



Organization of
American States



OEA/Ser.L/V/II.

Doc. 69

7 June 2010

Original: Spanish

ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE

OAS Cataloging-in-Publication Data


Acceso a servicios de salud materna desde una perspectiva de derechos humanos = Access to maternal health services from a human rights perspective / [Inter-American Commission on Human Rights.]

p. ; cm. (OEA documentos oficiales ; OEA/Ser.L)(OAS official records ; OEA/Ser.L)

ISBN 978-0-8270-5461-5

1. Maternal health services--America. 2. Women's health services--America.
3. Sex discrimination against women--America. 4. Women's rights--America.
I. Inter-American Commission on Human Rights. II Series. III. Series. OAS
official records ; OEA/Ser.L.

OEA/Ser.L/V/II. Doc. 69

Document published thanks to the financial support of Spain.
Positions herein expressed are those of the Inter-American Commission
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Approved by the Inter-American Commission on Human Rights on June 7, 2010

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ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE

TABLE OF CONTENTS

| | Page |
|---|-----------|
| I. INTRODUCTION | 1 |
| II. PROTECTING THE RIGHT TO PERSONAL INTEGRITY IN THE AREA OF MATERNAL HEALTH AND BARRIERS IN ACCESS TO THESE SERVICES | 7 |
| III. DUTIES OF THE STATES TO ENSURE THAT WOMEN HAVE ACCESS TO MATERNAL HEALTH SERVICES WITHOUT DISCRIMINATION | 15 |
| A. The principles of equality and non-discrimination | 15 |
| B. Duties of the States to ensure that women have access to maternal health services without discrimination | 21 |
| IV. RECOMMENDATIONS..... | 29 |

ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE

I. INTRODUCTION

1. High rates of preventable mortality and morbidity are cause for great concern worldwide. This situation is not unknown in the Americas. Maternal mortality continues to be a serious human rights problem with dramatic effects on women throughout the world and in the region, and with repercussions on women's families and communities. Specifically, it is the women who have historically been marginalized based on reasons of race, ethnicity, economic status, and age who have the least access to the maternal health services they require. This report addresses how the States' obligation to respect and guarantee human rights without discrimination, particularly the right to personal integrity, may help to overcome inequalities in access to maternal health services – understood as health services for women during pregnancy, childbirth, and the post-partum period – and ensure that all women, particularly those who have been historically marginalized, enjoy effective access to these services.

2. The right of every person to physical, mental, and moral integrity without discrimination is enshrined in the American Convention.¹ The right to personal integrity in the area of health is closely tied to the right to health since the provision of adequate and timely maternal health services is one of the principal ways to ensure women's right to personal integrity. The American Declaration of the Rights and Duties of Man establishes the right to personal integrity, and more specifically, that every person has the right to the preservation of his health through sanitary and social measures (...) and medical care without discrimination, to the extent permitted by public and community resources.² The Protocol of San Salvador establishes that everyone has the right to health without discrimination, which is understood as the enjoyment of the highest level of physical, mental, and social well-being.³

3. Protecting women's right to personal integrity in the area of maternal health includes the obligation to guarantee that women have equal access to the health services they require according to their particular needs as they relate to pregnancy and the post-partum period and other services and information related to maternity and reproduction throughout their lives.⁴ It

¹ IACHR, *Report on the Human Rights Situation in Chile*, OEA/Ser.L/V/II.77.rev.1 Doc. 18, 8 May 1990 Chap. IV, Right to Personal Integrity, para. 6. Available at: <http://www.cidh.org/countryrep/Chile85eng/chap.4.htm>; Article 5 of the American Convention as it relates to Article 1(1) of that international instrument. The American Convention on Human Rights was signed by all American States and was ratified by the following States: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago (between May 1991 and May 1999), Uruguay and Venezuela (Bolivarian Republic of).

² Articles I and II and Article XI of the American Declaration of the Rights and Duties of Man. States that approved this Declaration are: Antigua & Barbuda, Argentina, Bahamas (Commonwealth de las), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, St. Vincent an the Grenadines, St. Lucia, Suriname, Trinidad & Tobago, United States of America, Uruguay, and Venezuela (Bolivarian Republic of).

³ States that ratified this Protocol are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname and Uruguay. States that signed this Protocol and did not ratify are: Chile, Dominican Republic, Haiti, Nicaragua, and Venezuela (Bolivarian Republic of).

⁴ See the American Convention on Human Rights, Article 5 in relation to the International Covenant on Economic, Social, and Cultural Rights, Articles 10 and 12; the Convention on the Elimination of All Forms of Discrimination against Women, Article 14; United Nations, General Assembly, *The right of everyone to the*
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is important to point out that many complications in pregnancy and childbirth are generally preventable. According to the Pan American Health Organization, illnesses relating to sexual and reproductive health in Latin America and the Caribbean represent 20% of the total health burden in women and 14% in men, pointing clearly to a gender gap.⁵

4. The right to personal integrity is related to the basic principles of human rights such as equality, privacy, autonomy, and dignity. However, the IACHR has found that many women subject to exclusion, understood as a situation that is prejudicial to certain individuals or social groups in terms of access to basic quality health services, are more likely to suffer adverse effects with respect to their right to physical, mental, and moral integrity in terms of their access to maternal health services as a result of some barriers limiting their access to these services.⁶

5. These barriers are related to the absence or inadequacy of a gender perspective in public policies addressing women's health needs, particularly for reducing maternal mortality. They also involve various forms of discrimination historically faced by women at different levels, whether at home or at healthcare facilities, generating health inequalities among women and between women and men in terms of their enjoyment of human rights.

6. According to the World Health Organization, maternal mortality is an indicator of the disparity and inequality between men and women and its extent is a marker of women's place in society and their access to social services, health services, and nutrition as well as economic opportunities.⁷ For men, there is no single cause of death and disability of a magnitude comparable to maternal mortality and morbidity.⁸

Maternal mortality and morbidity in numbers

7. The Inter-American Commission on Human Rights has received information indicating that approximately 536,000 women die each year throughout the world due to complications from pregnancy and childbirth, despite the fact that these deaths are generally preventable at relatively low cost.⁹ The World Bank estimates that if all women had access to care to

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enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, 13 September 2006.

⁵ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 65. Available at: <http://www.paho.org/hia/vol1regionalingcap6.html>.

⁶ According to the Pan American Health Organization, access to health services is understood as the ability to obtain care when needed. Thus, accessibility is ultimately manifested in the ability of specific population groups that could *a priori* be assumed to be disadvantaged to use health services. Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, pps. 366-367. Available at: <http://www.paho.org/hia/vol1regionalingcap4.html>.

⁷ WHO, *Reduction of maternal mortality: A joint WHO/UNFPA/UNICEF/World Bank Statement*. Geneva: World Health Organization, 1999. [translation of the Secretariat]

⁸ United Nations, General Assembly, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, September 13, 2006*, para. 9.

⁹ WHO, Facts and figures from the World Health Report, 2005. In addition, between three and six dollars each year in poor and medium economy countries. Data provided during the Hearing on the Reproductive Rights of Women in the Americas, 130th Period of Sessions, October 10, 2007; PAHO, *Regional Strategy for Maternal Mortality and Morbidity Reduction*, available at:

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deal with complications in pregnancy and childbirth, particularly emergency obstetrical care, some 74% of maternal deaths could be prevented.¹⁰ The United Nations Human Rights Council made reference to an average of 1,500 women and girls who die each day as a result of preventable complications related to pregnancy and childbirth.¹¹ In addition, for every woman who dies, another 30 women suffer permanent injuries or illnesses that could result in pain throughout their lives, disability, and socioeconomic exclusion.¹²

8. Maternal mortality rates in the Americas represent a total of 22,680 deaths each year.¹³ The principal causes of maternal death in the region's countries are preventable and consistent: preeclampsia, hemorrhage, and abortion, with the order varying according to the rate of maternal mortality, coverage levels for prenatal care and childbirth, and the prevalence of contraceptive use.¹⁴

The impact of inequalities in access to services

9. Most of these cases of maternal mortality – defined by the World Health Organization as deaths of women during pregnancy or the 42 days following delivery – and maternal morbidity – defined as complications or illness occurring during gestation, delivery, or the puerperium and affecting the safety and health of women, often permanently,¹⁵ occur in developing countries.¹⁶

10. Latin America and the Caribbean are characterized as regions with great diversity in terms of both economic development level and geographic distribution as well as disparities

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<http://www.paho.org/English/AD/FCH/WM/maternalmortalitystrategy.pdf>, undated. This situation was also noted by the United Nations Human Rights Council with respect to maternal mortality.

¹⁰ Wagstaff, A. and M. Claeson, 2004. *The Millennium Development Goals for Health: Rising to the Challenges*. Washington DC: World Bank. See: Executive Summary, *Women Deliver*, Global Conference 18-20 October 2007, London.

¹¹ United Nations, Human Rights Council, *Preventable maternal mortality and morbidity and human rights*, A/HRC/11/L.16/Rev.1, June 12, 2009.

¹² Millennium Development Goal 5: Improving Maternal Health. Available on line at: http://www.who.int/pmnch/media/press_materials/fs/fs_saludmaterna.pdf. It should be noted that between 10 and 15 million women suffer from long-term illness or disability due to complications from pregnancy and childbirth; United Nations Population Fund. *When Pregnancy Kills, Unacceptable Maternal Deaths*, available at: http://www.unfpa.org/safemotherhood/mediakit/documents/fs/factsheet1_eng.pdf; United Nations, General Assembly, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/61/338, September 13, 2006, para. 7.

¹³ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 152. Available at: <http://www.paho.org/hia/vol1regionalingcap2.html>.

¹⁴ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 152. Available at: <http://www.paho.org/hia/vol1regionalingcap2.html>.

¹⁵ 42 days after pregnancy ends.

