relations and therefore sex with a child younger than 13 is always presumed to be rape¹¹¹. If the victim is between 13 and 16 and he or she consented, the crime of seduction, (*seducción*, same as *estupro*)¹¹² is committed when the consent is obtained taking advantage of the victim's sexual immaturity or of the perpetrator's authority over the victim.

Argentina still has the crime of *rapto*,¹¹³ defined as the use of force, intimidation or fraud to kidnap a person for sexual purposes. If there was no force, fraud or intimidation but the victim is between 13 and 16 years old, there is still a penalty albeit lower than if she had not consented. In Argentina prostitution is not a crime, but exploitation of prostitution¹¹⁴ and trafficking persons for prostitution¹¹⁵ are. Penalties are higher when the victim is under 18, and even higher if under 13 or if the aggressor has authority over the child. However, the CEDAW has complained that there is no available data on the status of prostitution and trafficking, and requested the State to provide it. The CRC is also concerned about the increase in child prostitution and insists on the need to study and evaluate programs to prevent prostitution and to rehabilitate prostitutes.¹¹⁶ The Penal Code also includes other crimes that are specifically against minors such as corruption of minors,¹¹⁷ which is not defined in the Code but carries a high penalty. Pornography is a crime only when it involves children under 18, whether as participants in the images or as spectators of them.¹¹⁸

2.3.2. Child and Adolescent Code

The Argentinean Child and Adolescent Law (*Ley de Patronato*) harks back to 1919¹¹⁹ and is based

¹⁰⁶Argentina, Penal Code Art. 82.

¹⁰⁷Argentina, CCPR

¹⁰⁸Argentina, Crimes Against Sexual Integrity Act, Law 25 087.

¹⁰⁹Argentina, Penal Code Art. 119.

¹¹⁰If the rape is committed by an ascendant, brother, tutor, curator, minister of any religion, or person in charge of care and education. Argentina Penal Code Art. 119.

¹¹¹Argentina, Penal Code Art. 119 .

¹¹²Argentina, Penal Code Art. 120 .

¹¹³Argentina, Penal Code Article 130.

¹¹⁴Argentina, Penal Code Art. 125 .

¹¹⁵Argentina, Penal Code Art. 127.

¹¹⁶Argentina, CRC

¹¹⁷Argentina, Penal Code Art.125.

¹¹⁸Argentina, Penal Code Art.129

¹¹⁹Argentina, Law.10.903 Ley de Patronato

¹²⁰Argentina, Centro de Estudios Legales Y Sociales (CELS). "Cuestiones a Considerar en la Evolución del Segundo Informe Periódico de Argentina en Cumplimiento del Artículo 44 de la Convención de Derechos del Niño.". <http://www.crin.org/resources/treaties/list.asp?ID=11&type=ctry>

doctrine of irregular situation which does not see children as subject of rights but as objects of protection. There have been several unsuccessful attempts to enact a new law.¹²⁰

The *Ley de Patronato* does not regulate juvenile justice and does not distinguish between children in need of care and protection and children in conflict with the law. Law Act 22.278 (amended by Law 22.803) establishes the penal regime applicable to minors. There is no punishment for any person under 16, and no punishment for any person under 18 for a privately actionable offence, an offence carrying a sentence of not more than two years or one punishable by fine. Persons over 16 who commit more serious crimes will be prosecuted under the same procedural rules than adults, but with a special regime of penalties that takes rehabilitation and protection as its main objectives. Even so, police brutality and especially the condition of juveniles in detention are serious concerns for the United Nations Human Rights Committees, especially the existence of police brutality.¹²¹ There are reports of the "easy trigger syndrome" affecting police officers and of torture and ill treatment of children held in police stations.¹²² Children in detention are held under poor conditions including lack of basic services, corporal punishment, and isolation. In its shadow report to the CRC,¹²³ CELS, an Argentinean NGO, echoes these findings, describing the situation of children who are detained for crime as particularly dire, with reports of torture and of extrajudicial killings committed by police officers.

The CRC has recommended law enforcement personnel receive training, the creation of a complaint mechanism and that complaints are investigated, and that there be medical exams of child detainees, and that there be a possibility for recovery and compensation of victims.¹²⁴ It has also recommended the reform of the Code of Criminal Procedure (Art.205) that allows anyone (possibly including a child) to be held *incommunicado* up to 72 hours.¹²⁵

The CELS shadow report insisted on three aspects of concern: the situation of children in conflict with the law, children's social and economic rights, and the situation of immigrant children. Because of Argentina's outdated child-related legislation and because the laws still have the doctrine of the irregular situation, children are often detained and institutionalized against their will, whether they have committed a crime, are the victims of one, or are under any sort of duress for which the judge considers they are "in need of protection." The CELS is also concerned about the dire situation of children's social and economic rights in the Argentinean crisis, and especially about the effects on children of immigrants, who are discriminated against and denied access to health and education.

2.1.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

The Argentinean domestic violence law gave family judges the possibility of issuing protection orders, but did not create the crime of domestic violence.¹²⁶ Instead domestic violence is

¹²¹Argentina, CRC, CERD and CCPR

¹²²Argentina, CRC

¹²³CELS, *op. cit.* Footnote 111.

¹²⁴Argentina, CRC

¹²⁵Argentina, CRC and Argentina Criminal Procedures Code

¹²⁶Argentina, Law 24.417 of 1994.

¹²⁷Argentina, Penal Code Arts. 270 and 271.

¹²⁸Children must go accompanied by a public defender. Law 24,417 Art. 5.

¹²⁹Argentina, CRC

prosecuted under the Penal Code's provisions for assault.¹²⁷ In order to get a domestic violence protection order, all have to go to a mandatory conciliation meeting.¹²⁸

As to the protection of children in situations of domestic violence, the CRC laments the lack of standard procedures for detecting neglect, ill treatment and abuse and limited support for victims.¹²⁹

2.1.3.4. Labor Law: Protection against exploitation

The minimum age for work in Argentina is 14, except for family enterprises provided the work is not harmful or dangerous and the child can still attend school. Minors between 14 and 18 are under the same labor protection regime as adults.¹³⁰

2.1.3.5. Health: Access to health services and reproductive and sexual health including HIV and access to contraception

The Public health system in Argentina is two tiered.¹³¹ On the one hand there are health services covered by mandatory health insurance, provided mostly by private organizations known as Obras Sociales, linked to a specific group of workers and their dependents. On the other hand, the public assistance health system has the obligation to provide services for the uninsured population. There is also a market for private health insurance and service providers. Argentina was one of the first countries in Latin America to have an HIV/AIDS law, in 1990.¹³² This law establishes anti discrimination measures and ensures access to voluntary testing, but does not specifically mention adolescents. The provision of treatment is part of mandatory and private health insurance programs.¹³³ The law does not mention adolescents, nor whether parental consent is needed to receive services. The decree that accompanies the law orders the inclusion of HIV/AIDS information in elementary, secondary and higher education.¹³⁴ In Argentina sex education is also mandated by the reproductive health law¹³⁵ and the Buenos Aires Constitution.¹³⁶ The City of Buenos Aires adopted in 2000 a Reproductive Health and Responsible Procreation law, and the Federal Government adopted in 2002 a similar law that creates the National Program for Sexual Health and Responsible Procreation.¹³⁷ The Federal Law has among its objectives to prevent unwanted pregnancies and promote adolescent's sexual and reproductive health and education.¹³⁸ It ensures the free provision of reproductive health services and information, including contraceptives for the population at large, but it is unclear whether parental consent is required in the case of minors: the law establishes that the superior interest of the child will prevail, but at the same time that the law is framed within parental rights and duties.¹³⁹

The economic crisis has had a serious impact in health through the increase in poverty, and deterioration of health services. Women are losing their right to comprehensive health care in

¹³⁰Argentina, Employment Contract Act Law 20.744 Art. 187 and 189.

¹³¹See: Organización Panamericana de la Salud, Programa de Organización y Gestión de los Sistemas y Servicios de Salud. Perfil del Sistema de Servicios Salud de Argentina. Washington, 2001.

¹³²Argentina, Ley 23.789

¹³³Argentina, Ley 24.455 and 24.754

¹³⁴Argentina, Decree N°1.244/91 Reglamenting Law N° 23.798, Art. 1.

¹³⁵Argentina, Law 23,673 of 2002.

¹³⁶Argentina, Buenos Aires Constitution Art. 24.

¹³⁷Argentina, Law 23,673 of 2002.

¹³⁸Argentina, Federal Reproductive Health and Responsible Procreation Law Art. 2

¹³⁹Argentina, Federal Reproductive Health and Responsible Procreation Law Art. 4

¹⁴⁰Argentina, CEDAW

¹⁴¹Argentina, CESCR Three Committees (CRC, CEDAW, and CESCR) are concerned about the lack of data on these issues.

particular in regards to sexual and reproductive health.¹⁴⁰ In spite of the National Plan of Action for HIV/AIDS and the Reproductive Health and Responsible Procreation Laws, there is growing HIV infection (especially among young women), high maternal mortality, and a high rate of adolescent pregnancies. The CERSC suggested the state review its policies on health "in particular pay attention to the issues of mental health, maternal mortality, adolescent pregnancies, and HIV/AIDS" and provide data on these issues.¹⁴¹

2.1.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

According to the Federal Education Act, school attendance is compulsory and free for all children from six to fourteen.¹⁴² However the crisis has affected access of girls to public education as they lack resources, especially girls from most vulnerable sectors.¹⁴³ There are also high drop out and repetition rates.¹⁴⁴ The decree that accompanies the AIDS law orders the inclusion of information on HIV/AIDS in all levels of education.¹⁴⁵

2.1.3.7. Minimum Ages for Marriage and Recruitment

The minimum age for voluntary recruitment into the armed forces is 18, and there is no compulsory recruitment. Parental authorization for joining is needed until age 21.¹⁴⁶ The minimum age for marriage for women is 16 and for men 18, except with judicial dispensation, not just parental.¹⁴⁷ Judicial dispensation is to be given only under exceptional circumstances and for the child's benefit. The law does not mention an age limit for this dispensation. The CRC is concerned about this disparity in age of marriage and recommends it be changed so that both have the same age.

2.2. BRAZIL

Brazil has presented reports and received recommendations from the United Nations Human Rights Committees in the last decade. The CEDAW comments are from 2003,¹⁴⁸ the CCPR comments are from 1996,¹⁴⁹ the CERD comments are from 2004¹⁵⁰ and the CSECR comments are from 2003.¹⁵¹ Brazil has only presented one report to the CRC, in 2003, and the recommendations have not yet been published in the U.N. website.

Generally the Committees congratulate Brazil for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. Perhaps the most important legislative advance after the 1988 Constitution is the new Civil Code that eliminated

¹⁴²Argentina, Federal Education Act 24.195 of 1993 Art. 10 compulsory school attendance for ten years on year of kindergarten plus nine of basic general education. Art. 39 Education shall be free.

¹⁴³Argentina, CEDAW

¹⁴⁴Argentina, CRC

¹⁴⁵Argentina, Decree N°1.244/91 Reglamenting Law N° 23.798, Art. 1.

¹⁴⁶Argentina, Law 24.429 Ley de Servicio Militar Voluntario.

¹⁴⁷Argentina, Act. 23 515 Art. 166 par. 5 and Art. 168.]

¹⁴⁸Brazil, Committee for the Elimination of All Forms of Discrimination Against Women, Concluding Observations, Brazil. In: Report for 2003, U.N. A/58/38. Henceforth, Brazil, CEDAW.

¹⁴⁹Brazil, Concluding Observations of the Human Rights Committee: Brazil. 24/07/96. CCPR/C/79/Add.6. Henceforth: CCPR

¹⁵⁰Brazil, Concluding Observations of the Committee for the Elimination of Racial Discrimination: Brazil. 12/03/2004. CERD/C/64/CO/2. Henceforth CERD

¹⁵¹Brazil, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil. 23/05/2003. E/C.12/1/Add.87.Henceforth: CESC

¹⁵²Brazil, Law 9459 of 1997.

gender discriminatory provisions of the old Code. There is also a law against discrimination, which dates from 1997,¹⁵² but the CERD was concerned that penalties against racial crimes were rarely applied.

Also in 2003 the new government has created a series of institutional mechanisms to fight discrimination: Special Secretariat for Racial Equality Policies, Special Secretariat for Women's Policies, and the Special Human Rights Secretariat, all with ministerial rank. There are also new programs that, like the new institutional mechanisms, have received compliments for the State from the U.N Committees. The best known are the Ministry of Health's HIV/AIDS Program, the new Fome Zero (Zero Hunger) Program, the National Affirmative Action Programme, and the women's police stations which date from the mid eighties.

All United Nations committees are concerned with the extreme inequality and social exclusion rates in Brazil, affecting especially Afro-Brazilians and indigenous peoples. The CEDAW is especially worried about that social exclusion and high poverty affect mostly women in this country with one of the highest income distribution gaps in the world. The CEDAW and the CESCR are concerned about the way social exclusion is reproduced by structural inequalities and by discrimination and recommend measures be taken to correct this situation.

2.2.1. INTERNATIONAL COMMITMENTS

Brazil has signed and ratified the major U.N. treaties, including: the CCPR, CEDAW, CESCR, CRC and CERD.¹⁵³ It did not take any action in relation to the two Optional Protocols to the CCPR, on the abolition of the death penalty and allowing the Committee to receive communications on individual cases, although it did ratify the Optional Protocols to the CEDAW and the CRC. It made reservation to Articles 15 (4) and 16 (1a, c, g, h) but these were withdrawn in 2003.

2.2.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

The Brazilian Constitution guarantees a series of rights for children such as full protection, priority of the superior interest of the child, guarantee of access to school and to social security.¹⁵⁴ It also establishes that when charged with infractions children will have full rights of defense, according to the laws, and that they are not criminally liable under the age of 18.¹⁵⁵ The Constitution allows for a judicial injunction for the direct application of rights, in case the laws do not protect constitutional rights.¹⁵⁶

¹⁵³It also declared it was not bound by the arbitration clause of CEDAW Art. 29.

¹⁵⁴Brazil, Federal Constitution Art. 226.

