

# THE RIGHT OF YOUNG PEOPLE TO HEALTH AND GENDER IDENTITIES

## FINDINGS, TRENDS AND TARGETS FOR PUBLIC HEALTH ACTION



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## ACRONYMS

1. ACHR: American Convention on Human Rights
2. American Declaration: American Declaration on the Rights and Duties of Man
3. AG: General Assembly
4. CAT: Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
5. Protocol of San Salvador: Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights
6. CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
7. CRC: Convention on the Rights of the Child
8. CCPR: The Human Rights Committee
9. CESCR: The Committee on Economic, Social and Cultural Rights
10. CERD: International Convention on the Elimination of All Forms of Racial Discrimination
11. HCR: Human Rights Council
12. IACHR: Inter-American Commission on Human Rights
13. IAJC: Inter-American Judicial Committee
14. ICCPR: International Covenant on Civil and Political Rights
15. ICESR: International Covenant on Economic, Social, and Cultural Rights
16. ICJ: International Commission of Jurist
17. WHO: World Health Organization
18. LGBTI: lesbian, gay, bisexual, transgender and intersex persons
19. OAS: Organization of American States
20. PAHO: Pan-American Health Organization
21. The CEDAW Committee: The Committee on the Elimination of Discrimination against Women
22. The CRC Committee: The Committee on the Rights of the Child
23. The CAT Committee: The Committee Against Torture
24. UDHR: the Universal Declaration of Human Rights
25. UNGA: United Nations General Assembly

## FOREWORD

**R**ecently approved Resolution CD50R8 of the Pan American Health Organization (PAHO) on “Health and Human Rights” reiterates PAHO’s continuous support to its Member States in providing technical cooperation to formulate, review, and—if necessary—reform national health plans, policies, and legislation, by incorporating the international human rights instruments applicable in each case—especially those related to protecting groups in situations of vulnerability.

The present document is based on PAHO’s technical cooperation carried out in collaboration with the Royal Norwegian Embassy in Guatemala pursuant to the Regional Strategy for Improving Adolescents and Youth Health and the Plan of Action on Adolescents and Youth Health. Its purpose was to protect and promote the right to the enjoyment of the highest attainable standards of health (“right to health”) and other related human rights and fundamental freedoms of young people and women and men in situation of vulnerability (including people living with HIV; and lesbian, gay, bisexual, transgender, and intersex persons, designated collectively under the acronym LGBTI persons).

This document is based on first-hand experiences from 11 human rights capacity-building workshops held in 11 countries between 2008 and 2010. The workshops included an average of 35 participants per workshop. Participants included staff from governmental agencies (ministries of health, labor, education, and finance) and civil society (including media, LGBTI groups and youth associations) as well as judges, legislators and ombudspersons.

The observations and recommendations made at each of the workshops have been organized and analyzed by topic, trend, and public health measures. The information is derived from the reports and observations made by the stakeholders who participated in the above-mentioned workshops and national consultations, and that were applicable to health.

The report emphasizes recent developments in women’s and adolescent girls’ sexual and reproductive health. Despite progress made, there are still significant levels of stigma, discrimination, and violence against certain groups in situation of vulnerability (women, children, adolescents, and LGBTI groups). Nor are the views and human rights of these groups being effectively included in health laws, policies, and plans that affect their fundamental human right to health and well-being.

This document reflects three years of intense work in the Americas. We hope that it can serve as an inspiration and tool for advocates, public health specialists, legislators, and civil society organizations in opening new pathways leading to significant changes in the way human rights instruments are conceptualized and applied at the national legal and practical levels. Our goal is to improve the health of young people around the world, regardless of their gender identity, sexual orientation, and gender expression.



Mirta Roses Periago  
Director

*Pan American Health Organization*

# 1. Introduction: Young People's Right to Health and Other Related Human Rights

**T**he present report is the result of PAHO's technical cooperation conducted in eleven countries<sup>1</sup> with the collaboration of the Royal Norwegian Embassy in Guatemala. The aim of this report is to promote and protect the right to the enjoyment of the highest attainable standards of health ("right to health") and other related human rights and fundamental freedoms of young people and women and men in situation of vulnerability (including people living with HIV, as well as lesbian, gay, bisexual, transgender, and intersex persons, designated collectively under the acronym LGBTI persons).

The report is divided into six sections. The first section is dedicated to analyzing young's people "right to health" and other related human rights, including the interpretation of young's peoples right to health under General Comment no. 14. The second section is an analysis of the evolution of the categories and concepts of health, gender, sex, "sexual orientation" and "gender identity" in international human rights law and an explanation of the need to expand the scope of the right to health, especially in the context of young people. The third section explains the fieldwork conducted by PAHO and the Royal Norwegian Embassy in Guatemala, to promote the "right to health" of young people, which provided the basic information and findings to produce this report. Section four is a summary of the targets for public health action based on the findings and section five includes the summaries of the findings from 11 workshops identifying preliminary "trends" related to the human rights and fundamental freedoms of young peoples. Finally, section six includes a case study that demonstrates that appropriate interventions in the form of training workshops on international human rights norms and standards, and using the recommendations of the UN treaty bodies can open the way for the reform of national policies, plans and programs to ensure their conformity to international human rights norms and standards as provided by those bodies and PAHO technical guidelines.

Every Pan American Health Organization (PAHO) Member State has taken on international legal obligations with regard to human rights. Most obligations emanate from the Universal Declaration of Human Rights (UDHR), which consists of 30 articles that represent the basic rights and freedoms to which all human beings are entitled, and the American Declaration of the Rights and Duties of Man ("American Declaration"). One characteristic of these human rights and freedoms is that they are interdependent; that is, each human right and freedom is indispensable for the exercise and enjoyment of other human rights and freedoms.<sup>2</sup> The application of the UDHR, the American Declaration, and other international and regional human rights instruments in the context of health have been embraced by PAHO Member States, which have stressed that existing international and regional standards and technical guidelines must be taken into account when formulating health plans, policies, programs, and laws concerning groups in situation of vulnerability.

<sup>1</sup> The workshops were conducted in: Barbados, Belize, Dominican Republic, El Salvador (national and sub regional), Guatemala (national and sub regional), Honduras, Jamaica, Panama and Trinidad and Tobago.

<sup>2</sup> [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=3149&Itemid=2401&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=3149&Itemid=2401&lang=en)

More specifically, the right to the enjoyment of the highest attainable standard of health (“right to health”) is one of the rights expressly protected under the aforementioned human rights instruments. Article 25.1 of the UDHR states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and *medical care and necessary social services*”<sup>3</sup> [emphasis added]. Similarly, Article 11 of the American Declaration states that “every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and *medical care*, to the extent permitted by public and community resources”<sup>4</sup> [emphasis added]. In addition to being protected under the UDHR and the American Declaration, the right to health has been incorporated into a number of international treaties and instruments that, like the aforementioned documents, have the force of international law and are binding upon all ratifying Member States. For example, the World Health Organization (WHO) established in its Constitution that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”<sup>5</sup> Moreover, the UN General Assembly (UNGA) adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, in force since 1976, which had 69 signatories and 160 parties<sup>6</sup> - some of which are PAHO Member States<sup>7</sup>, recognized in its Article 12.1 “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>8</sup>

Other international human rights instruments that recognize the right to health are: the International Convention on the Elimination of All Forms of Racial Discrimination<sup>9</sup> (CERD), which entered into force in 1969, Article 5 (e)(iv), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UNGA in 1979, and in force since 1981<sup>10</sup> with 186 parties<sup>11</sup> —some of which are PAHO Member States<sup>12</sup>, Articles 11.1 (f) and 12, the Convention on the Rights of the Child (CRC) adopted by the UNGA in 1989, and in force since 1990<sup>13</sup> with 193 parties<sup>14</sup> —some of which are PAHO Member States<sup>15</sup>, Article 24, and the Convention on the Rights of Persons with Disabilities<sup>16</sup>, with 103 parties, in force since may 2008, Article 25, and in the inter-American system, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), adopted in 1988 and in force since 1999, all of the parties are PAHO Member States<sup>17</sup> (Article 10), as well as other several regional human rights instruments.