¹⁶ According to the United Nations Children's Fund, 99% of maternal deaths occur in developing countries, and Africa and Asia represent 90% of them. See United Nations, *The State of the World's Children 2007, Women and Children: The Double Dividend of Gender Equality*, p. 5.

between countries and within countries with respect to access to maternal health services.¹⁷ As a result, 50% of maternal deaths are concentrated in the poorest 20% of the region while only 5% of such deaths are found in the richest 20%.¹⁸ In Haiti, for example, approximately 670 women die for every 100,000 live births, while in Canada approximately 7 women die for every 100,000 live births.¹⁹ In addition, the WHO estimated that in 2006 there were 280,000 perinatal deaths with notable differences across the region, where the risk of perinatal death is three times higher in Latin America and the Caribbean than in Canada and the United States.²⁰

11. While maternal mortality and morbidity affects women in all social and economic strata, the IACHR notes that a disproportionately high number of poor, indigenous, and/or afro-descendent women, most of whom live in rural areas, are the women who most often do not fully enjoy their human rights with respect to maternal health. This is because these groups of women suffer from the conjunction of multiple forms of discrimination limiting their access to these services. Discrimination based on sex, gender, race, ethnicity, poverty, or other factors is in turn considered a social determinant of health.²¹

12. In fact, at the United Nations Fourth International Conference on Women held in Beijing in 1995, it was determined that the major obstacle preventing women from attaining the highest possible standard of health is inequality between women and men and among women in different geographic areas, social groups, and indigenous and ethnic groups.²² This means that the inequalities that women face in society in terms of health, including maternal health, are evident as compared to their male peers, but also among women themselves.

13. Thus, in Peru, 74% of women in rural areas give birth at home without qualified professional care, compared to 90% of women in indigenous communities, even though one of the factors recognized internationally as associated with reducing maternal morbidity and mortality is childbirth attended by qualified personnel.²³ In Bolivia, a country with the highest maternal mortality rate in the Andean region (290),²⁴ the rate of maternal mortality varies significantly depending on geographic region (high plateau, valleys, or tablelands) and depending on place of residence (urban

¹⁷ IACHR, Thematic Hearing, *Maternal Mortality in the Americas*, 137th Period of Sessions, November 6, 2009, organized by the Center for Reproductive Rights, Amnesty International, Foro Salud Perú, Movimiento Autónomo de Mujeres de Nicaragua and the International Initiative on Maternal Mortality and Human Rights. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁸ Pan American Health Organization, The Partnership for Maternal, Newborn & Child Health and the Government of Chile. *Mortalidad Materna and Neonatal en ALC y Estrategias de Reducción*, Situation summary and strategic approach, undated. Available at: www.delivernow.org.

¹⁹ UNFPA, *State of World Population 2008*. Available at: http://www.unfpa.org/swp/2008/includes/images/pdf_swp/notes_indicators_full.pdf.

²⁰ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 60. Available at: <http://www.paho.org/hia/vol1regionalingcap2.html>.

²¹ See United Nations, *Economic, Social and Cultural Rights: the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur, Mr. Paul Hunt*, E/CN.4/2004/49, February 16, 2004.

²² United Nations, *Fourth World Conference on Women, Declaration of Beijing and Action Platform*, 4-September 15, 1995, para. 89.

²³ Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007, p. 8. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

²⁴ UNFPA, *State of World Population 2008*. Available at: http://www.unfpa.org/swp/2008/includes/images/pdf_swp/notes_indicators_full.pdf.

or rural),²⁵ with obstetrical complications, hemorrhage, and infections being the principal causes of maternal mortality.²⁶

14. With regard to the maternal health situation of indigenous women, according to the Pan American Health Organization, in Guatemala, where 42% of the population is indigenous, maternal mortality is three times higher among indigenous women (211 for every 100,000 live births) than among non-indigenous women (70 for every 100,000 live births).²⁷ In addition, according to United Nations Economic Commission for Latin America and the Caribbean (herein after "ECLAC"), while 68% of non-indigenous women get professional prenatal care, only 45.6% of indigenous women get such care.²⁸

15. In addition, the IACHR notes with alarm the maternal health situation among the region's adolescents. Each year, records indicate about two million mothers between the ages of 15 and 19 and approximately 54,000 births to mothers under the age of 15.²⁹ Statistics show that high pregnancy rates among adolescents have not declined significantly since 1990, despite a decline in the region's total fertility.³⁰ High adolescent pregnancy rates (among those under age 18) are a serious problem because pregnant adolescents face risks of maternal death that are two to five times higher than among women aged 20 or older.³¹ In addition, their children are more likely to die during infancy.³²

International commitments and the duties of States

16. The IACHR recognizes that there is consensus among the States that improving access to maternal health is a matter of priority. An example of this is that improving maternal health is established as one of the eight Millennium Development Goals.³³ In addition, the United Nations Human Rights Council recently issued a resolution expressing its concern over maternal mortality and

²⁵ PAHO, *Regional Strategy for Maternal Mortality and Morbidity Reduction*, available at: <http://www.paho.org/English/AD/FCH/WM/maternalmortalitystrategy.pdf>.

²⁶ IACHR, *Report on Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, 28 June 2007, Chapter V, Women's Rights, para. 363. Available at: <http://www.cidh.org/countryrep/Bolivia2007eng/Bolivia07indice.eng.htm>.

²⁷ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 164. Available at: <http://www.paho.org/hia/vol1regionalingcap4.html>.

²⁸ ECLAC, *Social Development Division, Indigenous and Afro-descendent peoples in the new millennium, 2006*. Available at: http://www.eclac.org/publicaciones/DesarrolloSocial/8/LCL2518PE/sps118_lcl2518.pdf.

²⁹ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 152. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

³⁰ United Nations, *Millennium Development Goals 2007*. Available at: http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2007/UNSD_MDG_Report_2007s.pdf. In Nicaragua, for example, 113 out of every 1,000 women who give birth are adolescents between the ages of 15 and 19, and in Guatemala, the rate is 107 out of every 1,000 births. UNFPA, *State of World Population 2008*. Available at: http://www.unfpa.org/swp/2008/includes/images/pdf_swp/notes_indicators_full.pdf.

³¹ WHO, *Improving Adolescent Health and Development*, WHO/FRH/ADH/98.18 Rev.1, 2001. Available at: http://whqlibdoc.who.int/hq/1998/WHO_FRH_ADH_98.18_Rev.1.pdf.

³² WHO, *Improving Adolescent Health and Development*, WHO/FRH/ADH/98.18 Rev.1, 2001. Available at: http://whqlibdoc.who.int/hq/1998/WHO_FRH_ADH_98.18_Rev.1.pdf.

³³ See Gateway to the UN System's Work on the MDGs, Available at: <http://www.un.org/millenniumgoals/bkgd.shtml>.

asked the States to renew their commitment to eliminating preventable maternal morbidity and mortality at the local, regional, and international level.³⁴

17. At the regional level, the countries in the Americas have undertaken various efforts to address the challenge through changes in legislation, policies, programs, and services.³⁵ Nonetheless, trends indicate that despite these efforts, they are well below the 5.5% improvement needed to achieve the target established in the Millennium Development Goals.³⁶ To illustrate, although the maternal mortality rate in Latin America and the Caribbean fell from 180 to 130 deaths for every 100,000 live births between 1990 and 2005, that figure is still very high and reflects this serious and persistent situation affecting the region's women.

18. Thanks to support from the Government of Spain, the IACHR has been implementing a project to produce, through its Rapporteurship on the Rights of Women, a series of publications, including a brief analysis and recommendations to the States, regarding subjects linked to access to health in the area of women's reproduction at the regional and subregional level, the aim being to ensure greater protection for the human rights of women in this area.

19. For this reason, the IACHR has developed this report, with the purpose of analyzing the duties of the States in guaranteeing women's human rights without discrimination in terms of access by women to maternal health services, and to formulate general recommendations to the States on the subject. The recommendations in the report primarily cover the duties of the American States with respect to their legislation and public policies, services, and judicial branch, so as to guarantee the right to personal integrity for all women with respect to their access without discrimination to maternal health services.

20. Thus, while the OAS Member States are working toward full implementation of the applicable obligations in the area of maternal health, the IACHR believes there are certain fundamental obligations that require immediate priority measures:

- Identification and allocation of human and material resources to work toward eliminating barriers in access to services.
- Implementation of measures to reduce preventable deaths due to pregnancy or childbirth, particularly to ensure that women have effective access to emergency obstetrical services and to care before and after delivery.
- Incorporation of the gender perspective and elimination of *de facto* and *de jure* forms of discrimination that impede women's access to maternal health services.
- Prioritization of efforts and resources in order to guarantee access to maternal health services for women who may be at greater risk because they have been subject to various forms of discrimination such as indigenous, afro-descendant, and adolescent women, women living in poverty, and women living in rural areas.

³⁴ United Nations, Human Rights Council, *Preventable maternal mortality and morbidity and human rights*, A/HRC/ 11/L.16/Rev.1, June 12, 2009.

³⁵ For example, Honduras, a lower middle income country with one of the highest incidences of poverty and inequality in the region, was able to reduce maternal mortality by 38%, going from 182 for every 100,000 live births to 108 for every 100,000. World Bank. Honduras Country Brief. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/HONDURASEXTN/0,contentMDK:21035522~pagePK:1497618~piPK:217854~theSitePK:295071,00.html>.

³⁶ See Gateway to the UN System's Work on the MDGs, Available at: http://www.un.org/millenniumgoals/pdf/goal5_2008.pdf.

- Education for users regarding health services, as well as services to provide information on their rights as patients and on their health, including family planning.
- Design and implementation of maternal health policies, plans, and programs on a participatory basis.
- Timely access to effective judicial remedies to ensure that women who allege that the State has not met its obligations in this area have access to effective judicial remedies.

21. With this first report, the Commission hopes to contribute, along with the States' efforts, to the protection and promotion of women's human rights in terms of their access to maternal health services without discrimination.

