

Guatemala

# Women of the World:

## Laws and Policies Affecting Their Reproductive Lives



Latin America and the Caribbean

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

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# Guatemala



## Statistics

### GENERAL

#### *Population*

- Guatemala has a total population of 11.2 million, of which 49.5 % are women.<sup>1</sup> The growth rate is approximately 2.8% per year.<sup>2</sup>
- In 1996, 44.7% of the population was under 15 years old<sup>3</sup> and 5.3% was over 60.<sup>4</sup>
- In 1997, 41%<sup>5</sup> of the population lived in urban areas and 52% in rural areas.<sup>6</sup>

#### *Territory*

- Guatemala has a surface area of 105,105 square kilometers.<sup>7</sup>

#### *Economy*

- In 1994, the World Bank estimated the gross national product per capita at U.S.\$1,200.<sup>8</sup>
- From 1990 to 1994, the gross domestic product grew at an estimated rate of 4.1%, compared with the period from 1980 to 1990, when the growth rate was 0.8%.<sup>9</sup>
- In 1990, the Guatemalan government invested U.S.\$92 million in health.<sup>10</sup>

#### *Employment*

- In 1994, approximately 3.2 million people were employed in Guatemala.<sup>11</sup> Women comprised 25% of the labor force.<sup>12</sup>

### WOMEN'S STATUS

- The average life expectancy for women is 68 years, compared with 63 years for men.<sup>13</sup>
- Illiteracy continues to be a problem that affects primarily women. The illiteracy rate for women in urban areas is 12.63%; in rural areas it is 49.42%.<sup>14</sup>
- The unemployment rate for the economically active population in Guatemala is 6.4%<sup>15</sup>. Women make up 3.8% of that population in urban areas and 2.5% in rural areas.<sup>16</sup>
- In 1994, women made up 8% of the agricultural labor force, 17% of the labor force in the industrial sector, and 74% of the service sector.<sup>17</sup>
- Violence against women, especially within the family, is a significant problem. In 1991, a study conducted in thirteen health departments revealed that a large number of women who have been assaulted seek help in health centers. However, the help they receive is restricted to medical care, such as treatment for bruises, abrasions, miscarriages, and other injuries.<sup>18</sup>

### ADOLESCENTS

- Approximately 46% of the population of Guatemala is under 15 years of age.<sup>19</sup>
- The median age at first marriage is 20 years.<sup>20</sup>
- According to figures from the Ministry of Public Health and Social Assistance, 87% of pregnancies occur in women between the ages of 20 and 35 years.<sup>21</sup>

### MATERNAL HEALTH

- The total fertility rate is 5.4 children per woman.<sup>22</sup> This figure decreases in urban areas to 3.6 children per woman<sup>23</sup> but grows considerably in rural areas,<sup>24</sup> to 6.6 children per woman.<sup>25</sup>
- The maternal mortality rate is 200 deaths per 100,000 live births.<sup>26</sup>
- From 1995 to 2000, it is estimated that the infant mortality rate will be 40 deaths per 1,000 live births.<sup>27</sup>
- In Guatemala, 35% of births are attended by a health professional.<sup>28</sup>

## CONTRACEPTION AND ABORTION

- 32% of Guatemalans of reproductive age use some form of contraception.<sup>29</sup> Within this group, 27% use modern methods of family planning.<sup>30</sup>
- From May to November 1995, 1,644 packets of birth control pills and 407 packets of condoms were distributed;<sup>31</sup> there were 2,281 operations to place intrauterine devices; and 11,688 voluntary surgical sterilizations took place.<sup>32</sup>
- There are no figures on the overall incidence of abortion. However, the Ministry of Public Health and Social Assistance (MPHSA) indicates that 76% of women who suffer complications from abortion procedures have had at least one previous abortion.<sup>33</sup>

## HIV/AIDS AND STIS

- In 1996, 936 cases of AIDS were reported.<sup>34</sup> The pattern of infection by sex is three men to every one woman.<sup>35</sup>
- Those between the ages of 20 and 50 years make up the highest percentage of HIV/AIDS sufferers.<sup>36</sup>
- In 1994, the most common sexually transmissible infections found in the Guatemalan population were gonorrhea (16.7 cases per 1,000 inhabitants) and syphilis (2.98 cases per 1,000 inhabitants).<sup>37</sup>

## ENDNOTES

1. PRO-FAMILY ASSOCIATION (APROFAM), CALENDARIO DEMOGRÁFICA 1997 ["DEMOGRAPHIC CALENDAR" 1997], annex B, at 3 (1996).
2. UNITED NATIONS POPULATION FUND, THE STATE OF WORLD POPULATION 1997, at 72 (1996).
3. DEMOGRAPHIC CALENDAR, *supra* note 1.
4. *Id.*
5. *Id.*
6. *Id.*
7. THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 769 (1996).
8. WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET, at 188 (1996).
9. *Id.*
10. *Statistics and Quantitative Analysis, Guatemala* (visited on July 14, 1997) <<http://iadb6000.iadb.org/~http/guatemala/gubsed.html>>.
11. *Id.*
12. WORLD DEVELOPMENT REPORT, *supra* note 8, at 194.
13. THE WORLD ALMANAC, *supra* note 7, at 770.
14. SECRETARY GENERAL FOR ECONOMIC PLANNING, PLAN DE DESARROLLO SOCIAL 1996-2000 (PLADES 1996-2000) [SOCIAL DEVELOPMENT ACTION PLAN 1996-2000 (PLADES 1996-2000)], at 3 (1996).
15. *Statistics and Quantitative Analysis, supra* note 10.
16. UNITED NATIONS, THE WORLD'S WOMEN 1995: TRENDS AND STATISTICS, U.N. Doc. ST/ESA/STAT/SER.K/12, at 133 (1995).
17. *Id.*, at #158.
18. REPORT OF THE REPUBLIC OF GUATEMALA TO THE FOURTH WORLD CONFERENCE ON WOMEN: ACTION FOR EQUALITY, DEVELOPMENT AND PEACE, THE FUTURE APPLICATION OF THE STRATEGIES OF NAIROBI FOR THE ADVANCEMENT OF WOMEN, at 178 (1994).
19. DEMOGRAPHIC CALENDAR, *supra* note 1, at 4.
20. THE WORLD'S WOMEN, *supra* note 16, at 38.
21. THE MINISTRY FOR PUBLIC HEALTH AND SOCIAL ASSISTANCE (MPHSA), REPRODUCTIVE HEALTH UNIT, PLAN OPERATIVA 1996 [OPERATIVE PLAN 1996], at 2 (1996).
22. THE WORLD'S WOMEN, *supra* note 16, at 32.
23. DEMOGRAPHIC CALENDAR, *supra* note 1, at 7.
24. *Id.*, Jutiapa Province.
25. *Id.*
26. THE STATE OF WORLD POPULATION, *supra* note 2, at 69.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. OPERATIVE PLAN, *supra* note 21, at 6.
32. *Id.*
33. *Id.*
34. MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, MANUAL DE CONSEJERIA EN VIH/SIDA/ETS PARA PROFESIONALES DE SALUD [GUIDELINES ON HIV/AIDS/STIS FOR HEALTH PROFESSIONALS], at 1 (1996).
35. *Id.*

36. *Id.*

37. MPHSA, NATIONAL PROGRAM FOR THE PREVENTION AND CONTROL OF HIV/AIDS. A SYMPTOMATIC FOCUS ON SEXUALLY TRANSMISSIBLE INFECTIONS, at 1 (1996).

Guatemala, which was part of the ancient Maya empire,<sup>1</sup> is located in Central America. Mexico borders it to the north, El Salvador to the south, and Honduras and Belize to the east.<sup>2</sup> The official language is Spanish, although several Maya dialects predominate in some regions of the country.<sup>3</sup> The predominant religion is Roman Catholicism.<sup>4</sup> In terms of ethnic composition, 56% of the country's inhabitants are mestizo, and 44% are indigenous.<sup>5</sup> Guatemala was a Spanish colony from 1524 until 1821, when it obtained independence.<sup>6</sup>

Guatemala has had a series of civilian and military governments and violent periods of civil war.<sup>7</sup> As a result of this political violence, more than 100,000 people have been killed since 1961, another 40,000 have been reported as "disappeared," and thousands have sought refuge in Mexico and other neighboring countries.<sup>8</sup> Alvaro Arzú Irigoyen, the current democratically elected president of Guatemala, took office on January 14, 1996.<sup>9</sup> The peace negotiations between the Guatemalan government and the armed rebel group<sup>10</sup> ended with the signing of the Peace Accords on December 29, 1996, after nine years of arduous negotiation, ending 36 years of civil war.<sup>11</sup>

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

The legal and political systems of a country determine the framework for women to exercise their reproductive rights, and for governments to enact the policies that affect women's reproductive lives. To understand how laws are made, interpreted, modified, and implemented, as well as the process through which policies regarding women's reproductive health and population issues are enacted, it is necessary to understand the foundation and structure of the legal and political systems.

### A. THE STRUCTURE OF THE NATIONAL GOVERNMENT

The Guatemalan government is republican, presidential, democratic, and representative, as established by the Guatemalan Constitution.<sup>12</sup> Sovereignty is rooted in the people, who delegate this authority to the three branches<sup>13</sup> of government that represent them: the legislative, the executive, and the judicial.<sup>14</sup> None of these branches is subordinate to any other.<sup>15</sup> However, the Constitution establishes mechanisms of checks and balances between the three branches, as a means of ensuring the proper administration of the country's affairs and respect for rights and freedoms.<sup>16</sup> Such mechanisms include the right of Congress to question<sup>17</sup> a minister of state,<sup>18</sup> the right of the president of the republic to veto any law passed by

Congress,<sup>19</sup> and the right to prior review of dismissal<sup>20</sup> for magistrates and judges of the republic.<sup>21</sup>

### *Executive Branch*

The executive branch is comprised of the president of the republic, the cabinet ministers, and all officials working within the ministries.<sup>22</sup> The president is elected for a period of four years by secret universal suffrage.<sup>23</sup> The president is the head of the Guatemalan state, and is charged with: upholding and implementing the Constitution and the law, approving and promulgating laws and decrees when he is authorized to do so, leading the armed forces, directing international affairs, and performing other functions as established by the Constitution.<sup>24</sup>

The ministries are responsible for implementing government policies;<sup>25</sup> each ministry is the responsibility of a minister of state.<sup>26</sup> Ministers design and develop policies for their ministry, or sector.<sup>27</sup> Ministers must approve the decrees, resolutions, and regulations issued by the president relating to their sector in order for them to be valid.<sup>28</sup>

### *Legislative Branch*

The legislative power resides with the Congress of the Republic ("Congress"),<sup>29</sup> which is composed of ninety-eight deputies elected for a period of four years by secret universal suffrage.<sup>30</sup> Congressional deputies represent the people and they are considered high officers of the nation.<sup>31</sup> They enjoy a special privilege that protects them from being arrested or tried without a prior resolution of the Supreme Court of Justice establishing the lawfulness of criminal proceedings.<sup>32</sup> Congress has the power to pass, amend, and repeal laws.<sup>33</sup> The following entities have the power to introduce legislation:<sup>34</sup> congressional deputies, the executive branch, the Supreme Court of Justice, the University of San Carlos of Guatemala, and the Supreme Electoral Council.<sup>35</sup>