¹⁵⁵Brazil, Federal Constitution Art. 228.

¹⁵⁶Brazil, Federal Constitution Art.5 LXXI.

¹⁵⁷Brazil, CESCR Brazil CEDAW

2.2.3. SPECIAL LEGISLATION

2.2.3.1 Criminal Law

In Brazil the Penal Code Reform has been pending for several years, as is the adoption of a law against domestic violence. The present Penal Code has various discriminatory articles, such as the requirement of honesty in the victim and the article that establishes an elimination of penalty for sexual crimes when the victim marries.¹⁵⁷

Criminal Law on Abortion

Abortion is a crime punished with 1 to 3 years in prison, unless it was done to save the mother's life or in case of rape.¹⁵⁸ The CEDAW is concerned about the high rates of clandestine abortion and maternal mortality from illegal abortion linked to poverty, exclusion, and the lack of reproductive health information and services.

Sexual Abuse, Trafficking and Prostitution

Sexual crimes are classified as crimes against customs and are privately actionable offences, unless the victim and her family cannot afford a lawyer or a parent, tutor or curator committed the rape.¹⁵⁹ All penalties are increased if committed by a family member. Sexual relationships with children (boys as well as girls) under 14 are always rape, even if there is consent.¹⁶⁰ The norms concerning sexual crimes in Brazil are generally discriminatory, because they leave out men as possible victims of sexual violence or because they include the victim's sexual past as an element. For example, rape is defined as sexual intercourse with a woman by the use of force¹⁶¹ or by the deception of an honest woman.¹⁶² There is also the crime of having consensual sex with a virgin woman between the ages of 14 and 18 when her consent obtained through fraud¹⁶³ or through taking advantage of her inexperience or trust.¹⁶⁴ Forced sex with a male is not as rape but violent attempt against modesty, under the category of "other sexual acts," which carry the same penalty as rape.¹⁶⁵ To kidnap an "honest" woman for "lewd" purposes using violence, dire threat or fraud is the crime of raptio.¹⁶⁶ The penalty is reduced by a third if the purpose of the raptio is marriage or in half if he frees her or leaves her in a safe place where she can be found by her family and has not practiced any sexual act.¹⁶⁷

For all sexual acts there is no prosecution if a victim marries either her rapist or someone else after the crime.¹⁶⁸ All sexual crimes are prosecuted only if the victim reports the crime (querella, private action) and not by state initiative (de officio, public action). While prostitution itself is not a crime, trafficking and exploiting another person's prostitution are, and the penalties are higher if the person is younger than 18.¹⁶⁹ Trafficking has a narrow definition: it is defined as the promotion or

¹⁵⁸Brazil, Penal Code Art. 124.

¹⁵⁹Brazil, Penal Code Art.224.

¹⁶⁰Brazil, Penal Code Art.224.

¹⁶¹Brazil, Penal Code Art. 213.

¹⁶²Brazil, Penal Code Art.215.

¹⁶³Brazil, Penal Code Art. 215.

¹⁶⁴Brazil, Penal Code Art. 217.

¹⁶⁵Brazil, Penal Code Art.214.

¹⁶⁶Brazil, Penal Code Art. 219.

¹⁶⁷Brazil, Penal Code Art. 221.

¹⁶⁸Brazil, Penal Code Art. 107

¹⁶⁹Brazil, Penal Code Art. 227 and Art. 230.

¹⁷⁰Brazil, Penal Code Art.231.

¹⁷¹Brazil, Penal Code Art. 234.

¹⁷²Brazil, Statute of the Child and Adolescent. Law 8.069 of 1990.

facilitation of the entry into national territory or the leaving of it of a woman to practice prostitution.¹⁷⁰ There is no specific provision in the Code about pornography with minors.¹⁷¹ However, the Child and Adolescents Statute contemplates several crimes against persons younger than 18, including trafficking of both sexes for any purpose and child pornography (*see next section*).

2.2.3.2 Child and Adolescent Code

The Statute of the Child and Adolescent¹⁷² guarantees the rights of the child and eliminates the doctrine of minor in an irregular situation. It accompanied the Brazilian 1988 Constitution in establishing children (up to twelve) and adolescents (up to eighteen) as rights bearers and in ordering measures for the assistance and protection of children. The Constitution establishes the minimum age for criminal liability to be 18,¹⁷³ and the Statute of the Child and the Adolescent establishes procedures for juvenile offenders. These procedures contemplate the protection of the right to defense and due process.¹⁷⁴ They also establish the crime of illegal detention of a minor, and other crimes against minors such as:

- Cruel punishment and humiliation¹⁷⁵
- Participation in taking a child or adolescent out of the country illegally or for profit¹⁷⁶
- Using a child or adolescent in sexual or pornographic scenes in the there, television or movies¹⁷⁷ or taking photographs¹⁷⁸
- Giving children and adolescents guns,¹⁷⁹ addictive drugs without a justification¹⁸⁰ or dangerous fireworks.¹⁸¹

For information on adolescents in detention in Brazil: see supra Regional Trends 8.2.

2.2.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

Among the country studied, only Brazil does not have domestic violence legislation, although there have been various bills that have failed. Domestic violence is prosecuted as assault, except when the abuse constitutes another crime in the Penal Code or in the Statute for the Child and the Adolescent, such as the crime of mistreatment.¹⁸² There is also a law that protects victims of violence, but it is not specific for domestic violence.¹⁸³ However there are many policies and programs for battered women and abused children, most notable the establishment of women's police stations since the mid eighties.¹⁸⁴

¹⁷³Brazil, Federal Constitution Art. 228.

¹⁷⁴Brazil, Statute of the Child and Adolescent Art.111.

¹⁷⁵Brazil, Statute of the Child and Adolescent Art. 232.

¹⁷⁶Brazil, Statute of the Child and Adolescent Art. 239.

¹⁷⁷Brazil, Statute of the Child and Adolescent Art. 240.

¹⁷⁸Brazil, Statute of the Child and Adolescent Art. 241.

¹⁷⁹Brazil, Statute of the Child and Adolescent Art. 242.

¹⁸⁰Brazil, Statute of the Child and Adolescent Art. 243.

¹⁸¹Brazil, Statute of the Child and Adolescent Art.244.

¹⁸²Brazil, Statute of the Child and the Adolescent Art. 146.

¹⁸³Brazil, Law 9.807 of 1999.

¹⁸⁴Brazil, Informe de país al Comité CEDAW . 2002. CEDAW/C/BRA/1-5. p. 36

¹⁸⁵Brazil, Federal Constitution Art.227 par 3.

¹⁸⁶Brazil, Statute of the Child and Adolescent Art.60 and ss.

¹⁸⁷Brazil, Statute of the Child and Adolescent Art. 67.

2.2.3.4. Labor Law

The federal Constitution of 1988 establishes 14 as the minimum working age.¹⁸⁵ The Statute of the Child and Adolescent also establishes this minimum age except for work as an apprentice and that adolescent workers have all the rights of adult workers.¹⁸⁶ The statute also prohibits the following types of work for those who are under 14 years of age: work at night, work that is dangerous or unhealthy or that takes place under conditions prejudicial to their physical, psychological, moral or social development or that impedes them from going to school.¹⁸⁷

2.2.3.5. Right to Health

The Brazilian Constitution establishes health as a social right.¹⁸⁸ Adolescents have the right to social assistance and protection when they are in need.¹⁸⁹ Brazil has, unlike most countries in the region, a unified health system. This means that there are not two sets of health service providers, one for those who have mandatory health insurance (workers and their dependants) and another for those who don't.¹⁹⁰ Instead both are served by the SUS, Sistema Unificado de Salud or Unified Health System, which is financed by worker's mandatory health insurance provisions, and by the federal, state and municipal budgets. There is a parallel private health insurance market that caters to the wealthier urban populations.¹⁹¹

The Statute for the Child and Adolescent specifically guarantees pregnant adolescents prenatal and natal care and all adolescents and children access to health care through the Unified Health System.¹⁹² Since 1996, family planning is included in the Unified Health System and it does not mention parental consent.¹⁹³ In Brazil, sex education is included in various policies and programs but not through laws.¹⁹⁴

There is a decrease in HIV infection due to exemplary Brazilian Ministry of Health programme; however, there is an increasing HIV infection rate among young women.¹⁹⁵ CEDAW recommends the country take measures to guarantee access of young women to health care information and services and recommends that sexual and reproductive health and sex education be widely promoted, particularly targeting adolescents with special attention to the prevention and control of HIV/AIDS. The State of Sao Paulo has laws against discrimination of people with AIDS.¹⁹⁶

2.2.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

The Brazilian Constitution establishes education is a social right, and that elementary education is free, compulsory and an individual (subjective) right.¹⁹⁷ It does not mention a minimum age for

¹⁸⁸Brazil, Federal Constitution Art. 6

¹⁸⁹Brazil, Federal Constitution Art. 203.

¹⁹⁰OPS, Salud en Brasil.

¹⁹¹Brazil, Law 9.656 of 1998.

¹⁹²Brazil, Statute of the Child and Adolescent Art. 8 and 11.

¹⁹³Brazil, Family Planning Law 9,263 of 1996.

¹⁹⁴See: CRLP Women of the World: Laws and Policies that affect their reproductive lives. Latin America and the Caribbean.. New York 1997 and 2000 supplement.

¹⁹⁵Brazil, CEDAW, CESCR

¹⁹⁶Brazil, Law 641 of 2000.

¹⁹⁷Brazil, Federal Constitution Art. 6 and 205.

¹⁹⁸Brazil, Law No. 4375 (1964) Art.5

¹⁹⁹Brazil, Federal Constitution

school. The CEDAW is worried about gender segregation in education field, by which young women make choices that have negative consequences for their professional opportunities.

2.2.3.7. Minimum Ages for Marriage and Recruitment

In Brazil, the compulsory recruitment minimum age is 19, and for voluntary recruitment age it is 17.¹⁹⁸ The 1988 Constitution makes military services compulsory for men during peacetime.¹⁹⁹ The new Civil Code, enacted in 2001, establishes a minimum age of 16 for the marriage of both boys and girls, and even then with parental consent.²⁰⁰ However it also establishes the following exception to this minimum age: to avoid criminal penalties (since marriage is an exemption for rape and other sexual crimes) and in case of pregnancy.²⁰¹

2.3. COLOMBIA

Colombia has recently presented reports and received recommendations from the United Nations Human Rights Committees: The CRC comments are from 2000,²⁰² the CEDAW comments are from 1999,²⁰³ the CCPR comments are from 1997,²⁰⁴ the CERD comments are from 1999²⁰⁵ and the CSECR comments are from 2001.²⁰⁶

Generally the Committees congratulate Colombia for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. Colombia has also been congratulated for the creation of an Ombudsman's Office and for the progressive human rights decisions of the Constitutional Court.

All Committees mention the existence of extreme inequalities, persistence of discrimination, armed conflict, and increasing poverty that threatens human rights, including the rights of adolescents. The economic recession of the late nineties greatly deteriorated the human development index. The CSECR is furthermore concerned that rapid growth of unemployment affected mainly young people, and that budgets for social programs have been cut.

2.3.1. INTERNATIONAL COMMITMENTS

Colombia has signed and ratified the major UN human rights treaties, including: CCPR, CEDAW, CERD, CSECR, and CRC. It is party to the Optional Protocols to the CCPR and the second Protocol of the CRC. It has signed but not ratified to Optional Protocol to the CEDAW and the First Protocol of the CRC.²⁰⁷

²⁰⁰Brazil, Civil Code Art.1517.

²⁰¹Brazil, Civil Code Art.1520.

²⁰²Colombia, Concluding Observations of the Committee on the Rights of the Child 16/10/2000. CRC/C/15/Add.137. Henceforth: Colombia CRC.

²⁰³Colombia, Committee for the Elimination of All Forms of Discrimination Against Women 04/02/99. A/54/38 paras.337-401. Henceforth: Colombia CEDAW.

²⁰⁴Colombia, Concluding Observations of the Human Rights Committee 05/05/97 CCPR/C/79/Add.76. Henceforth: Colombia CCPR. There are new comments form April 2004 but I was unable to find them on the U.N. websites.

²⁰⁵Colombia, Concluding Observations of the Committee for the Elimination of Racial Discrimination 20/08/1999. CERD/C/304/Add.76. Henceforth Colombia CERD.

²⁰⁶Colombia, Concluding Observations of the Committee on Economic, Social and Cultural Rights: 30/11/2001. E/C.12/1/Add.74. Henceforth: Colombia CSECR.

²⁰⁷At signature, Colombia made a reservation to Article 38 saying it construes Art.38 to say the minimum age of recruitment into the army to be 18. It also made a declaration to Art. 7 of the Second Protocol of the CRC on the sale of children, child prostitution and child pornography, saying that it understands the confiscation of [child pornographic] materials as a seizure or forfeiture during the penalty phase.

²⁰⁸Colombian Constitution Art 44.

²⁰⁹Colombian Constitution Art. 45.

2.3.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

The Colombian Constitution enshrines the rights of children and adolescents in several articles. It establishes that children's rights prevail over the rights of others²⁰⁸ as well as additional rights for adolescents to special protection and participation.²⁰⁹ The constitution also guarantees children's rights to health,²¹⁰ right to education,²¹¹ and the special protection of working children.²¹² The 1991 Constitution also created institutional mechanisms for the protection of rights, most importantly the Ombudsman's Office (*Defensoria del Pueblo*).²¹³ It also created the *tutela*, an action for the direct application of fundamental rights that can be used before any judge.²¹⁴ A *tutela* action demands a judicial injunction to protect the threatened right and which must be decided within 48 hours, and they are revised by the Constitutional Court.²¹⁵

The Committees have congratulated Colombia also on the expansive rights guarantees given by its 1991 Constitution, many of which can be protected through a *tutela*. The 1991 Constitution also created the Constitutional Court, which reviews bills, laws and decrees as well as other judges' *tutela* decisions. Through its jurisprudence, the Court has had an important role in the creation of human rights law, and many of its decisions have benefited adolescents. For example, the Court has defended adolescents' right to education when they were expelled from school for being pregnant and the right to sex education that is age-appropriate, in spite of parental opposition to sex education.²¹⁶

2.3.3. SPECIAL LEGISLATION

2.3.3.1 Criminal Law

Criminal Law on Abortion

In Colombia, abortion is a crime punished with 1 to 3 years in prison; the penalty is diminished in 1/3 if the pregnancy is the result of rape, but there are no exceptions. The Code offers the possibility of judicial reprieve if there are extraordinary motivating circumstances and the pregnancy was the result of rape.²¹⁷ Because of the connection with maternal mortality, the CEDAW committee has manifested that these criminal penalties are a violation of women's right to life. The CRC is also concerned that illegal abortion is the leading cause of maternal mortality, while the CESCR expressed concern about the increased incidence of illegal abortion. They recommend the country reconsider its legislation on abortion.