II. PROTECTING THE RIGHT TO PERSONAL INTEGRITY IN THE AREA OF MATERNAL HEALTH AND BARRIERS IN ACCESS TO THESE SERVICES

22. Article 5 of the American Convention establishes the right of everyone to respect for their physical, mental, and moral integrity. The IACHR has established that the right to personal integrity is a very broad concept;³⁷ the Inter-American Court has reaffirmed that the right to personal integrity is essential to the enjoyment of human life and cannot be suspended under any circumstances.³⁸ The Inter-American Court has developed the link between the right to personal integrity and the rights to life and health, establishing that both are directly and immediately linked to human health care.³⁹

23. The right to personal integrity in the area of health is closely related to the right to health given that the provision of adequate and timely maternal health services is one of the principal ways to ensure women's right to personal integrity. Article 10 of the Protocol of San Salvador states that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being. In addition, Article 3 of the Protocol of San Salvador establishes that the States undertake to guarantee the rights set forth therein without discrimination of any kind for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

24. For the Inter-American Court, health is a public good for which the States are responsible.⁴⁰ Thus, it has stated that the States are responsible for regulating and monitoring the delivery of health services in order to achieve the effective protection of the rights to life and personal integrity,⁴¹ regardless of whether the entity providing such services is public or private in nature.⁴²

³⁷ IACHR, *Report on the Human Rights Situation in Chile*, OEA/Ser.L/V/II.77.rev.1, Doc. 18, May 8, 1990 Chap. IV, Right to Personal Integrity, para. 6. Available at: <http://www.cidh.org/countryrep/Chile85sp/cap4.htm>.

³⁸ I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149, para. 126. In this regard, see, I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 119; and I/A Court H. R., *"Juvenile Reeducation Institute" v. Paraguay Case*. Judgment of September 2, 2004. Series C No. 112, para. 157.

³⁹ I/A Court H.R., *Albán Cornejo et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, para. 117.

⁴⁰ I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149, para. 89.

⁴¹ I/A Court H.R., *Albán Cornejo et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, para. 121.

⁴² I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149, para. 89.

25. The right to health is enshrined in several of the region's constitutions. For example, the Constitutional Court of Colombia has developed the elements of the right to personal integrity – physical, mental and moral – establishing that “the Constitution proclaims the fundamental right to personal integrity, and in doing so, does not only cover the person's physical constitution but also the full range of elements that have an impact on their mental health and psychological equilibrium. Both must be preserved and thus attacks on one or the other of such factors of personal integrity – by act or omission – violate that fundamental right.”⁴³

26. The Commission feels that the right to personal integrity implies the obligation of the States to respect that right and guarantee that no one is subject to physical or mental aggression. In addition, protection of women's right to personal integrity in the area of maternal health implies the obligation of the States to guarantee through legislation or otherwise that women enjoy the right to the highest possible level of physical and mental health without discrimination.⁴⁴ To do so, although the Commission has indicated that the States must ensure the adoption of measures that are reasonably within their reach and expeditious in order to provide required medical treatment to those who need it,⁴⁵ equal treatment for women and men is an immediate obligation.

27. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (hereinafter “the ESCR Committee”) defined four interrelated characteristics of the right to health: availability, accessibility, acceptability and quality.⁴⁶

28. Specifically with respect to the accessibility of health services, the Committee established that accessibility has four overlapping dimensions:⁴⁷ 1) non-discrimination which means equitable *de facto* and *de jure* access to health services; 2) physical accessibility which includes the requirement that health services be geographically within the reach of all sectors of the population. Physical accessibility also means that medical services and the basic determining factors of health such as potable water and adequate sanitation services are within an appropriate geographic distance, even with respect to rural areas; 3) Economic accessibility (affordability) includes that requirement that service be within the reach of all. Payments for health services and related services are determining factors of health that must be based on the principle of equity, so as to ensure that such services are within the reach of all. In addition, equity requires that there not be a disproportionate burden on poor households with respect to health expenses in comparison with richer households, and 4) access to information which includes the right to seek, receive and disseminate information and ideas on health-related issues.

⁴³ Judgment of the Constitutional Court of Colombia, C-355-06, May 10, 2006.

⁴⁴ See Article 1.1 of the American Convention on Human Rights.

⁴⁵ IACHR, Report No. 27/09, Case 12.249, *Jorge Odir Miranda Cortez et al.* (El Salvador), March 20, 2009, para. 108,

⁴⁶ United Nations, Economic, Social and Cultural Committee, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*. E/C.12/2000/4, August 11, 2000. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/37/PDF/G0043937.pdf?OpenElement>.

⁴⁷ United Nations, Economic, Social and Cultural Committee, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*. E/C.12/2000/4, 11 August 2000; Rebecca Cook, Bernard M. Dickens and Mahmoud F. Fathalla, *Reproductive Health and Human Rights. Integrating Medicine, Ethics, and Law*, Oxford, p. 179.

Barriers in Access to Maternal Health Services

29. With respect to the accessibility of maternal health services, the IACHR notes that there are various barriers limiting women's access to these services. These barriers are related to structural factors of the health services *per se*,⁴⁸ and laws and policies governing those services. In addition, certain practices, attitudes, and stereotypes, both within the family and community as well as on the part of personnel working in health facilities, can act as barriers impeding women's access to these services. It is very important to bear in mind, in this regard, that women have historically been subject to various forms of discrimination and that the obligation to remedy that discrimination demands the integration of a gender perspective in the design and implementation of laws and public policies affecting women.

30. With respect to structural factors, the IACHR has received information indicating that one of the major barriers women face in obtaining access to maternal health services are high fees for health care.⁴⁹ Fees for service become a determinant when deciding whether or not to seek out health services when there is some symptom of risk during pregnancy and/or childbirth, a situation that has a disproportionate effect on poor women, reflecting the lack of governmental support for persons with limited resources. Thus, the failure to prioritize resources in many cases reflects the lack of a gender perspective in public policies on access to basic maternal health services.

31. Health facility hours⁵⁰ and the lack of adequate equipment, medical supplies or medications to deal with emergencies during pregnancy, childbirth and the post-partum period, as well as the lack of trained personnel within the health services to respond to these emergencies, particularly to provide emergency obstetrical care, are also barriers limiting access to the maternal health services that women need.⁵¹

32. Another structural factor faced by women, particularly those living in rural areas, is the acute distance to health services. The distances women must travel to go to a health center as well as road conditions and transportation costs may be determinants when deciding to seek medical care.⁵² The lack of transportation to take a pregnant woman to a health facility in the case of an emergency, for example, is another barrier to access. As a result, the distribution and general location of health facilities as well as transportation may constitute a form of discrimination against women living in rural and/or remote areas in terms of the accessibility of services.⁵³

⁴⁸ Pan American Health Organization, *Evaluating the Impact of Health Reforms on Gender Equity – a PAHO Guide*, Draft 2, 23.4.001, p. 11.

⁴⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*. para. 21. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm-sp.htm#recom24>.

⁵⁰ Pan American Health Organization, *Evaluating the Impact of Health Reforms on Gender Equity – a PAHO Guide*, Draft 2, 23.4.001, p. 11.

⁵¹ Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

⁵² United Nations, Economic Commission for Latin America and the Caribbean, *The Right to Health and the Millennium Development Goals*, Chap. V, p. 154. Available at: <http://www.eclac.org/publicaciones/xml/0/21540/chapter5.pdf>; Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007, p. 9. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

⁵³ Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007, p. 57. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

33. In addition to the physical accessibility and affordability of health services that are economically and geographically within the reach of women, it is important that women, their families, and communities be aware of health services and that they also be able to identify warning signs that require medical attention.⁵⁴ As a result, the lack of information on reproductive health acts as another barrier to obtaining access to maternal health services because it prevents women from freely making decisions based on their health, and the result of this is the lack of appropriate prevention and health promotion behaviors to protect their own health and that of their children. On this point, in General Comment No. 14, the ESCR Committee determined that “accessibility includes the right to seek, receive, and impart information and ideas concerning health issues.”⁵⁵

34. Also, the IACHR observes the existence of cultural factors that can operate as barriers of access to maternal health services, for example, health services that are offered without considering indigenous and afrodescendent women’s expectations, traditions and beliefs. Likewise, the IACHR received information that indicates that women, particularly the poor and the marginalized, do not seek health services because of a lack of time or overburden of domestic duties placed exclusively on them. Consequently, women postpone their health care, risking their lives.

35. The Commission considers that the perception of service quality may influence a woman’s decision to seek medical care. In addition, perceived cultural insensitivity or disrespectful treatment on the part of medical personnel may cause women and their families to cease seeking help.⁵⁶ Thus, the lack of interpreters in areas where there are communities speaking other languages may constitute an obstacle to women’s access to services.

36. With respect to laws and policies that may represent barriers to obtaining access to maternal health services, the failure to implement laws, policies, programs and practices to benefit women’s health in the area of maternal health as well as the lack of standards and protocols governing medical care in this area stand out.⁵⁷ Thus, medical personnel’s refusal to provide services under legal conditions is not only a barrier to access but is discriminatory as well.⁵⁸

37. Another structural factor that acts as a barrier impeding women’s access to maternal health services are persistent gender stereotypes in the health sector. Thus, laws, policies or practices that require women to have third party authorization in order to obtain medical care and that allow forms of coercion such as sterilization of women without their consent perpetuate stereotypes that see women as vulnerable and unable to make autonomous decisions regarding their own health. In effect, situations in which women are denied medical care because they are women,

⁵⁴ United Nations, Economic Commission for Latin America and the Caribbean, *The Right to Health and the Millennium Development Goals*, Chap. V, p. 154. Available at: <http://www.eclac.org/publicaciones/xml/0/21540/chapter5.pdf>; United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*, para. 20.

⁵⁵ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, para. 12 iv).