Once a bill is passed, Congress sends it to the president for approval, promulgation, and publication.<sup>36</sup> The president has fifteen days to return the bill to Congress if he or she has any modifications or reservations.<sup>37</sup> If the president does not return or promulgate the law within this fifteen-day period, Congress must promulgate it by the eighth day after the end of the fifteen-day period<sup>38</sup> with the approval of two-thirds of its members.<sup>39</sup>

### *Judicial Branch*

The Supreme Court of Justice and other courts exercise the judicial function exclusively as established by law.<sup>40</sup>

The judicial branch<sup>41</sup> is composed of the Supreme Court of Justice;<sup>42</sup> the Court of Appeals and the collegiate tribunals (courts composed of several judges);<sup>43</sup> the courts of first instance;<sup>44</sup> and the lower courts.<sup>45</sup> The Supreme Court of Justice is the highest appeals court in Guatemala.<sup>46</sup> Its president presides over both the Supreme Court of Justice and the

judicial branch.<sup>47</sup> The Supreme Court is composed of nine judges, four of which are directly elected by Congress and five of which are selected from among thirty candidates nominated by the Nomination Commission.<sup>48</sup> Supreme Court judges are elected for a six-year period.<sup>49</sup> The Supreme Court of Justice established the Court of Appeals and the collegiate tribunals, the courts of first instance, and the lower courts or justices of the peace.<sup>50</sup> It determines their territorial jurisdiction and the number of tribunals or courts in Guatemala.<sup>51</sup>

The Guatemalan justice system is regulated by a series of principles established by the Constitution, such as functional and economic independence,<sup>52</sup> and the right to contest a decision through the process of judicial review.<sup>53</sup> The Law of the Judicial Branch establishes that access to the judicial system is free of charge.<sup>54</sup> With the exception of the military courts, only entities pertaining to the judicial branch administer justice.<sup>55</sup> The death penalty may be applied as provided by the Constitution,<sup>56</sup> with certain exceptions.<sup>57</sup> The death penalty cannot be imposed on women, persons over the age of 60, or persons convicted of political crimes.<sup>58</sup>

The Attorney General's Office, an auxiliary institution of the civil service,<sup>59</sup> is charged with upholding the law in Guatemala.<sup>60</sup> The Attorney General is the head of the Attorney General's Office, and is responsible for bringing judicial actions on behalf of the public.<sup>61</sup>

## B. THE STRUCTURE OF THE NATIONAL GOVERNMENT

### *Regional and local governments*

The system of government in Guatemala is decentralized.<sup>62</sup> The country is politically divided into departments, or states, which are in turn divided into municipalities.<sup>63</sup> A governor named by the President of the Republic heads the departmental governments.<sup>64</sup> This governor is head of the Departmental Council,<sup>65</sup> which comprises the mayors of the municipalities and representatives of organized groups within the public and private sectors.<sup>66</sup> The objective of the Departmental Council is the promotion and development of the department.<sup>67</sup> Municipalities are autonomous institutions of local government.<sup>68</sup> The Municipal Council<sup>69</sup> governs the municipality. It is elected by universal popular vote for a period of four years.<sup>70</sup>

With the aim of fostering the country's development, the Constitution provides for the possibility of creating development regions,<sup>71</sup> which may be established according to certain economic, social, and cultural criteria.<sup>72</sup> These regions may comprise one or more departments.<sup>73</sup> The National Council of Urban and Rural Development<sup>74</sup> is charged with formulating national policies relating to urban and rural development as well as territorial organization. It is under the supervision of

the president of the republic.<sup>75</sup> Each region has a Regional Development Council,<sup>76</sup> composed of a representative of the president of the republic, the governors of the departments who belong to the region, a representative of the municipalities of each of the departments, and representatives of public and private entities as established by law.<sup>77</sup>

## C. SOURCES OF LAW

### *Domestic sources of law*

The laws that determine the legal status of women and their reproductive rights come from different sources. In the Guatemalan legal system, the formal sources of legislation are hierarchically organized into different levels, at the apex of which is the Constitution, which takes primacy over all other sources of law.<sup>78</sup> Next come international treaties that do not involve human rights issues; followed by laws and other governmental or regulatory decrees.<sup>79</sup> No law may violate the dispositions established in the Constitution.<sup>80</sup> In the case of incompatibility between the Constitution and a given law, judges must decide in favor of the former,<sup>81</sup> except where human rights issues are involved, in which case international treaties prevail over domestic law.<sup>82</sup> Laws are applicable throughout the national territory eight days after their publication in the official Daily Gazette.<sup>83</sup>

"Jurisprudence"<sup>84</sup>—or a series of court decisions deciding the same legal issue — is a complementary source of law in accordance with the Constitution.<sup>85</sup> Custom and usage is recognized as a source of law, but only when an applicable law is defective or when expressly permitted by law.<sup>86</sup> Upon signing the Peace Accords, the Guatemalan government committed itself to enacting laws that recognize the right of the country's indigenous communities to follow their own legal customs, "as long as such customs are not incompatible with the fundamental rights defined by the domestic legal system or with internationally recognized human rights."<sup>87</sup>

### *International sources of legislation*

Several international human rights treaties recognize and promote specific reproductive rights. Governments that adhere to such treaties are legally obligated to protect and promote these rights. International treaties constitute the principal international source of legislation in Guatemala, and treaties ratified by the Guatemalan government form part of domestic law. When international treaties involve human rights issues, they prevail over domestic law, including the Constitution.<sup>88</sup> When the courts in Guatemala apply the law, they must observe the principle of the supremacy of international human rights treaties that have been signed and ratified by the government.<sup>89</sup>

The president may sign, ratify, or withdraw from treaties or conventions without prior authorization from Congress.<sup>90</sup>

The exception is when they modify existing laws, affect real property under the control of the government, commit the state to financial expenditures, contain general clauses of arbitration, or obligate the state to submit any issue to international judicial decision or arbitration.<sup>91</sup> In such cases, the president must submit these treaties to Congress, which must approve the treaty before its ratification.<sup>92</sup>

Guatemala is a member state of the United Nations and the Organization of American States. As such, it has signed and ratified most of the international treaties dealing with the universal system of protection of human rights.<sup>93</sup> In particular, Guatemala has ratified several treaties related to the protection of women's human rights in the universal and the Inter-American systems,<sup>94</sup> such as the Convention on the Elimination of All Forms of Discrimination Against Women<sup>95</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Pará).<sup>96</sup>

## II. Examining Health and Reproductive Rights

In Guatemala, issues referring to the reproductive health of women are subsumed under national health and population policies. In order to understand reproductive rights in Guatemala, it is therefore necessary to analyze both the laws and the government's programs in population and health.

### A. HEALTH LAWS AND POLICIES

#### *Objectives of the health policy*

As part of its national development and planning programs,<sup>97</sup> the Guatemalan government has prioritized the war against poverty by creating greater opportunities for the population to access education, health, and other basic services.<sup>98</sup> For the period from 1996 to 2000, the Ministry of Public Health and Social Assistance ("MPHSA") defines the specific objectives of the health care sector as the modernization;<sup>99</sup> increasing the coverage and improving the quality of the health care services provided;<sup>100</sup> improving hospital administration;<sup>101</sup> and improving infrastructure.<sup>102</sup> Other goals for the health care sector during the same period include: the reduction of infant mortality;<sup>103</sup> the reduction of maternal mortality;<sup>104</sup> and the increase in the number of births attended by health professionals.<sup>105</sup>

The MPHSA will seek to achieve these objectives and goals through the following strategies: administrative modernization, decentralizing services, and developing health programs for the neediest groups.<sup>106</sup>

#### *Infrastructure of health services*

The infrastructure of the health care sector consists of public entities and establishments ("public health subsector"),<sup>107</sup> private institutions, nongovernmental organizations ("NGOs"), and groups and institutions that practice the traditional medicine of the various ethnic groups throughout the country.<sup>108</sup> In terms of the provision of services, the public health subsector comprises health establishments that are classified as follows, according to their capacity for treatment and their resources:<sup>109</sup> health stations, which provide minimal, basic treatment;<sup>110</sup> type "B" health centers and type "A" health centers, which provide intermediate treatment;<sup>111</sup> district and area hospitals, which provide comprehensive treatment;<sup>112</sup> and regional and national hospitals,<sup>113</sup> which treat the most complex illnesses and pathologies, and whose headquarters are in the capital city (Guatemala City).<sup>114</sup> As of 1996, there were 860 health stations, 131 type "A" health centers, 217 type "B" health centers, and 60 hospitals.<sup>115</sup>

Existing private health establishments primarily offer health services in urban areas. These establishments include 71 medical centers, services offered by private companies, and 2,526 private clinics.<sup>116</sup> NGOs that specialize in health services operate four hospitals and 637 private health centers throughout the country.<sup>117</sup>

In terms of human resources, there are approximately 51,500 health care professionals, staffing the network of services offered by the health sector of which 57% work in institutions pertaining to the public health subsector.<sup>118</sup> The MPHSA operates twelve technical schools, seven of which train personnel as comprehensive health care providers.<sup>119</sup> Training for the medical and nursing professions is carried out largely through exposure to treatment methods in hospitals, as opposed to more preventive forms of treatment.<sup>120</sup> While only 20% of the total population resides in the capital, more than 80% of medical professionals within the public health subsector work in Guatemala City, and 46% of the total hospital beds of the health sector are located there.<sup>121</sup> The Guatemalan government has recognized that there are serious deficiencies in both quantity and quality in the provision of health services.<sup>122</sup> The government has also noted that more than 64% of all deaths in Guatemala are related to the low prevalence of health services, the limited infrastructure of sewage systems and indoor plumbing, and poor nutrition.<sup>123</sup>

#### *Cost of health services*

The central government provides the funds required to carry out the public health sector's programs through an annual allocation within the national budget.<sup>124</sup> In 1996, public health expenditures have not surpassed 2.2% of Guatemala's gross domestic product.<sup>125</sup> Financial resources have primarily been spent on curative measures performed in hospitals rather than

on the development of preventive health programs and infrastructure projects like sewage systems and indoor plumbing.<sup>126</sup> Only 20 to 25% of public health expenditures over the last two years were directed at preventive programs.<sup>127</sup>

Regarding the cost of health services for patients, the Health Code<sup>128</sup> provides that preventive treatment and medical assistance in public health establishments be free of charge, with the exception of those that have an established fee prescribed by law.<sup>129</sup> Fees are charged for health licenses, and analyses and sales of biological products sold by the MPHSA.<sup>130</sup> The income generated by these services is expected to increase the amount of the national budget allocated by the government to the health sector.<sup>131</sup>

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

Who may legally provide health services, and of what kind? Are there meaningful guarantees of quality control within existing health services? Because the Guatemalan government regulates such matters, it is important to review the most relevant legal provisions. The conduct of health professionals as providers of health services is regulated primarily by the Ethics Code.<sup>132</sup> The Penal Code<sup>133</sup> regulates the punishment for criminal acts committed while exercising the medical profession. By constitutional mandate, medical professionals are required to become members of their professional association (“Guatemalan Association of Physicians and Surgeons”) in order to exercise their profession.<sup>134</sup> The Ethics Code contains obligatory regulations for all affiliated physicians and surgeons. The general duties of physicians include the obligations to respect the life and dignity of all persons, protecting their health without discrimination,<sup>135</sup> and to maintain patient confidentiality.<sup>136</sup> Physicians must respect the beliefs and customs of their patients as long as these do not endanger their health.<sup>137</sup> They must also set their fees according to the time spent treating the person, the distance traveled, and the quality of the services provided.<sup>138</sup>