Sexual Abuse, Trafficking and Prostitution

All sexual crimes receive a higher penalty if the victim is younger than 12 or the rapist has

²¹⁰Colombian Constitution Art.49.

²¹¹Colombian Constitution Art. 6.

²¹³Colombian Constitution Art. 53.

²¹⁴Colombian Constitution Art. 282.

²¹⁵Colombian Constitution Art. 86.

²¹⁶Colombia, Decree 2591 of 1991.

²¹⁷Colombia, Constitutional Court Decisions T-440 of 1992 and T-420 of 1992.

²¹⁸Colombia, Penal Code Art. 122 and 124.

²¹⁹Colombia, Penal Code Art. 211, 205 and 207.

²²⁰Colombia, Penal Code. Art. 208 and 209.

authority over the victim derived from being a parent, teacher, minister, etc.²¹⁸ Consensual sex with a person younger than 14 is the crime of *estupro*; other consensual sexual acts with a person younger than 14 are also punished.²¹⁹ Likewise, it is a crime to photograph, film, sell, buy exhibit or in any way derive profit from pornographic material where children under 18 participate.²²⁰

While prostitution is not a crime in Colombia, induction to prostitution and forcing someone into prostitution are. It is not a crime to have a house where prostitution is practiced, but it is if there are prostitutes under 18; the penalty is increased by a half when the victim is younger than 12.²²¹ Trafficking is a crime defined as promoting, inducing, forcing or facilitating the entry or leaving the country of person for prostitution.²²² In every case, penalties are increased by one third to one half when the victim is younger than 14 or the trafficker is a relative with authority over the victim. While the legal framework may be adequate, the CRC is concerned about inadequate prevention of trafficking and sale of children and recommends the country increase efforts to address this problem.

2.3.3.2. Child and Adolescent Code

Colombia's 1989 Code of Minors did not fully incorporate the Convention of the Rights of the Child. Even though it has an initial chapter on rights, it is still guided by the doctrine of the protection and correction of irregular situations with children as objects rather than subjects of rights. It creates a national institution, the ICBF, to oversee the protection of children in irregular situations, which includes both those in conflict with the law, and those who are abused or abandoned. The CRC is concerned about this, and especially concerned that efforts to reform the Code have been dragging. It is also concerned that the ICBF does not fully embrace a rights approach and needs institutional reform.

The age of criminal responsibility is 18; children from 12 to 18 are tried by a system of juvenile justice that emphasizes protection and rehabilitation.²²³ Children cannot be detained in the same places as adults.²²⁴ Although prisons for children have been closed and reeducation centers established, the CRC remains concerned about the long-term placement of children in these centers, and the lack of alternative measures to deprivation of children's liberty. It recommends that children be placed in centers only as a last measure and that there be alternatives to deprivation of their liberty.

2.3.3.3. Domestic Violence

Law 294 of 1996 (partially reformed by law 575 of 2000) created the crime of domestic violence and also gave Family judges the power to issue protection orders. There is a mandatory

²²¹Colombia, Penal Code Art. 218.

²²²Colombia, Penal Code Art. 219.

²²³Colombia, Penal Code Art. 215.

²²⁴Colombia, Minors Code Art. 57.

²²⁵Colombia, Minors Code Art. 183.

²²⁶Colombia, Penal Code Arts. 229 and 230.

²²⁷Colombia, Minors Code Decree 2737 of 1989 Art 131.

conciliation hearing but only for adults. The 2000 reform gave the power to issue protection orders to family commissars, a police authority with judicial powers, and to prosecutors, but kept domestic violence a crime in the Penal Code.²²⁵ Besides these laws, children are also protected by the Minors Code which gives the ICBF's lawyers (Family Defenders) the power to order protection measures for children who are abused.²²⁶

2.3.3.4. Labor Law: Protection against exploitation

Work by minors under the age of 14 is prohibited.²²⁷ Under special circumstances children over 12 may be allowed to work by the labor inspection upon application made by parents or guardians to the Family Defender. The Labor Law establishes shorter working hours for children and also establishes that children can't work at night or do dangerous work.²²⁸ Even so, the CRC is concerned about the persistence of economic exploitation of children.

2.2.3.5. Right to Health: Access to health services including reproductive and sexual health, including HIV and access to contraception

Colombia's public health system is a two tiered system. On the one hand there is the health system for those who have mandatory health insurance and their dependents. The services are provided by both private and public providers who administer mandatory health insurance for workers. The government subsidizes health insurance for the poorest sectors. On the other hand, there is a public assistance health network for those who are not insured.²²⁹

Colombia has national legislation to protect the rights of persons with HIV/AIDS and to establish policies and regulations to monitor the epidemic and prevent it from spreading. The only reference that is made in the law to adolescents is to the need for the promotion of a responsible and healthy sexuality for children and adolescents and the need for sex education that includes information on HIV/AIDS.²³⁰ Sex education is also mandated by the national education law, and the Constitutional Court has had decisions on the constitutionality and need for sex education.²³¹ In 2002, AIDS medications were included in the medicines covered by social security health plans.²³²

CEDAW acknowledges there have been positive measures in regard to sexual and reproductive health in the general system of social security including several campaigns on HIV prevention. But there is still high maternal mortality and adolescent pregnancy rates, as well as insufficient access by adolescents to reproductive health education, counseling, and services. The CRC is concerned about this and about the increasing rates of substance abuse and HIV/AIDS among

²²⁷Colombia, Minors Code Art. 237 to 264.

²²⁸Colombia, Labor Code Art. 161 4 hours per day/ 24 a week for children between 12 and 14. 6 hours a day/36 a week for children between 14 and 16, while children over 16 can work the full week (8 hours a day/48 a week), but not more than that (no extra hours).

²²⁹OPS, Colombia.

²³⁰Decreto 1543 de 1997 por la cual se reglamenta el manejo de infección por VIH/SIDA y otras ITS.

²³¹Colombia, General Law of Education Law 115 of 1994. Constitutional Court decision T-440 of 1992, T-293 of 1998 and T-321 of 1993.

²³²Manual de medicamentos de Plan Obligatorio de Salud - Acuerdo 226/2002.

children and adolescents, and discrimination against them. It recommends access to basic health care and services, and to the care and rehabilitation of adolescents with HIV/AIDS.

2.3.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

According to the Constitution, education shall be compulsory for children between five and fifteen and free except when they can pay.²³³ The CRC is concerned about the high drop out and repetition rates in primary and secondary, especially among afro-Colombians, indigenous and internally displaced populations. The CESCR is also concerned about the low quality of education. They recommend the country take action to correct this.

In 2003 the Special Rapporteur on the Right to Education did a report on Colombia. Her main concern was that while the constitution affirmed free compulsory education except for those able to pay for it, state school charge fees, and educational authorities have the power to assess a family's capacity to pay for education. Therefore, Colombia is the only country in the region where tuition fees are charged in primary education, placing some families who supposedly can pay with difficult choices between necessary household expenses and school.

2.3.3.7. Minimum Ages for Marriage and Recruitment

The minimum age for recruitment into the Armed Forces is 18.²³⁴ However, the data suggests that some armed illegal groups recruit children in significant numbers. For more information on children soldiers in Colombia, see section 8.1.

Minors under 18 need parental approval for marriage.²³⁵ With parental approval, according to the Civil Code, girls can marry at age 12 and boys at 14. In 2004, the Constitutional Court declared the minimum age of 12 for girls to be unconstitutional, and placed the minimum age for both at 14,²³⁶ well below the CRC recommendation of 18.

2.4. DOMINICAN REPUBLIC

The Dominican Republic has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 2002,²³⁷ the CEDAW comments are from 2002,²³⁸ the CCPR comments are from 2000,²³⁹ the CERD comments are from 2001²⁴⁰ and the CSECR comments are from 1999.²⁴¹

²³³Colombia, Constitution Art. 67.

²³⁴Colombia Law 49/99.

²³⁵Colombia Civil Code Art. 116 and Art.140.

²³⁶Colombia, Constitutional Court 2004. This decision was taken in may and not yet registered on the Constitutional court's data base, but see: <http://www.caracol.com.co/titular.asp?id=112366>.

²³⁷Dominican Republic Concluding Observations of the Committee on the Rights of the Child 21/02/2001. CRC/C/15/Add.150. Henceforth: Dominican Republic, CRC.

²³⁸Dominican Republic Committee for the Elimination of All Forms of Discrimination Against Women 14/05/98. A/53/38 paras 312-353. Henceforth: Dominican Republic, CEDAW.

²³⁹Dominican Republic Concluding Observations of the Human Rights Committee 28/05/2002. CCPR/CO/71/DOM. Henceforth: Dominican Republic, CCPR.

²⁴⁰Dominican Republic Concluding Observations of the Committee for the Elimination of Racial Discrimination 26/08/1999. CERD/C/304/Add.74. Henceforth: Dominican Republic, CERD.

²⁴¹Dominican Republic Concluding Observations of the Committee on Economic, Social and Cultural Rights 12/12/1997. E/C.12/1/Add.16. Henceforth: Dominican Republic, CESCR.

Generally the Committees congratulate the Dominican Republic for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. The Committees also congratulate the Dominican Republic for the creation of the Office for the Promotion of Woman.²⁴² The committees all mention widespread poverty and related concerns, such as the inequitable distribution of wealth,²⁴³ the persistence of discrimination against women,²⁴⁴ and large numbers of children living in the streets.²⁴⁵ They are also concerned about the situation of Haitians in the Dominican Republic (see section 8.3). They recommend the county take measures to correct this situation.

2.4.1. INTERNATIONAL COMMITMENTS

The Dominican Republic has signed and ratified the major UN human rights treaties: it is a party to the CCPR, CEDAW, CERD, CESC, and CRC. It is also a party to the First Optional Protocol of the CCPR and the Optional Protocol of the CEDAW. It has signed but not ratified the First Optional Protocol of the CRC on children in armed conflict, and has taken no action in relation to the Second Protocol of the CCPR and the Second Protocol of the CRC on the sale of children, child prostitution and child pornography.

2.4.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

The Dominican Constitution does not include the rights of children or adolescents in a special section. It does mention that elementary education is free and mandatory, and that military service is a duty.²⁴⁶ It does not have mechanisms for the direct application of rights. The CEDAW is concerned that the principle of equality for women is not in the constitution, in spite of political efforts to include it, and hopes that there will be a reform soon.

2.4.3. Special Legislation

2.4.3.1. Criminal Law

Criminal Law on Abortion

Abortion is a crime in the Dominican Republic: there are no exceptions.²⁴⁷ The CEDAW is concerned about the implications for women's right to life of criminalization without exception, which leads to clandestine unsafe abortions.

Sexual Abuse, Trafficking and Prostitution

In the Dominican Penal Code sexual crimes have higher penalties if the victim is under 18, including the penalty for rape (sexual intercourse with the use of force).²⁴⁸ There is also a penalty for consensual sex with a girl under 18 (*estupro*), but *only* if she is pregnant as a result;

²⁴³Dominican, Republic CESC.

²⁴⁴Dominican, Republic CEDAW, CCPR.

²⁴⁵Dominican, Republic CRC.

²⁴⁶Dominican, Republic Constitution Art. 8 and 9.

²⁴⁷Dominican, Republic Penal Code Art. 317.

penalties are increased if the author is a relative.²⁴⁹The Dominican Republic still has the crime of *rapto*, defined as "taking from her home a girl younger than 18 in any manner that is not a kidnapping."²⁵⁰ For both *estupro* and *rapto*, if the aggressor has the same age or less than the victim, penalties are reduced to a half. If one of them or both are younger than 18, then the Child and Adolescent Code is applied.²⁵¹ *Estupro* and *rapto* are investigated only by private action by the victim or her parents.²⁵² Sexual harassment is also punished. It is defined as any order, threat or offering destined to obtain sexual favors by a person who abuses of the authority of his or her role.²⁵³

The Penal Code includes two crimes relative to children and adolescents: incest, and corruption of minors. Incest is defined as any sexual act by an adult with a child or adolescent with whom the adult has a link by blood up to the fourth degree and by affinity up to the third degree, and it carries the highest prison term.²⁵⁴ Corruption of minors is committed by a parent or person caring for a person younger than 18 who allows others to sexually abuse the child or adolescent or who uses him or her for pornography or prostitution or allows others to use him or her for amoral, dangerous, or illegal labor, or who benefits from this labor.²⁵⁵

Prostitution is not a crime in the Dominican Republic, but the exploitation of it is: there is a penalty for assisting or abetting or recruiting or benefiting from prostitution, and the penalties are higher if it is the prostitution of a child or adolescent.²⁵⁶ The Dominican Republic does not have the crime of trafficking, except as an aggravation of the crime of exploitation of prostitution (when the victim is taken out of the country for prostitution). The Code for the Protection of Children and Adolescents punishes unauthorized moving of children out of the country with the obligation to return them to the country.²⁵⁷

The CCPR laments that there is no information on trafficking. However the CRC has some reports of an increase of sexual and commercial exploitation of children, apparently related to sex tourism. The CESCR also mentions the persistence of sex tourism in the Dominican Republic.

2.4.3.2. Child and Adolescent Code

In 1994 the legislature approved a law for the Protection of Children and Adolescents²⁵⁸ that established rights oriented principles for the protection of children, special courts for children and adolescents, and a supreme court of Juvenile Justice within the Supreme Court. The CRC says this is a positive move, although the state has been slow to implement these changes. There is still a failure to separate juveniles from adults and men from women in prisons according to the CCPR, and a lack of adequate protection for children in institutions, according to the CRC.