⁵⁶ Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

⁵⁷ Rebecca Cook, Bernard M. Dickens and Mahmoud F. Fathalla, *Reproductive Health and Human Rights. Integrating Medicine, Ethics, and Law*, Oxford. p. 213. Also in this regard, see the Judgment of the Human Rights Committee, *K. LL. v Peru*, CCPR/C/85/D/1153/2003, November 17, 2005.

⁵⁸ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*, para. 11.

because of their marital status, or because of their level of education⁵⁹ are forms of discrimination in access to such services.⁶⁰ In addition, policies, practices, and gender stereotypes that fail to respect women's right to confidentiality may constitute barriers limiting access to maternal health services, particularly for adolescents.⁶¹

38. Similarly, attitudes such as indifference, mistreatment and discrimination perpetrated by health sector employees that affects women and girls victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address situations of violence, constitute barriers to access of health services.

39. Under the Inter-American system, barriers limiting access to maternal health services may amount to affecting the right of women to physical, mental and social integrity. Although each particular situation will have to be analyzed, the IACHR feels that cases in which surgeries and medical treatments are performed on women without their consent or pose a physical risk to their health may constitute violations of the right to personal integrity. In addition, cases in which women's dignity is assaulted, such as when they are denied medical care in the area of reproduction, thus damaging their health or causing them considerable emotional stress, would constitute a violation of the right to personal integrity. In all these cases, the provisions contained in the Convention of Belém do Pará,⁶² as a specific instrument intended to provide special protection for women's human rights, must be used to specify the obligations deriving from Article 5 of the American Convention and from Articles I and XI of the American Declaration of the Rights and Duties of Man.

40. Although the right to personal integrity, particularly in the area of maternal health, is not a subject that has been dealt with in depth by the IACHR, the Commission has received various forms of information in its on-site visits as well as under the case system that provide examples of some of the barriers that women face in obtaining access to maternal health services that may affect their right to personal integrity. In its 1997 regional report on the situation of women in the Americas, the IACHR emphasized that comprehensive health care for women generally

⁵⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*, para. 14; R.J Cook, C.G. Ngwena, *Women's Access to Health Care: The Legal Framework*. *International Journal of Gynecology and Obstetrics* (2006) 94, 216—225.

⁶⁰ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*, para. 22.

⁶¹ On this subject, Article 5 of the Convention on the Rights of the Child establishes the obligation of the States parties to respect the responsibilities, rights and duties of parents or, where applicable, legal guardians responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. In addition, Article 12 of the same international instrument establishes the obligation of States to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Article 24 of said international instrument establishes that the States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health and that States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

⁶² The Belém do Para Convention was ratified by the following States: Antigua and Barbuda, Argentina, Bahamas (Commonwealth de las), Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica (Commonwealth of), Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Saint Kitts and Nevis, San Vicente and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of).

depends on two factors: 1) the organization and structure of adequate services and 2) the knowledge that women have regarding laws protecting their rights and governing health care services.⁶³

41. In its report, the IACHR pointed out that women's reproductive health should occupy an important place in legislative initiatives and health programs at the national and local level. The IACHR also expressed its concern regarding serious difficulties faced by women in the public health sector, generally due to the lack of resources, the absence of standards on reproductive health, the precarious conditions under which services are delivered, and the lack of professionals and essential materials. The report referred to high maternal mortality rates in the region and the obstacles women face to receiving adequate health services during pregnancy and after childbirth. Based on the responses sent by the States on the subject of health and reproductive health, the Commission found profound deficiencies in statistical data, generally due to the lack of appropriate resources and infrastructure. The Commission was able to confirm serious problems in terms of access to basic information and adequate medical and social services. The IACHR recommended that the States adopt measures so as to have the necessary statistical information and resources needed to adopt plans and programs that would afford women the full exercise of their right to health.

42. In its on-site visits, the IACHR has confirmed the maternal health situation in some countries and has made recommendations to the States on addressing some of the most significant problems associated with protecting the right to personal integrity. For example, the Commission referred to the serious maternal mortality situation in the region and how that situation reflects the poverty level and exclusion of women.⁶⁴ It also referred to abortion as a very serious problem for women, not only from a health perspective but also in terms of women's human rights to integrity and privacy.⁶⁵

43. The IACHR has pointed to the need to encourage policies that propose specific prevention and health care measures in maternal health and has recommended making adequate health care services as well as information and assistance in reproductive health available to women, particularly poor and indigenous women.⁶⁶ Along these lines, it has also recommended the implementation of dissemination measures and campaigns for the general public on the duty to respect women's rights in civil, political, economic, social, cultural, sexual, and reproductive matters.⁶⁷

44. In addition, the Commission has underscored the problem of discrimination against women and the various ways in which it is manifested, for example, in the area of reproductive health. In effect, the IACHR voiced its concern over cases of forced sterilization in Peru.

⁶³ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998.

⁶⁴ IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110, doc. 52, 9 March 2001, See Chapter VIII, Women's Rights. Available at: <http://www.cidh.oas.org/countryrep/Paraguay01eng/TOC.htm>.

⁶⁵ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999, See Chapter XII, Women's Rights, para. 49. Available at: <http://www.cidh.oas.org/countryrep/Colom99en/table%20of%20contents.htm>.

⁶⁶ IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110, doc. 52, 9 March 2001, See Chapter VIII, Women's Rights. Available at: <http://www.cidh.oas.org/countryrep/Paraguay01eng/TOC.htm>.

⁶⁷ IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, June 28, 2007, See Chapter V, Women's Rights. Available at: <http://www.cidh.oas.org/countryrep/Bolivia2007sp/Bolivia07indice.sp.htm>.

The Commission maintained that “when a family planning program ceases to be voluntary and turns women into a mere object of control so as to make adjustments to population growth, it loses its *raison d’être* and instead poses a danger of violence and direct discrimination against women.”⁶⁸ The Commission felt that a campaign to disseminate family planning methods was a positive action, provided that this means voluntary family planning. Among its recommendations for addressing this form of discrimination and violence against women, the IACHR including adopting measures to promote respect for women’s rights in public health services such as: providing training in human rights for health providers, developing mechanisms to eradicate the cover-up of crimes in health facilities, and establishing complaint offices in hospitals and health centers, among other measures.

45. In addition, the Commission emphasized the importance of a proper investigation in order to establish the respective responsibilities and penalties. However, in subsequent years the Commission has not received information on concrete results. On the contrary, very recently the Commission received information indicating that the Provincial Office of the Special Prosecutor for Human Rights, through a resolution dated May 26, 2009, archived 2,074 accumulated complaints submitted by women who were victims of forced sterilization while the National Reproductive Health and Family Planning Program was effect during the period from 1996 to 2000. The Office of the Prosecutor decided to archive the complaints based on the statute of limitations, concluding that although there was evidence indicating that crimes of manslaughter and negligent injury had been committed, since about 13 years had passed the period for prosecuting those crimes had lapsed; thus it archived the cases definitively.⁶⁹

46. The IACHR wishes to recall that the State itself had already recognized in 2002 that the policy in question had violated many individuals’ human rights and that the Office of the Prosecutor itself recognizes the existence of evidence. Despite that recognition, according to the reports, competent authorities have not moved investigations toward the necessary conclusions and consequences. It should be noted in general terms that the international responsibility of the State continues over time until its obligations under international law have been met.

47. The IACHR has also expressed its concern over limited access to family planning in the countries even though in some cases there is a high unmet need for such services.⁷⁰ The Commission has expressed its view that persistent limitations on information regarding family planning services are linked to limitations on access to public health care and education. On this point, the Commission has made recommendations on measures to provide comprehensive health services, including modern family planning services, in order to protect women’s right to personal integrity and the right of couples to determine the number of children they want and how to space their births.⁷¹

⁶⁸ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106. Doc. 59 rev, June 2, 2000, See Chapter VII, Women’s Rights. Available at: <http://www.cidh.oas.org/countryrep/Peru2000en/TOC.htm>.

⁶⁹ To challenge this decision, a complaint was filed on May 29, 2009. In December 2009, the Superior Office of the Prosecutor, archived the cases definitively.

⁷⁰ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111, Doc. 21 rev, April 6, 2001, See Chapter XIII, Women’s Rights. Available at: <http://www.cidh.oas.org/countryrep/Guate01eng/TOC.htm>.

⁷¹ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev, 6 April 2001, See Chapter XIII, Women’s Rights. Available at: <http://www.cidh.oas.org/countryrep/Guate01eng/TOC.htm>; IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, December 29, 2003, See Chapter V, Women’s Rights. Available in Spanish only at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/indice.htm>.

48. Under the case system, cases related to maternal health have been resolved through friendly settlement agreements. An important example is the Case of María Mamérita Mestanza of Peru, in which the petitioning organizations alleged that Mrs. Maria Mamérita (aged 33) was forced into a public health facility and submitted to surgical sterilization, resulting in her death.⁷² Mrs. Mestanza was allegedly harassed and threatened by health personnel who claimed she would be reported to the police if she did not submit to the operation. As a result, Mrs. Mestanza submitted to the operation, was discharged despite her complaints of pain and discomfort, and died nine days after the operation. The petitioners alleged that the case of Mrs. María Mamérita Mestanza represented just one of several cases of women affected by the application of a massive, compulsory, and systematic government policy that emphasized sterilization as a method for rapidly changing the population's reproductive behavior, particularly poor, indigenous, and rural women.

49. Through a friendly settlement agreement between the parties signed in 2003, the State of Peru recognized its responsibility for having violated the victim's right to life, physical and mental integrity, and personal integrity, to equal protection of the law, and to live free of violence.⁷³ The State agreed to compensate the victim's family financially, to punish those responsible for the violations and to change national standards and policies in the area of family planning in accordance with relevant international standards.⁷⁴ The State also agreed to adopt the recommendations made by the Ombudsman's Office to protect women's personal integrity, including: improving pre-operative evaluation of women who undergo a surgical contraceptive procedure; providing medical personnel with better training; creating mechanisms for receiving and efficiently processing complaints within the health system; and implementing measures to guarantee that women are able to provide informed consent within a period of 72 hours prior to sterilization. The IACHR is monitoring the implementation of the agreement.