The Ethics Code contains certain regulations regarding the physician-patient relationship that are particularly relevant to reproductive health issues. It provides that physicians must abstain from examining the genitalia of minor females without the presence of their parents or legal guardians, except when requested by a judge or when an obstetric-gynecological emergency requires such an examination.<sup>139</sup> Physicians must maintain the confidentiality of the patient when testing for pregnancy and when assisting in childbirth if so requested by the patient, except when the patient is a minor.<sup>140</sup> In cases of “criminal abortion,” the physician is exempt from maintaining professional confidentiality.<sup>141</sup> It is important to note that the Ethics Code prohibits sterilization except when medically

necessary to prevent imminent danger to the life of the patient and after all other treatment methods have been exhausted.<sup>142</sup> This regulation conflicts with the policy of the MPHSA, which offers voluntary surgical sterilization as a method of family planning.<sup>143</sup> The Ethics Code also ratifies the prohibition against abortion,<sup>144</sup> and stipulates that only medical professionals may perform therapeutic abortions, in accordance with the Penal Code.<sup>145</sup> The Penal Code penalizes crimes that involve the participation of health professionals, such as performing an abortion,<sup>146</sup> and the illegal prescription of drugs.<sup>147</sup>

### **Patients’ rights**

Laws also seek to ensure quality health services by protecting the rights of patients. The rights of patients are protected by the Constitution, the bylaws of the Guatemalan Association of Physicians and Surgeons,<sup>148</sup> and the Ethics Code. The Constitution provides that it is the government’s duty to defend the health, security, and economic interests of consumers and service users generally.<sup>149</sup> The government, therefore, is charged with overseeing the quality of foodstuffs, pharmaceutical and chemical products, and all other products that could affect the health and well being of the population.<sup>150</sup>

The Ethics Code mandates the review of any professional who violates its standards by the Tribunal of Honor of the Medical Association,<sup>151</sup> which acts as an ex-officio court for the profession.<sup>152</sup> Any person who contends that a physician or surgeon “has made an ethical breach or has violated the honor or prestige of his or her profession”<sup>153</sup> may present a complaint to the professional association.<sup>154</sup> The Tribunal of Honor then may impose any of the following penalties,<sup>155</sup> depending on the seriousness of the violation: a private warning, a public warning, a fine, temporary suspension from exercising the profession, and permanent suspension from exercising the profession.<sup>156</sup>

The Penal Code also provides protection to patients in cases of medical negligence. Negligence, which is categorized in the Code as a crime of “injury”, is punished with three months, to twelve years, imprisonment, depending upon the gravity of the injury.<sup>157</sup> In terms of the rights of patients as consumers, the Regulations on Medicines, Narcotics, Psychotropic Drugs, and Beauty and Personal Hygiene Products for the Home and Pharmaceutical Establishments<sup>158</sup> regulate the sale of pharmaceutical products.<sup>159</sup> These regulations establish that the Department of Medicine Control, a department of the General Office of Health Services,<sup>160</sup> oversees the regulation of medicine, beauty and personal hygiene products, foodstuffs for medical use, therapeutic devices, and household pesticides.<sup>161</sup> It also regulates pharmaceutical establishments.<sup>162</sup>

## B. POPULATION, REPRODUCTIVE HEALTH AND FAMILY PLANNING

The population, reproductive health, and family planning policies currently in force in Guatemala are outlined in the Government Program,<sup>163</sup> the Plan of Action for Social Development (“PLADES 1996-2000”), the Women, Health and Development Program (“WHD”), and the Operative Plan of the Reproductive Health Unit of the MPHSA (“Operative Plan”).<sup>164</sup>

### **Laws and policies on population**

While there is no specific population policy in Guatemala, the Government Program proposes that demographic policies be developed that “respect the right to life from the moment of conception,”<sup>165</sup> and that programs be implemented that promote family unity.<sup>166</sup> PLADES 1996-2000 mandates that the government give particular attention to satisfying the basic material and spiritual needs of the family.<sup>167</sup> Specifically, it requires the implementation of strategies such as training and orientation programs on family-related issues.<sup>168</sup>

Regarding population distribution, the government seeks to promote a more equitable distribution throughout the country of sources of employment and income, in order to help satisfy basic needs nationwide.<sup>169</sup>

### **Laws and policies on reproductive health and family planning**

The Constitution includes several provisions related to sexual and reproductive rights. It mandates that the government promote responsible parenting and the right of all persons to choose freely the number and spacing of their children.<sup>170</sup> It also states that the government must provide special protection to mothers.<sup>171</sup> Guatemala has an annual population growth rate of 2.9%.<sup>172</sup> One of the goals of the health sector for the period from 1996 to 2000 established by the MPHSA is to achieve a minimum increase of 10% in contraceptive prevalence among married or cohabiting women.<sup>173</sup>

The WHD Program was created in 1989 as part of the MPHSA.<sup>174</sup> Its objectives include developing programs to treat health problems specific to women; incorporating a gender perspective in the proposal and development of different health initiatives; and training the health personnel of the public health subsector using this new perspective.<sup>175</sup> In a study carried out in 1994, the WHD has identified the existence of gender discrimination within the health sector. The WHD has also undertaken a study of domestic violence and its impact on women's health.<sup>176</sup>

In order to implement the government's reproductive health programs, the MPHSA created the Reproductive Health Unit (“RH Unit”) to organize and coordinate these programs within the public health subsector.<sup>177</sup> The Operative Plan of the RH Unit states that the MPHSA seeks to improve the health of Guatemalan women and children by strengthening the

provision of reproductive health services, with special emphasis on rural communities.<sup>178</sup> Its specific objectives include expanding the population's access to information about reproductive health<sup>179</sup> and coordinating the development of the RH Unit's reproductive health programs with local NGOs.<sup>180</sup>

The RH Unit, which is the only government agency that directly addresses the issue of reproductive health, is currently at risk of being eliminated. This is primarily due to the lack of support on the part of the MPHSA and to the fact that its importance to the country's social and economic development has not been widely recognized.<sup>181</sup>

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

The RH Unit is responsible for providing family planning services in public health subsector establishments.<sup>182</sup> The RH Unit operates in eight of the twenty-four existing “health areas” in Guatemala.<sup>183</sup> Its activities include: providing training workshops on the use of contraceptive methods to health care personnel;<sup>184</sup> providing medical and surgical supplies;<sup>185</sup> and providing contraception to those who request it.<sup>186</sup> In an effort to develop a comprehensive approach to service provision, the RH Unit's activities are carried out in coordination with other public and private entities that deal with reproductive health.<sup>187</sup>

While there is no specific law or regulation requiring that the government provide family planning services free of charge, the Health Code states that in government-run establishments, preventive treatment and medical care must be provided to all Guatemalan citizens free of charge. Certain services are exempted from this provision by law.<sup>188</sup> The RH Unit is responsible for the distribution of contraceptives.<sup>189</sup>

## C. CONTRACEPTION

### **Prevalence of contraceptives**

According to recent statistics, the current prevalence of contraceptive methods among married or cohabiting women in Guatemala is 31.4%,<sup>190</sup> compared to 23% between 1986 and 1993.<sup>191</sup> The modern contraceptive methods most commonly used by married or cohabiting women are: female sterilization (14.3%), the birth control pill (3.8%), the intrauterine device (IUD); (2.6%), injectable hormonal contraceptives (2.5%), and the condom (2.2%).<sup>192</sup> The traditional rhythm method—periodic abstinence—is currently used by 3.6% of married or cohabiting women in Guatemala.<sup>193</sup>

During the period from May to November 1995, the RH Unit of the MPHSA distributed 1,644 packages of birth control pills and 407 packages of condoms.<sup>194</sup> The RH Unit also carried out 2,281 IUD insertions and performed 11,688 voluntary surgical sterilizations during this period.<sup>195</sup>

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

Guatemalan law does not restrict women's right to obtain and use contraceptive methods. However, the Ethics Code of the Guatemalan Association of Physicians and Surgeons expressly prohibits the practice of sterilization as a method of contraception,<sup>196</sup> despite the fact that it is a family planning method offered by the MPHSA.<sup>197</sup>

The Department of Medicine Control, supervised by the General Office of Health Services, is responsible for regulating the sale of contraceptive methods in pharmacies or other establishments selling pharmaceutical products.<sup>198</sup> This department authorizes, inspects, and exercises general control over the entities that produce, store, or distribute such products.<sup>199</sup> Pharmaceutical products of any kind may be sold only in laboratories, drug stores, and pharmacies<sup>200</sup> that have been licensed by the Department of Medicine Control,<sup>201</sup> which regulates these establishments.<sup>202</sup> The sale of such products by street vendors, whether in vehicles, streets, plazas, markets, or other public places, is strictly prohibited.<sup>203</sup>

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

There are no regulations restricting information about contraceptive methods or technologies. One of the responsibilities of the RH Unit is to carry out informational campaigns on reproductive health to patients and the public in general in the waiting rooms of public health establishments.<sup>204</sup>

PLADES 1996-2000 calls for the development of educational programs regarding the family, women's status, respect for women, and children's rights.<sup>205</sup> The government has proposed to carry out this mandate through a mass media campaign. This campaign aims at reaching 50% of the population with messages that promote respect for and the recognition of the rights of women and children<sup>206</sup> and offer advice to parents on family issues.<sup>207</sup> PLADES 1996-2000 does not specify the content of these programs, which are to be supervised by the appropriate governmental agency.<sup>208</sup>

### ***Sterilization***

Voluntary surgical sterilization is one of the family planning methods provided by the establishments of the RH Unit of the MPHSA,<sup>209</sup> despite the fact that the Ethics Code applicable to doctors permits sterilization only when medically required.<sup>210</sup> In such cases, written authorization of the patient's free and voluntary acceptance of this procedure is required before performing the operation. In addition, two physicians must concur that sterilization is medically indicated.<sup>211</sup>

There is no law or administrative regulation that requires health establishments to obtain the authorization of the patient and/or the spouse in cases of sterilization. In public hospitals, however, the authorization of the spouse is required for surgical

sterilization.<sup>212</sup> Most private health establishments do not solicit the authorization of the spouse for this operation.<sup>213</sup> The Penal Code penalizes a person who intentionally "castrates or sterilizes" another person without his or her consent.<sup>214</sup>

## **D. ABORTION**

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

The state guarantees and protects human life from the moment of conception.<sup>215</sup> This constitutionally sanctioned principal is the basis for considering abortion a criminal act in Guatemalan domestic law.<sup>216</sup> Guatemala's Penal Code lists abortion among the crimes "against the life and integrity of the person."<sup>217</sup> "Therapeutic abortion" is an exception specifically authorized by law when abortion is necessary to save the mother's life.<sup>218</sup> The Penal Code penalizes "a woman who induces her own abortion or who permits another person to perform an abortion on her,"<sup>219</sup> as well as "any person who intentionally causes a woman to abort"<sup>220</sup> and any person "whose use of violence against a pregnant woman causes her to abort."<sup>221</sup>