In 2003, the law for the protection of children and adolescents was reformed by a law that creates

²⁴⁸Dominican Republic, Penal Code Art. 331.

²⁴⁹Dominican Republic, Penal Code Art. 355.

²⁵⁰Ibid.

²⁵¹Dominican Republic, Penal Code Art. 357.

²⁵²Dominican Republic, Penal Code Art. 356.

²⁵³Dominican Republic, Penal Code Art.333.

²⁵⁴Dominican Republic, Penal Code Art. 332.

²⁵⁵Dominican Republic, Penal Code Art. 351.

²⁵⁶Dominican Republic, Penal Code. Art. 334.

²⁵⁷Dominican Republic, Code for the Protection of Children and Adolescent's Rights Art. 110.

²⁵⁸Dominican Republic, Law 14-94.

more protective measures and is more rights oriented: the Code for the Protection of Children and Adolescent's Rights.²⁵⁹ This Code specifically enshrines the Convention's rights such as the primacy of the best interests of the child and that the child is a subject of rights. It gives procedural guarantees to children who are in conflict with the law, and it enshrines several rights including the rights to education and health. The Dominican Penal Code establishes that children who commit a crime and have acted "without the capacity to discern" (*sin discernimiento*) will not be punished; however those who are older than 18 and have acted with this capacity will be punished accordingly.²⁶⁰ Those younger than 18 who have acted with discernment will be judged by special judges and will be subjected to shorter and lighter penalties of criminal justice unless they have committed a crime that has a minimum sentence of 30 years.²⁶¹ The Code for the Protection of Children and Adolescents establishes the procedures for juvenile justice.²⁶²

2.4.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

Since 1997, the Dominican Republic has a law against domestic violence that is focused on the protection of women against violence.²⁶³ However, the Penal Code includes the crime of domestic violence, and there it is defined as any pattern of behavior using physical force or psychological violence or verbal violence or intimidation or persecution against one or more members of the family or person which with they cohabit or have had a child.²⁶⁴ Thus, the Penal law protects adolescents as well. It also says that in every case, there will be a protection order.²⁶⁵ The CEDAW congratulated the Dominican Republic for the holistic and integrated approach to violence in this law. The CRC however is concerned there are insufficient rehabilitation and facilities for children who are victims of sexual crimes and violence, and that the procedures and mechanisms for complaint need to be strengthened. It recommends these facilities be increased as well as rehabilitation programs for the victims.

2.4.3.4 Labor Law: Protection against exploitation

The Code for the Protection of Children and Adolescent's Rights of 2003 establishes that the protection of working children and adolescents will be "guided by ILO Covenant 138 and 182".²⁶⁶ The Committees manifest a concern that would affect adolescent girls who work for multinational corporations and in free trade zones: the CEDAW and the CESCRC are concerned about reports of discrimination especially arbitrary dismissal owing to pregnancy and pregnancy tests.²⁶⁷ They recommend the country investigate these reports and insist on the illegality of these tests.

²⁵⁹Dominican, Republic Law 136-03.

²⁶⁰Dominican, Republic Penal Code Art. 66 and 67

²⁶¹Dominican, Republic Penal Code Art.68 and 69

²⁶²Dominican, Republic Code for the Protection of Children and Adolescent's Rights Art.221 and 223.

²⁶³Dominican, Republic Law 24-94.

²⁶⁴Dominican, Republic Penal Code Art. 309.

²⁶⁵Ibid

²⁶⁶Dominican, Republic Code for the Protection of Children and Adolescent's Rights Art.34.

²⁶⁷(see also a HRW report on pregnancy based sex discrimination in the Dominican Republic's Free trade Zones. Hrw.org/backgrounder/wrd/caftan_dr0404.htm May 6 2004.)

2.4.3.5. Health: Access to health services and reproductive and sexual health including HIV and access to contraception

The Dominican Constitution has a list of rights, most of which are enshrined as liberties, and there is no right to health as such. The social security system provides public health services for workers and their dependants. The Code for the Protection of Children and Adolescent's rights does include the right to health, including protections related to maternity and programs for adolescent mothers.²⁶⁸ It also orders health education including sexual and reproductive health.²⁶⁹ Likewise, the AIDS law orders the inclusion of information about sexually transmitted diseases and HIV /AIDS in sexual education.²⁷⁰

The CRC has pointed out the need for data on adolescent health. There are high rates of adolescent pregnancy and maternal mortality, insufficient access by adolescents to reproductive health and sex education counseling and an increase in HIV/AIDS and other STD.²⁷¹ The CEDAW, like the CRC, has recommended the state strengthen educational programmes for boys and girls about sexual and reproductive health, combating HIV/AIDS, family planning.

2.4.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

The Dominican Constitution has a list of rights most of which are enshrined as liberties, including the freedom of education.²⁷² This same article mentions that elementary and secondary education will be free. The Constitution also has a section on duties, including the duty of acquiring at least elementary education²⁷³ and the education law established education as a right.²⁷⁴ The CRC notes the inclusion of human rights in school curricula as a positive measure, but is still concerned about the high drop-out rates, discrimination in schools against pregnant adolescents, unregistered children, children with disabilities, and children of Haitian origin. The CESCR expressed concern about low rates of school enrolment.

2.4.3.7. Minimum Ages for Marriage and Recruitment

The minimum age for marriage with parental consent is 18 for boys and 15 for girls.²⁷⁵ The CRC expresses concern about the different minimum age for marriage with parental consent between girls and boys, and recommend the same age be established. *There is no conscription, only voluntary recruitment at 18.*²⁷⁶

²⁶⁸Dominican Republic, Code for the Protection of Children and Adolescent's Rights Art. 28.

²⁶⁹Dominican Republic, Code for the Protection of Children and Adolescent's Rights Art. 29.

²⁷⁰Dominican Republic, Law 55-93 Art.24.

²⁷¹Dominican Republic, CEDAW, CRC, CESCR.

²⁷²Dominican Republic, Constitution Art. 8, number 16.

²⁷³Dominican Republic, Constitution Art. 9-g.

²⁷⁴Dominican Republic, Law 66-97.

²⁷⁵Dominican Republic, Civil Code Art.144.

²⁷⁶Dominican Republic, Country Report to the CRC: 26/08/99. CRC/C/8/add.40.

5. HONDURAS

Honduras has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 1999,²⁷⁷ the CESCR comments are from 2000,²⁷⁸ and the CEDAW comments are from 1992. There are no recommendations from the CCPR or the CERD. Because the CEDAW recommendations are more than a decade old, this review does not use them.

Generally the Committees congratulate Honduras for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. Honduras has been congratulated for its recent institutional development in human rights, which includes a Human Rights Prosecutor, a National Institute for Women, Family Councils, Ombudsman, the Network of municipal Children's rights Defenders, National Council for the Attention of Children with Disabilities and an Office for the Defense of Children in the Public Defender's Office. The Committees express concern about poverty and its negative impact on rights. Besides poverty, there is persistent inequality and discrimination. Honduras is a highly indebted poor country, with 40% of its budget going to debt service. The CESCR stated that structural adjustment programs have negatively affected the enjoyment of rights, especially by vulnerable and marginalized groups. Other reasons for concern are the persistent discrimination against girls and children from indigenous groups in culture and tradition,²⁷⁹ the rise of youth gangs (*maras*), and street children.²⁸⁰

2.5.1. INTERNATIONAL COMMITMENTS

Honduras is party to the main human rights treaties of the United Nations: the CCPR, CEDAW, CESCR, CERD and CRC. It is also party to the two CRC Optional Protocols, but not to the Optional Protocol of the CEDAW, and has only signed but not ratified the two Optional Protocols of the CCPR. It has made a declaration to the First Optional Protocol of the CRC establishing the minimum age of military recruitment at 18.

2.5.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

In Honduras, the National Constitution has a chapter dedicated to the rights of Children. Children will have their rights protected as established in the international covenants.²⁸¹ It orders special legislation for minors.²⁸² State must provide attorneys to defend the interests of minors.²⁸³ It declares that there must be special tribunals for minors and that no one under 18 years old will

²⁷⁷Honduras, Concluding Observations of the Committee on the Rights of the Child 25/08/1999. CRC/C/15/Add.105. Henceforth: Honduras, CRC.

²⁷⁸Honduras, Concluding Observations of the Committee on Economic, Social and Cultural Rights 21/05/2001 E/C.12/1/Add.57. Henceforth: CESCR

²⁷⁹Honduras, CRC

²⁸⁰Honduras, CESCR and CRC ²⁸¹Honduras Constitution Art. 119

²⁸²Honduras, Constitution Art. 120.

²⁸³Honduras, Constitution Art. 83.

²⁸⁴Honduras, Constitution Art. 122.

²⁸⁵Honduras, Constitution Art. 123 and 124.

²⁸⁶Honduras, Constitution Art 59 and 183.

enter a prison.²⁸⁴ It also establishes the prohibition to work before an "adequate" minimum age and the rights to health and education.²⁸⁵ The Constitution also creates an Ombudsman's Office and the possibility of amparo, an action for the immediate protection of rights.²⁸⁶

2.5.3. SPECIAL LEGISLATION

2.5.3.1. Criminal Law

Criminal Law on Abortion

Abortion is a crime punished with 3 to 6 years in prison, unless the pregnancy was the result of rape. The penalty is diminished to 6 months to 1 year if the abortion was done to hide "dishonor."²⁸⁷ The Constitution says: "the one who is to be born shall be considered already born for all that is in his favor within the limits established by the law."²⁸⁸

Sexual Abuse, Trafficking and Prostitution

In Honduras, sexual crimes are still classified as crimes against honesty (and against sexual freedom) and are only prosecuted by private action, unless the victim is either younger than 14, has no parents or the crime is committed by his or her parents, tutors or representative.²⁸⁹ There are no penalties for sexual crimes if the aggressor marries the victim.²⁹⁰ Generally all sexual crimes have higher penalties if the victim is under 18 and persons under 14 cannot legally consent to sexual relations. Therefore sex with a child younger than 14 is always presumed to be rape.²⁹¹ It is also a crime to have consensual sex with a woman older than 14 and younger than 18 when the consent is obtained through the use of hierarchy, trust, or authority.²⁹² Honduras also has the crime of *rapto*, which is aggravated if the victim is younger than 18²⁹³ and the crime of sexual harassment, defined as taking advantage of hierarchy (for example in the case of teachers) to obtain sexual favors.²⁹⁴ The Honduran Penal Code also has the crime of corruption of minors, which includes leading a child to vagrancy, gambling, drugs, alcohol, or begging.²⁹⁵ In Honduras prostitution is not a crime but promoting prostitution or keeping a person in prostitution is, and penalties are increased if victim is younger than 18.²⁹⁶ It is also a crime to traffic persons of any age or sex for prostitution, with longer penalties if illegal entry into another country is involved.²⁹⁷

The CESCR is concerned about the reported high incidence of sexual abuse, exploitation and prostitution. The CRC is concerned about the absence of data on sexual exploitation of children, and lack of a plan of action. It recommends the country document the situation and take adequate measures.

²⁸⁷Honduras, Penal Code Art. 126 to 132.

²⁸⁸Honduras, Constitution Art. 83.

²⁸⁹Honduras, Penal Code Art. 152.

²⁹⁰Honduras, Penal Code Art. 151.

²⁹¹Honduras, Penal Code Art. 140.

²⁹²Honduras, Penal Code Art 142.

²⁹³Honduras, Penal Code Art. 145 to 147. .

²⁹⁴Honduras, Penal Code Art.147A .

²⁹⁵Honduras, Penal Code Art. 396.

²⁹⁶Honduras, Penal Code Art. 148.

²⁹⁷Honduras, Penal Code Art.149

²⁹⁸Honduras, Code on Children and Adolescents Law 73-96. Honduras Art. 122 of Constitution and Arts. 180 and following articles of the Code on Children and Adolescents.

2.5.3.2. Child and Adolescent Code

The Child and Adolescent Code was reformed in 1996. It establishes the rights of children and protection measures, as well as procedures for juvenile justice.²⁹⁸ The CRC is concerned that parts of the new Code still have the irregular situation approach, in which children are not yet perceived as subjects of rights, and recommends it be reformed. The CRC finds the creation of special centers for the detention of juveniles and alternative measures a positive but insufficient measure. There is still need to survey and improve the conditions of children living in institutions and to eliminate the violence of law enforcement officials.

2.5.3.3. Domestic Violence: Criminal procedures, civil protection orders and protection systems for minors

The Law Against Domestic Violence is focused on marital or intimate relationships, and does not include children or adolescents or other family members. Mostly, it orders policies and programs.²⁹⁹ The Penal Code has a provision against domestic violence that also applies to violence against children, including adolescent children.³⁰⁰ The CRC says there is insufficient awareness, resources, rehabilitation services, and law enforcement against child abuse.

2.5.3.4 Labor Law: Protection against exploitation

The Constitution establishes some rules for working children: all children must enjoy social security and education³⁰¹ and there can be no work before the adequate minimum age.³⁰² Labor law establishes special protection for women and minors.³⁰³ No one younger than 16 or still in school shall work, except with special authorization, and with no exceptions work at night, for more than 30 hours.³⁰⁴

The Child and Adolescent Code also establishes some norms for children's work: Children cannot work if they are under 14; they cannot engage in dangerous work or work that threatens their values; there are also limits to the number of hours they may work daily.³⁰⁵

The CRC and the CESCR are concerned about the high number of working children, the serious situation of street children, the economic exploitation of children and the insufficient law enforcement and monitoring mechanisms. As in the case of Mexico and the Dominican Republic, there is also concern about women working for transnational corporations, in *maquilas* and in free trade zones, who are discriminated against and suffer general violations of labor rights. Since many of these workers are young, these concerns are pertinent to adolescents' rights.³⁰⁶

²⁹⁹Honduras, Law 132-97.

³⁰⁰Honduras, Penal Code Art. 179.