<sup>3</sup> <http://www.un.org/en/documents/udhr/index.shtml#a25>

<sup>4</sup> <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>

<sup>5</sup> [http://www.who.int/governance/eb/who\\_constitution\\_en.pdf](http://www.who.int/governance/eb/who_constitution_en.pdf)

<sup>6</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en)

<sup>7</sup> The following PAHO Member States are parties to the ICESCR: Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>8</sup> <http://www2.ohchr.org/english/law/cescr.htm#art12>

<sup>9</sup> <http://www2.ohchr.org/english/law/cerd.htm>

<sup>10</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en)

<sup>11</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en)

<sup>12</sup> The following PAHO Member States are parties to the CEDAW: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>13</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en)

<sup>14</sup> Id. 13

<sup>15</sup> The following PAHO Member States are parties to the CRC: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>16</sup> <http://www2.ohchr.org/english/law/disabilities-convention.htm>

<sup>17</sup> The following PAHO Member States are parties to the Protocol of San Salvador: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay.

As with all human rights, the right to health acts in synergy with other human rights, including, inter alia, the right to education, human dignity, life, non-discrimination, and equality.<sup>18</sup> In other words, a certain degree of physical and mental health is necessary to exercise these recognized human rights—while at the same time, the protection and exercise of these rights are essential to achieving genuine physical and mental well-being.<sup>19</sup> Therefore, violation or failure to enforce and protect human rights can adversely affect the physical, mental, and social well-being of all people.<sup>20</sup>

### 1.1. Interpretation of Young People’s Right to Health: General Comment No. 14

In the year 2000, the Committee on Economic, Social and Cultural Rights (CESCR) published General Comment No. 14 to address substantive issues arising in the implementation of Article 12 of the ICESCR. In interpreting the meaning of the aforementioned article, the CESCR explained that the right to health is neither the right to be healthy nor the right to health care. Instead, “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life.” More specifically, the right to health extends to “the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related information and education, including on *sexual and reproductive health*” [emphasis added]. Therefore, the right to health must be interpreted as “[the] right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”<sup>21</sup>

The CESCR’s controlling interpretation of the right to health responds to the dynamic character of the world health situation. Today, the notion of health differs significantly from that which existed when the ICESCR was adopted in 1966; and determinants of health that were not taken into account then are now being considered. For example, formerly unknown diseases such as HIV/AIDS constitute determinants of health that have now created new obstacles for the realization of the right to health; as such, they must be taken into account when interpreting Article 12 today.<sup>22</sup> Similarly, determinants of health that existed then are no longer interpreted to mean the same thing nowadays. For example, the CESCR expressed in General Comment No. 20 that “[the term] sex has evolved considerably to cover not only physiological characteristics but also the social construction of *gender* stereotypes, prejudices, and expected roles, all of which have created obstacles to the equal fulfillment of economic, social, and cultural rights”<sup>23</sup> [emphasis added].

#### General Comment 20 of the Committee on Economic, Social and Cultural Rights Evolution of the Concept of Sex

The concept of “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfillment of economic, social and cultural rights.

<sup>18</sup> [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=3149&Itemid=2401&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=3149&Itemid=2401&lang=en)

<sup>19</sup> *Id.* 18

<sup>20</sup> *Id.* 19

<sup>21</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>22</sup> *Id.*

<sup>23</sup> <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc>

As the notions of health, sex, and gender continue to evolve, the scope of the right to health must continue to widen, especially in the context of young people.

### **Elements of the Right to Health**

The right to health is composed of the following essential elements:

- (a) availability;
- (b) accessibility;
- (c) acceptability; and
- (d) quality.

These elements are both interrelated and legally enforceable.

#### **a. Availability**

Health facilities, goods, and services must be available in sufficient quantity within the Member State. Although the CESCR allows some flexibility with regard to the nature of these facilities, goods, and services, it remains firm that they must include not only the traditional underlying determinants of health, but also those that—as described above—emerge to create new obstacles for the realization of the right to health.

#### **b. Accessibility**

Health facilities, goods, and services must be physically and economically accessible to everyone without discrimination on the basis of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.” In addition, accessibility includes the right to seek, receive, and impart information and ideas concerning health issues; and the exercise and enjoyment of such a right must not be encumbered by discrimination on the basis of any of the aforementioned grounds.

#### **c. Acceptability**

Health facilities, goods, and services must be mindful of medical ethics; respectful of the culture of individuals, minorities and communities as a whole; and sensitive to gender requirements.

#### **d. Quality**

Health facilities, goods, and services must be of good quality, as well as scientifically and medically appropriate.<sup>24</sup>

These elements of the “right to health” are not only applicable to young people. The “right to health” of young people is the same as for other groups, such as “adults” although young people may be constrained in its exercise for the only reason of being young, for example with respect to “medical consent” or “the right to receive and impart information versus parental control”.

<sup>24</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

## 1.2. Obligations of the Parties to the ICESCR with Respect to Young People's Right to Health

Article 12.2 of the ICESCR offers the following illustrative examples of the obligations acquired by its parties with respect to young people's right to health:

- (i) the right to maternal, child, and reproductive health;
- (ii) the right to healthy natural and workplace environments;
- (iii) the right to disease prevention, treatment, and control; and
- (iv) the right to health facilities, goods, and services.

These examples define the action to be taken by the parties to the ICESCR. They illustrate the content of the right to health as defined in Article 12.1, as interpreted by the CESCR.

### ***i. The Right to Maternal, Child, and Reproductive Health***

Pursuant to Article 12.2 (a) of the ICESCR, its parties are required to enact, *inter alia*, “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information” [emphasis added].

### ***ii. The Right to Healthy Natural and Workplace Environments***

Pursuant to Article 12.2 (b) of the ICESCR, its parties are required to adopt, *inter alia*, measures to ensure that populations have access to safe and potable water, basic sanitation, and an environment free of harmful substances and hazards.

### ***iii. The Right to Disease Prevention, Treatment, and Control***

Pursuant to Article 12.2 (c) of the ICESCR, its parties are required to establish, *inter alia*, “prevention and education programs for behavior-related health concerns, such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely *affecting sexual and reproductive health*” [emphasis added]. In addition, its parties are required to promote not only the traditional underlying determinants of health, but also those that—as described above—emerge to create new obstacles for the realization of the right to health. This is the case, for example, of “environmental safety, education, economic development, and *gender equity*” [emphasis added]. Finally, its parties are required to disaggregate health and socio-economic data according to sex, which is “essential for identifying and remedying inequalities in health.”

### ***iv. The Right to Health Facilities, Goods, and Services***

Pursuant to Article 12.2d of the ICESCR, its parties are required to provide for, *inter alia*, “equal and timely access to basic ... health services and health education.”

### 1.3. Special Considerations Pertinent to the Realization of Young People's Right to Health

The parties to the ICESCR are legally required to incorporate certain principles into their agendas as they set out to fulfill their obligations under Article 12 of the treaty. These principles are, *inter alia*, non-discrimination and equality.

#### i. Non-Discrimination

One of the most important considerations with regard to the realization of young people's right to health is non-discrimination. As emphasized above, the ICESCR prohibits any discrimination in access to health care on the basis of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health." The phrase "other status" indicates that the list of grounds on which discrimination is prohibited is non-exhaustive and, therefore, subject to expansion. In other words, the ICESCR would also ban any discrimination on the basis of unnamed grounds if such a discrimination "nullif[ies] or impair[s] the equal enjoyment or exercise of the right to health."

#### ii. Equality

Another important consideration with respect to the right to health of young people is equality. All parties to the ICESCR must emphasize and prioritize quality of access to health care and services. They have under a special obligation to provide for members of vulnerable groups and avoid the inappropriate allocation of health resources. According to the CESCR, any failure of the parties to the ICESCR to fulfill such obligations could result in "discrimination that may not be overt."

## 2. “Gender” and “Sex” Considerations in the Context of Young People’s Right to Health

In addition to incorporating the principles of non-discrimination and equality, the parties to the ICESCR must take into account “gender” and “sex” considerations when fulfilling their obligations under Article 12. According to the CESCR, States must “integrate a gender perspective in their health-related policies, planning, programs and research in order to promote better health for both women and men.”