Despite the fact that abortion is illegal in Guatemala, the MPHSA has recognized that abortion is of the principal and most serious health problems among the country's female population,<sup>222</sup> and that the MPHSA has a responsibility to develop programs through the RH Unit to combat this situation.<sup>223</sup> Statistics from the ministry's Maternal and Infant Department reveal that a high percentage of women have received hospital assistance for abortion-related complications and that 76% of those women had had at least one previous abortion.<sup>224</sup>

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

The Penal Code establishes essential requirements for obtaining a therapeutic abortion: "the woman's consent"<sup>225</sup> and a "previous diagnosis by at least one other physician concurring with this course of action."<sup>226</sup> The Penal Code also provides that the abortion procedure must be carried out "without the intention of directly causing the death of the fetus,"<sup>227</sup> with the sole intention of avoiding imminent danger to the life of the mother; and only after all other scientific and technical methods have been exhausted.<sup>228</sup>

### ***Penalties***

A woman who induces her own abortion, or who allows another person to perform her abortion, is liable to imprisonment for one to three years.<sup>229</sup> However, the law recognizes mitigating circumstances in which case the penalty is reduced. When the woman who obtains an abortion was "compelled by motives that are the product of undeniable psychological disturbance that is directly related to the pregnancy,"<sup>230</sup> the penalty is six months to two years of imprisonment.<sup>231</sup> A person who performs an abortion with the pregnant woman's

consent is subject to one to three years of imprisonment.<sup>232</sup> A person who performs an abortion without the woman's consent is subject to three to six years' imprisonment.<sup>233</sup> In the latter case, if the person used violence, threats, or deceit, the penalty is four to eight years' imprisonment.<sup>234</sup>

If a woman who has consented to an abortion dies because of the procedure, the person performing it is liable to three to eight years' imprisonment.<sup>235</sup> If an abortion followed by death was performed without the woman's consent, the person performing it is liable to four to twelve years' imprisonment.<sup>236</sup>

When the person performing the abortion is a medical professional who "abuses his or her profession by performing an abortion or cooperating in the performance of such procedure,"<sup>237</sup> the above-mentioned penalties are applied, plus the additional penalties of a fine of 3,000 *quetzales* and suspension from the practice of medicine for a period of two to five years.<sup>238</sup> The same penalties apply when the performer is a medical intern or a person with another type of health degree.<sup>239</sup> The Penal Code expressly states that attempted abortion<sup>240</sup> and "unintentional" abortion<sup>241</sup> are not criminally sanctioned.<sup>242</sup>

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

Examining the issue of HIV/AIDS within a reproductive rights framework is essential insofar as the two issues are interrelated from the medical and public health standpoints. Moreover, a comprehensive evaluation of the laws and policies affecting reproductive health in Guatemala must examine HIV/AIDS and STIs given the dimensions and implications of both diseases. Between 1984 and June 1996, 936 cases of HIV/AIDS were reported in Guatemala.<sup>243</sup> The pattern of infection by sex is three men to every one woman.<sup>244</sup> The highest incidence of infection is among people between the ages of 20 and 50.<sup>245</sup> Statistics on STIs show that for 1994, the rate of incidence was 16.7 cases of gonorrhea per 1,000 inhabitants<sup>246</sup> and 2.98 cases of syphilis per 1,000 inhabitants.<sup>247</sup>

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

The laws governing HIV/AIDS and STIs regulate the rights and duties of persons infected with HIV/AIDS and of health establishments. The law states that blood tests may not be required to obtain goods or services, or to access educational establishments or to obtain medical attention.<sup>248</sup> It protects the right of all people to dignified and respectful treatment, and it prohibits discrimination against people due to their status as carriers of the HIV/AIDS virus.<sup>249</sup> It also establishes that the results of all blood tests are strictly confidential.<sup>250</sup> However, health professionals are required to notify the nearest health authority when a case of AIDS or HIV infection is diagnosed.<sup>251</sup> Health institutions pertaining to the MPHSA are

required to provide counseling and psychological assistance to all persons who are notified that they are HIV-positive.<sup>252</sup>

In Guatemalan criminal law, a person who is aware that he or she has a "venereal disease" and knowingly exposes another person to infection is penalized with a fine of 50 to 300 *quetzales*.<sup>253</sup> If infection occurs, in addition to the fine, the offender is penalized with a prison term of two months to one year.<sup>254</sup>

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

In 1987, the Guatemalan government created an advisory body, the National Commission to Prevent and Control AIDS ("the AIDS Commission"),<sup>255</sup> to coordinate all programs nationwide dealing with the prevention and control of the disease.<sup>256</sup> The AIDS Commission has a representative from each of the following institutions: the MPHSA, the Medical Association, universities, the ministries of Education and Government, social service organizations, religious institutions, and the media.<sup>257</sup> The main function of the AIDS Commission is to systematize the control and prevention of AIDS and to propose national policies and laws to reach its goals.<sup>258</sup>

For the period from 1996 to 2000, the MPHSA established the National Plan to Prevent and Control HIV/AIDS.<sup>259</sup> The principal objective of this program is to diminish the incidence of HIV infection and, thereby, of AIDS, through health promotion programs directed at the population at large and at high-risk groups in particular.<sup>260</sup> To obtain these ends, the MPHSA has organized its activities along three lines of action: epidemiological control of HIV/AIDS infection;<sup>261</sup> the promotion of health and counseling for the prevention of HIV infection;<sup>262</sup> and the treatment and monitoring of persons with AIDS.<sup>263</sup> In addition, through the National Office of Health Services, the ministry has published a series of informative pamphlets on HIV/AIDS and STIs for health personnel and the public in general.<sup>264</sup>

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

Women's health and reproductive rights cannot be fully evaluated without investigating women's legal and social status. Not only do laws relating to women's legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women's ability to exercise reproductive rights. The legal context of family life and couple relations, a woman's access to education, her economic status, and the legal protection available to her determine a woman's ability to

make decisions concerning her reproductive health needs and to exercise her right to obtain health care services.

The Constitution recognizes the principle of equality, and provides that all human beings are free and equal in their dignity and their rights.<sup>265</sup> The Constitution acknowledges equal opportunities and responsibilities for men and women regardless of their marital status.<sup>266</sup> In addition, Guatemala is a party to several international treaties regarding women's civil rights, which recognize the equal rights of men and women and enshrine the principle of nondiscrimination against women.<sup>267</sup> However, as the following section suggests, Guatemalan domestic law includes provisions that are contrary to the principles of equality and nondiscrimination.

#### A. RIGHTS WITHIN MARRIAGE

##### **Marriage law**

The Constitution mandates that the government guarantee the social, economic, and legal protection of the family and promote its establishment on the legal basis of marriage.<sup>268</sup> It also provides that the government should promote equality between spouses as well as responsible fatherhood.<sup>269</sup> This principle is also recognized in the Civil Code, which provides that both spouses should enjoy equal rights and obligations within marriage.<sup>270</sup> However, the Civil Code, which has been in effect since 1963, stipulates that only the husband may legally represent the married couple—a violation of the principle of equal rights and obligations between spouses.<sup>271</sup> During marriage, a woman has the right to add her husband's surname to her own and to retain his name unless the marriage is dissolved through annulment or divorce.<sup>272</sup>

Both spouses have the right to decide jointly their place of residency, to make decisions regarding the education and rearing of their children, and to administer the household financial affairs.<sup>273</sup> The Civil Code provides that it is the husband's duty to protect and support his wife, and that he is required to provide all the resources necessary to maintain the household.<sup>274</sup> The wife has the "special" right and duty of caring for and rearing their minor children and of overseeing domestic tasks.<sup>275</sup> The Civil Code also provides that a woman may seek employment, exercise a profession or trade or engage in a commercial enterprise, as long as these activities do not interfere with the interests and well-being of the children and her other household responsibilities.<sup>276</sup> The husband may object to the wife's working outside the home at any time as long as he provides the necessary resources to sustain the household.<sup>277</sup>

Property rights within marriage are regulated by a "marriage contract,"<sup>278</sup> which is entered into by the man and woman before or during the celebration of the marriage.<sup>279</sup> The spouses may choose one of the following property

regimes: absolute community property,<sup>280</sup> absolute separation of property,<sup>281</sup> and joint community property.<sup>282</sup> If no marriage contract regarding marital property rights has been agreed upon, the law provides that the regime of joint community property applies.<sup>283</sup> Women may not enter marriage until 300 days after the dissolution of a prior marriage. This provision was enacted to avoid uncertainty regarding paternity in case of pregnancy.<sup>284</sup>

The minimum age required to enter marriage without parental consent is 18.<sup>285</sup> Polygamy is not permitted in Guatemala. The Penal Code penalizes any person who enters a second marriage without having legally dissolved the previous marriage.<sup>286</sup> The same penalty is applicable to a single person who enters marriage with a married person, knowing that that person is already legally married.<sup>287</sup>

Until March 1996,<sup>288</sup> the Penal Code had defined the crime of "adultery" as the crime committed by a "married woman" who "lays with" a man who is not her husband, or by the man who "lays with" such woman "knowing that she is married."<sup>289</sup> The penalty for this crime was six months, to three years, imprisonment.<sup>290</sup> However, with respect to male adulterers, the crime, known as "concubinage" (*concubinato*) was defined to have occurred only when the man brought his lover into the conjugal home, the penalty for which was one year of imprisonment.<sup>291</sup> Guatemalan women's organizations successfully fought for the repeal of these criminal provisions by bringing a lawsuit seeking a declaration of unconstitutionality before the Guatemalan Constitutional Court.<sup>292</sup>

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

The Constitution recognizes the legality of domestic partnerships (*uniones de hecho*).<sup>293</sup> The Civil Code defines a domestic partnership as a stable union between a man and a woman who have the legal capacity to enter into marriage,<sup>294</sup> provided that they share a permanent and single household, have lived together continuously for more than three years as witnessed by their family members and friends, and are committed to procreating, feeding, and educating their children and mutually supporting each other.<sup>295</sup> Domestic partnerships are legally recognized when the couple declares their relationship before a local governmental authority.<sup>296</sup> This declaration is inscribed in the Civil Register,<sup>297</sup> and has the same legal effect as a marriage certificate.<sup>298</sup>

The inscription of a domestic partnership in the Civil Register has the following legal effects: the children born during the duration of the partnership are presumed to be the children of the mother's partner and<sup>299</sup> the property acquired during the domestic partnership is considered joint property of the couple.<sup>300</sup> Either partner may request the liquidation of the

couple's jointly owned property and the distribution of the property that belongs to him or her.<sup>301</sup> Finally, a man and woman in a domestic partnership are subject to the same rights and duties as spouses during marriage.<sup>302</sup> A domestic partnership may be dissolved by the mutual agreement of the partners or based on any of the grounds for divorce established in the Civil Code.<sup>303</sup> Reciprocal inheritance rights are recognized between a man and woman whose domestic partnership has been duly registered.<sup>304</sup> The prohibition against a woman remarrying during the 300 days following the death of her spouse or the dissolution of her marriage also prohibits her from entering a domestic partnership during that period.<sup>305</sup>

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

The Civil Code establishes the categories of *separation*, which modifies a marriage, and *divorce*, which dissolves a marriage.<sup>306</sup> Both separation and divorce may be declared by an agreement between the spouses<sup>307</sup> or when one of the spouses invokes one of the legal grounds for divorce.<sup>308</sup> Legal grounds for separation or divorce include adultery, mistreatment, excessive slander, any behavior that makes living together impossible,<sup>309</sup> an attack against the life of the spouse, having conceived a child prior to the marriage without the husband's prior knowledge of the pregnancy, serious, incurable, and contagious illness that may endanger the life of the other spouse or their children, and absolute or relative inability to procreate, as long as it is incurable and was made known only after entering into the marriage.<sup>310</sup>