³⁰¹Honduras, Constitution Art. 123.

³⁰²Honduras, Constitution Art. 124.

³⁰³Honduras, Constitution Art. 128.

³⁰⁴Ibid

³⁰⁵Honduras, Code of Children and Adolescents Arts, 119, 120, 122, and 123.

³⁰⁶www.hrw.org/english/docs/2004/03/09/usint8099.htm.

³⁰⁷Honduras, Constitution Art. 145.

2.5.3.5. Health: Access to health services and reproductive and sexual health including HIV and access to contraception

According to the Constitution, all have the right to health, especially children.³⁰⁷ Public health services are provided through a mandatory health insurance scheme for workers and their dependants and otherwise by the Ministry of Health. Honduras has an AIDS law which generally establishes the rights of persons with HIV/AIDS to no discrimination and a series of programs and services for the prevention of and attention to HIV/AIDS, including sex education.³⁰⁸ Honduras has serious problems in the implementation of reproductive health policy, including insufficient medical services, a high incidence of HIV/AIDS, increasing rates of substance abuse among adolescents, and a high rate of adolescent pregnancy.³⁰⁹ The CESCR recommends that Honduras implement its reproductive health policy with a focus on young persons, and develop training programs and counseling services for both men and women. The CRC recommends a study of the scope of adolescent health problems to promote adolescent health policies, health education, and counseling services.

2.5.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

The Honduran Constitution recognizes the importance of education but does not mandate that it be either free or mandatory. However, Honduran law establishes education as free and mandatory up to age 15.³¹⁰ The Special law for HIV/AIDS mandates sex education in schools. The education budget increased significantly from 12.95% to 22.75% in the period 1996-2001³¹¹ and human rights and children's rights were included in school curricula, through the same Educational Reform Law that encourages the participation of children in schools. However, implementation is not sufficiently developed,³¹² and there is a legal prohibition of student organization in secondary schools,³¹³ contravening adolescents' right to participation.

2.5.3.7. Minimum Age for Marriage and Military Service

The 1995 constitution abolished mandatory military service and prohibited the service of persons younger than 18.³¹⁴ *The minimum marriage age laws are discriminatory, at 16 for girls and 18 for boys.*³¹⁵

³⁰⁸Honduras, Special Law on HIV/AIDS Decree No 147-99.

³⁰⁹Honduras, CRC and CESCR.

³¹⁰Honduras, Acuerdo 0097 (see Honduras Country Report to the CRC CRC/C/65 Add.2 (1998.)).

³¹¹Honduras, CESCR.

³¹²Honduras, CRC.

³¹³Honduras, Country Report to the CRC. CRC/C/65 Add.2 (1998.).

³¹⁴Honduras, Constitution Art.276 amended by Decree 24-94 ratified by Congress in 1995.

³¹⁵Honduras, Country Report to the CRC. CRC/C/65 Add.2 (1998.).

³¹⁶Mexico, Concluding Observations of the Committee on the Rights of the Child, 10/11/1999. CRC/C/15/Add.112. Henceforth: Mexico CRC.

³¹⁷Mexico Committee for the Elimination of All Forms of Discrimination Against Women, 14/05/98. A/53/38, paras. 354- 427. Henceforth: Mexico CEDAW.

³¹⁸Mexico, Concluding Observations of the Human Rights Committee, 27/07/1999. CCPR/C79/Add.109. Henceforth: Mexico CCPR.

³¹⁹Mexico, Concluding Observations of the Committee for the Elimination of Racial Discrimination 11/12/1997. CERD/C/304/Add.30. Henceforth: Mexico CERD.

³²⁰Mexico, Concluding Observations of the Committee on Economic, Social and Cultural Rights, 8/12/1999. E/C/12/1/Add.41. Henceforth: Mexico CESCR.

2.6. MEXICO

Mexico has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 1999,³¹⁶ the CEDAW comments are from 2002,³¹⁷ the CCPR comments are from 2002,³¹⁸ the CERD comments are from 1997³¹⁹ and the CDESCR comments are from 1999.³²⁰ Generally the Committees congratulate Mexico for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. Other advances mentioned by the Committees are the creation of the National Women's Institute (*Instituto Nacional de Mujeres*, which has ministerial rank) and Proequidad (its program for achieving equity.)

Poverty and disparities affect especially rural and indigenous population: according to the UN Committees the impact of poverty is made worse by discriminatory ideas and practices against women and indigenous people.³²¹ Although the CDESCR congratulates Mexico on its improved macroeconomic performances and increase in social expenditure programs, it laments the increase in the number of persons living in poverty and in extreme poverty. The Committee also says that unless the structural causes of poverty are properly addressed, a more equitable distribution of wealth will not be achieved. It also recommends that the state strengthen efforts to alleviate the effects of NAFTA on vulnerable populations. The CDESCR and the CCPR are also concerned with the growing number of street children.

2.6.1. INTERNATIONAL COMMITMENTS

Mexico is party to the major United Nations human rights treaties: the CCPR, CEDAW, CERD, CDESCR, and CRC. It is also party to the First Optional Protocol for the CCPR, the Optional Protocol for the CEDAW and both Optional Protocols for the CRC. It has taken no action in relation to the second Optional Protocol for the CCPR. Mexico has made several reservations and declarations to these treaties, the most relevant for adolescent rights being its reservation to the First CRC Protocol stating that the minimum age for voluntary recruitment is 18, with 16 allowed in some cases, and also that the Mexican state is not responsible for recruitment of children under 18 by non-governmental armed groups.³²²

2.6.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

Mexico's Federal Constitution date from the 1914 Revolution, and has been frequently reformed since. It includes a bill of rights, and mechanisms for their protection, especially the *amparo*.³²³ A law regulates the National Human Rights Commission, a very important institution for the protection of rights.³²⁴ The Federal Constitution mentions children's rights in its article 4, where it declares children have the right to food, health, education and recreation, but that the primary responsibility for this falls on the parents and only secondarily on the state.

³²¹Mexico, (CEDAW, CRC, CCPR, CERD).

³²²Mexico, also made reservations to the CCPR limiting its commitments in relation to freedom of religion, which in Mexico is limited by a strict separation of Church and state.

³²³Mexico, Federal Constitution Art.104 and 107.

³²⁴Mexico, Law of the National Commission of Human Rights, 1992.

2.6.3. SPECIAL LEGISLATION

2.6.3.1. Criminal Law:

Mexico is a Federal country and states have their own Penal legislation. This section is a review of Mexico D.F. (Mexico City Federal District) Penal law.

Criminal Law on Abortion

In all of the country, abortion is a crime unless it was done to save the mother's life or the pregnancy was the result of rape.³²⁵ In the D.F., the code adds the exception of saving the mothers' health (with two doctors concurring). In 10 states, fetal malformation is an allowed exception, as is forced artificial insemination, and the Yucatan allows economic reasons as well, if the woman has three living children.³²⁶

Sexual Abuse, Trafficking and Prostitution

In Mexico D.F., penalties for sexual crimes increase when the victim is a child. There are also special crimes for sexual acts with children. The age of consent is 12; therefore sexual intercourse with a person younger than 12 is considered rape (*violacion equiparada*), whether there was consent or not.³²⁷ Consensual sex with a person older than 12 and younger than 18 (*estupro*) is only rape when consent was obtained through deceit, and the prosecution of this crime requires private action.³²⁸ Although the Code was reformed, it still has the crime of *rapto*,³²⁹ kidnapping another person for a sexual act. However it also has a new crime, that of sexual harassment:³³⁰ whoever harasses another person with lewd intention taking advantage of position of superiority such as domestic or educational relationship is liable for the crime of sexual harassment. Other crimes related to minors are the crimes of corruption of minors,³³¹ and pornography of children.³³²

The crimes of trafficking³³³ and prostitution receive higher penalties when the victims are minors.³³⁴ The CEDAW is concerned about the lack of statistics on prostitution and trafficking, and recommends that statistics be produced. The CRC adds a concern for repatriated children as a group likely to have been victims of trafficking. There is data on the commercial exploitation of children in the sex industry in a 1998 report by the special Rapporteur on the sale of children, child prostitution, and child pornography.³³⁵

³²⁵Mexico D.F., Penal Code Art. 334.

³²⁶See webpage of GIRE (Grupo Interdisciplinario de Reproducción Elegida) for a full table of the allowed reasons for legal abortion. <http://www.gire.org.mx/phpnuke/modules.php?name=prueba&opgire=31>.

³²⁷Mexico D.F., Penal Code. Art. 266.

³²⁸Mexico D.F., Penal Code Art. 262 and 263.

³²⁹Mexico D.F., Penal Code Art. 365 1 to 5 years, 1 month to 2 years if the victim is freed within 3 days without practicing the act.

³³⁰Mexico D.F., Penal Code Art. 259 1 to 3 years, by private action.

³³¹Mexico D.F., Penal Code Art. 200. Higher penalty and fine if the object is to produce pornographic material Art.201. 5 to 10 years is for inducing, facilitating or forcing a person younger than 18 to exhibitionism or criminal activity 3 to 8 years for forcing or inducement to begging or drunkenness. Higher penalty is alcoholism, drug addiction or prostitution are the result.

³³²Mexico D.F., Penal Code Art. 200 6 months to 5 years for making reproducing or publication or obscene material or for their distribution and circulation.

³³³Mexico D.F., Penal Code Art.366 and Art. 366 Federal Penal Code. 2 to 9 years for sale of children but 1 to 3 if a child is given over to another but not for profit 25 to 50 years for moving children across the national border to obtain profits.

³³⁴Mexico D.F., Penal Code Art. 208. 6 to 10 years for benefiting from, promoting, covering up, or allowing prostitution of a person under 18 years of age. <http://www.salud.gob.mx/unidades/dgsr/>.

³³⁵Mexico D.F., Special Rapporteur report on the sale of children, child prostitution and child pornography E/CN4/1998/101/Add.2.

2.6.3.2. Child and Adolescent Code

Both Mexico D.F. and Mexico have new laws defending the rights of children: the law of boys and girl's rights in Mexico D.F. and the Federal Law for the Protection of the Rights of Girls, Boys and Adolescents, both adopted in the year 2000. Both enshrine a list of rights, the superior interest of the child, and the corresponding family and state obligations. Additionally, the Federal law has rules about juvenile justice at a federal level, establishing due process rights, and Art. 28 declares the prevention of early pregnancies a purpose of the law.

The CRC is concerned about the juvenile justice system especially its overuse of deprivation of liberty; children are detained with adults; the process is slow; conditions in detention centers are poor; there is insufficient legal assistance, rehabilitation programs, supervision and monitoring of detention centers, and limited training of staff. It recommends the county implement a justice system in accordance to international standards. It is concerned about the persistent number of alleged cases of children detained in extreme conditions which amount to cruel, inhuman or degrading treatment, and cases of children ill treated by members of the police or armed forces. It has recommended that the state develop mechanisms to investigate and prosecute police brutality, ill treatment, and abuse.

2.6.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

The Mexico D.F Penal Code was reformed in 1999, and the reform established a criminal procedure for the prosecution of domestic violence. Protection orders can be issued as part of the procedure, when the *Ministerio Público* asks for them (Public Defender's Office). There is a mandatory conciliation hearing.³³⁶ Even so, most Committees are concerned with domestic violence that goes unpunished.³³⁷

2.6.3.4. Labor Law: Protection against exploitation

The Constitution prohibits children under 14 from working, and children under 16 from performing unhealthy or hazardous work, night work in industry, or any work after 10 pm.³³⁸ Likewise, the Federal Labor Act establishes 14 as the minimum working age (with parental authorization), and establishes limits for the types of work children over 14 can do, such as the prohibition of working in premises supplying alcohol for immediate consumption; work which may affect their moral or good habits; work involving travel; work which is hazardous, unhealthy, beyond their strength or may harm their physical development and any kind of work after 10pm.³³⁹

The CESCR recommends increasing the minimum working age of children from 14 to 16 since basic education is normally concluded at 16. The CRC is concerned about the increased economic

³³⁶Mexico D.F., Penal Code 6 months to 4 years.

³³⁷Mexico, CEDAW, CESCR, CCPR.

³³⁸Mexico, Federal Constitution Art. 123A.

³³⁹Mexico, Federal Labor Law Art 175.

³⁴⁰Mexico, (CESCR; CEDAW; CCPR) HRW reports of sex discrimination in Mexico's maquiladora sector, especially mandatory pregnancy tests in 1998. www.hrw.org/reports98/women2/. For Amnesty International's Report, see: <http://www.amnestyusa.org/women/juarez/>.

exploitation of children and the lack of adequate monitoring mechanisms. Another area of concern for the Committees as well as for human rights organizations is the rights of women working in *maquilas*, many of whom are young, who are subjected to pregnancy tests and other forms of discrimination.³⁴⁰

2.6.3.5. Health: Access to health services and reproductive and sexual health including HIV and access to contraception

The Federal Constitution says all persons have access to the national Health System, and all have the right to health, as defined by law. Parents are responsible for their children's physical and mental health.³⁴¹ The Mexican public health system is a two tiered system: one system provides services for those who have mandatory health insurance (workers and their dependents) and the other provides services for those who are uninsured. The state also has general health campaigns for the population at large. There is also a private market for health insurance and health services.³⁴² Adolescent's access to health services is related to their status as insured or uninsured. They also benefit from general health programs, such as the national sexual and reproductive health program for adolescents.³⁴³ In Mexico, the General Health law includes sex education and family planning education as part of the strategies for the national Population Council.³⁴⁴

The CEDAW, CESCRC and CRC in their recommendations were concerned about the increase in HIV/AIDS, especially among young women, and about the relationship between illegal abortion and maternal mortality. The CEDAW comments to the country report relate teenage pregnancy to the illegality of abortion, and the other Committees link it also with inadequate education, dissemination, accessibility, and supply of contraception, especially to the poor in urban and rural areas and to adolescents. The CEDAW recommends Mexico consider the situation of adolescents a national priority, urges it to adopt measures guaranteeing access to reproductive and sexual health services with attention to the special needs to adolescents and to implement programs and policies that increase knowledge of contraceptive methods and their availability to both partners. It urges Mexico to promote sexual education for adolescents with particular attention to the prevention and elimination of HIV/AIDS. The CESCRC also recommends intensification of an educational campaign on women's sexual and reproductive health and the inclusion of this subject in school curricula. The CRC recommends further efforts to provide child- friendly counseling services and facilities for care and rehabilitation of adolescents with HIV/AIDS.