“Gender” and “sex” are socially constructed categories, the meaning of which has grown more sophisticated over time. The term “sex” has been defined by PAHO as “the sum of biological characteristics that define the spectrum of humans as females and males”. The CESCR has expressed in General Comment No. 20 that “sex” “has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices, and expected roles, which have created obstacles to the equal fulfillment of economic, social, and cultural rights.

For the United Nations and the Organization of American States, a major goal is to promote the realization of the right to health of women and adolescent girls by removing barriers—such as women’s health risks, discrimination, and domestic violence—that interfere with the access to health services, education, and information. To achieve this goal, both organizations require their Member States to develop and implement comprehensive strategies that take into account the health needs of women and adolescent girls as part of an overarching “gender mainstreaming” agenda.<sup>25</sup> According to the CESCR, such strategies would include “interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable care, including *sexual and reproductive services*” (emphasis added). Moreover, such strategies would promote “preventive [...] and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them of their full reproductive rights.”<sup>26</sup>

In addition to the ICESCR several international and regional human rights instruments also require their parties to take into account the health needs of women and adolescent girls in the context of the right to health. In these instruments the crosscutting human rights themes of non-discrimination and equality in the availability, accessibility, acceptability, and quality of sexual and reproductive health services and information are constant themes. With respect to non-discrimination, the American Declaration of the Rights and Duties of Man (“American Declaration”), adopted in 1948, binding upon every OAS Member State.<sup>27</sup> establishes in its Article 2: “[a]ll persons [...] have the rights and duties established in this Declaration,

<sup>25</sup> The UN Economic and Social Council (ECOSOC) which serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system defined ‘gender mainstreaming’ as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.” See <http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>

<sup>26</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>27</sup> The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have established that, despite having been adopted as a declaration and not as a treaty, the American Declaration constitutes a source of international obligations for every OAS Member State.

without distinction as to race, sex, language, creed or any other factor”<sup>28 29</sup> (emphasis added). The International Covenant on Civil and Political Rights (ICCPR) adopted by the UNGA in 1966, and in force since 1976<sup>30</sup> with 167 parties —some of which are PAHO Member States<sup>31</sup>, establishes in Article 2, that “each party to the treaty undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”<sup>32</sup> (emphasis added)<sup>33</sup>.

In an effort to explain the obligations of the parties to the ICCPR, the Human Rights Committee (CCPR) published General Comment No. 28. In this Comment, the CCPR explained that the parties to the treaty must “take all steps necessary, including the prohibition of discrimination on the grounds of sex, to put an end to discriminatory actions [...] which impair the equal enjoyment of rights”<sup>34</sup> (emphasis added). Such steps would include, *inter alia*, “the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights, [...] the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant, [and the] adopt [ion of] positive measures in all areas so as to achieve the effective and equal empowerment of women.”

In order to explain the obligations of the parties to the ICESCR, the CESCR published General Comment Nos. 14, 16, and 20. In General Comment No. 14, the CESCR expressed that “[h]ealth facilities, goods and services have to be accessible to everyone without discrimination, [...] especially the most vulnerable sections of the population, in law and in fact.”<sup>35</sup> The distinction between law and fact is further explored in General Comment No. 16, where the CESCR distinguished between formal and substantive equality: “Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.”<sup>36</sup> Furthermore, it recognized that “substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, *prima facie*, gender-neutral.” Therefore, the parties to the ICESCR must “take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.” In the end, one of the ultimate goals of the ICESCR is that its parties effectively achieve formal and substantive equality alike.

<sup>28</sup> <http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>

<sup>29</sup> As with the phrase ‘other status,’ the phrase ‘other factor’ indicates that the list of grounds upon which discrimination is prohibited is non-exhaustive and, therefore, subject to expansion.

<sup>30</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>31</sup> The following PAHO Member States are parties to the ICCPR: Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

<sup>32</sup> <http://www2.ohchr.org/english/law/ccpr.htm#part2>

<sup>33</sup> In the same terms the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UNGA in 1979, and in force since 1981, in its Article 2 underlines: “each party to the treaty undertakes “[t]o embody the principle of the equality of men and women in [its] national constitution[] or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.”

<sup>34</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)

<sup>35</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>36</sup> <http://www.unhcr.org/refworld/docid/43f3067ae.html>

To protect the right to health of women and adolescent girls, both in law and practice, PAHO Member States adopted the resolutions “Regional Strategy for Maternal Mortality and Morbidity Reduction” (CSP26.R13), the “Gender Equality Policy” (PAHO CD46.R16) and the “Plan of Action for Implementing the Gender Equality Policy” (CD49 R.12). In the former, PAHO Member States undertook to “develop key partnerships between local and national governments, health services, professional associations, women’s organizations, and other nongovernmental organizations, in order to enhance efforts to reduce maternal mortality and morbidity, in addition to ensuring interagency collaboration when promoting and implementing maternal mortality and morbidity reduction strategies.”<sup>37</sup> In the latter, PAHO Member States promised to “develop national health plans, policies, and laws for advancing the integration of gender equality in the health systems, and develop specific health policies, programs, and laws with a gender equality perspective and ensure that they are implemented through the establishment or strengthening of a gender office within the Ministry of Health.”<sup>38</sup>

Violence against women is of great concern to PAHO Member States as well. In its Strategic Plan 2008-2012, the Pan American Sanitary Conference outlined a number of strategic objectives, one of which is Strategic Objective No. 3 (SO3). In this objective, PAHO Member States “focus[] on the prevention and reduction of disease, disability, and premature death from chronic non-communicable conditions, mental disorders, *violence* and injuries”<sup>39</sup> (emphasis added). Regarding violence, PAHO Member States highlighted that “some 20% to 60% of households in the Region are the scene of physical and psychological violence against women, girls, and boys,” and that “although laws to protect women and children from intra-family violence have been enacted in every country, they are not being fully enforced.”<sup>40</sup>

PAHO Member States also acknowledged in the technical document “Scaling-Up of Treatment within a Comprehensive Response to HIV/AIDS” (CD45/11) that HIV/AIDS is intertwined with gender inequality because of the obstacles it creates in accessing anti-retroviral therapy.<sup>41</sup> PAHO Member States further acknowledged that, in addition to gender inequality, other major challenges in this respect are the stigma and discrimination that affect society at large, but especially the young and populations in situation of vulnerability.<sup>42</sup> In response to this situation, PAHO Member States adopted the resolution “Scaling-Up of Treatment within a Comprehensive Response to HIV/AIDS” (CD45.R10), which promises to reduce stigma within the health services, as well as to sustain and reinforce prevention activities and services for groups in situation of vulnerability, including women, children, youth, and men who have sex with men.<sup>43</sup>

The theme of education and access to information in the context of sexual and reproductive health of adolescents is covered in General Comment No. 4 of the Committee on the Rights of the Child (CRC)<sup>44</sup>. In this Comment the Committee explained that adolescents must be given access to “sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)”<sup>45</sup> (emphasis added). To this end, the Committee stressed that “[i]t is essential to find proper means and methods of providing

<sup>37</sup> <http://www.paho.org/english/gov/csp/csp26.r13-e.pdf>

<sup>38</sup> [http://new.paho.org/hq/dmdocuments/2009/CD49.R12%20\(Eng.\).pdf](http://new.paho.org/hq/dmdocuments/2009/CD49.R12%20(Eng.).pdf)

<sup>39</sup> <http://new.paho.org/hq/dmdocuments/2009/OD-328-complete-e.pdf>

<sup>40</sup> *Id.*

<sup>41</sup> <http://www.paho.org/english/gov/cd/CD45-11-e.pdf>

<sup>42</sup> *Id.*

<sup>43</sup> <http://www.paho.org/english/gov/cd/CD45.r10-e.pdf>

<sup>44</sup> Committee established under the Convention of the Rights of the Child (CRC), a treaty adopted by the UNGA in 1989, and in force since 1990. As of June 2011, it had 193 parties. According to Article 2 of the CRC, each party to the treaty undertakes to respect and ensure the human rights of each child “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (emphasis added).

<sup>45</sup> [http://www2.ohchr.org/english/bodies/crc/docs/GC4\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC4_en.doc)

information that is [sic] adequate and sensitive to the particularities and specific rights of adolescent girls and boys”<sup>46</sup> (emphasis added).