After a separation or divorce, the marital property is legally liquidated.<sup>311</sup> In a separation or divorce in which the husband is the party at fault, the wife has a right to alimony<sup>312</sup> as long as she maintains good conduct and does not remarry.<sup>313</sup> In addition, one of the spouses receives custody of the children. The spouse who is the party at fault in the separation or divorce is suspended from or loses parental authority over the children if the "innocent" spouse expressly requests it.<sup>314</sup> The Civil Code also provides that from the moment the petition for separation or divorce is filed, the woman and the children are under government protection to ensure their personal integrity and to safeguard their property until the final decree is handed down.<sup>315</sup> A judge determines whether provisional custody of the children is granted to the father, the mother, or a legal guardian until the divorce proceedings are settled.<sup>316</sup>

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

### ***Property rights***

The Guatemalan Constitution guarantees the fundamental right of all persons to private property and states that all persons may freely dispose of their property.<sup>317</sup>

However, the Guatemalan Civil Code provides specific

legal restrictions on the rights of women regarding the joint ownership of property of a married couple. The husband is responsible for administering jointly owned property,<sup>318</sup> and the wife may legally challenge her husband's decisions only when they endanger their jointly owned property.<sup>319</sup> A woman may represent the married couple and administer their jointly owned property only when an injunction has been granted against the husband, when the husband abandons the household or his abandonment has been legally declared, or, when the husband is condemned to imprisonment, for the duration of his incarceration.<sup>320</sup>

The Civil Code provides that the disposition of or encumbrance on jointly owned real estate requires the consent of both spouses, otherwise such actions are considered null and void.<sup>321</sup> No laws exist that restrict women's right to inherit property. The Civil Code states that in cases in which there is no will, inheritances are regulated by law, which stipulates that only family relationships and not the sex of the persons involved are to be considered.<sup>322</sup>

### ***Labor rights***

Employment is protected by the Constitution as an inherent right of all persons and is declared a social obligation.<sup>323</sup> The Constitution provides that the protection of working women and the regulation of women's working conditions are basic social rights that must be guaranteed by labor legislation.<sup>324</sup> The Constitution specifically states that women must receive equal pay for equal work under equal conditions, and prohibits discrimination between single and married women.<sup>325</sup>

The Guatemalan government is a party to several international conventions adopted by the International Labor Organization (ILO) that protect women in the workplace, such as Convention No. 100, the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value;<sup>326</sup> Convention No. 111, the Convention Concerning Discrimination in Respect of Employment and Occupation;<sup>327</sup> and Convention No. 156, the Convention concerning Workers with Family Responsibilities.<sup>328</sup>

The Labor Code<sup>329</sup> regulates nondiscrimination based on sex, family responsibility, civil status, and pregnancy.<sup>330</sup> It also protects working women who become pregnant, providing that they must not be subjected to work that might endanger a pregnancy.<sup>331</sup> It also establishes that women must be given a required rest period of thirty days prior to childbirth and forty-five days after, paid at 100% of the woman's salary.<sup>332</sup> Women who adopt a minor child enjoy the same benefits.<sup>333</sup> Working women who are breast-feeding have the right to two rest periods during the workday to breastfeed their child.<sup>334</sup>

### **Access to credit**

While no laws in Guatemala exist that specifically restrict women's access to credit, this right is restricted in practice by certain civil laws that provide that the husband legally represents the married couple and administers their affairs.<sup>335</sup> This has been interpreted to mean that the husband alone is capable of carrying out commercial transactions. In practice, widows, abandoned women and single mothers must seek out the support of a male family member to act as their legal representative and to appear as the "head of the household" for purposes of credit applications before the government or private entities.<sup>336</sup>

### **Access to education**

The Constitution provides that the government is responsible for providing and facilitating access to education for all Guatemalan citizens without discrimination.<sup>337</sup> Public education is provided free of charge.<sup>338</sup> However, illiteracy remains high and primarily affects rural women.<sup>339</sup> In 1994, 62% of all illiterate persons were women.<sup>340</sup> 20.35% of all illiterate women lived in urban areas, and 79.65% lived in rural areas.<sup>341</sup>

Following the Constitution, the government must provide and promote scholarships and educational loans.<sup>342</sup> The Constitution also establishes that education must be bilingual in areas where the population is predominantly indigenous.<sup>343</sup> PLADES 1996-2000 mandates that the government develop special educational programs for repatriated, refugee, and displaced women and children during the period,<sup>344</sup> and that it ensure that educational services are appropriate to the activities and needs of the families of each region.<sup>345</sup>

### **Women's bureaus**

The National Office for Women (NOW),<sup>346</sup> which is part of the Ministry of Labor, is the entity of the Guatemalan government responsible for formulating policies relating to gender and the promotion of women.<sup>347</sup> However, NOW's budget is minuscule and it has a low status in the administrative hierarchy of government,<sup>348</sup> making it impossible for it to achieve its objectives in a satisfactory manner.<sup>349</sup> A bill currently awaiting congressional approval proposes the creation of another entity,<sup>350</sup> the National Institute for Women (NIW).<sup>351</sup>

The Ombudsman for Women of the Office of the Procurator General for Human Rights<sup>352</sup> is responsible for organizing workshops on women's human rights with local authorities in the country's interior, carrying out statistical studies of the situation of women in Guatemala, and providing direct services to women who have been victimized by violence.<sup>353</sup> Regarding criminal laws, the Attorney General's Office on Women<sup>354</sup> is charged with investigating and prosecuting crimes involving one or more women that are related to their being women.<sup>355</sup> The crimes under the purview of this office

include abortion; crimes against sexual freedom, safety, and decency; and crimes related to the integrity of the family or one's marital status.<sup>356</sup>

### **C. RIGHT TO PHYSICAL INTEGRITY**

The Guatemalan Constitution guarantees and protects human life and the integrity and security of all persons.<sup>357</sup>

#### **Rape**

Rape is categorized in articles 173 to 175 of the Penal Code as a crime "against sexual freedom and security and against decency."<sup>358</sup> Criminal law defines the crime of rape as the act of "laying with a woman" by the use of sufficient force to obtain this end or by taking advantage of circumstances in which the woman is unconscious or lacks the capacity to understand her actions or is otherwise incapable of resisting.<sup>359</sup> If the female victim is under the age of 12, the law states that a rape has occurred "in all cases" in which the aggressor had sexual relations with the victim.<sup>360</sup> The penalty for this crime is six to twelve years of imprisonment.<sup>361</sup> Under certain circumstances, the penalty for rape is more severe. The penalty is eight to twenty years<sup>362</sup> when two or more persons carry out the crime;<sup>363</sup> if the perpetrator is a relative of the victim, or if she is under his guardianship or he is responsible for the victim's education or custody;<sup>364</sup> or when the rape results in serious injury to the victim.<sup>365</sup> In cases in which the rape results in the death of the victim, the penalty is thirty to fifty years' imprisonment.<sup>366</sup> If the victim who dies is under the age of ten, the offender is punished with death.<sup>367</sup>

Abducting, kidnapping, or holding a woman against her will with sexual intentions, and by using violence or deception,<sup>368</sup> is penalized with two to five years' imprisonment.<sup>369</sup> The Penal Code also penalizes "crimes against decency,"<sup>370</sup> by establishing fines ranging from 300 to 5,000 *quetzales*.<sup>371</sup> Under Guatemalan law, if the offender of any of the above-mentioned crimes marries the victim, the offender is exonerated from criminal responsibility or any other penalties. However, the offender is exonerated only as long as the woman is over the age of 12 and the marriage is authorized by the Attorney General's office.<sup>372</sup>

#### **Sexual harassment**

There are no specific laws in the Guatemalan legal system that addresses the problem of sexual harassment. However, a bill on sexual harassment, which would provide legal protection to women in cases of sexual harassment in the workplace and in educational establishments, was approved by the House of Representatives.<sup>373</sup> The bill is currently awaiting full congressional approval.<sup>374</sup>

### *Domestic violence*

In 1996, the Guatemalan Congress promulgated the Law to Prevent, Punish and Eradicate Domestic Violence.<sup>375</sup> The law defines domestic violence as those acts or omissions that directly or indirectly cause harm or suffering of a physical, sexual or psychological nature or damage to property of a family member.<sup>376</sup> In such cases, the offender may be any relative, a live-in partner or former live-in partner, a spouse or former spouse, or the person with whom the victim has a child.<sup>377</sup>

The law provides for protection mechanisms in such cases, including imposing a court order to force the offender to abandon the common residence, the suspension of guardianship and custody of minor children, sequestration of the offender's property, and civil reparations to the victim for damages caused, among others.<sup>378</sup> The victim, the victim's relatives, or a physician who is in contact with the victim, or any other person who is a witness to domestic violence may request these remedies.<sup>379</sup> The law establishes the role of the national police<sup>380</sup> and justices of the peace<sup>381</sup> in the process of receiving complaints of domestic violence or in the filing of requests for protection in such cases.<sup>382</sup>

## IV. Focusing on the Rights of a Special Group: Adolescents

The needs of adolescents are often unrecognized or neglected. Given that in Guatemala 46% of the total population is under the age of 15,<sup>383</sup> it is particularly important to meet the reproductive health needs of this group. Efforts to address issues of adolescent rights, including those related to reproductive health, are important in terms of women's health as well as their right to self-determination.

### A. REPRODUCTIVE HEALTH

One of the main objectives of PLADES 1996-2000 is to provide special protection to children and adolescents.<sup>384</sup> Following this aim, the program seeks to promote the design and implementation of public policies and programs to protect their rights.<sup>385</sup> In particular, the government has proposed developing massive educational campaigns<sup>386</sup> to prevent and eradicate prostitution<sup>387</sup> and the mistreatment and sexual abuse of children and adolescents.<sup>388</sup> With respect to the relationship between physicians and adolescent patients, the Ethics Code notes that physicians are prohibited from examining the genital organs of women under the age of 18 without the presence one of the minor's parents or legal guardians, unless a judge requests the examination or there is an obstetric-gynecological emergency.<sup>389</sup>

To address the problem of AIDS among adolescents,

PLADES 1996-2000 mandates the implementation of AIDS prevention campaigns that promote abstinence and monogamy to young people.<sup>390</sup> The Guatemalan government ratified the Convention on the Rights of the Child in 1990.<sup>391</sup> A bill, the Code of Children and Adolescents, was drafted in order to bring Guatemala into compliance with the international standards of protection for children and adolescents. The proposed law is currently awaiting approval by Congress.<sup>392</sup>

### B. MARRIAGE AND ADOLESCENTS

The minimum age required to marry without parental consent in Guatemala is 18,<sup>393</sup> the age at which one is considered an adult and at which one may fully exercise his or her civil rights.<sup>394</sup> Men over the age of 16 and women over the age of 14 may marry<sup>395</sup> with the express consent of both parents or of only one parent if he or she exercises sole legal parental authority.<sup>396</sup> If it is impossible to obtain the authorization of both parents due to the absence of one parent, illness, or for any other reason, the authorization of one parent is sufficient. If these factors prevent both parents from granting their authorization, a civil judge may authorize the marriage.<sup>397</sup> If the parents disagree over whether to approve the marriage, a judge may authorize it if the grounds for refusal are deemed unreasonable.<sup>398</sup>