50. Another important case before the IACHR in the area of maternal health that was resolved through a friendly settlement agreement is the case of Paulina Ramirez Jacinto of Mexico.⁷⁵ The petitioners alleged that Paulina Ramirez, aged 13, was the victim of sexual violence, was prevented from exercising her right to a legal abortion because she and her mother were the victims of intimidation and delays on the part of agents of the State. In 2007, the parties ratified a friendly settlement agreement that includes public recognition of the responsibility of the Government of Baja California and a series of measures to compensate the victim and her child, including court costs for processing the case, medical expenses arising from the events and health services, financial support for their maintenance, housing, education and professional development, psychological care, and reparation for moral damages. In publishing the report, the IACHR emphasized that it is impossible to achieve women's full enjoyment of human rights unless they have timely access to comprehensive health care services as well as information and education on the subject. The IACHR also noted that the health of the victims of sexual violence must have priority in the States' legislative initiatives and in health policies and programs. The IACHR is monitoring fulfillment of the agreement.

⁷² IACHR, Report No. 71/03, Petition 12.191, Friendly Settlement, *María Mamérita Mestanza Chávez* (Peru), October 3, 2003.

⁷³ IACHR, Report No. 71/03, Petition 12.191, Friendly Settlement, *María Mamérita Mestanza Chávez* (Peru), October 3, 2003.

⁷⁴ IACHR, Report No. 71/03, Petition 12.191, Friendly Settlement, *María Mamérita Mestanza Chávez* (Peru), October 3, 2003.

⁷⁵ IACHR, Report No. 21/07, Petition 161/02, Friendly Settlement, *Paulina del Carmen Ramirez Jacinto* (México), March 9, 2007.

51. In addition, on March 7, 2007, the IACHR received a petition alleging international responsibility on the part of the State of Bolivia for the alleged forced sterilization of a woman in a public health facility. The petitioner maintains that in 2000, Mrs. I.V. was subjected to tubal ligation surgery without her informed consent and thus to a non-consensual sterilization, permanently losing her reproductive function. For its part, the State maintains that when the alleged victim was undergoing a caesarian section, multiple adhesions were found. For this reason, the attending physician informed her regarding the risk to her life in her next pregnancy, which is why he suggested a tubal ligation, to which they allege she gave verbal consent. The case was accepted on July 23, 2008 for alleged violations of Articles 5.1 (right to personal integrity), 8.1 (judicial guarantees), 11.2 (protection for one's honor and dignity), 13 (freedom of thought and expression), 17 (protection of the family) and 25 (judicial protection) of the American Convention, as they relate to the general obligations established in Article 1.1 of the American Convention. The case is currently in the merits stage.⁷⁶

52. A common denominator in these three cases is the assertion that the women found themselves in situations of exclusion and poverty.

III. DUTIES OF THE STATES TO ENSURE THAT WOMEN HAVE ACCESS TO MATERNAL HEALTH SERVICES WITHOUT DISCRIMINATION

A. The principles of equality and non-discrimination

53. The Commission has received information indicating that the right to personal integrity of thousands of women in the Americas is affected in terms of their ability to access health services that only they require, generating inequalities between men and women with respect to the enjoyment of this right. These inequalities are manifest in the failure to provide adequate services to meet their specific biological needs related to their reproductive function as well in discriminatory sociocultural patterns that cause situations that present a risk to women's health (e.g., a pregnant rural women seeking medical attention for some complaint and a health facility that doesn't want to treat her because they require authorization from her spouse to do so).

54. The information received also allows for the conjecture that some groups of women, particularly poor women, women living in rural areas, indigenous and/or afro-descendant women and adolescent women, are the groups whose rights to access to such services are most often violated. (e.g., the case of an indigenous woman seeking medical attention who is mistreated at the health facility because she doesn't speak Spanish). This situation creates inequalities among women themselves in terms of their enjoyment of rights, inequalities that may constitute violations of the principles of equality and non-discrimination that permeate the inter-American system.

55. Article II of the American Declaration provides that "all people are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." Article 1 of the American Convention establishes that each of the States Parties undertakes to "respect the rights and freedoms" established therein and to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language,...national or social origin, economic status...or any other social condition."⁷⁷

⁷⁶ IACHR, Report No. 40/08, Admissibility, *I.V.* (Bolivia), July 23, 2008.

⁷⁷ Articles 1 and 2 of the Universal Declaration proclaim that "all human beings are born free and equal in dignity and rights" and thus anyone may invoke all the rights and freedoms established in the Declaration "without distinction," including gender.

56. The American Convention provides that when a recognized right is not guaranteed by legislative or other provisions, the State Party agrees to adopt the measures necessary to give effect to the right.⁷⁸ In Article 24, the American Convention specifically establishes protection for the right to equal protection of the law and before the law.

57. The Inter-American Court has indicated that “the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual.”⁷⁹ According to the Inter-American Court, the right to equality before the law “prohibits all discriminatory treatment originating in a legal prescription”⁸⁰ and in order to achieve that objective, the States have the obligation not to introduce discriminatory regulations in their legal systems with reference to protection of the law.⁸¹ This assertion is supplemented by what the Inter-American Court maintained in the *Yean and Bosico* case: “States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.”⁸² This includes the duty of the States not only to abstain from producing discriminatory legislation, standards and policies affecting women’s equality, but also that such standards and policies must be eliminated. In addition, this duty includes the active role of the States in guaranteeing that women are able to enjoy their human rights free from all forms of discrimination.⁸³

58. The IACHR has indicated that laws, practices and policies that at first glance seem neutral but that, nevertheless, produce arbitrary or disproportionate distinctions when applied are manifestations of discrimination in that they conceal their prejudicial effect on groups in vulnerable situations.⁸⁴ In this regard, the IACHR has established that an examination of laws and policies based on the principle of effective equality and non-discrimination also includes their potential discriminatory impact, even when their formulation seems neutral, or they apply to everyone, without distinction.⁸⁵ In this regard, the ESCR Committee has defined indirect discrimination as “laws, policies, or practices that appear neutral at face value but have a disproportionate impact on the exercise of Covenant rights (referring to the International Covenant on Economic, Social and Cultural Rights) as distinguished by prohibited grounds of discrimination.”

⁷⁸ See Article 2 of the American Convention.

⁷⁹ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4.

⁸⁰ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54.

⁸¹ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54.

⁸² See I/A Court H. R., *Yean and Bosico Girls v. Dominican Republic Case*. Judgment of September 8, 2005. Series C No. 130, para. 141.

⁸³ See I/A Court H. R., *Yean and Bosico Girls v. Dominican Republic Case*. Judgment of September 8, 2005. Series C No. 130, para. 141; *Yatama Case*, *supra* note 109, para. 185, and *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September 2003, Series A, No. 18, para. 88.

⁸⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, 20 January 2007, para. 89.

⁸⁵ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, 20 January 2007, para. 90. See also I/A Court H. R., *Yean and Bosico Girls v. Dominican Republic Case*. Judgment of September 8, 2005. Series C No. 130, para. 141.

59. The universal system for the protection of human rights, in Articles 1 and 2 of the Universal Declaration, proclaims that "all human beings are born free and equal in dignity and rights" and thus anyone may invoke all the rights and freedoms established in the Declaration "without distinction," including gender.⁸⁶ The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "the CEDAW") defined "discrimination against women" as follows⁸⁷:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, civil or any other field.

60. This definition covers any difference in treatment based on gender that:⁸⁸

- intentionally or unintentionally disadvantages women;
- prevents recognition by society as a whole of the rights of women in the public and private spheres; or
- prevents women from exercising their rights.

61. That definition, which incorporates the gender perspective, is very important in the area of health, in which the specific needs of women, particularly on the subject of reproduction, have often not received adequate or specific attention.

62. The CEDAW also includes the elimination of any form of discrimination against women based on gender. In Article 5(a), the CEDAW establishes the obligation of the States to "modify the social and cultural patterns of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women."

63. In addition, Article 2 of the CEDAW requires the States Parties to adopt and implement "by all appropriate means and without delay, a policy of eliminating discrimination against women," which includes the duty to "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation," as well as the duty to adopt appropriate legislative and other measures "to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

64. Under international instruments providing regional and universal protection for human rights, all women have the right to be treated with the same respect, dignity and responsibility as men, without discrimination. The IACHR has previously maintained that while formal equality does not guarantee the elimination of instances of discrimination in reality, recognizing it

⁸⁶ IACHR, *Report of the Inter-American Commission of Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998, Chap. IV.

⁸⁷ The following American States ratified the CEDAW Convention: Antigua and Barbuda, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, México, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela (Bolivarian Republic of). United States of American signed the Convention but has not ratified it.

⁸⁸ IACHR, *Report de Report of the Inter-American Commission of Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998.

makes it possible to encourage transformations in society, thereby enhancing the authority of this right.⁸⁹ This means that the commitment to equality must not be limited to achieving legal equality, but must also encompass all social institutions, such as the family, the market, and political institutions.⁹⁰ Thus, women's equality must also be examined in the light of the circumstances in which they live, including the family, the community and the cultural context.

65. Some international instruments make express reference to discrimination and inequality that women face with respect to maternal health.⁹¹ Article 10 of the International Covenant on Economic, Social and Cultural Rights provides that special protection should be accorded to women during a reasonable period before and after childbirth, without discrimination.⁹² In the inter-American system, the Protocol of San Salvador expressly establishes the obligation of the States to provide appropriate protection for women, particularly to provide special care and assistance to mothers during a reasonable period before and after childbirth, without discrimination.⁹³

66. Regarding the discrimination and inequality that women face, the Committee on the Elimination of Discrimination against Women (hereinafter "CEDAW Committee" Committee has maintained that:

The position of women will not improve as long as the underlying causes of discrimination against women and their inequality are not addressed. The lives of men and women must be considered in a contextual way, and measures adopted toward real transformation of opportunities, institutions and systems so that they are no longer grounded in historically pre-determined male paradigms of power and life patterns.⁹⁴

67. According to the CEDAW Committee, it is not enough to guarantee women the same treatment as men.⁹⁵ The biological differences between men and women and the differences that society and culture have created must be taken into account. Under certain circumstances, treatment of men and women will have to be non-identical in order to balance those differences.⁹⁶

⁸⁹ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998, cap. IV.