Several PAHO mandates have echoed the CRC in this respect. In the resolution “Regional Strategy for Improving Adolescent and Youth Health” (CD48/8), PAHO Member States warned, “[t]he primary health care model demands health care providers to be adequately prepared to respond to the needs of individuals throughout the life cycle.” For this reason, “[providers] are required to have knowledge of the specific needs of young people and the barriers they face,”<sup>47</sup> especially those individuals who belong to groups in situation of vulnerability, as identified by PAHO Member States in the technical document “Plan of Action on Adolescent and Youth Health” (CD49/12) and the resolution “Scaling-Up of Treatment within a Comprehensive Response to HIV/AIDS” (CD45.R10). These groups include, *inter alia*, low income, poorly educated, and HIV/AIDS patients and at-risk individuals, as well as men who have sex with men.<sup>48</sup>

## 2.1 Young People’s Gender Identity, Gender Expression, Sexual Orientation, and the “Right to Health”

Discrimination on the basis of sex and gender can no longer be interpreted to apply only to gender-conforming heterosexual “men and women” and “boys and girls.” Nowadays, such an interpretation has proven insufficient. On the one hand, it perpetuates customs, policies, and laws that stigmatize and discriminate against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons specifically because of their non-conformity with prevailing gender norms in terms of their gender identity, gender expression, and/or sexual orientation. On the other hand, such a limiting definition would effectively exclude LGBTI youth from gaining access to civil, political economic, social and cultural rights and fundamental freedoms, including “the right to health”.

### i. International Human Rights Law and the “right to health” of LGBTI persons

#### a. International protection

The international community has responded to this limited interpretation by expanding the scope of “discrimination on the basis of sex” to protect not only heterosexual individuals, but also LGBTI persons of all ages, including youth. For example, in General Comments No. 14 and No. 20, the CESCR explained that Articles 2 and 3 of the ICESCR also ban any discrimination in access to health care and underlying determinants of health on the basis of sexual orientation and gender identity.<sup>49 50 51</sup> Similarly, in General Comment No. 4, the Committee on the Rights of the Child explained that the grounds on which discrimination is prohibited under the CRC “also cover adolescents’ sexual orientation.”<sup>52</sup>

Echoing the CESCR and the Committee on the Rights of the Child, the Human Rights Committee (CCPR) held in *Toonen v. Australia* that any distinction between individuals on the basis of sexual orientation and gender identity amounted to a violation of Article 2 of the International Covenant on

<sup>46</sup> *Id.*

<sup>47</sup> <http://www.paho.org/english/gov/cd/cd48-08-e.pdf>

<sup>48</sup> <http://www.paho.org/english/gov/cd/CD45.r10-e.pdf>

<sup>49</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

<sup>50</sup> <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc>

<sup>51</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>52</sup> <http://www2.ohchr.org/english/bodies/crc/comments.htm>

Civil and Political Rights (ICCPR).<sup>53</sup> In doing so, it rejected the Tasmanian government's arguments that its laws criminalizing homosexuality were "justified on public health and moral grounds, as they are intended in part to prevent the spread of HIV/AIDS in Tasmania, and because ... moral issues must be deemed a matter for domestic decision." With respect to the public health argument, it reasoned that "the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS." Moreover, it observed that "statutes criminalizing homosexual activity tend to impede public health programs by driving underground many of the people at the risk of infection." Therefore, the "criminalization of homosexual activity ... would appear to run counter to the implementation of effective education programs in respect of the HIV/AIDS prevention." Finally, with respect to the argument based on moral issues, it found it unacceptable for moral issues to be considered exclusively a matter of domestic concern, "as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with [human rights]."

In the year 2011, the UN Human Rights Council (HRC) established a formal mechanism to combat discrimination and violence against LGBTI people based on their sexual orientation and gender identity. In the resolution "Human Rights, Sexual Orientation, and Gender Identity" (A/HRC/17/L.9/Rev.1), the HRC Member States "express[ed] grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity."<sup>54</sup> In light of this concern, they asked the United Nations High Commissioner for Human Rights (UNHCHR) to conduct a study documenting discriminatory laws and practices, as well as acts of violence, against individuals based on their sexual orientation and gender identity. They also asked the UNHCHR for guidance on how to use international human rights law to put an end to such discrimination and violence.

In the resolution "Human Rights, Sexual Orientation, and Gender Identity" of 11 August 2011 (A/HRC/17/L.9/Rev.1), the Human Rights Council Member States:

- **express[ed]** grave concern at acts of violence and discrimination committed against LGBTI individuals because of their sexual orientation and gender identity;
- **asked** the UNHCHR to document laws and practices, including acts of violence, that discriminate against LGBTI individuals because of their sexual orientation and gender identity; and
- **asked** the UNHCHR for guidance on how to use international human rights law to better protect the rights of LGBTI individuals.

<sup>53</sup> <http://www.unhchr.ch/tbs/doc.nsf/0/d22a00bcd1320c9c80256724005e60d5>

<sup>54</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/12session/resdec.htm>

### b. Regional Protection

The Organization of American States (OAS) has been taking measures since 2008 to ensure that its Member States protect LGBTI persons from discrimination on the basis of gender identity, gender expression, and sexual orientation. For example, in 2010 the OAS adopted the resolution “Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2600). In it, the OAS Member States reaffirmed that the UDHR protects the human rights of all human beings without distinction on the basis of sex—which includes “discrimination against persons because of their sexual orientation and gender identity.” Accordingly, they resolved, “to condemn acts of violence and human rights violations committed against persons because of their sexual orientation and gender identity.”

In addition, they set out “to take all necessary measures to ensure that acts of violence and related human rights violations not be committed against persons because of their sexual orientation and gender identity, and to ensure that victims be given access to justice on an equal footing with other persons.” Finally, they promised “to consider ways to combat discrimination against persons because of their sexual orientation and gender identity,” and to provide “adequate protection for human rights defenders who work on issues related to acts of violence, discrimination, and human rights violations committed against persons because of their sexual orientation and gender identity.”

In the resolution “Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2600) of 2010, the OAS Member States undertook to:

- **prevent and condemn** acts of violence, discrimination, and human rights violations committed against persons because of their sexual orientation and gender identity;
- **ensure** that the victims of such crimes be given access to justice on an equal footing with other persons; and
- **provide** adequate protection for human rights defenders who work on issues related to such crimes.

Taking one step further in the protection of LGBTI persons from discrimination on the basis of their gender identity, gender expression, and sexual orientation, in 2011 the OAS adopted the resolution “Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2653). In it, the OAS Member States first reaffirmed that which had been agreed upon in similar previous resolutions. They then requested that the Inter-American Commission on Human Rights (IACHR) “pay particular attention to its work plan [en]titled “Rights of LGBTI People” and, in keeping with its established practice, ... prepare a hemispheric study on the subject; and ... urge member states to participate in the report.” In addition, they asked the IACHR and the Inter-American Juridical Committee (IAJC) “to prepare a study on the legal implications and conceptual and terminological developments as regards sexual orientation, gender identity, and gender expression, and to instruct the Committee on Juridical and Political Affairs to include on its agenda the examination of the results of the requested studies, with the participation of interested civil society organizations.”

In its 2011 resolution “Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2653), the OAS Member States:

- **reaffirmed** their commitment to:
  - (1) preventing violence, discrimination, and human rights violations committed against LGBTI people because of their sexual orientation and gender identity;
  - (2) providing equal access to the justice system for the victims of such crimes; and
  - (3) protecting human rights defenders working on behalf of the victims of such crimes;
- **requested that**
  - a. the IACHR prepare a study on the human rights of LGBTI people; and
  - b. the IACHR and the IAJC provide legal definitions of sexual orientation, gender identity, and gender expression.