### C. SEXUAL OFFENSES AGAINST MINORS

The Penal Code provides that any person who has sexual relations with a person under the age of 12 has committed the crime of rape,<sup>399</sup> whether or not violence was involved or the victim was unconscious or unable to resist.<sup>400</sup> The penalty for such a crime ranges from six to twelve years' imprisonment.<sup>401</sup> If the offender is a relative of the victim, involved in the victim's education, or is the victim's legal guardian, the penalty is more severe,<sup>402</sup> ranging from eight to twenty years' imprisonment. When the victim is under the age of 10, and the rape results in the victim's death, the offender is to be sentenced to the death penalty.<sup>403</sup>

When an adolescent is between the ages of 12 and 14, and a sexual act occurs by exploiting their "inexperience," or through deception or "false promises" of marriage, the crime is known as "statutory rape" and is penalized with one to two years' imprisonment.<sup>404</sup> For punishment to be imposed in such a crime (and unlike the crime of statutory rape in, for example, many common law legal systems), Guatemalan law specifically stipulates that the victim must be an "honest woman."<sup>405</sup> If the author of the crime is a relative of the victim, responsible for the victim's education, or the victim's legal guardian, the penalty imposed increases by one-third.<sup>406</sup> The penalty is reduced to six months to one year of imprisonment when the victim is between the ages of 14 and 18.<sup>407</sup> Under Guatemalan law, if the offender of any of the above-mentioned crimes

enters into legal marriage with the victim, the offender is exonerated from criminal responsibility or any other penalties, as long as the woman is over the age of 12 and authorization is granted by the Attorney General's Office.<sup>408</sup>

The Penal Code also penalizes the crime of "corruption of minors."<sup>409</sup> Such a crime is committed when a person promotes, facilitates, or favors in any form the prostitution or sexual corruption of a minor,<sup>410</sup> and is penalized with two to six years' imprisonment, whether or not the minor consented to particular sexual acts.<sup>411</sup> The penalty is augmented by two-thirds in the following cases: if the victim is under the age of 12; if such acts are practiced for monetary gain; if these acts are committed with the use of violence, deception, or the abuse of authority; if the offender is the victim's parent, grandparent, brother, or guardian is otherwise responsible for the victim's education, custody, or guardianship; if the corruption occurs through "perverse, premature or excessive" acts; or when the acts involved are carried out "habitually."<sup>412</sup>

#### D. SEXUAL EDUCATION

The Guatemalan Constitution provides that the objective of education is to promote the comprehensive development of the human person.<sup>413</sup> It also states that parents have an obligation to educate their children, as well as the right to choose the type of education to impart to their children.<sup>414</sup> The educational objectives of the Government Program for the period 1996-2000 include affirming moral and cultural values that respect human rights, and avoiding the perpetuation of poverty and ethnic, sexual, social, and geographical discrimination.<sup>415</sup>

PLADES 1996-2000 is committed to improving the quality of education for children and adolescents.<sup>416</sup> It points out the need to educate children and adolescents about AIDS through educational campaigns emphasizing prevention through the eradication of promiscuity, which it considers to be the main cause of HIV/AIDS infection.<sup>417</sup>

#### ENDNOTES

1. THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 770 (1996).
2. *Id.*
3. *Id.*, at 769.
4. *Id.*
5. *Id.*
6. *Id.*, at 770.
7. *Id.*
8. *Id.*
9. DEPARTMENT OF STATE OF THE UNITED STATES OF AMERICA, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1996, at 454 (1997).
10. *Id.*; This group, known as the Guatemalan National Revolutionary Union, is referred to by its Spanish acronym, URNG (*Unidad Revolucionaria Nacional Guatemalteca*).
11. *Id.*
12. CONSTITUTION OF THE REPUBLIC OF GUATEMALA (decreed by the National Constituent Assembly, May 31, 1985, as amended by popular vote; Legislative Agreement 18-93), art. 140 [hereinafter GUAT. CONST.].
13. *Id.*, art. 141. The Constitution denominates the three powers of government as "branches" (*organismos*). See *id.*, tit. IV.
14. *Id.*
15. *Id.*
16. *Id.*, art. 140.
17. *Id.*, arts. 166-167. Known as *interpelación*, this process of questioning and investigation is designed to establish the political responsibility of the minister being questioned regarding issues related to the national interest. If the minister is found to be responsible for the actions of which he or she stands accused, Congress emits a vote of no confidence, and the minister under investigation must immediately present his or her resignation.
18. *Id.*
19. *Id.*, art. 183 (h).
20. *Id.*, art. 206. Magistrates and judges who have been accused of a crime or of the inappropriate exercise of their functions have the right to have their case reviewed by Congress (if they are magistrates of the Supreme Court) or by the Supreme Court of Justice (in all other cases), so that these entities can determine whether the legal proceedings against them should continue. See also Law of the Judicial Branch, Decree No. 2-89, March 28, 1989, as amended by Legislative Decrees Nos. 64-90, 11-93, and by constitutional amendment in accordance with Legislative Agreement 18-93, art. 79 (c), § c).
21. *Id.*
22. *Id.*, art. 182.
23. *Id.*, art. 184.
24. *Id.*, art. 183.
25. *Id.*, art. 193.
26. *Id.*
27. *Id.*, art. 194 (d).
28. *Id.*, at art. 194 (c).
29. *Id.*, art. 157.
30. *Id.*
31. *Id.*, art. 161.
32. *Id.*
33. *Id.*, art. 171 (a).
34. Defined as the "authority to propose something. In politics, it means the right to present proposals and the exercise of certain related functions. For example, in public law, introducing legislation is, by general principle, a right of the legislative branch, the executive branch, and judicial entities such as the Supreme Court." PEDRO FLORES POLO, DICCIONARIO DE TÉRMINOS JURÍDICOS [DICTIONARY OF LEGAL TERMS] 587 (1987).
35. GUAT. CONST., arts. 174 and 183, (g).
36. *Id.*, arts. 177 and 183, (e).
37. *Id.*, art. 178, first ¶.
38. *Id.*, second ¶; modified by Legislative Agreement No. 18-93, Art. 13 (n.d.).
39. *Id.*, art. 179.
40. *Id.*, arts. 203, 212 and 219.
41. *Id.* tit. IV- (Public Authority), ch. IV (Judicial Branch), arts. 203-222.
42. Law of the Judicial Branch, arts. 74-85.
43. *Id.*, arts. 86-93.
44. *Id.*, arts. 94-99.
45. *Id.*, arts. 101-107.
46. *Id.*, art. 74.
47. *Id.*, art. 75, (a).

48. *Id.*, art. 76. The Nomination Commission is composed of the deans of Guatemala's law schools, representatives of the association of lawyers and notary publics, and a representative of the judicial branch.
49. *Id.*
50. *Id.*, art. 101. "The courts of minors are called justices of the peace except when, because of their special functions, the law or the Supreme Court gives them a different name."
51. *Id.*, arts. 86, 94 and 101. It also determines the subject matter jurisdiction of the courts as well as parameters on the amount and issue in controversy necessary for jurisdiction by particular courts. *Id.*
52. GUAT. CONST., art. 205, (a) and (b).
53. *Id.*, Art. 211.
54. Law of the Judicial Branch, *supra* note 42, art. 57, second ¶.
55. GUAT. CONST., arts. 203, 212 and 219
56. *Id.*, art. 18.
57. *Id.*
58. *Id.*
59. *Id.*, art. 251.
60. *Id.*
61. *Id.*
62. *Id.*, art. 224
63. *Id.*
64. *Id.*, art. 227.
65. *Id.*, art. 228.
66. *Id.*
67. *Id.*
68. *Id.*, art. 253.
69. *Id.*, art. 254. The Municipal Council is comprised of the mayor, the trustees, and the council members, who are elected by universal vote.
70. *Id.*, art. 254
71. *Id.*, art. 224
72. *Id.*
73. *Id.*
74. *Id.*, art. 225.
75. *Id.*
76. *Id.*, art. 226.
77. *Id.*
78. *Id.*, art. 175.
79. *Id.*; Law of Protection, Personal Liberty and Constitutionality, Decree No. 1-86, March 10, 1989 art. 115; Law of the Judicial Branch, art. 9
80. GUAT. CONST., art. 175.
81. *Id.*, Art. 204.
82. *Id.*, art. 46; Law of Protection, Personal Liberty and Constitutionality, art. 114; Law of the Judicial Branch, art. 9
83. GUAT. CONST., art. 180.
84. In the Roman system of civil law, the term "jurisprudence" refers to the "series of judgments decided by the courts related to the same legal issue and whose reiteration confers upon them the quality of interpretive sources of law, making them precedents that must necessarily be followed in future cases." DICTIONARY OF LEGAL TERMS, *supra* note 34, at 24.
85. Law of the Judicial Branch, art. 2.
86. *Id.*
87. OFICINA NACIONAL DE LA MUJER (ONAM) [NATIONAL OFFICE FOR WOMEN (NOW), WOMEN AND LEGAL REFORMS PROJECT] LAS OBLIGACIONES LEGISLATIVAS A FAVOR DE LAS MUJERES DERIVADAS DE LOS ACUERDOS DE PAZ [THE LEGISLATIVE OBLIGATIONS FAVORING WOMEN DERIVING FROM THE PEACE ACCORDS], at 41 (1997). Due to the initiatives of labor and grassroots women's organizations, other demands of the indigenous population were incorporated into the Peace Accords, including the right to land and housing; mechanisms to protect female-headed households, widows and orphans affected by the internal conflict; and the reintegration of displaced people and the development of resettlement areas.
88. Law of the Judicial Branch, art. 9
89. Law of Protection, Personal Liberty and Constitutionality, art. 114
90. GUAT. CONST., art. 183, (o).
91. *Id.*, arts. 183, (k) and 171.
92. *Id.*
93. The government of Guatemala has signed and ratified, among others, the following international treaties dealing with the protection of human rights: International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976) (ratified by Guatemala on May 5, 1992); International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Sept. 3, 1976) (ratified by Guatemala on May 19, 1988); International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969) (ratified by Guatemala on Jan. 18, 1983).
94. Convention on the Political Rights of Women, *opened for signature* Dec. 20, 1952, G.A. Res. 640(VII) U.N. GAOR (*entry into force* July 7, 1954) (ratified by Guatemala on Oct. 7, 1959); Inter-American Convention on the Nationality of Women, *adopted* Dec. 26, 1933, O.A.S.T.S. 4 (*entry into force* Aug. 29, 1934) (ratified by Guatemala on July 17, 1936); Inter-American Convention on the Granting of Civil Rights to Women, *adopted* May 2, 1948, O.A.S.T.S. 23 (ratified by Guatemala on Sept. 7, 1951).
95. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981) (ratified by Guatemala on Aug. 12, 1982).
96. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *adopted* June 9, 1994, 33 I.L.M. 1534 (*entry into force* Mar. 5, 1995) (ratified by Guatemala on Apr. 4, 1995).
97. SECRETARY GENERAL OF PLANNING, GOVERNMENT PROGRAM 1996-2000 (1996) [hereinafter GOVERNMENT PROGRAM]; SECRETARY GENERAL FOR ECONOMIC PLANNING, SOCIAL DEVELOPMENT ACTION PLAN (PLADES 1996-2000) (1996) [hereinafter PLADES 1996-2000].
98. GOVERNMENT PROGRAM, at 72.
99. GOVERNMENT OF GUATEMALA, HEALTH POLICY 1996-2000, at 5 (1996).
100. *Id.*, at 8.
101. *Id.*, at 10.
102. *Id.*, at 11.
103. GOVERNMENT PROGRAM, at 71; PLADES 1996-2000, at 24. Currently, the infant mortality rate in Guatemala is 40 per 1,000 live births.
104. *Id.* Currently, the maternal mortality rate in Guatemala is 248 per 1,000 live births.
105. *Id.* Currently, 31% of childbirths are attended by health professionals.
106. GOVERNMENT PROGRAM, at 70.
107. *Id.*, at 67.
108. *Id.*
109. Regulations of the Ministry of Public Health and Social Assistance and its Departments, Governmental Accord No. 741-84, August 1984, art. 115.
110. *Id.*, art. 116.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. GOVERNMENT PROGRAM, at 67.
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. PLADES 1996-2000, at 21.
122. GOVERNMENT PROGRAM, at 68.
123. *Id.*
124. HEALTH CODE, Decree No. 45-79 August 9, 1979, art. 16.
125. PLADES 1996-2000, at 21.
126. *Id.*
127. *Id.*
128. The Health Code is a legal document that outlines health and administrative regulations pertaining to health services in Guatemala.
129. Decree Law No. 132-85, promulgated on December 19, 1985, art. 1 (modifies article 104 of the Health Code).
130. HEALTH CODE, art. 16.
131. *Id.*
132. ETHICS CODE, Guatemalan Association of Physicians and Surgeons, approved by the General Assembly of the Guatemalan Association of Physicians and Surgeons, Mar. 18, 1991 [hereinafter ETHICS CODE].
133. PENAL CODE, approved by Decree No. 17-73.
134. GUAT. CONST. art. 90; Law of Obligatory Professional Association, Decree No. 62-91, art. 1, published in the Diario de Centro América [Central American Newspaper], Oct. 1, 1991; HEALTH CODE, art. 134.
135. ETHICS CODE, art. 2.
136. *Id.*, art. 44.
137. *Id.*, art. 30.