⁹⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 97.

⁹¹ United Nations, Committee on Economic, Social and Cultural Rights. *General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, July 2, 2009. Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁹² United Nations, Committee on Economic, Social and Cultural Rights. *General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2 July 2009. Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁹³ Article 15 of the Protocol of San Salvador and Article 3 of that instrument.

⁹⁴ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25, referring to special temporary measures*, para. 10.

⁹⁵ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25, referring to special temporary measures*, para. 8.

⁹⁶ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25, referring to special temporary measures*, para. 8.

68. For its part, the Inter-American Court has maintained that not all different treatment is discriminatory in itself, because not all differences in treatment can be considered, in and of themselves, as offending human dignity.⁹⁷ The Inter-American Court, based on the jurisprudence of the European Court of Human Rights, maintained that a distinction is only discriminatory when it lacks an objective and reasonable justification.⁹⁸ The Inter-American Court indicated that there are certain *de facto* inequalities that may legitimately be reflected in inequalities in legal treatment without such situations being unjust. On the contrary, they may sometimes be necessary in order to achieve justice,⁹⁹ as in the case of the application of special measures. In other words, equitable treatment under the law for men and women is expected unless pressing and just, legitimate and reasonable grounds are provided to justify a difference in treatment.¹⁰⁰ According to the Inter-American Court:

...no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things.

69. The CEDAW Committee states that women must be empowered by an enabling environment to achieve equality of results. Equality of results is the logical corollary of substantive or *de facto* equality. The results may be quantitative or qualitative, that is, women enjoying their rights in various fields in fairly equal numbers with men.¹⁰¹

70. In this regard, in its report on Access to Justice for Women Victims of Violence in the Americas, the IACHR emphasized that the inter-American system is moving toward a concept of material or structural equality based on the recognition that certain sectors of the population require the adoption of special equalizing measures. This demands different treatment when, due to circumstances affecting a disadvantaged group, equal treatment means limiting or encumbering access to a service, good or the exercise of a right.¹⁰²

71. Moreover, the Inter-American Court has maintained that the duties of the States to adopt measures for prevention and protection “[...] are conditioned upon the knowledge of a genuine, immediate risk to a specific individual or group of individuals and the reasonable possibility of preventing or averting such risk.”¹⁰³ This means that the States have an obligation to adopt prevention and protection measures against possible risks to their integrity that women face due to

⁹⁷ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 56.

⁹⁸ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 56, citing the ECHR, *Belgian Linguistic Case*, Judgment of July 23, 1968, Series A, No. 6, para. 34.

⁹⁹ I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 56, citing the judgment of the European Court, judgment of July 23, 1968, p. 56.

¹⁰⁰ IACHR, Report on the Merits, No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 36.

¹⁰¹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25, on temporary special measures*, para. 9.

¹⁰² IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, 20 January 2007, para. 99.

¹⁰³ I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 123.

the lack of adequate medical care and services. Following the Constitutional Court of Colombia, the IACHR has established that equality is protected when the law and public policy take into account the particular circumstances and characteristics of those who are in a position of social, political, economic or legal disadvantage.¹⁰⁴ Thus, the Committee on the Elimination of Discrimination against Women has established that measures to eliminate discrimination against women will not be considered appropriate when a health care system lacks services to prevent, detect and treat illnesses specific to women.¹⁰⁵

The link between discrimination and violence

72. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) recognizes the crucial linkage between the right to live free of discrimination and the recognition of other fundamental rights, particularly the right to be free of violence based on gender.¹⁰⁶

73. The IACHR has indicated that violence against women is a form of discrimination that seriously impairs women's ability to enjoy rights and freedoms on an equal footing with men.¹⁰⁷ Article 6 of the Convention of Belém do Pará establishes that a woman's right to a life free of violence includes, *inter alia*:

- The right of women to be free from all forms of discrimination; and
- The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

74. Violence has a direct impact on women's enjoyment of the right to personal integrity. Many women suffer forms of violence during pregnancy that may affect their physical integrity, for example, leading to sterility, and may in some cases lead to a violation of their right to life. On this subject, Article 9 of the Convention of Belém do Pará establishes that the States shall take special account of women's vulnerability when pregnant.

75. In the area of access to maternal health services, health care practices such as a refusal to provide medical care to women who need it without the consent of their partners or sterilization performed by health personnel without a woman's informed consent, as well as the physical and psychological consequences of such a procedure, are examples of forms of violence against women. The IACHR has also underscored the State's affirmative obligations in the area of access to health services and their relationship with violence, by establishing that the health of victims of sexual violence must be given priority in the legislative initiatives and in the health policies and programs of the Member States,¹⁰⁸ which includes maternal health services.

¹⁰⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 96.

¹⁰⁵ United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, Women and Health.

¹⁰⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

¹⁰⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 65.

¹⁰⁸ IACHR, Report No. 21/07, Petition 161/02, Friendly Settlement, *Paulina del Carmen Ramírez Jacinto* (México), March 9, 2007.

76. The IACHR also believes that the lack of affirmative measures to guarantee both the accessibility of maternal health and its availability, acceptability, and quality may constitute a violation of the obligations arising from the principles of equality and non-discrimination that permeate the inter-American system.

77. Article 7(e) of the Convention of Belém do Pará requires the States to take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women. Given the obvious relationship between discrimination and violence, this principle should be interpreted in the sense of imposing on the States the duty to revise laws, practices and public policies that are discriminatory or with potentially discriminatory effects on women (for example, laws that prohibit the distribution and sale of all family planning methods used by women).

B. Duties of the States to ensure that women have access to maternal health services without discrimination

78. The IACHR appreciates that the American States have not only recognized maternal mortality as a problem, but have also made efforts to improve the situation. According to the Pan American Health Organization, a study conducted in 2004 based on a survey administered to decision-makers in 16 Latin American and Caribbean countries indicated that strategies to expand coverage and access to primary care constitute one of the most common components of policies to reform health care services in the region.¹⁰⁹ These strategies include increasing the number of primary care centers and directing the delivery of a series of basic services to populations with limitations on access, to vulnerable groups such as children, mothers, or indigenous populations in countries like Brazil, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Nicaragua, and Panama, among others.¹¹⁰

79. In addition, most countries in the region have been supporting policies or provisions that emphasize the importance of safe motherhood and the goal of reducing maternal mortality by 50% by the year 2015. Some countries such as Bolivia, Ecuador, and Peru have even implemented universal health care coverage for pregnant women.

80. Despite the efforts of the States, there are still great challenges in the region with respect to health services, including maternal health services. Access to health care is not universal and is practically non-existent in many cases for the social groups most in need of it.¹¹¹ The supply of services does not always reflect the expectations, social values, and cultural preferences of the region's populations.¹¹² In many cases, the delivery of services is ineffective and of low technical quality.¹¹³ Similarly, available resources are not always used appropriately, which in turn generates

¹⁰⁹ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 367. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

¹¹⁰ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 367. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

¹¹¹ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 360. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

¹¹² Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 360. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

¹¹³ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 360. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

inefficiencies in services and contributes to increased health costs. In some cases, the financing of services is insufficient and unsustainable.¹¹⁴

81. In the inter-American system, the American Declaration and the Protocol of San Salvador expressly establish the States' obligation to provide adequate protection to women, and particularly to grant special care and attention to mothers during a reasonable period before and after childbirth.¹¹⁵ The Protocol of San Salvador specifically establishes the States' obligation to adopt the following measures to guarantee the right to health as applicable to maternal health, consistent with their available resources and taking into account their level of development, in order to gradually make the right to health fully effective: primary health care, understood as essential health care put within the reach of all individuals and families in the community; the extension of the benefits of health services to all individuals subject to the jurisdiction of the State; full immunization against the principal infectious diseases; prevention and treatment of endemic, professional, and other diseases; education of the population on prevention and treatment of health problems; and meeting the health needs of the groups most at risk and most vulnerable due to their poverty.

82. The Protocol of San Salvador refers to satisfying the right to health in a context of developing a health system that, as basic as it might be, must guarantee access to primary health care (PHC) and gradual development of a system providing coverage to the country's entire population. In turn, it gives special attention to vulnerable groups or groups in situations of poverty.¹¹⁶

83. The IACHR wishes to emphasize, as the States themselves recognized when agreeing to the Millennium Development Goals and/or the Cairo Programme of Action, that to a great extent the high rates of maternal mortality reflect historical discrimination against women and the inadequacy of the measures applied to remedy it. Since prohibiting discrimination is a guiding principle in the regional system, the States should redouble their efforts to adopt measures and assign the resources necessary to eliminate the various forms of discrimination against women that still impact the preventable risks and injuries women face in the field of maternal health.

84. Following international standards on the protection of maternal health and the inter-American system's own jurisprudence, the IACHR notes that the duty of the States to guarantee women's right to physical, mental and moral integrity in terms of access to maternal health services under equal conditions implies giving priority to resources to serve women's specific needs with respect to pregnancy, childbirth, and the post-partum period, particularly by implementing key interventions that contribute to guaranteeing maternal health, as well as emergency obstetrical care.¹¹⁷ At a minimum, the States must guarantee maternal health services that include the basic

¹¹⁴ Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 360. Available at: <http://www.paho.org/hia/vol1regionalcap4.html>.

¹¹⁵ Article 15 of the Protocol of San Salvador.