## ii. Definitions

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereafter referred to as the Special Rapporteur on the right to health), in his report to the Human Rights Council of 27 April 2010 defines **gender identity** as “each person’s deeply felt internal and individual experience of **gender**, which may or may not correspond with the sex assigned at birth, including the personal sense of the body ... and other expressions of gender.”<sup>55</sup> In addition, the Special Rapporteur on the right to health defines in the same report to the Human Rights Council, **sexual orientation** as “each person’s capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”<sup>56</sup>

The International Commission of Jurists, an international non-governmental human rights organization, defines **gender expression** as a visible source of identification that is displayed through characteristics such as personal deportment, mode of dress, mannerisms, speech patterns, socioeconomic behaviors and interactions, and other external features that may subvert traditional expectations of male and female norms.<sup>57</sup>

## iii. Criminalization Based on Gender Identity, Gender Expression, and Sexual Orientation

One way to discriminate against LGBTI persons, including young people, on the basis of *sex and gender identity* is by criminalizing their way of living and sexual conduct. In his report to the Human Rights Council, the Special Rapporteur on the right to health noted that, as of 2010, there were 80 countries in which consensual same-sex conduct is punishable by law, and that many countries also penalized individuals merely because of their sexual orientation and gender identity.<sup>58</sup> He then warned that these laws have the effect of substantially diminishing individuals’ self-worth and dignity, thus preventing the realization of the right to health—as well as other related human rights—as outlined in Article 12 of the ICESCR.<sup>59</sup>

<sup>55</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>56</sup> *Id.*

<sup>57</sup> <http://www.icj.org/dwn/database/PractitionersGuideonSOGI.pdf>

<sup>58</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>59</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

### a. Consequences of Criminalization on the Right to Health

A natural consequence of criminalization is the creation of the societal perception that LGBTI persons are abnormal and criminals, which has a significant negative impact on the way they see themselves. In this respect, the Special Rapporteur on the right to health noted that the rate of suicide attempts among young people who engage in same-sex conduct is much higher than that among young people who identify themselves as heterosexual.

Another natural consequence of criminalization is the perpetuation of existing prejudices and stereotypes, which prevents otherwise able institutions from properly addressing the concerns of LGBTI persons. For example, the Diagnostic and Statistical Manual of Mental Disorders (“the Manual”), published by the American Psychiatric Association, standardizes criteria for the classification of mental disorders. Until very recently, the Manual maintained that homosexuality was a mental disorder; and it still includes other so-called gender identity disorders. This is the case, for example, of transvestic fetishism.<sup>60</sup> According to the Manual, transvestites should be treated with psychotherapy aimed at uncovering and working through the underlying causes of their behavior, without regard to the possible discomfort that they may feel because of their gender identity. In the opinion of the Special Rapporteur on the right to health, such attempts to cure “are not only inappropriate but have the potential to cause significant psychological distress.”<sup>61</sup>

Attempting to cure the identity, expression, and orientation of LGBTI persons is not the only way in which health care practitioners deny effective health services to these individuals. For example, health professionals often refuse to treat homosexual patients altogether or respond with hostility when compelled to do so. Furthermore, in countries where homosexuality is deemed a crime, health professionals may be required by law to report these individuals to the appropriate authorities, thereby effectively failing to meet the obligation of confidentiality attached to the health profession.

The Special Rapporteur on the right to health considers that criminalization based on gender identity, gender expression, and sexual orientation causes LGBTI persons to:

- **see themselves in a negative way**, often feeling as if they were abnormal and criminals;
- **fall victim to prejudices and stereotypes**, which in turn prevents health centers and other institutions that would otherwise be able to do so from properly addressing their concerns; and
- **remain outside the reach of the health care system** for fear of prosecution based on their livelihood and sexual conduct, thus making them more prone to illnesses and overall poor health.

<sup>60</sup> <http://allpsych.com/disorders/paraphilias/transvestite.html>

<sup>61</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

### **b. Incompatibility of Criminalization with the Human Rights Approach to Public Health**

The adoption and subsequent enforcement of laws criminalizing same-sex conduct or punishing individuals because of their gender identity, gender expression, or sexual orientation is not only a breach of a State's international duty to prevent discrimination against individuals on the basis of sex. It also creates an atmosphere wherein LGBTI individuals are disempowered and prevented from achieving the full realization of their human rights, including their right to health.<sup>62</sup> As the Special Rapporteur on the right to health noted in his report to the HRC, such criminalization—along with the negative association of HIV/AIDS with homosexuality—also weakens the ability of heterosexual individuals to fully realize their right to health and other related human rights.

PAHO Member States also consider the resulting stigma and discrimination as two major challenges to region-wide HIV/AIDS prevention efforts. In the technical document *Scaling-Up of Treatment within a Comprehensive Response to HIV/AIDS* (CD45/11), PAHO Member States recognized that stigma and discrimination affected individuals, be they heterosexual or LGBTI, and drove them underground and away from the reach of the health care system.<sup>63</sup> Therefore, PAHO Member States undertook to sustain and reinforce HIV/AIDS prevention activities as well as activities to reduce stigma within health services—especially those services aimed at groups in situation of vulnerability, including women, children, youth, men who have sex with men, sex workers, intravenous drug users, and families of persons living with HIV/AIDS.<sup>64</sup>

According to the Special Rapporteur on the right to health, decriminalization would facilitate meeting this and other similar obligations, in that it would create an atmosphere conducive to the enjoyment and full realization of all human rights—including the right to health—without State-sponsored stigma and discrimination.<sup>65</sup> For the aforementioned reasons, the Special Rapporteur on the right to health believes that laws criminalizing same-sex conduct or punishing individuals because of their gender identity, gender expression, or sexual orientation must be promptly repealed.

### **iv) Invisibility of Gender Identities, Gender Expressions, and Sexual Orientations in National Health Agendas and Systems**

Another way to discriminate against LGBTI persons on the basis of *sex and/or gender identity* is to ignore their specific needs when formulating health plans, policies, programs, and laws. Pursuant to General Comment No. 14, the parties to the ICESCR are required to disaggregate health and socio-economic data according to sex, so that the inequalities in health can be properly identified and remedied.<sup>66</sup> However, the inappropriate interpretation of sex as applied generally to heterosexual men and women tends to hinder efforts to identify and remedy inequalities in health. It namely excludes LGBTI persons from national health agendas and systems, with negative consequences on their enjoyment of basic human rights and fundamental freedoms. For instance, health and socio-economic data that is compiled may be used to create and implement health plans, policies, programs, and laws that do not take into consideration all gender identities, gender expressions, and sexual orientations. In addition, this data may be used to implement health education and prevention services—including those related to sexual and reproductive health—that fail to address specific LGBTI issues. The resulting invisibility of LGBTI persons and violation of their human rights, which will be explored in more detail in upcoming chapters, amount to the kind of discrimination prohibited in several international and regional human rights instruments.

<sup>62</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>63</sup> <http://www.paho.org/english/gov/cd/CD45-11-e.pdf>

<sup>64</sup> <http://www.paho.org/english/gov/cd/CD45.r10-e.pdf>

<sup>65</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>66</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)



### 3. PAHO's Initiative on Young People's Human Rights

#### The Initiative: Workshops and Focus Groups

In 2008, the Royal Norwegian Embassy and the Pan American Health Organization joined forces under one initiative: *HIV Prevention in Young People Using a Human Rights Framework in Central America and the Caribbean 2008–2013*. The goals of this initiative include the following:

- providing support to priority and high-impact countries for establishing a regional legislative and policy environment for gender-sensitive and human rights based HIV prevention and sexual and reproductive health programs for young people;
- building human rights capacity for providing gender-sensitive and human rights-based HIV prevention and sexual and reproductive health services and programs for young people;
- assisting six countries in expanding HIV prevention services for young people, utilizing gender, sexual and reproductive health, and human rights approaches; and finally
- strengthening regional, sub-regional, and national capacity to generate and use strategic information for developing and monitoring HIV programs for young people.

In order to implement this initiative, 11 capacity-building workshops in eleven countries were conducted to address, among others, the following issues:

- (i) raising awareness of the most relevant human rights and fundamental freedoms related to the situation of young people, people living with HIV, sex workers, and LGBTI persons;
- (ii) facilitating access on the part of civil society organizations, police, judges, organizations of persons living with HIV, sex workers, and LGBTI people to instruments and mechanisms to protect their right to health—especially in the context of HIV/AIDS and sexual and reproductive health;
- (iii) Eliminating legislative barriers that single out and stigmatize certain groups—such as persons living with HIV, sex workers, and LGBTI persons—and ensuring that health systems recognize and respect the different sexual practices and identities of young people, despite long-standing conservative and religious views;
- (iv) ensuring that LGBTI persons have access to health systems and information, especially that which relates to their sexual and reproductive health;
- (v) developing strategies and actions that clarify sexual health issues as distinct from reproductive health issues, as a mechanism to strengthen human rights in the context of sexual health and sexuality; and
- (vi) ensuring conformity to minimum international and regional health and human rights standards, including those related to family planning, unsafe abortion, internally displaced persons, sexual violence, and sterilization procedures.