2.6.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

The Federal Constitution establishes that all persons have right to free and mandatory elementary and secondary education.³⁴⁵ Even so, the CRC is concerned about the high drop out

³⁴¹Mexico, Federal Constitution Art 4 According to law those who are in the mandatory health insure system receive health services form the Mexican Institute for Social Security (INMSS) and others receive health form the national health assistance system.

³⁴²Organización Panamericana de la Salud, Programa de Organización y Gestión de los Sistemas y Servicios de Salud. Perfil del Sistema de Servicios Salud de México. Found at www.paho.org.

³⁴³Mexico, Programa de Salud Sexual y Reproductiva de la Población Adolescente See the website for the Direcci'on for reproductive health:

³⁴⁴ Mexico, General Health Law art. 67.

³⁴⁵Mexico, Federal Constitution Art. 3.

³⁴⁶Mexico, CESCRC, CEDAW, CRC.

and repetition rates in secondary schools, which reflect disparity in access to education. The CEDAW mentions a national scholarship program that has had a beneficent effect in bridging the gender gap in education, but laments the lack of evaluation of programs. The UN Committees consider there is a need for more sex education.³⁴⁶

2.6.3.7 Minimum Age for Recruitment and Marriage

The CRC and CEDAW are concerned that the minimum age for marriage is too young and not the same for girls and boys: minors may marry at the age of 14 for girls and 16 for boys, with parental consent or judicial consent.³⁴⁷ It should be the same age for both.

Compulsory recruitment in to the armed forces begins at age 18, but voluntary recruitment at age 16. (Volunteers 16-18 are only accepted as technicians in the transmission unit.)³⁴⁸ The NGO "Child Soldiers" reports there are indication of children serving in armed groups in the south, in the Zapatista army and other groups.³⁴⁹ The CRC is concerned about conflict in the south, and with the threat to children by militarization and confrontation with irregular and armed civilian groups.

2.7. PERU

Peru has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 2000,³⁵⁰ the CEDAW comments are from 2002,³⁵¹ the CCPR comments are from 2000,³⁵² the CERD comments are from 1999³⁵³ and the CSECR comments are from 1997.³⁵⁴

Generally, the Committees congratulate Peru for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. Other institutional advances mentioned by the Committees are the creation of the Office of the Ombudsman with a specialized Office for Human Rights; the National Strategy to combat poverty; Programme of Action for Children and Children's regional plans of action; the PROMUDEH (National Office for Women and Human Development, of ministerial rank); and the National Equal Opportunity Plan for Women and Men.

The Committees are concerned about the widespread poverty and long standing social disparities in Peru, as well as the aftermath of political and social violence.³⁵⁵ While there is a positive decrease in activity of terrorist groups and improvement in the economic situation, there is persistent racial discrimination and stereotypes that affect the enjoyment of human rights for all

³⁴⁷Mexico, Civil Code Art. 148, 149, 150.

³⁴⁸Mexico, Military Service Law Art. 10.

³⁴⁹See information by the Coalition against Child Soldiers: <http://www.child-soldiers.org/cs/childsoldiers.nsf/0/e6f83a2ff10d3d8180256b1e00566960?OpenDocument>.

³⁵⁰Peru, Concluding Observations of the Committee on the Rights of the Child, 22/02/2000.CRC/C15/Add.120. Henceforth: Peru CRC.

³⁵¹Peru, Committee for the Elimination of All Forms of Discrimination Against Women, 15/08/2002. A/57/38 Par. 454 to 502. Henceforth: Peru CEDAW.

³⁵²Peru, Concluding Observations of the Human Rights Committee 15/11/2000. CCPR/CO/70/PER. Henceforth: Peru CCPR.

³⁵³Peru, Concluding Observations of the Committee for the Elimination of Racial Discrimination, 13/04/1999. CERD/C/304/Add.69. Henceforth: Peru CERD.

³⁵⁴Peru, Concluding Observations of the Committee on Economic, Social and Cultural Rights, 16/05/97. E/C.12/1/Add.14. Henceforth: Peru CSECR.

³⁵⁵Peru, CCPR, CRC.

³⁵⁶Peru, CERD CEDAW.

vulnerable groups, including adolescents.³⁵⁶ In particular, the CERD noted the "difference of almost 20 years between the life expectancy of people of indigenous origin and that of the rest of the population."

2.7.1. International Commitments

Peru is party to the main U.N. human rights treaties: the CCPR, CEDAW, CESC, CRC and CERD. It is also a party to the First Optional Protocol of the CCPR, the Optional Protocol to the CEDAW, and the two Optional Protocols of the CRC. It has taken no action in relation to the Second Optional Protocol of the CCPR. It has accepted the competence of the CERD Committee through a declaration. It has also made a declaration in relation to article 3 of the first protocol of the CRC, stating that it understands 18 to be the minimum age of military recruitment.

2.7.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

The national Constitution orders the special protection of children and adolescents by the state and the community³⁵⁷ as well as the special protection of working minors.³⁵⁸ The Constitution has a bill of rights and creates the Ombudsman's Office to defend these rights as well as the action of *amparo*.³⁵⁹

2.7.3. SPECIAL LEGISLATION

2.7.3.1. Criminal Law:

Criminal Law on Abortion

Abortion is a crime punished with up to two years in prison or community service from 52 to 104 days, unless it was done to save the mother's life or avoid serious or permanent damage to her health. The penalty was reduced to three months if pregnancy was the result of rape outside marriage and there is at least a police investigation, or when the fetus has serious physical or psychical damage.³⁶⁰ The CCPR is concerned that abortion is subject to criminal penalties even when the result of rape. It recommends the legislation be amended to establish exceptions to the prohibition and punishment of abortion. The CEDAW also concerned about high mortality rate from illegal abortion, which includes adolescents.

Sexual Abuse, Trafficking and Prostitution

It is a positive development that since 1999, all sex crimes in Peru are prosecuted by public, not private action.³⁶¹ Penalties for sexual crimes in Peru are higher if the victim is a child. The penalty for rape is higher if the victim is under 14 and can go up to life imprisonment if the victim is under 7.³⁶² Sex with a child under 14 is always considered rape, even if it was consensual.³⁶³

³⁵⁷Peru, Constitution Art. 4.

³⁵⁸Peru, Constitution Art. 23.

³⁵⁹Peru, Constitution Art. 161 and 200.

³⁶⁰Peru, Penal Code Art. 119 and 120.

³⁶¹Peru, Law 27,115 of 1999.

³⁶²Peru, Penal Code Art. 171, 172 and 173.

³⁶³Peru, Penal Code Art.173.

³⁶⁴Peru, Penal Code Art. 175.

³⁶⁵Peru, Penal Code Art. 183.

There is also a penalty for *estupro*, having consensual sex with a person between 14 and 18 if there was deceit.³⁶⁴

Other crimes that have children as victims are selling, giving or showing obscene images or texts to a child under 14, or for exposing one self to a child under 14; facilitating or allowing (when in charge of admissions) their entry into a house of prostitution or other places of corruption.³⁶⁵ Prostitution is legal in Peru but it is a crime to force, threaten, or deceive anyone into prostitution for profit.³⁶⁶ It is also a crime to seduce a person in order to hand her over to another for sexual intercourse and the penalties are higher if the victim is under 18.³⁶⁷ Trafficking, also a crime, is defined facilitating the entry or leaving the country of a person for prostitution; it is also a crime to move a minor from one place to another to obtain economic or other benefits³⁶⁸ There is also a new law against sexual harassment³⁶⁹ that establishes monetary compensation for harassment. The CRC is concerned there is no plan of action to combat or prevent sexual exploitation, and suggests Peru needs a national study of sexual exploitation of minors.

2.7.3.2. Child and Adolescent Code

The Peruvian Child and Adolescent Code establishes the national system for the protection of children and adolescents as well as the branch of justice that deals with juvenile offenders. It also establishes a series of rights and freedoms, including the principle that the interests of the child must prevail over all others.³⁷⁰ It also includes in the right to education the right to sexual orientation and family planning,³⁷¹ and establishes the juvenile justice process and responsibilities, as well as special courts and prosecutors.³⁷²

Criminal liability is acquired at 18,³⁷³ but minors are responsible for crimes committed over the age of 12. Juveniles are not prosecuted by the regular criminal system but are responsible before a juvenile criminal system, different to that of adults in terms of procedures and penalties.³⁷⁴ However, Decree 899 against dangerous gangs (*ley contra el pandillaje pernicioso*) establishes lower minimum ages for criminal responsibility starting at 12. The CRC is concerned that the provisions of the Child and Adolescent Code on administration of juvenile justice are not fully implemented. The staff is insufficient and untrained; the conditions in detention center are poor and not monitored, and alternative measures to detention are not developed. The CRC recommends improvement in all these fronts.

2.7.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

The domestic violence law³⁷⁵ establishes a domestic violence crime and the possibility for protection orders to be issued both by criminal law authorities and by Family Judges. There was

³⁶⁶Peruvian Penal Code. Art. 153.

³⁶⁷Peru, Penal Code. Art. 181.

³⁶⁸Peru, Penal Code. Art. 182

³⁶⁹Peru, Law 27,942.

³⁷⁰Peru, Child and Adolescent Code Art.9

³⁷¹Peru, Child and Adolescent Code Art. 15

³⁷²Peru, Child and Adolescent Code Art. 133 and following.

³⁷³Peru, Child and Adolescent Code Art 183

³⁷⁴Peru, Child and Adolescent Code

³⁷⁵Peru, Decree Law 26260 Texto Unico Ordenado que establece la Política del Estado y la Sociedad frente a la Violencia Familiar.

³⁷⁶Peru, Law 27,398.

mandatory conciliation until 2001, when it was eliminated by law in cases of domestic violence.³⁷⁶ On the other hand, the Child and Adolescent Code establishes protective measures for abused children. Both laws apply to adolescents.

2.7.3.4. Labor Law: Protection against exploitation

The Constitution orders special protection for minors who work; the Code of Child and Adolescent establishes 12 as the minimum working age with authorization, but some dangerous activities such as work in factories have higher minimum ages.³⁷⁷ The Code also establishes maximum working hours for children, prohibits work at night, and certain types of dangerous work such as work in mines.³⁷⁸ The CRC recommends that child labor laws be enforced, labor inspectorate strengthened, and penalties handed out in cases of violations.

2.7.3.5. Health: Access to health services and reproductive and sexual health including HIV and access to contraception

The Constitution enshrines the right to health, including the promotion of responsible parenthood, the right to choose, and the state duty to provide information and the means to choose.³⁷⁹ The Code of Minors orders the provision of all health services to pregnant women, including adolescents.³⁸⁰ Additionally, in 1996, Peru adopted AIDS legislation that establishes government duties to control the epidemic and the right of persons with AIDS, including confidentiality, protection of employment, and the right to health services.³⁸¹ Youth or the young or children are not mentioned in these laws but they are mentioned in other norms that establish the free provision of HIV/AIDS medicine for children.³⁸² In spite of these laws, the CEDAW is concerned about the inadequacy of sex education, limited dissemination, availability and supply of all contraceptive methods and the fact that HIV infection is increasing particularly among young women. It recommends the state party give priority to the situation of the adolescent population, strengthen family planning programs, guarantee access to sexual and reproductive health services and provide information, especially to adolescents.

2.7.3.6. Education: Legislation about access to education and discrimination in educational facilities and sex education

The Constitution declares that early, elementary, and secondary education is mandatory and that education is free in state institutions and in public universities to students who can't afford to pay and whose grades are satisfactory.³⁸³ However, the lack of an established minimum age for completion of basic compulsory education is a major concern, and the drop out rate of working children is high.³⁸⁴ There is also a high number of high school dropouts among girls and among adolescents in rural areas.³⁸⁵

³⁷⁷Peru, Code of the Child and the Adolescent Art 51 and Constitution Art. 23.

³⁷⁸Peru, Code of the Child and the Adolescent Art. 56, 57, 58.

³⁷⁹Peru, Constitution, Arts. 6 and 7.

³⁸⁰Peru, Code of the Child and the Adolescent, Art. 2.

³⁸¹Peru, Ley 26.626 CONTRASIDA 1996 and Reglamento de la Ley 26.626 -1997.

³⁸²Peru, Resolution N° 265-2002-DGSP, Treatment for children infected With HIV.

³⁸³Peru, Constitution Art.17

³⁸⁴LO Factsheets "Peru: Project benefits children in gold mining industry".

³⁸⁵Peru CEDAW.

³⁸⁶Peru Law of Military Service.

2.7.3.7. Minimum Age for Marriage and Conscription

The 1999 Law of Military Service ended the system of obligatory military service and implemented voluntary service at the minimum age of 18.³⁸⁶ However the CERD points to conscription of young people into self defense committees under the auspices of the armed forces. Most of these committees are in rural communities in the Andean highlands and jungle regions, with a high percentage of indigenous residents.

The minimum age for marriage was amended in 1999 to 16 years old for boys and girls. If persons under 18 have a child, they gain certain rights at 14, such as demanding child support for their child, but can't marry until they are 16.³⁸⁷

2.8. TRINIDAD

Trinidad has recently presented reports and received recommendations from the United Nations Human Rights Committees. The CRC comments are from 1997,³⁸⁸ the CEDAW comments are from 2002,³⁸⁹ the CCPR comments are from 2000,³⁹⁰ the CERD comments are from 2001³⁹¹ and the CSECR comments are from 2002.³⁹²

Generally, the Committees congratulate Trinidad for advances in legislation and in national policies. The legislative advances are included in the following section, where relevant. The Committees have especially congratulated Trinidad for the creation of the Human Rights Unit in the Ministry of the Attorney General and for the Equal Opportunity Act of 2000. The CESCR has lamented that the law includes no provisions for the protection against discrimination based on sexual orientation, age, and HIV/AIDS status.