¹¹⁶ IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14 rev. 1, July 19, 2008. Available at: <http://www.cidh.oas.org/countryrep/IndicadoresDESC08eng/Indicadoresindice.eng.htm>.

¹¹⁷ See United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4, 11 August 2000, paras. 14 and 21; United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health*, para. 27; International Conference on Population and Development, para. 8.25; United Nations, General Assembly, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/61/338, September 13, 2006.

factors that are determinants of health. Thus, the CEDAW specifies in Article 12(2) the States' obligation to ensure equal conditions for women to obtain health services required by women only according to their specific health needs.¹¹⁸ The CEDAW Committee even recommended that the States Parties ensure "that women are not forced to seek unsafe medical procedures such as illegal abortion because of a lack of appropriate services in regard to fertility control."¹¹⁹

85. International standards establish that the States must provide health services under appropriate and safe conditions and that such services should be free when necessary, and must ensure adequate nutrition during pregnancy and while mothers are nursing.¹²⁰ With respect to nutrition, it is important to emphasize that it is estimated that approximately half of the pregnant women in the world suffer from some form of anemia. The situation of pregnant adolescents is even more serious because they are more likely to suffer from anemia than older women and because they have fewer opportunities to receive treatment for this condition.¹²¹

86. For its part, the CEDAW Committee specifically established the States' obligation to guarantee women's right to free maternity services by allocating the highest amount of resources available to such services:¹²²

Many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity, and post-natal services. The Committee notes that it is the duty of States Parties to ensure women's right to safe motherhood and emergency obstetrical services, that they should allocate to these services the maximum extent of available resources.¹²³

87. In addition, the duty to protect women's integrity under conditions of equality includes the States' need to prioritize their resources and efforts to address the particular needs of the groups of women identified in this report who are most at risk of suffering injury to their integrity in terms of access to maternal health services, i.e., poor women, women in rural areas, including indigenous and/or afro-descendant women, due to the multiple forms of discrimination they face. According to the United Nations Special Rapporteur on the right of everyone to enjoy the highest attainable standard of health, the principles of equality and non-discrimination mean that

¹¹⁸ Article 12 of the CEDAW establishing the States' obligation to take appropriate measures to eliminate discrimination against women in the field of health care to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

¹¹⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19: Violence against Women*, 1992, UN GAOR, 1992, UN Doc. No. A/47/38. 1.

¹²⁰ Article 12(2) of CEDAW establishes: "Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation." In addition, the CEDAW Committee has expressly noted the obligation of the States Parties to ensure women's right to free and risk-free maternity services and emergency obstetrical services and that they must allocate the maximum amount of available resources to such services. See United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*.

¹²¹ United Nations, UNICEF, *Progress for Children: A Report Card on Maternal Mortality*, No. 7, 2008, p. 6

¹²² United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, para. 27.

¹²³ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, para. 27.

neighborhood and other programs should be implemented to ensure that disadvantaged individuals and communities such as women who are excluded actually have the same access as other more favored groups.¹²⁴

88. Specifically with respect to indigenous women, the Inter-American Court has held that the States must pay particular attention and care to the protection of this group and must adopt special measures to ensure that mothers have access to adequate health care services, particularly during pregnancy, childbirth, and lactation.¹²⁵

89. Consequently, the States must eliminate obstacles limiting the access that women, particularly women in these groups, have to maternal health services, such as fees, distance from health centers, and the lack of adequate and accessible public transportation.¹²⁶ One way to reduce the effects of distance from health services may be to establish homes for pregnant women.

90. Information and education enable women to make decisions at all levels in all areas of their lives, particularly regarding health, sexuality, and reproduction.¹²⁷ Access to information in the area of maternal health also includes recognizing the warning signs of obstetrical emergencies, as well as access to information on personal medical history and institutional and systemic information on maternal health expenses and statistics.¹²⁸

91. In this respect, the Inter-American Commission has indicated that the concepts of independence and empowerment should be a part of the agenda for reducing gender inequalities.¹²⁹ Women with more education generally have tools for adopting appropriate prevention and health promotion behaviors, including maternal health and the health of their families, such as having their children vaccinated.¹³⁰ The gap between women with greater resources and poor women and between men and women in this area requires that States provide educational and employment opportunities for women in order to remedy the inequality. This includes the need for the State to dedicate resources to ensure that women have knowledge regarding their rights as users of the health system and health services.

¹²⁴ United Nations, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Promotion and Protection of All Human, Civil, Political, Economic, Social and Cultural Rights*, A/HRC/7/11, January 31, 2008, para. 42.

¹²⁵ I/A Court H. R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 177.

¹²⁶ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*.

¹²⁷ United Nations, International Conference on Population and Development, Cairo, 1994, Chapter IV, *Gender Equality, Equity and Empowerment of Women*, para. 4.2.

¹²⁸ Physicians for Human Rights, *Deadly Delays, Maternal Mortality in Peru, A Rights-Based Approach to Safe Motherhood*, 2007, p. 58. Available at: <http://physiciansforhumanrights.org/library/report-2007-11-28.html>.

¹²⁹ IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14 rev. 1, July 19, 2008, p. 57. Available at: <http://www.cidh.oas.org/countryrep/IndicadoresDESCO8eng/Indicadoresindice.eng.htm>.

¹³⁰ Elizabeth King and Andrew D. Mason, *Engendering Development through Gender Equality in Rights, Resources and Voice*, World Bank and Oxford University Press, Washington DC, January 2001, pp. 78-83. Women Deliver. Global Conference, October 18-20, 2007, London, Executive Summary.

92. As a result, protecting women's right to personal integrity under conditions of equality is achieved in the area of maternal health through the provision of information and education on the subject so that women will adopt free, well-founded, and responsible decisions regarding reproduction, including family planning.¹³¹ On this subject, the Constitutional Court of Colombia stated that "the right to health has a sphere in which it is closely linked to personal autonomy and the free development of one's personality, in terms of the power to make decisions regarding one's own health."¹³² According to those principles, the States must pay particular attention to the specific information needs of women belonging to vulnerable groups such as poor women, women living in rural areas, including indigenous and afro-descendant women and adolescent women.¹³³

93. According to the United Nations Rapporteur on the right of everyone to enjoy the highest attainable standard of health, in order to prevent maternal mortality and improve access to maternal health, it is not enough to gradually increase technical procedures or make them more accessible.¹³⁴ According to the Rapporteur, it is also essential to address social, cultural, political, and legal factors that influence a woman's decision to seek maternal health or reproductive health services.¹³⁵ This requires the States to eliminate discriminatory laws, policies, and practices and gender inequalities that prevent women and adolescents from seeking good quality services.¹³⁶ Among discriminatory practices, the States must redouble their efforts to eliminate gender stereotypes such as restrictions on women's access to health care services because they do not have authorization from their spouse, or companion, or parents, or health authorities, based on their marital status, or because they are women.¹³⁷

¹³¹ In this regard, the Committee on Economic, Social, and Cultural Rights has stated that providing for the "reduction of the stillbirth rate and of infant mortality, and for the healthy development of the child" (Article 12(2)(a) of the International Covenant on Economic, Social, and Cultural Rights) can be understood to mean that measures must be adopted to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-partum care, emergency obstetrical care, and access to information, as well as the resources needed to act in accordance with that information. United Nations, Committee on Economic, Social, and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4, August 11, 2000, para. 14.

¹³² Judgment of the Constitutional Court of Colombia, C 355-06.

¹³³ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, para. 6

¹³⁴ United Nations, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/61/338, September 13, 2006, para. 17.

¹³⁵ United Nations, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/61/338, September 13, 2006, para. 17.

¹³⁶ United Nations, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/61/338, 13 September 2006, para. 17.

¹³⁷ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, para. 14. The provisions of the Convention on the Rights of the Child recognize the obligations of the States Parties to respect the responsibilities, rights and duties of parents or, where applicable, legal guardians responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. In addition, Article 12 of the same international instrument establishes the obligation of States to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

94. The IACHR emphasizes the need to involve the principal beneficiaries in the design and implementation of policies, plans, and programs that affect them. The United Nations Committee on Economic, Social, and Cultural Rights has maintained that an important aspect of the right to health involves the population's participation in the entire decision-making process with respect to health issues at the community, national, and international level.¹³⁸

95. The IACHR underscores the States' duty to guarantee that maternal health services are provided through respectful attention to women. In the case of indigenous and afro-descendant women, the States must adapt preventive services as well as health care and treatment services, with respect for their cultures, for example, through informed selection of the type of childbirth. According to the Committee on Economic, Social, and Cultural Rights, "health facilities, goods, and services must be accessible, in fact and under the law, to the most vulnerable and marginalized sectors of the population, without any discrimination based on any prohibited grounds."¹³⁹ In this respect, goods, services, and facilities "must adjust to existing needs in the area of gender and to the rights and cultures of minorities and indigenous populations."¹⁴⁰

96. In this regard, it is important to point out that the Inter-American Court has held that anyone who is in a vulnerable situation has the right to special protection, based on the special duties with which the State must comply in order to satisfy its general obligations to respect and guarantee human rights.¹⁴¹ In addition, the Court has reiterated that it is not enough for the States to refrain from violating rights, but it is essential that they adopt affirmative measures, to be determined based on the specific needs for protection of the subject of law, whether due to his or her personal circumstances or the specific situation in which he or she is found.¹⁴² In this respect, the States must consider that groups of persons living in adverse circumstances and with fewer resources, such as women living in poverty, indigenous women, afro-descendant women, and adolescents, are those who are most at risk of having their right to personal integrity affected in terms of access to maternal health services.

97. Consistent with the position taken by the Inter-American Court, the States Parties have the obligation to establish and adopt in their domestic legal systems all the measures necessary to comply with and implement the provisions of the Convention, and to ensure that such legislation does not become a mere formality, unrelated to reality.¹⁴³ This obligation includes setting up accountability systems and providing women with effective and timely access to justice when their health-related rights are violated, through criminal, civil, or administrative proceedings. On this

¹³⁸ United Nations, Committee on Economic, Social, and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4. 2000, para. 11.