The training workshops included an average of 35 participants per workshop from governmental agencies (ministries of health, labor, education and finance) and civil society, as well as judges, legislators, ombudspersons, the media, LGBTI groups and associations of young people. Participants were organized in focus groups. During the workshops PAHO's human rights and HIV experts used international human rights instruments and standards, included in Annex 1 and 2, as well as reports and concluding observations applicable to health from different human rights treaty bodies and special procedures to facilitate the

discussions and to allow participants to determine any overriding concerns regarding human rights and fundamental freedoms—not only of young people, but also of other groups in situation of vulnerability—such as persons living with HIV, women, children, and LGBTI persons.

This analysis identifies preliminary trends or patterns in the conclusions, observations, and recommendations offered by the participants that might help identify:

- particular problems related to access to health care on the part of said vulnerable groups; and
- any particular obstacle that needs to be addressed using a human rights-based approach facilitated by PAHO.

### Focus groups:

After each workshop, the facilitators prepared a summary report documenting the participants' responses to the prepared questionnaires provided (Annex 3 and 4). Annex 3 includes a model agenda for a national workshop “to promote the development of children and adolescents through programming and planning using a human rights law approach” and Annex 4 includes two model questionnaires.

- The observations and recommendations were grouped under the topical headings listed below. The findings for each of these topics are discussed in this report.

**Topic 1:** Consciousness-raising, training, and spreading the word on the most relevant human rights and fundamental freedoms

**Topic 2:** Stigma and discrimination against certain groups in situation of vulnerability

**Topic 3:** Legislation, policies, and programs incorporating considerations of adolescents, particularly with regard to their sexual and reproductive health

**Topic 4:** Legislation, policies, and programs incorporating considerations of the LGBTI community

**Topic 5:** Mechanisms for identifying, investigating, prosecuting, penalizing, and monitoring human rights violations and freedoms

The observations and recommendations made at each of the above workshops have been organized by topic. This information has been analyzed and compared with analyses of reports and concluding observations from the following Human Rights Treaty Bodies<sup>67</sup>:

- The Committee on the Elimination of Discrimination against Women (the CEDAW Committee)
- The Committee on the Rights of the Child (the CRC Committee)
- The Committee Against Torture (the CAT Committee)
- The Human Rights Committee (CCPR)
- The Committee on Economic, Social and Cultural Rights (CESCR)
- The Committee on the Elimination of All Forms of Racial Discrimination (CERD)
- The Human Rights Council
- Opinions from the following “Special Rapporteurs”:
- the Special Rapporteur on violence against women, its causes and consequences
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- the Special Rapporteur on extrajudicial, summary and arbitrary executions
- the Special Rapporteur on the Right to Education
- the Special Rapporteur on Torture and cruel, inhuman or degrading treatment or punishment

<sup>67</sup> The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

## 4. Targets for Public Health Action on Young People's Right to Health Based on Findings and Trends

This section summarizes the targets identified for public health action based on the findings and trends listed previously in this document.

### *Topic 1: Consciousness-raising, training, and spreading the word on the most relevant human rights and fundamental freedoms*

- Introduce measures to raise awareness about international and regional instruments and standards relating to the right to health of young people, women, children, LGBTI persons and people living with HIV among health workers and prisons personnel;
- Provide young people with information regarding sexual and reproductive health and STIs prevention following international and regional human rights instruments and standards;
- Undertake targeted awareness-raising for lawyers, judges, criminal justice workers, health care providers and law enforcement officials regarding the human rights of young people, women, children, LGBTI persons and people living with HIV in order to advance changes in national legislation and plans; and
- Conduct specific training in primary and secondary schools on sexual and reproductive health in a manner consistent with CRC and the CEDAW in coordination with Ministries of Education and Health.

### *Topic 2: Stigma, discrimination and violence against certain groups in situations of vulnerability (women, children, adolescents, and LGBTI groups)*

- Ensure mechanisms of protection, investigation, monitoring and enforcement of human rights violations to avoid discriminatory and violent practices against young people, women, children, LGBTI groups and those persons responsible for murder and/or acts of violence and discrimination are penalized adequately;
- Support the review of existing laws and policies in the analyzed countries, making sure that laws, plans and policies are aligned with international instruments and standards regarding discrimination and decriminalization of specific sexual conducts;
- Promote the adoption and implementation of specific legislation and development programs that protect the rights of women, young people, children and LGBTI persons with emphasis on provisions regarding gender identities, sexual orientation and gender expressions; and
- Issue and enforce laws that prohibit discrimination with respect to women, children, young people, LGBTI persons and other groups in situation of vulnerability, including prisoners, sex workers, and drug users.

### **Topic 3: Legislation, policies, and programs that particularly incorporate adolescents' considerations with respect to their sexual and reproductive health**

- Support the review and revision of existing laws and policies and, where needed, the drafting of plans and new legislation and policy documents in order to align them with international and regional human rights instruments and standards;
- Include the needs of adolescents in national laws, policies and plans that respond to their needs for access to sexual and reproductive health, in particular: a) establishment of family counseling services and parent education programs; b) access to safe, legal and confidential sexual and reproductive health services including contraception and termination of pregnancy, c) access to skilled personnel (including mental health providers); d) universal access to HIV prevention, treatment and support.; and e) guarantee procedures on informed consent, the right to privacy and freedom of expression; and
- Review of national surveys to include questions on gender identities and sexual orientation

### **Topic 4: Legislation, policies and programs incorporating the needs of the LGBTI community**

- Introduce changes in the legislation, policies and programs to protect specifically the needs of the LGBTI community, especially young people, against violations of their fundamental human rights (among others, right to life, integrity, freedom of expression and movement, right to education and work);
- Guarantee non-discriminatory access to healthcare facilities (prevention and treatment) and services by the LGBTI community;
- Decriminalization of same-sex conduct and other forms of punishing individuals because of their gender identity, gender expression, or sexual orientation; and
- Reform laws, policies and plans to incorporate the participation of civil society groups that represent the interest of LGBTI persons in order to advance their fundamental human right to health.

### **Topic 5: Mechanisms for identifying, investigating, prosecuting, penalizing, and monitoring human rights violations and freedoms (including capacity-building for civil society)**

- Training and awareness-raising about the human rights of young people, women, children and LGBTI community and the mechanisms available to challenge violations of these rights;
- Human resources, capacity and funds for civil society organizations involved in the defense of LGBTI persons, women, children and young people;
- Designation or establishment of national monitoring mechanisms in Ombudsperson's offices to monitor implementation of the international and regional instruments and recommendations from international human rights treaty bodies in health services and prisons; and
- Coordinate national reporting/evaluating mechanisms involving Ministries of Health, Education and Foreign Affairs to include the right to sexual health and other related human rights of young people in the country reports that are submitted to UN and OAS human rights bodies

## 5. Summaries of the Findings of 11 Workshops

### Topic 1: Consciousness-raising, training, and spreading the word on the most relevant human rights and fundamental freedoms

#### Summary of Topic 1: Trends

The contributions to Finding 1 revealed an urgent need to raise awareness of the human rights of groups in situation of vulnerability such as women, children, adolescents, and LGBTI persons. Many of the proposals from the focus groups underscored the need for capacity-building among magistrates, public health personnel, congressional delegates, police officers, and union members. Training is also urgently needed with respect to the Convention on the Rights of the Child (CRC) as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Data from the workshops conducted by PAHO revealed a **considerable lack of awareness** among the population of the regional and international human rights framework and its application in the context of young people, women, children, LGBTI persons, and people living with HIV. The workshops concluded that there is a need for **broad and intensive dissemination of information**, especially on international human rights norms and standards. This over-arching theme cut across all the workshops and reflected the consensus of the participants.