2.8.1. INTERNATIONAL COMMITMENTS

Trinidad and Tobago is party to all the major UN human rights treaties, but with regard to the Optional Protocols, only ratified the First Optional Protocol to the CCPR. It has made reservations to all the human rights treaties it has signed, except for the CERD, but most of these are not particularly relevant to adolescent's rights.³⁹³

³⁸⁷Peru, Law 27.201 of 1999.

³⁸⁸Trinidad, Concluding Observations of the Committee on the Rights of the Child, 10/10/97. CRC/C/15/Add.82. Henceforth: Trinidad CRC. There is also a 2003 country report which can be found at: www.unchr.ch/html/menu2/6/crc/doc/report/srf-trinidad&Tobago-2.pdf

³⁸⁹Trinidad Committee for the Elimination of All Forms of Discrimination Against Women, 07/05/2002 A/57/38 (Part I) , paras. 119-166. Henceforth: Trinidad, CEDAW.

³⁹⁰Trinidad Concluding Observations of the Human Rights Committee, 03/11/2000. CCPR/CO70/TTO. Henceforth: Trinidad CCPR

³⁹¹Trinidad Concluding Observations of the Committee for the Elimination of Racial Discrimination, 08/08/2001. A/56/18, paras. 343-359. Henceforth: Trinidad CERD.

³⁹²Trinidad Concluding Observations of the Committee on Economic, Social and Cultural Rights, 05/06/2002. E/C 12/1/Add.80. Henceforth: Trinidad CSECR.

³⁹³It has made reservations to Art. 4(2), 10 (2b, 3), 12 (2), 14 (5,6), 21 and 26 of the CCPR, as well as a Declaration on Art.5c. These reservations refer to the rights of prisoners and the right of assembly as well as the right of aliens to own property. All these rights are restricted under Trinidad law. Trinidad also made a reservation to the CCPR OP 1, saying it does not accept the competence of the HRC in accepting communications about death sentences. It made a reservation to Art.29 (1) of the CEDAW, saying it does not accept the provision on settlement of disputes. It made a reservation to Art 8 (1d,2) (on trade union rights) of the CESCR.

2.8.2. CONSTITUTIONAL PROTECTION OF ADOLESCENTS' RIGHTS

There is no special section on children or adolescent rights in the Constitution, nor is there an institutional mechanism for protection or direct application of the freedoms enshrined in the bill of rights section of its constitution.

2.8.3. SPECIAL LEGISLATION

2.8.3.1. Criminal Law:

Criminal Law on Abortion

Abortion is a crime, unless it was done to save the mother's life.³⁹⁴ The CESCR has linked illegal abortion to the high rate of maternal mortality and the CCPR has declared legal limitations on abortion needs to be reappraised and restrictions which may risk violations of women's rights be removed.

Sexual Abuse, Trafficking and Prostitution

In 2000 there was an amendment to the Sexual Offences Act³⁹⁵ to better protect children and adolescents from sexual crimes. Today the sexual crimes considered by the Act against minors establish different penalties according to sex and age of the victim. Statutory rape is defined as having sex with a girl under 14 whether or not she consented, unless she is the wife.³⁹⁶ There is a lighter sentence for consensual sex with an adolescent girl between 14 and 16 years old.³⁹⁷ Having consensual sex with a male is a separate offence: if a female has intercourse with a male under 16 years old.³⁹⁸ Male on male sex is always a crime, consensual or not.³⁹⁹

The Children Act and the Sexual Offences Act both have several provisions concerning the prostitution and trafficking of children. It is crime to allow children and young persons to live in or frequent brothels, as well as "causing, encouraging or favoring the seduction or prostitution of a young girl" (under 16).⁴⁰⁰ Likewise, it is a crime to procure intercourse between a minor under 16 and anyone anywhere else⁴⁰¹ and allowing a child or an adolescent under 16 to be in the premises one controls as a owner, occupier or manager for the purpose of having sexual intercourse.⁴⁰² It is also a crime to permit or manage a brothel, live on earnings from prostitution, or aid in prostitution.⁴⁰³ While there is no legislation specific for child pornography, there is legislation against the production or selling of all pornographic material, but not for mere possession.⁴⁰⁴

³⁹⁴Trinidad, Offences Against the Person Act. Section 56 and 57.

³⁹⁵Trinidad, Sexual Offences Act N° 27 of 1986, as amended by Sexual Offences Act N° 31 of 2000.

³⁹⁶Trinidad, Sexual Offences Act Section 6.

³⁹⁷Trinidad, Sexual Offences Act Section 7 (1).

³⁹⁸Trinidad, Sexual Offences Act Section 8:

³⁹⁹The crime of buggery. Sexual Offences Act Section 13.

⁴⁰⁰Trinidad, Children's Act Ch.46:01 Section 7 and 8.

⁴⁰¹Trinidad, Sexual Offences Act Section 17.

⁴⁰²Trinidad, Sexual Offences Act Section 21.

⁴⁰³Trinidad, Sexual Offences Act Section 22, 23, 24.

⁴⁰⁴Trinidad, Summary Offences Act Chapter 11.02 Sections 46 (g) and 104.

⁴⁰⁵Trinidad, Children's Authority Act. 64 of 2000.

⁴⁰⁶Trinidad, Adoption of Children Act 67 of 2000.

⁴⁰⁷Trinidad, Young Offenders Detention Act.

2.8.3.2. Child and Adolescent Code

In Trinidad, various Acts regulate matters that in the other countries in this study are in one Children and Adolescents Code. The matter of protection of abandoned and abused children, or children otherwise in need of protection is in the hands of the newly created Children's Authority, as regulated by the Children's Authority Act.⁴⁰⁵ The Adoption of Children Act regulates the adoption of children;⁴⁰⁶ juvenile detention is regulated by the Young Offenders Detention Act⁴⁰⁷ and the Children Act.⁴⁰⁸ Other relevant norms can be found in the Miscellaneous Provisions (Children) Act.⁴⁰⁹

The Children (Amendment) Act 68 of 2000 established that a child henceforth be under 18, not under 14.⁴¹⁰ This same Act prohibits teachers from administering corporal punishment to school children. It also establishes that no child under 14 can be sentenced to imprisonment and no child under 18 can be whipped as punishment.⁴¹¹

In 1997 the CRC manifests its concern about the administration of juvenile justice. There was a very low minimum age of criminal responsibility and no requirement to present juveniles before the court in a speedy manner. There were no facilities for girl juvenile offenders, which resulted in their detention with adult offenders.

The CRC also manifested concern about corporal punishment of adolescent detainees, but the state reported in 1997 that corporal punishment was no longer allowed in detention centers. Since then, in 2000, a reform of the Summary Offences Act⁴¹² and of the Corporal Punishment Act established that corporal punishment of offender will now be only for those who are over 18.⁴¹³

2.8.3.3. Domestic Violence: Criminal procedures and civil protection orders and protection systems for minors

The Domestic Violence Act of 1991 includes a procedure for protection orders that can benefit adolescents in situations of domestic violence.⁴¹⁴ The CESCR sees the Domestic Violence Act and establishment of the Domestic Violence Unit within the Gender Affairs Division as positive. However, it is still concerned about the high rates of domestic and sexual violence related to a "culture of violence."

2.8.3.4. Labor Law: Protection against exploitation

The Children Act allows work under 18 and over 14 but with limitations regarding health and the prohibition of night work, except in a family enterprise.⁴¹⁵

⁴⁰⁸Trinidad, Children (Amendment) Act No. 68 of 2000.

⁴⁰⁹Trinidad, Miscellaneous Provisions (Children) Act. N.66 of 2000.

⁴¹⁰Trinidad, Children (Amendment) Act 68 of 2000 Art. 1.

⁴¹¹Trinidad, Children (Amendment) Act 68 of 2000 Art. 28 (2).

⁴¹²Trinidad, Summary Offences Act Ch 11:02.

⁴¹³Trinidad, Corporal Punishment Act 13:03 and 13:04.

⁴¹⁴Trinidad, Act 10 of 1991.

⁴¹⁵Trinidad, Children Act 46:01.

⁴¹⁶Panamerican Health Organization Trinidad Country report. At: www.paho.org/English/DD/AIS/cp_214.htm.

2.8.3.5. Right to Health: Access to health services and reproductive and sexual health including HIV and access to contraception

Since 1999 Trinidad has reorganized its Ministry of Health and health services. Until 2000, all public health service was provided by the Ministry of Health, but starting in 2000, health sector reform has been implementing a national health insurance system.⁴¹⁶

The CESCR is concerned about the high HIV rate especially among young women. It is also concerned about the overcrowding in hospitals, lack of drugs, and in accessibility of basic drugs, all of which have detrimental effects on the most disadvantaged.⁴¹⁷ The CESCR recommends Trinidad step up measures to combat HIV/AIDS, and produce more data on specific health programs devoted to reducing and preventing infant and maternal mortality as well as adolescent pregnancies and back street abortions.

The CEDAW is concerned about high rates of adolescent pregnancy, which have negative consequences for girls' enjoyment of rights. It recommends the country raise awareness of prenatal services for women, and promote adolescent health by strengthening education and services to prevent and combat unwanted pregnancy and HIV/AIDS.

2.8.3.6. Education: legislation about access to education and discrimination in educational facilities and sex education

The compulsory school age is between six and 12 years of age.⁴¹⁸ However, according to the CESCR, there is free secondary education for all.

2.8.3.7. Minimum Ages for Conscription and Marriage

In Trinidad, there are several minimum ages for marriage. Under the Hindu Marriage Act (chapter 45: 03), a girl may marry at age 14 and a boy at 18. Under the Muslim Marriage Act a girl may marry at 12 and a boy at 16. Under the common law, the minimum ages are 12 for girls and 14 for boys. Parental consent is required for all marriages of people under 18 years except in the case of a Hindu girl who is 16 or older.⁴¹⁹ CEDAW is concerned about early child marriages and recommend the laws be revised. There is no conscription, and no child soldiers reported. Recruitment is on voluntary basis and minimum age is 18, except for a cadet force of youths from age 12 to 19 by consent of the school principal and parents.⁴²⁰

⁴¹⁷Trinidad, CESCR.

⁴¹⁸Trinidad, Education Act Chapter 39:01 Section 76 (1).

⁴¹⁹Trinidad, Hindu Marriage Act.

⁴²⁰Trinidad, www.directory.gov.tt/directory/ministry/Natsec/Securit.htm.

3. CONCLUSIONS

3.1. LEGAL REFORM

As has been explained in this review, there have been important advances in legislation in these eight countries. These countries have subscribed to all the major human rights treaties in the United Nation's system and presented reports to the committees. New Constitutions as well as reforms of the different Codes have enacted national legislation that generally agrees with international standards for the protection of adolescent's human rights. In spite of the great advances in legislative reform, there are still some national laws that need to be reformed to be in accordance with international protection of adolescent's rights.

The areas which need legal reform in all the countries reviewed are:

- There are low minimum **marriage ages** with parental consent and different marriage ages for boys and for girls, except in Brazil, Mexico, and Peru.
- There is insufficient recognition of and mechanisms for adolescent **participation** in all areas of decision making that affect them.
- There are discriminatory **anachronisms in criminal law**, such as the crime of raptó and elements related to the victim's sexual innocence in the crime of estupro.
- **Education** is not free or mandatory for adolescents over the age of 14 except in Mexico and Peru. Additionally, fees for different activities or supplies often result in costs for supposedly free education. Efforts should be made to implement the Commitments of the Dakar Framework for Action in local education laws.
- Clarify competences in cases of conflict between laws for the protection of children in situations of **domestic violence** and Children and Adolescent Codes, creating unified procedures and responsibilities. Address **dating violence** in these laws.⁴²¹
- Adapt and reform existing **antidiscrimination and inclusion legislation** to take into account the special needs of adolescents belonging to ethnic and racial minorities in order to address the exclusions they face. Some areas to be considered are special access to health care, affirmative action measures in education. The impact of traditional law on adolescents in those places where there is indigenous jurisdiction should be further studied.

Support for reform of the legislation governing these areas is recommended for all countries. **Additionally**, recommendations for each specific country are:

Argentina

- Reconsider its declaration to the CRC by which it extends the rights of the child to the moment of conception and emphasize parental control over sex education.
- Ratify the first optional protocol to the CEDAW that allows the Committee to receive communications on individual cases, which it has only signed.

⁴²¹For the framework for the commitments of Education for All see: www.unesco.org/education/efa/ed_for_all/background/background_documents.shtml/

- Enact a new Child and Adolescent legislation, in place of the obsolete *Ley de Patronato*.
- Eliminate the provision by which children can be tried as adults for some crimes.
- Eliminate the possibility of stopping the investigation or prosecution of a sexual crime because an agreement is reached between the victim and the aggressor (*avenimiento*).
- Establish that sexual harassment is a crime, especially sexual harassment by teachers and employers of adolescents.
- Establish that children detained for committing a crime cannot be kept incommunicado for any length of time.

Brazil

- Adopt a new Penal Code, perhaps by approving the bill that is pending in Congress, but in any case eliminating all the discriminatory provisions against women of the present Code.
- Increase minimum working age from 12 to 14, as established in the ILO Convention 138.
- Adopt domestic violence legislation, and have it address the special needs of adolescents.
- Establish that sexual harassment is a crime, especially sexual harassment by teachers and employers of adolescents.

Colombia

- Ratify the first Optional Protocol of the CEDAW that allows the Committee to receive communications on individual cases, and the Optional Protocol of the CRC on children in Armed Conflict.
- Enact the bill that is pending and that reforms the present Code of Minors.
- Increase minimum working age from 12 to 14, as established in the ILO Convention 138.
- Establish that sexual harassment is a crime, especially sexual harassment by teachers and employers of adolescents.

Dominican Republic

- Sign the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography.
- Reform new Child and Adolescent Code to truly include the point of view of children as subjects and not objects of rights.
- Establish a minimum age for consent to sexual activity even when there is no pregnancy as the result and no force.

Honduras

- Ratify the first optional protocol to the ICCPR which it has only signed.
- Reform new Child and Adolescent Code to truly include the point of view of children as subjects and not objects of rights.