138. *Id.*, art. 36.
139. *Id.*, art. 27.
140. *Id.*, art. 51. See also the section on the reproductive health of adolescents in this chapter.
141. *Id.*, art. (e).
142. *Id.*, art. 78. It specifically prohibits sterilization as a form of eugenics, as a punitive measure, as a contraceptive method, or as a method of population control. See also the section on sterilization in this chapter.
143. THE MINISTRY FOR PUBLIC HEALTH AND SOCIAL ASSISTANCE (MPHSA), REPRODUCTIVE HEALTH UNIT, OPERATIVE PLAN 1996, at 6 (1996) [hereinafter OPERATIVE PLAN].
144. ETHICS CODE, art. 81.
145. PENAL CODE, art. 137. See also the section on abortion in this chapter.
146. *Id.*, art. 140.
147. *Id.*, arts. 307-308, § (3).
148. Bylaws of the Guatemalan Association of Physicians and Surgeons, approved by the General Assembly of the Guatemalan Association of Physicians and Surgeons on Mar. 12, 1993.
149. GUAT. CONST. art. 119 (i).
150. *Id.*, art. 96.
151. Bylaws of the Guatemalan Association of Physicians and Surgeons, *Supra* note 148, art. 26; Rules of the Tribunal of Honor of the Guatemalan Association of Physicians and Surgeons, art. 2. The Tribunal is comprised of seven permanent members the president, vice-president, secretary and four members, plus two alternate members who are elected by the General Assembly by the majority of votes cast for the same period of time as the members of the Board of Directors of the Association.
152. ETHICS CODE, arts. 83-84.
153. Law of Obligatory Professional Association, art. 17; Bylaws of the Guatemalan Association of Physicians and Surgeons, *supra* note 148, art. 27.
154. Rules of the Tribunal of Honor of the Guatemalan Association of Physicians and Surgeons, art. 1.
15. *Id.*
156. Bylaws of the Guatemalan Association of Physicians and Surgeons, *supra* note 148, art. 38.
157. PENAL CODE, arts. 144-151.
158. Regulations on Medicine, Narcotics, Psychotropic Drugs, and Beauty and Personal Hygiene Products for the Home and Pharmaceutical Establishments, approved by Governmental Decree No. 106-85, Feb. 8, 1985, art. 1.
159. *Id.*, art. 1.
160. *Id.*, art. 3.
161. *Id.*, art. 1.
162. *Id.*
163. GOVERNMENT PROGRAM, *supra* note 97.
164. OPERATIVE PLAN, see *supra* note 143.
165. GOVERNMENT PROGRAM, *supra* note 97, at 57.
166. *Id.*, at 56; PLADES 1996-2000, *supra* note 97, at 35.
167. *Id.*, at 35.
168. *Id.*, at 37.
169. GOVERNMENT PROGRAM, *supra* note 97, at 97.
170. GUAT. CONST. art. 47.
171. *Id.*, art. 52.
172. GOVERNMENT PROGRAM, *supra* note 97, at 46.
173. OPERATIVE PLAN, *supra* note 143, at 3.
174. REPORT OF THE REPUBLIC OF GUATEMALA TO THE FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 166, at 139.
175. *Id.*
176. *Id.*
177. OPERATIVE PLAN, *supra* note 143, at 2.
178. *Id.*
179. *Id.*, at 11.
180. *Id.*, at 12.
181. MARÍA EUGENIA MIÑANGOS, DERECHOS SEXUALES Y REPRODUCTIVOS DE LAS MUJERES [SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN] 61 (1996) (unpublished; on file with CRLP).
182. OPERATIVE PLAN, *supra* note 143, at 2.
183. Guatemala has twenty-four health areas corresponding to each of its twenty-four administrative departments (or states). Regulations on the Ministry of Public Health and Social Assistance, *supra* note 109, art. 117.
184. OPERATIVE PLAN, *supra* note 143, at 4.
185. *Id.*
186. *Id.*
187. *Id.*, at 2.
188. HEALTH CODE, art. 104, modified by Decree Law No. 132-85, December 19, 1985.
189. OPERATIVE PLAN, *supra* note 143, at 4.
190. *Guatemala 1995: Results from the Demographic and Health Survey*, 28(2) STUD. IN FAM. PLAN. 153 (1997).
191. OPERATIVE PLAN, *supra* note 143, at 1.
192. *Results from the Demographic and Health Survey*, *supra* note 194, at 153.
193. *Id.*
194. OPERATIVE PLAN, *supra* note 143, at 6.
195. *Id.*
196. ETHICS CODE, art. 78.
197. OPERATIVE PLAN, *supra* note 143, at 6.
198. Regulations of the Ministry of Public Health, *supra* note 109, art. 45.
199. *Id.*, art. 4.
200. *Id.*, art. 130.
201. *Id.*, art. 45.
202. *Id.*, art. 131.
203. *Id.*, art. 59.
204. OPERATIVE PLAN, *supra* note 143, at 12.
205. PLADES 1996-2000, *supra* note 97, at 37, 39-40.
206. *Id.*, at 40.
207. *Id.*, at 37.
208. *Id.*, at 13 and 17.
209. OPERATIVE PLAN, *supra* note 143, at 6.
210. ETHICS CODE, art. 78.
211. *Id.*, arts. 78 and 79.
212. *Id.*
213. SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN, *supra* note 185, at 69.
214. PENAL CODE, art. 145. "Anyone who intentionally castrates or sterilizes, blinds or mutilates another person, will be punished with five to twelve years' imprisonment."
215. GUAT. CONST. art. 3.
216. The Constitution is the highest authority within Guatemala's hierarchical legal system. Therefore, no or inferior law may contradict the normative principles established in the Constitution. See the section on domestic sources of law.
217. PENAL CODE, art. 133 et al. The code defines abortion as: "...the death of the product of conception at any moment of pregnancy." *Id.*, art. 133.
218. *Id.*, art. 137.
219. *Id.*, art. 134.
220. *Id.*, art. 135.
221. *Id.*, art. 138.
222. OPERATIVE PLAN, *supra* note 143, at 1.
223. *Id.* (For general information about the programs and activities of the RH Unit, see the section on "Objectives of the Health Policy.")
224. *Id.*
225. PENAL CODE, art. 137.
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*, art. 134.
230. *Id.* This mitigating factor refers to disturbances that a woman might suffer due to the pregnancy.
231. *Id.*
232. *Id.*, art. 135.
233. *Id.*, art. 135.
234. *Id.*, last ¶.
235. *Id.*, art. 136.
236. *Id.*
237. *Id.*, art. 140.
238. *Id.*
239. *Id.*
240. *Id.*, art. 14 "An attempt to commit a crime occurs when, with the intention of committing a crime, a person takes purposeful steps toward commission initiates an act, but the crime is not consummated for reasons independent of the will of the agent." *Id.*
241. *Id.*, art. 12 "A crime is negligent unintentional when lawful acts or omissions resulting from imprudence, negligence, or lack of skill result in harm or injury." *Id.*
242. *Id.*, art. 139.
243. MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT

AND CONTROL HIV/AIDS, MANUAL DE CONSEJERÍA EN VIH/SIDA/ETS PARA PROFESIONALES DE SALUD [GUIDELINES ON HIV/AIDS/STIs FOR HEALTH PROFESSIONALS], at 3 (1996).

244. *Id.*

245. *Id.*

246. MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, ENFOQUE SINDRÓMICO DE LAS ENFERMEDADES DE TRANSMISIÓN SEXUAL [A SYMPTOMATIC FOCUS ON SEXUALLY TRANSMISSIBLE INFECTIONS], at 1 (1996).

247. *Id.*

248. MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, NORMAS, PRINCIPIOS Y RECOMENDACIONES PARA LA PREVENCIÓN Y CONTROL DE LA INFECCIÓN VIH/SIDA [REGULATIONS, PRINCIPLES AND RECOMMENDATIONS FOR THE PREVENTION AND CONTROL OF HIV/AIDS], at 17 (n.d.).

249. *Id.*, at 16.

250. *Id.*, at 17.

251. *Id.*, at 18.

252. *Id.*, at 17.

253. PENAL CODE, art. 151.

254. *Id.*

255. Governmental Decree No.119-87, Dec. 23, 1987, art. 1.

256. *Id.*, art. 2.

257. *Id.*, art. 3.

258. General Regulation of the National Commission to Prevent and Control AIDS, Agreement No.S/P-M-38-90 (October 10, 1990); National Program to Prevent and Control AIDS, art. 1.

259. MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, PLAN NACIONAL DE ACCIÓN PARA LA PREVENCIÓN Y CONTROL DE VIH/SIDA [NATIONAL PLAN TO PREVENT AND CONTROL HIV/AIDS], art. 1 (1996).

260. *Id.*, at 2.

261. *Id.*, at 3.