The table below includes a summary of the responses and observations made by the participating countries during the workshops.

| Finding 1: Limited access to, and knowledge of, international and human rights instruments, norms, and standards related to health |   |
|------------------------------------------------------------------------------------------------------------------------------------|---|
| Barbados                                                                                                                           | X |
| Belize                                                                                                                             | X |
| Costa Rica                                                                                                                         | X |
| Dominican Republic                                                                                                                 | X |
| El Salvador                                                                                                                        | X |
| Guatemala                                                                                                                          | X |
| Honduras                                                                                                                           | X |
| Jamaica                                                                                                                            | X |
| Nicaragua                                                                                                                          | X |
| Panama                                                                                                                             | X |
| Trinidad and Tobago                                                                                                                | X |

## Finding 1: Limited access to, and knowledge of, international and human rights instruments, norms, and standards related to health

The participants at the workshops recognized that insufficient training and capacity-building in the context of health-related human rights and freedoms is a widespread problem throughout the entire sub-region. There is a need to strengthen the capacities of public health personnel, members of the judiciary and of law enforcement, civil society, and the general public on regional and international human rights instruments, norms, and standards—especially those related to sexual health, sexuality, HIV/AIDS, and other sexually transmitted infections (STIs).<sup>68 69</sup>

### Responses and Observations Made by Various Participating Countries during the Workshops

**Barbados** Regarding human rights training and HIV, the Barbados workshop recognized the need to conduct capacity-building workshops on the relationship between human rights and HIV for personnel dealing with the public. This included magistrates, public health personnel dealing with people living with HIV, congressional delegates, police officers, union members, and journalists.<sup>70</sup> Regarding Children's Rights, the workshop recognized that Barbados has made efforts to disseminate the CRC in the form of conducting public consciousness-raising campaigns, including it in the school curriculum, and collaborating with the media. However, these efforts have not managed to bring about full acceptance of the principles and provisions of the CRC, either among professional groups or among the general public.

**Belize** Regarding human rights training, participants at the Belize workshop recognized the need to conduct training on human rights for public health personnel, police officers, and judges.

Regarding women's and Children's Rights and the public's right to know participants at the workshop expressed concern over a lack of knowledge of CEDAW and of existing laws, policies, and programs. They also expressed concern that the CRC is neither being disseminated at all levels of society nor is being translated into all languages spoken in the country.

**Costa Rica** Regarding legal and political issues related to human rights, participants at the Central American workshop in El Salvador underscored the need to incorporate international and human rights instruments, norms, and standards into national laws and policies.

Regarding training, workshop participants remarked upon the need to train police officers, prison staff, medical personnel, and judicial personnel on the prohibition of torture and also remarked upon the need to increase the number of hours devoted to human rights in basic police training.

Regarding racial discrimination and the public's right to know, workshop participants also expressed concern that the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is not being disseminated by every means possible, including the Internet.

<sup>68</sup> PAHO Travel Report; San Salvador, El Salvador; 4–5 December 2008.

<sup>69</sup> PAHO Travel Report; San Salvador, El Salvador; 9–10 November 2009.

<sup>70</sup> PAHO Travel Report; Bridgetown, Barbados; 13–14 September 2010.

**Dominican Republic** Regarding child and adolescent health and human rights, the workshop held in the Dominican Republic recognized two major needs:

- The first was to raise awareness among university faculty and media regarding human rights violations in the context of issues affecting child and adolescent health, such as violence, teenage pregnancy, and maternal and infant mortality.
- The second was to conduct training workshops for members of the police force who deal with issues pertaining to adolescent health as it relates to international and regional human rights instruments, norms, and standards.<sup>71</sup>

Workshop participants expressed two main concerns:

- The first involves failure on the part of the State in terms of the public's right to know and training at all levels. No programs have been implemented to raise awareness and educate law enforcement officials, relevant professionals, and the general public on the illegal nature of acts of domestic violence, human trafficking, and child labor.
- The second also involves the public's right to know and invoke their own rights. To date, no effective measures have been taken to increase awareness of the International Covenant on Economic, Social and Cultural Rights (ICESCR) among the judiciary and the general public. Nor have any measures been taken to ensure that Covenant provisions can be invoked before domestic courts.

Regarding the rights of the child, the workshop participants are concerned that civil servants, professionals, and the general public—particularly various groups of people who work for and with children, as well as parents themselves—are largely unaware of the concept of Children's Rights. Nor are they aware of the provisions of the corresponding CRC.

**El Salvador** Participants at the Central American workshop held in El Salvador underscored the need to incorporate international and human rights instruments, norms, and standards into national laws and policies.

Regarding Women's Rights, participants at the workshop expressed three basic concerns:

1. The first involves training: lawyers, criminal justice workers, health care providers, and law enforcement officials have not been adequately trained in all matters concerning sexual exploitation and human trafficking.
2. The second involves the need for a strategy to eliminate sexist stereotypes: no such strategy exists at this point and there is a need to include consciousness-raising programs in school curricula, train teachers in this matter, and sensitize the media and the public at large, with special emphasis on men and boys.
3. The third involves limited awareness—even among legal professionals—of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as is shown by the limited case law where said provisions have been invoked.

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<sup>71</sup> PAHO Travel Report; Santo Domingo, Dominican Republic; 25–26 May 2010.

**Guatemala** Regarding training in Children’s Rights, workshop participants were concerned that several relevant professional categories—including the police, the state district attorney’s office (*Procuraduría General de la Nación*), judges, and immigration authorities—require further training on the provisions of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography. This is important not only because of their direct contact with victims, but also because of the existence of reports indicating that the sale of children, irregular adoptions, and human trafficking are still occurring—thus calling for a scale-up in prevention activities.

Regarding torture and related training, workshop participants were concerned that the State has failed to carry out campaigns and training activities for police officers and members of the judiciary. These officials need to be made duly aware of the existing social violence so that they can report complaints properly and investigate them adequately.

**Honduras** Participants at the sub-regional workshop held in Honduras recognized the need to educate civil society organizations on existing international and regional human rights instruments, norms, and standards. There were two main concerns expressed:

1. The State offers no adequate human rights training, particularly pertaining to those rights guaranteed in the corresponding International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as in State party’s Constitution. This is especially true among the judiciary and other actors responsible for implementing the Covenant.
2. Police and other law enforcement personnel are not adequately trained on issues related to domestic violence.

**Jamaica** Participants at the Jamaica workshop underscored the need to reform national public health law and the Offences against the Person Act (Section 76 of which criminalizes sex between consenting adults), to ensure their conformity to international and regional human rights instruments, norms, and standards. They also cited the need to reform the Towns and Communities Act, in order to provide individuals such as men who have sex with men, sex workers, and injecting drug users with access to prevention and treatment services, measures, and goods.

**Nicaragua** Participants at the sub-regional workshop held in Honduras recognized the need to

- educate civil society organizations on the international and regional human rights instruments, norms, and standards ratified by their respective States; and
- facilitate access on the part of civil society organizations to instruments and mechanisms to protect the right to health—especially in the context of HIV/AIDS.

Regarding Children’s Rights, two main concerns were expressed:

1. Professionals working with and for children are generally unaware of the Convention and its provisions.
2. There is a lack of trained professional staff available to identify and address family problems.

Regarding torture and related training, two main concerns were expressed:

- For prison staff and police officers, as well as the judiciary, neither the duration nor the quality of training is adequate to ensure appropriate multidisciplinary instruction in human rights—particularly for those officials who come into contact with victims of domestic violence, be they children, juveniles, or women.
- There is inadequate staff training on the prohibition of torture and inhuman or degrading treatment.

**Panama** Participants at the Panama workshop recognized the need to

1. educate civil society organizations on the international and regional human rights instruments, norms, and standards ratified by their respective States;
2. facilitate access on the part of civil society organizations to instruments and mechanisms to protect the right to health—especially in the context of HIV/AIDS;
3. strengthen technical collaboration with the public prosecutor for human rights (*Procuraduría de Derechos Humanos*), including training staff from that office on issues related to HIV/AIDS and to the sexual and mental health of LGBTI people; and
4. conduct training workshops on the application of international and regional human rights instruments, norms, and standards in the context of HIV/AIDS, aimed at public health personnel, judges, corrections officers, congressional delegates, and staff from other organizations concerned with human rights issues.<sup>72</sup>

Regarding Children's Rights, there is concern that children—as well as many professionals working with and for them—are not sufficiently aware of the corresponding Convention and the rights-based approach enshrined therein.