Mexico

The same as the general recommendations, but no country specific urgent reforms identified.

Peru

- Increase minimum working age from 12 to 14, as established in the ILO Convention 138.
- Establish that sexual harassment is a crime, especially sexual harassment by teachers and employers of adolescents.

Trinidad and Tobago

- Sign the CRC Protocol on the Sale of Children, Child Prostitution, and Child Pornography.
- Raise the minimum age to be tried as an adult from 14 to 18.
- Establish that marital rape is rape.

3.2. IMPLEMENTATION OF EXISTING LEGISLATION AND MONITORING OF PRESENT STATUS OF IMPLEMENTATION EFFORTS

The largest obstacle to the enjoyment of rights by adolescents is not the lack of legislation but the lack of implementation of existing legislation, which is linked as both a cause and a manifestation of the present state of development of these countries. For much of the existing legislation that affects adolescents there is a dearth of information on the implementation of these laws and rights, and significant evidence that implies that these rights are not implemented. As mentioned earlier, the treaty bodies often comment on the lack of implementation as a significant obstacle to the enjoyment of the rights supposedly guaranteed by international and national laws. Therefore the main recommendation of this review to the regional office of the UNICEF is that it increase efforts to document and support the implementation of existing legislation. These efforts can be linked to the design of local plans and activities to meet the commitments established in the Millennium Development Goals and the millennium agenda, especially where it is relevant. An important concern in this task is to identify the disparate enjoyment of rights between national groups, especially the situation of the more vulnerable groups of adolescents: those living in rural areas, the urban poor, those who belong to ethnic or racial minorities, girls and adolescents with disabilities. While many countries have some sort of local legislation that protects at least partially disadvantaged groups, there is little information on the actual implementation of their rights.

The *tutela* mechanism in Colombia is an interesting experiment in the direct application of Constitutional rights through judicial injunctions that are easily available. Other countries have similar mechanisms that are not used in the same way because of different rules of procedure and competence. In order to implement existing human rights legislation, it might be useful to study the Colombian experience and support similar experiments in the other countries of the region.

In all eight countries, priority should be given to activities that can help monitor and support the implementation of existing legislation, especially:

3.2.1. Direct support to existing programs

- Support the provision of gender sensitive and age adequate health services, especially reproductive and sexual health services and sex education.
- Support the hiring and training of personnel in all areas of services for adolescents, and especially in: 1.the provision of health services; 2. juvenile justice (police, judges and other professionals). 3. state response to domestic violence and child abuse.
- Support the evaluation and improvement of education, and the elimination of supplementary activity fees in free education.
- The legislation against discrimination and against violence against girls and boys needs to be accompanied by large scales educational campaigns that seek to transform long held beliefs that support discrimination and the idea that children are objects and not subjects of rights.
- Support programs for the rehabilitation of adolescent victims of sexual crimes, prostitution, domestic violence, the survivors of social violence (social cleansing, terrorism etc.), and adolescents involved in gangs, drug abuse and armed conflict.

3.2.2. Study and produce data on areas of concern where there is little or no information on the status of adolescents, even though there are laws that guarantee them their rights. There is insufficient information, and the need to document the following areas:

- The unmet health, education and justice needs in adolescents, especially those belonging to the poorest sectors and other vulnerable groups.
- The specific impact of structural adjustment policies and health and education reforms on youth, taking into account specially the issues of access to health and education and quality of services.
- The present situation of institutionalized adolescents, both those in detention and those under state protection.
- The situation of adolescent victims of sexual abuse, trafficking and prostitution.
- The situation of working children and the actual implementation of laws that prohibit child labor.
- The situation of adolescents with disabilities.
- The situation of adolescents belonging to ethnic and racial minorities.

3.2.3. Follow up on reports of human rights violations that affect adolescents in specific countries, especially:

Argentina

- Follow up on reports of abuse of juveniles in detention.

Brazil

- Follow up on reports of police and vigilante violence against street children and young boys in gangs.
- Follow up on reports of bad conditions of detention for juvenile offenders.

Colombia

- Follow up on the status of internally displaced persons and other survivors of civil strife.
- Follow up on physical and psychological rehabilitation programs for adolescents involved in the armed conflict as combatants.
- Follow up on reports of "social cleansings."

Dominican Republic

- Follow up on reports of mistreatment of Haitians and Dominicans of Haitian origin including massive deportations.
- Follow up on reports of minors detained with adults.

Honduras

- Follow up on report of social cleansing of street children and youth in gangs.

Mexico

- Follow up of reports of minors detained with adults.
- Follow up on reports of child soldiers in Chiapas.

Peru

- Follow up of reports of forced conscription of youth in the highlands.

Trinidad and Tobago

- Follow up on reports of detention of girls with adult women and of corporal punishment of boys in detention.

3.2.4. And lastly, since lack of implementation is often related to lack of resources, there is a need to support those activities that will increase the resources destined to implementing the existing laws that guarantee adolescent rights. Evidently the direct support of programs is one way of facing the lack of resources but there are additional activities that can increase the funds available for the actual implementation of existing legislation.

Some of these activities are:

- Support citizen involvement and participation in **budgeting** exercises both at a local and national level, especially the involvement of groups that advocate for children and adolescent rights.
- Support citizen groups and ombudsman's offices that document and report human rights abuses, and especially the breach of state obligations to meet the agreed upon **benchmarks for social and economic rights**. This can be linked to meeting the millennium development goals, but can and should go beyond those minimum standards.
- Support the organization of communities to follow up on government programs and to improve the implementation of laws and policies, and the **organization of communities to participate** in local decisions and implementation of programs.
- Documents and disseminate information on **good practices** in the implementation of programs for youth.
- Support efforts to **address issues of inequality** both at the **national** level (wealth distribution and allocation of resources) and the inequalities at the **international** level (high indebtedness of countries and the harmful effects of structural adjustment policies and of the liberalization of international markets) that have serious negative effects on the immediate enjoyment of social and economic rights.

4. TABLES

SYNOPTIC TABLE 1: MINIMUM AGES*

	MARRIAGE WITH PARENTAL CONSENT (BOYS/ GIRLS)	CONSENT TO SEXUAL ACTIVITY (BOYS/ GIRLS IF DIFFERENT)	<i>ESTUPRO</i> ²² (BOYS/ GIRLS IF DIFFERENT)	AGE TO WORK (FULL-TIME)	AGE TO BE TRIED AS AN ADULT FOR CRIMES	CONSCRIPTION © OR RECRUITMENT ® INTO ARMED FORCES	MANDATORY EDUCATION
Argentina	18/16	13	16	14	16	18 ®	14
Antigua	18	16	N/A	14	16	--	16
Bahamas	15	16		16	18		16
Barbados	16	16	N/A	"unclear"	16	--	16
Belize	14	16 girls		14	18		14
Bolivia	16/14	14	18	14	18	--	--
Brazil	16	14	18	12	18	17 ® 19 ©	Primary
Chile	14/12	12	18	14	18	18 ©	Primary
Colombia	14**	14	No	12	18	18 ©	15
Costa Rica	--	15	18	15	18	N/A	Secondary
Dominica	16	16		12	18		16
Dominican Republic	16/15	No.	18, only if pregnant	14	18	18 ®	Eight years (14)
Ecuador	No limit with consent	14	18	14	18	--	--
El Salvador	Puberty, procreation.	14	18	12	18	18/16 ®	--
Grenada		16		14		--	14
Guatemala	16	12	18	15	18	--	12
Guyana	16 unless pregnant	12 (girl) Buggery always a crime	13 (girl) Buggery always a crime	14	17	18 ©	15
Haiti	18 except pregnant	No.	No.	15	16	--	--

⁴²²Estupro is the crime of having consensual sex with a minor old enough to consent, but whose consent is nullified by special circumstances that vary from country to country but that are either the abuse of authority or dependence, or lies and deceit, or taking advantage of the person's lack of sexual experience and trust, or the promise of marriage. Estupro is a crime in the Latin American civil law legal tradition, but not in the English common law tradition where the equivalent is statutory rape and there are no special requirements, only the age of consent.

	MARRIAGE WITH PARENTAL CONSENT (BOYS/ GIRLS)	CONSENT TO SEXUAL ACTIVITY (BOYS/ GIRLS)	ESTUPRO ⁴²³ (BOYS/ GIRLS IF DIFFERENT)	AGE TO WORK (FULL-TIME)	AGE TO BE TRIED AS AN ADULT FOR CRIMES	CONSCRIPTION © OR RECRUITMENT ® INTO ARMED FORCES	MANDATORY EDUCATION
Honduras	18/16	14	18	14	18	18	15
Jamaica	16	16 (girl) Buggery is a crime	N/A	15	18	--	14
Mexico	16	12	18	14	Not found	18/16	Secondary
Nicaragua	15/14	14	16	14	15? new code	--	--
Panama	16/14	14	18	15	18	18 ©	Basic
Paraguay	16	14	16	13	14	18	9 years basic ed.
Peru	16	14	18	12	18	18	Secondary
St. Kitts & Nevis	16	16		16	18		16
St. Vincent & Grenadines	15/16	14/15		14	16		
Surinam	15-18/13-15***	Range 13-18		14	16 or 18****		12
Trinidad & Tobago	14/12***	16/14	16	14	14	18	12
Venezuela	16/14	12	16	14	18	18	14 (nine years)

* For the countries that are not in bold, much of the information for this table is taken from the country reports to the Committee for Children's Rights in the period from 1998 to 2003.⁴²⁴ The data in italics was found in national penal and civil codes. For many of the smaller Caribbean countries, the data comes from the draft regional report on the 15th anniversary of the Convention on the Rights of the Child, published by UNICEF Regional Office for Latin America and the Caribbean.

** By decision of the Colombia Constitutional Court which declares the 12 minimum age for girls unconstitutional.

*** Common Law; personal laws establish different minimums for Muslims and Hindus.

⁴²³Estupro is the crime of having consensual sex with a minor old enough to consent, but whose consent is nullified by special circumstances that vary from country to country but that are either the abuse of authority or dependence, or lies and deceit, or taking advantage of the person's lack of sexual experience and trust, or the promise of marriage. Estupro is a crime in the Latin American civil law legal tradition, but not in the English common law tradition where the equivalent is statutory rape and there are no special requirements, only the age of consent.

⁴²⁴Reports to the CRC: Antigua and Barbuda 2003 (CRC/C/28/Add.22); Barbados 1999 (CRC/C/15/Add.103); Bolivia 1999 CRC/C/SR.486; Chile 1999 (CRC/C/65/Add.13/ Costa Rica 1998 (CRC/C/65/Add.7); El Salvador 2003 (CRC/C/65/Add.25); Guatemala 2001 (CRC/C/65/Add.10); Guyana 2003 (CRC/C/8/Add.47); Jamaica 2003 (CRC/C/S.R/880., CRC/C/15 Add.210); Nicaragua 1998 (CRC/C/65/Add.4); Panama 2003 (CRC/C/70/Add.20); Paraguay 1998 (CRC/C/65/Add.2); Venezuela 1999 (CRC/C/3/Add.54)

SYNOPTIC TABLE 2: RESTRICTIONS TO ABORTION (INFORMATION FROM: CENTER FOR REPRODUCTIVE RIGHTS AT: [HTTP://WWW.CRLP.ORG/PUB_FAC_ABORTION_LAWS.HTML](http://www.crlp.org/pub_fac_abortion_laws.html))

	ABORTION IS AVAILABLE ON DEMAND AND NOT A CRIME AT LEAST DURING PART OF THE PREGNANCY	EXCEPTIONS TO THE CRIMINALIZATION OF ABORTION	NEED FOR PARENTAL OR SPOUSAL AUTHORIZATION FOR LEGAL ABORTION
ARGENTINA	No	To save the woman's life, physical health, if the pregnancy is the result of rape of a retarded or insane woman	
ANTIGUA AND BARBUDA	No	To save the woman's life	
BAHAMAS		To save the woman's life, physical health	
BARBADOS	No	To save the woman's life, physical health, mental health, if the pregnancy is the result of rape or incest, if there is fetal impairment, or there are socioeconomic circumstances that justify it.	Parental Authorization
BELIZE	No	To save the woman's life, physical health, mental health, or if there is fetal impairment	
BOLIVIA	No	To save the woman's life, physical health, if the pregnancy is the result of rape or incest	
BRAZIL	No	To save the woman's life, if the pregnancy is the result of rape	
CHILE	No	None	
COLOMBIA	No	None	
COSTA RICA	No	To save the woman's life, physical health	
CUBA	Yes	N/A	Parental Authorization
DOMINICA	No	To save the woman's life	
DOMINICAN REPUBLIC	No	None	
ECUADOR	No	To save the woman's life, physical health, if the pregnancy is the result of rape of a retarded or insane woman	
EL SALVADOR	No	None	
GUATEMALA	No	To save the woman's life,	

GUYANA	Yes (eight weeks limit)	N/A	
GRENADA	No	To save the woman's life, physical health	
HAITI	No	None	
HONDURAS	No	None	
JAMAICA	No	To save the woman's life, physical health, mental health	Parental Authorization
MEXICO	No	To save the woman's life, if the pregnancy is the result of rape	
NICARAGUA	No	To save the woman's life	Parental Authorization
PANAMA	No	To save the woman's life, if the pregnancy is the result of rape, if the fetus is impaired.	Parental Authorization
PARAGUAY	No	To save the woman's life	
PERU	Yes	To save the woman's life, physical health	
SAO TOME E PRINCIPE	No	No	
ST. KITTS AND NEVIS	No	To save the woman's life, physical health, mental health	
ST. LUCIA	No	To save the woman's life, physical health	
ST. VINCENT AND THE GRENADINES	No	To save the woman's life, physical health, if the pregnancy is the result of rape, incest, or if there is fetal impairment	
SURINAME	No	To save the woman's life	
TRINIDAD AND TOBAGO	No	To save the woman's life, physical health, if the pregnancy is the result of rape of a retarded or insane woman	
URUGUAY	No	To save the woman's life, physical health, if the pregnancy is the result of rape	
VENEZUELA	No	To save the woman's life	