262. *Id.*

263. *Id.*

264. This series includes the following pamphlets: MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, NORMAS DE VIGILANCIA EPIDEMIOLÓGICA DE LAS ENFERMEDADES DE TRANSMISIÓN SEXUAL (STIs) [REGULATIONS ON EPIDEMIOLOGICAL CONTROL OF SEXUALLY TRANSMISSIBLE INFECTIONS] (1996); A SYMPTOMATIC FOCUS ON SEXUALLY TRANSMISSIBLE INFECTIONS, *supra* note 250; GUIDELINES ON HIV/AIDS/STIs FOR HEALTH PROFESSIONALS, *supra* note 247; REGULATIONS, PRINCIPLES AND RECOMMENDATIONS FOR THE PREVENTION AND CONTROL OF HIV/AIDS, *supra* note 252; MPHSA, GENERAL OFFICE OF HEALTH SERVICES, DIVISION OF MONITORING AND DISEASE CONTROL, DEPARTMENT OF TRANSMISSIBLE DISEASES, CONOZCA COMO SE TRANSMITEN LAS ENFERMEDADES VENÉREAS INCLUYENDO EL SIDA [LEARN HOW VENEREAL DISEASES, INCLUDING AIDS, ARE TRANSMITTED] (1996).

265. GUAT. CONST., art. 4.

266. *Id.*

267. Guatemala is a party to the following conventions dealing with civil and political rights: The Convention on the Political Rights of Women, *supra* note 94, and the Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 95. At the regional level, Guatemala is a party to: the Inter-American Convention on the Nationality of Women, *supra* note 94, and the Inter-American Convention on the Granting of Civil Rights to Women, *supra* note 94.

268. GUAT. CONST., art. 47.

269. *Id.*

270. CIVIL CODE, approved by Decree Law No. 106, Sept. 14, 1963, art. 79.

271. *Id.*, art. 109.

272. *Id.*, art. 108.

273. *Id.*, art. 109.

274. *Id.*, art. 110.

275. *Id.*

276. *Id.*, art. 113.

277. *Id.*, art. 114.

278. *Id.*, art. 117. Contracts or agreements entered into by both spouses that establish the property regime which regulates joint ownership of property by the married couple.

279. *Id.*, art. 116.

280. *Id.*, art. 122. "...All the goods brought by each spouse to the marriage or acquired during marriage are considered joint property; as such they shall be divided by half upon the

dissolution of the marriage."

281. *Id.*, art. 123. "...Each spouse retains the property and the administration of such property that belonged to him or her and he or she shall be the exclusive owner of the fruits, products and profits therefrom. Each spouse shall remain the sole owner of his or her salary, wages, emoluments and earnings for personal services rendered, or through commercial or industrial enterprises."

282. *Id.*, art. 124. "The husband and wife retain ownership of all property that was theirs at the time of marriage and of that which was acquired during marriage, whether they were acquired by gift or by bequest or for value paid by either spouse; provided, however, that upon the dissolution of the marriage, the spouses shall each receive half of the income generated by the property owned by each spouse, including the value of anything that was purchased or invested from such income, whatever is sold or bought with these profits, and whatever income each spouse acquires through his or her work, employment, profession or trade."

283. *Id.*, art. 126.

284. *Id.*, art. 89 (3).

285. *Id.*, art. 81. For more information on this see the section on Marriage and Adolescents below.

286. PENAL CODE, art. 226.

287. *Id.*

288. Case No. 936-95, Constitutional Court of Guatemala (March 5, 1996), Center for Legal Action on Human Rights, DOCUMENTO INFORMATIVO, GUATEMALA [NEWSLETTER, GUATEMALA], at iii (1996)]

289. PENAL CODE, Art. 232 (repealed).

290. *Id.*

291. *Id.*, art. 235 (repealed).

292. Case No. 936-95, Constitutional Court of Guatemala, *supra* note 288.

293. GUAT. CONST., art. 48.

294. See the previous section for more information on the impediments to entering into marriage.

295. CIVIL CODE, art. 173.

296. *Id.* The relevant authorities are the district mayor or a notary public.

297. CIVIL CODE, art. 175.

298. *Id.* It is also possible to obtain legal recognition of domestic partnerships in Guatemala even if one of the partners opposes such recognition or after one of the partners is deceased.

299. CIVIL CODE, art. 182, (1). The children born 180 days after the date declared as the initiation of the domestic partnership and any children born within 300 days after the dissolution of the domestic partnership are also presumed to be the children of the mother's partner. Evidence that this is not the case may be presented.

300. *Id.*, at art. 182 (2). Property acquired by only one of the partners as a gift or in exchange for another item of property are excluded from this provision.

301. *Id.*, § 3.

302. *Id.*, § 5.

303. *Id.*, art. 183.

304. *Id.*, art. 184.

305. *Id.*, art. 89 (3).

306. *Id.*, art. 153.

307. *Id.*, art. 154, (1).

308. *Id.*, §2.

309. *Id.*, art. 155.

310. *Id.* Other grounds for separation or divorce include the destruction of the domestic household; the habitual use of drugs and a gambling habit or alcoholism that disrupt the family's stability; slanderous denunciations or accusations on the part of one spouse against the other; the conviction of a spouse to more than five years' imprisonment; incurable mental illness of one of the spouses that is severe enough to declare civil commitment; and a previous decree of legal separation for an indefinite period after the persons have been declared legally separated.

311. *Id.*, arts. 159, (1), 163 and 170.

312. *Id.*, arts. 159, (2).

313. *Id.*, art. 169. The man has the same right only when he is unable to work and does not remarry.

314. *Id.*, art. 159, (3).

315. *Id.*, art. 162.

316. *Id.*

317. GUAT. CONST., art. 39.

318. CIVIL CODE, art. 131.

319. *Id.*, art. 132.

320. *Id.*, arts. 115 and 133.

321. *Id.*, art. 131.
322. *Id.*, art. 1070.
323. GUAT. CONST., art. 101.
324. *Id.*, art. 102, § k).
325. *Id.*
326. Convention No. 100 of the International Labor Organization, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* Jun. 29, 1951 (*entry into force* May 23, 1953) (ratified by Guatemala on Aug. 2, 1961) <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>>.
327. Convention No. 111 of the International Labor Organization, Convention Concerning Discrimination in Respect of Employment and Occupation, *adopted* Jun. 25, 1958 (*entry into force* Jun. 15, 1960) (ratified by Guatemala on Oct. 11, 1961), <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (visited Dec. 8, 1997).
328. Convention No. 156 of the International Labor Organization, Convention concerning Workers with Family Responsibilities, *adopted* Jun. 23, 1981, (*entry into force* Nov. 8, 1983) (ratified by Guatemala on Jan. 6, 1994), <<http://iloex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (visited Dec. 8, 1997).
329. LABOR CODE, Decree No. 1441, Aug. 16, 1961.
330. *Id.*, art. 151, §§ a, b and c.
331. *Id.*, § e.
332. *Id.*, art. 152, first ¶.
333. *Id.*, art. 152, § f.
334. *Id.*, art. 153; GUAT. CONST., art. 120, § k.
335. CIVIL CODE, arts. 109 and 131.
336. SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN, *supra* note 185, at 50.
337. GUAT. CONST., art. 71.
338. *Id.*, art. 74.
339. PLADES 1996-2000, *supra* note 97, at 3.
340. *Id.*
341. *Id.*
342. GUAT. CONST., art. 74.
343. *Id.*, art. 76.
344. PLADES 1996-2000, *supra* note 97, at 33.
345. *Id.*, at 34.
346. SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN, *supra* note 185, at 56.
347. *Id.*
348. Proyecto de Ley Orgánica del Instituto Nacional de la Mujer—INAM [Proposed Law on the Establishment of the National Institute for Women—NIW], Statement of Purpose, at 4 (n.d.).
349. *Id.*
350. *Id.*, at 5 as of July 1997, this bill had not been passed by the Guatemalan Congress).
351. *Id.*, at 26. The main objectives of this entity are to foster women's participation in the country's development; to promote real equality and equity between men and women; and to strengthen the institutional and individual efforts of both the public and private sectors in all programs designed to improve the situation of women in society.
352. Created by Resolution No. 6-5-91, issued by the Office of the Procurator General for Human Rights, May 2, 1991.
353. *Id.*
354. Organic Law of the Ministry of Public Affairs, Decree No. 40-94.
355. Decree No. 69-96, arts. 7 and 17.
356. *Id.*, art. 7.
357. GUAT. CONST., art. 3.
358. PENAL CODE, bk. II, tit. III, ch. I.
359. *Id.*, art. 173.
360. *Id.*
361. *Id.*
362. *Id.*, art. 174.
363. *Id.*, § 1.
364. *Id.*, § 2.
365. *Id.*, § 3.
366. *Id.*, art. 175.
367. *Id.* For more information about the rape of minors and adolescents, see the section on adolescents below.
368. *Id.*, art. 181.
369. *Id.*
370. *Id.*, arts. 191 and 192. The following are considered to be crimes against decency: *pimping* (promoting, facilitating, or favoring prostitution, without distinction on the basis of sex); *mguey* (living completely or in part at the expense of a person or persons who engage in prostitution); *trading in persons* (promoting, facilitating, or favoring the entry or exit of women from the country so that they may engage in prostitution); *obscene exhibitionism*; and *obscene publications and shows*.
371. *Id.*
372. *Id.*, art. 200.
373. LA HORA (THE HOUR; newspaper on-line) (visited July 20, 1997) <<http://www/lahora.com.gt/80/10/1996/pgs/naci1.htm>>
374. *Id.*
375. Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar [Law to Prevent, Sanction and Eradicate Domestic Violence], promulgated by Decree No. 97-96, Oct. 24, 1996.
376. *Id.*, art. 1.
377. *Id.*
378. *Id.*, art. 7.
379. *Id.*, art. 2.
380. *Id.*, art. 10.
381. *Id.*, art. 6.
382. *Id.*, art. 13.
383. PISO-FAMILY ASSOCIATION (APROFAM), DEMOGRAPHIC CALENDAR 1997, GUATEMALA, at 4 (1996).
384. According to the U.N. Convention on the Rights of the Child, a child is any person under the age of 18. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 28 I.L.M. 1448 (*entry into force* Sept. 2, 1990) (ratified by Guatemala on June 6, 1990).
385. PLADES 1996-2000, *supra* note 97, at 41.
386. *Id.*, at 40. "The problem of prostitution has increased alarmingly over the last few years, particularly affecting girls under the age of 15."
387. *Id.*, at 42.
388. *Id.*
389. ETHICS CODE, art. 27.
390. PLADES 1996-2000, at 36.
391. *Id.*, at 40.
392. *Id.* As of July 1997, the proposed Code of Children and Adolescents had not been approved by Congress.
393. CIVIL CODE, art. 81.
394. *Id.*, art. 8.
395. *Id.*, art. 81.
396. *Id.*, art. 82.
397. *Id.*, art. 83.
398. *Id.*, art. 84.
399. PENAL CODE, art. 173. (3) This concept is similar to statutory rape in some countries' legal systems.
400. *Id.*
401. *Id.*, art. 173.
- 402., 403. *Id.*, art. 174, (3).
404. *Id.*, art. 175, last ¶.
405. *Id.*, arts. 176 and 177.
406. *Id.*
407. *Id.*, art. 178.
408. *Id.*, arts. 176 and 177.
409. *Id.*, art. 200.
410. *Id.*, bk. II, tit. III, ch. IV.
411. CIVIL CODE, art. 8.
412. *Id.*, art. 188.
413. *Id.*, art. 189.
414. GUAT. CONST., art. 72.
415. *Id.*, art. 73.
416. *Id.*
417. PLADES 1996-2000, *supra* note 97, at 32.
418. *Id.*, at 36-37.