¹³⁹ United Nations, Committee on Economic, Social, and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4. 2000, para. 12(b).

¹⁴⁰ "Note by the Secretary General transmitting the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." A/61/338. Note 14, para. 17(c). Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/520/00/PDF/N0652000.pdf?OpenElement>

¹⁴¹ I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149, para. 103.

¹⁴² I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149. I/A Court H. R., *Baldeón García v. Peru Case*. Judgment of April 6, 2006. Series C No. 147, para. 81; I/A Court HR. *Case of the Indigenous Sawhoyamaya Community v. Paraguay. Merits, Reparations and Costs*. Judgment of 29 March 2006. Series C, No. 146, para. 154; and I/A Court H. R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 111.

¹⁴³ I/A Court H. R., *Ximenes Lopes v. Brazil Case*. Judgment of July 4, 2006. Series C No. 149, para. 98.

subject, the IACHR emphasizes the importance of the active participation of women in determining the priorities in maternal health policies.

98. With respect to protecting adolescents' right to integrity, the IACHR has previously stated that early pregnancy poses various risks that, in addition to health problems, include higher risk of abortions under unsafe conditions and interrupted education.¹⁴⁴ In this regard, the Human Rights Committee has established the duty of the States to provide adolescents with access to information on the harm early pregnancy can cause. In addition, the Committee has established that pregnant girls and adolescents must be given health services appropriate to their rights and specific needs.¹⁴⁵ For its part, the Committee on the Rights of the Child has urged the States Parties to adopt measures to reduce maternal morbidity and mortality among adolescent girls, particularly that produced by pregnancy and unsafe abortion practices, and to provide support to the parents of adolescents.¹⁴⁶ As a result, the Commission believes that the States must design policies and programs for this specific group based on their specific maternal health needs, while respecting their rights to privacy and confidentiality.

99. Improving maternal health is established as one of the eight Millennium Development Goals.¹⁴⁷ The goal set is to reduce maternal mortality by three-fourths, with the following indicators to measure progress: the rate of maternal mortality and the percentage of childbirths attended by specialized health personnel and the rate of contraceptive use.¹⁴⁸ In addition, the second goal is to achieve universal access to reproductive health by 2015, with indicators to measure progress: the fertility rate among adolescents, prenatal care coverage, and unmet needs in the area of family planning.

100. It should be noted that the Inter-American Commission on Human Rights developed a series of guidelines for assessing and monitoring economic, social, and cultural rights provided in the Protocol of San Salvador. The document specifically develops a series of structural, process and outcome indicators relating to pregnancy and maternity. The outcome indicators for measuring progress in the right to health include the percentage of individuals who have access to basic sanitation, the number of professionally attended deliveries, and the percentage of women of reproductive age with anemia. The outcome indicators for measuring progress in the right to health with respect to equality are specified as: the rate of maternal and perinatal mortality; the distribution of maternal mortality by cause, broken down by age group; the perinatal mortality rate; the percentage of newborns weighing less than 2.5 kg; the rate of assistance due to domestic violence;

¹⁴⁴ IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, December 29, 2003, See Chapter V, Women's Rights, para. 318. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/indice.htm>.

¹⁴⁵ United Nations, Committee on the Rights of the Child, General Comment No. 4, *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4, July 21, 2003.

¹⁴⁶ United Nations, Committee on the Rights of the Child, General Comment No. 4, *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4, 21 July 2003, para. 31.

¹⁴⁷ See Gateway to the UN System's Work on the MDGs, Available at: <http://www.un.org/millenniumgoals/bkgd.shtml>.

¹⁴⁸ See Gateway to the UN System's Work on the MDGs, Available at: <http://www.un.org/millenniumgoals/maternal.shtml>.

and estimated cases of illegal abortion by age, place of residence (urban and rural), and socioeconomic circumstances of the pregnant woman or other available data.¹⁴⁹

101. At the International Conference on Population and Development held in Cairo in 1994, more than 171 States agreed to the following objectives related to women's health and maternity:¹⁵⁰

(a) To promote women's health and safe motherhood to achieve a rapid and substantial reduction in maternal morbidity and mortality and to reduce the difference between and within developed and developing countries. On the basis of a commitment to improving women's health and well-being, to reduce greatly the number of deaths and morbidity from unsafe abortion;

(b) To improve the health and nutritional status of women, particularly pregnant and nursing women.

102. The measures agreed upon included increasing the delivery of maternity services within the framework of primary health care. Said services, based on the concept of choice based on correct information, should include education on safe motherhood; coordinated and effective prenatal care; maternal nutrition programs; appropriate care for deliveries; avoiding excessive use of caesarean sections and providing emergency obstetrical care; referral of cases when there are complications during pregnancy, childbirth, and abortion; prenatal care; and family planning. All births should be attended by trained personnel, preferably nurses and midwives, but at least by trained birth attendants.¹⁵¹

103. It was also established that the underlying causes of maternal morbidity and mortality should be determined and attention should be paid to developing strategies to eliminate them and to developing mechanisms for adequate evaluation and supervision, in order to evaluate progress made in reducing maternal mortality and morbidity and increasing the effectiveness of ongoing programs. The importance of obtaining the support of men for activities intended to secure the health of mothers and safe motherhood was also identified.

104. Finally, the IACHR wishes to emphasize that in order to achieve the full effect of the right to personal integrity "the States have the legal obligation to adopt deliberate, concrete measures intended to realize the right to health for all."¹⁵² This means adopting effective policies to address maternal health with particular attention given to the specific needs of the groups of women

¹⁴⁹ IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14 rev. 1, July 19, 2008, p. 50. Available at: <http://www.cidh.oas.org/countryrep/IndicadoresDESCO8eng/Indicadoresindice.eng.htm>.

¹⁵⁰ United Nations, International Conference on Population and Development, Cairo, para. 8.20.

¹⁵¹ The measures agreed upon included increasing the delivery of maternity services within the framework of primary health care. Said services, based on the concept of choice based on correct information, should include education on safe motherhood; prenatal care that is focused and effective, maternal nutrition programs; adequate delivery assistance that avoids excessive recourse to caesarean sections and provides for obstetric emergencies; referral services for pregnancy, childbirth, and abortion, post-natal care and family planning. All births should be assisted by trained personnel, preferably nurses and midwives, but at least by trained birth attendants. United Nations, International Conference on Population and Development, Cairo.

¹⁵² United Nations, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Implementation of General Assembly Resolution 60/251, March 15, 2006, Titled "Human Rights Council," January 17, 2007.

indicated in this report. In addition, although Article 26 of the American Convention establishes that the States Parties undertake to gradually achieve the full effectiveness of economic, social and cultural rights to the extent of the available resources, the IACHR reiterates that non-discrimination is an obligation that must be complied with immediately. As the United Nations Rapporteur on the right of everyone to enjoy the highest attainable standard of health has indicated, equal treatment between women and men is not subject to gradual achievement nor to the availability of resources,¹⁵³ and like equality among women, is a fundamental obligation to be implemented immediately.

IV. RECOMMENDATIONS

105. This report has summarized the duties of the States to guarantee protection for women's right to personal integrity in access to maternal health services under conditions of equality. The Commission hopes with its recommendations to contribute to the efforts of the States in this area and expects that the States' duties in the area of human rights will require:

1. Analyzing, by legislative, executive, and judicial bodies and by means of strict scrutiny all laws, provisions, practices, and public policies that establish differences in treatment based on gender or that have a discriminatory impact in the terms analyzed in this report.
2. Guaranteeing that the legislation on protecting maternal health is consistent with regional and international standards on the subject that the States have undertaken to follow and are consistent with the goals established by the States to improve maternal health. Policies and programs should be developed with the participation of women themselves.
3. Ensuring that health professionals inform women regarding their health so that they are able to make free, well-founded, and responsible decisions in the area of reproduction.
4. Ensuring that the gender perspective is incorporated in all plans, policies, and programs relating to the protection of and access to maternal health.
5. Strengthening the institutional capacity to guarantee, with adequate financing, women's access to professional care, during pregnancy, childbirth and post-partum, including emergency obstetrical services in particular, especially for women under conditions of exclusion, while respecting women's specific needs and cultural preferences.
6. Creating adequate referral mechanisms among health facilities in order to attend to obstetrical emergencies.
7. Guaranteeing the provision of nutrition programs before pregnancy, during pregnancy, and in the post-partum period, to include guidance on how to feed children correctly.

¹⁵³ United Nations, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Implementation of General Assembly Resolution 60/251, 15 March 2006, Titled "Human Rights Council," January 17, 2007.

8. Eliminating barriers that may limit women's access to maternal health services, for example, costs for fees, distance from health centers, and the lack of adequate and accessible public transportation.
9. Guaranteeing that maternal health services are provided with respect for women. In the case of indigenous and afro-descendant women, the States must adapt preventive and care and treatment services, providing for and respecting their expectations, traditions and beliefs.
10. Guaranteeing that public policies and programs designed to improve the maternal health of adolescents address the particular needs of this group, respecting their rights to privacy and confidentiality, recognizing the rights and duties of parents, and based on their age and maturity, consistent with the development of their faculties.
11. Implementing measures so that information systems appropriately reflect the health situation at the national and local level, such as figures on maternal morbidity and mortality, neonatal mortality, and their causes, so as to make decisions and take effective actions.
12. Establishing effective administrative, civil, and criminal procedures to guarantee justice for women when their rights to integrity as well as appropriate treatment under conditions of equality are violated.
13. Establishing regular training mechanisms for health professionals on protecting the rights of women in the health services as well as accountability mechanisms for personnel who fail to meet their duty to provide medical care to women who require it.
14. Establishing mechanisms to inform women at the local level regarding their rights as users of the health system and to consult with them on how to achieve their effective access to the information and health services they require.