**Trinidad and Tobago** Participants at the Trinidad and Tobago workshop underlined the need to incorporate more systematic use of international and regional human rights instruments, norms, and standards by

- a. harmonizing and reforming national legislation (especially criminal law), policies, and programs;
- b. conducting capacity-building sessions for public health personnel;
- c. evaluating health systems;
- d. preparing reports on universal access to and the expansion of care and services
- e. developing work plans for the territories and reorganizing budgets, public health personnel, and strategic plans;
- f. distributing international and regional human rights instruments, norms, and standards among government officials, civil society organizations and the media, so that they may be used in designing and reforming national laws, policies, and programs.

<sup>72</sup> PAHO Travel Report; Panama City, Panama; 18–20 May 2010.

## Topic 2: Stigma, discrimination, and violence against certain groups in situation of vulnerability (women, children, adolescents, and LGBTI persons)

### Summary of Topic 2: Trends

Participants at the workshops identified high levels of discrimination and violence against children, adolescents, and women. Violence and discrimination have also been extended to other groups in situation of vulnerability, such as LGBTI persons because of their sexual orientation, gender identity, and/or gender expression.

In the case of LGBTI groups, there is high level of selective persecution. Sexual violence against women, children, adolescents, and LGBTI groups is a constant in the sub-region. There is limited access by these groups to health care services.

Participants at the workshops described high levels of violence and discrimination against groups in situation of vulnerability. These included LGBTI persons, adolescents, children, and women in the countries included in this report.

**Finding 2.1:** High rates of violence and discrimination against women, including but not limited to domestic violence, sexual violence, harassment, and femicide

**Finding 2.2:** High rates of violence and discrimination against LGBTI persons because of their sexual orientation, gender identity, and/or gender expression

**Finding 2.3:** High rates of violence and discrimination against children, including but not limited to domestic violence, sexual violence, corporal punishment, and extrajudicial killings of street children and those living in marginalized areas

The table below includes a summary of the responses and observations of the participating countries during the workshops.

| Topic 2                                                                                                                                    | Finding 2.1                                                                                                                                        | Finding 2.2                                                                                                                                    | Finding 2.3                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Stigma, discrimination, and violence against certain groups in situation of vulnerability (women, children, adolescents, and LGBTI people) | High rates of violence and discrimination against women, including but not limited to domestic violence, sexual violence, harassment, and femicide | High rates of violence and discrimination against LGBTI persons because of their sexual orientation, gender identity, and/or gender expression | High rates of violence and discrimination against children, including but not limited to domestic violence, sexual violence, corporal punishment, and extrajudicial killings of street children and those living in marginalized areas |
| Barbados                                                                                                                                   | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Belize                                                                                                                                     | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Costa Rica                                                                                                                                 | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Dominican Republic                                                                                                                         | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| El Salvador                                                                                                                                | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Guatemala                                                                                                                                  | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Honduras                                                                                                                                   | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Jamaica                                                                                                                                    | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Nicaragua                                                                                                                                  | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Panama                                                                                                                                     | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |
| Trinidad and Tobago                                                                                                                        | X                                                                                                                                                  | X                                                                                                                                              | X                                                                                                                                                                                                                                      |

## Finding 2.1: High rates of violence and discrimination against women, including but not limited to domestic violence, sexual violence, harassment, and femicide

### Responses and Observations Made by Various Participating Countries during the Workshops

**Belize** Regarding Women's Rights participants at the Belize workshop emphasized the need to make amendments to existing legislation to guarantee women's routine exercise of several human rights and freedoms.

Participants at the workshop expressed the following concerns:

1. The widespread poverty among women—the poverty rate stands at 33.5%—is among the underlying causes behind the violation of Women's Rights and discrimination against them.
2. Labor laws regarding discrimination in the private sector are not enforced.
3. Violence against women and the lack of social awareness about it continue to prevail.
4. Women who are victims of violence are advised to return to their abusive partners by authority figures, including the police and magistrates.
5. Limited progress has been made in preventing and eliminating violence against women, reflected in a lack of prosecutions and convictions as well as a lack of access to justice for women, particularly in rural areas.
6. Despite the criminalization of marital rape, there are apparently no prosecutions for that crime.

**Costa Rica** Regarding Women's Rights, participants at the workshop expressed concern that domestic violence against women has been increasing in the country even though there is less prevalence of violence against women in Costa Rica than in the rest of the sub-region.

**Dominican Republic** Regarding Women's Rights, participants expressed the following concerns:

1. Violence against women—particularly domestic violence—persists, despite legislation to characterize and penalize family violence, e.g., article 42 of the Constitution and Law No. 24-97.
2. Sexual harassment in the workplace continues to affect more than 30% of all women.
3. Only a few cases of sexual harassment in the workplace have been settled under the Labor Code.
4. Sexual harassment has not been recognized as a crime under penal law.
5. Authorities fail to separate women from men in police holding cells.

**El Salvador** Participants at the workshop recognized that there are:

1. high rates of domestic violence, especially against women, which the authorities more often than not believe to be a private matter and thus choose to ignore unless it results in serious physical injuries;
2. high rates of sexual violence and abuse in the form of statutory rape and sexual harassment of women;
3. high rates of violent murders of women, accompanied by a high level of brutality, kidnapping, and sexual violence;
4. high rates of gender-based violence, harassment, and discrimination at the workplace, which come in the form of verbal and physical abuse, sexual harassment, mandatory pregnancy tests, denial of employment or dismissal of pregnant women, and requirements to work beyond ordinary hours; and

5. cases in which women who had suffered a miscarriage or had a complicated delivery with no medical assistance, which resulted in their child's death, were automatically accused of aggravated homicide, penalized, and punished by the Penal Code with imprisonment lasting from 30 to 50 years.

Regarding racial discrimination participants at the workshop recognized the following concerns:

1. National legislation confines itself to proclaiming the principle of non-discrimination but contains no specific reference to any of the numerous elements set out in Article 1 of the International Convention on the Elimination of all forms of Racial Discrimination.
2. Migrant workers—mainly originating from Guatemala, Honduras and Nicaragua, and especially women—face precarious situations and, for fear of deportation, fall victim to labor exploitation and ill-treatment.

**Guatemala** Regarding Women's Rights, participants expressed the following concerns:

1. Several provisions that discriminate against women in the Labor, Civil, and Criminal Codes have not yet been eliminated.
2. Groups of women in vulnerable situations, particularly in rural areas, still experience difficulties accessing reproductive health care services.
3. Certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination on such grounds as their ethnicity or their sexuality: some of these groups are those composed of Maya, Xinca, and Garifuna women, who experience many different types of discrimination across the various sectors based on their sex, ethnic origin, and social status.

Regarding racial discrimination participants at the workshop expressed concern that the Maya, Xinca, and Garifuna women also face persistent discrimination on the basis of language, for there is a general lack of interpreters available for court proceedings and health care services.

Regarding torture, it was recognized that women who have fallen victim to sexual assault experience gender discrimination on the part of the authorities in the course of the investigation of the crime and subsequent and judicial proceedings.

**Honduras** In 2010, participants at the Honduras workshop reflected upon the need to monitor the issue of courts ordering the involuntary hospitalization of men and women, especially in cases of domestic violence, and using the international and regional human rights framework for this task.<sup>73</sup>

<sup>73</sup> PAHO Travel Report; San Pedro Sula, Honduras & Tegucigalpa, Honduras; 3–17 June 2009.

Regarding Women's Rights there is concerned that:

1. Domestic violence continues to be a problem.
2. The State is apparently unable to implement legislation to address it.
3. There are acts of sexual violence against female detainees in particular since the coup d'état on 28 June 2009.
4. Many forms of violence against women prevail, including sexual abuse, domestic violence, and femicide.
5. Authorities fail to separate women from men in police holding cells.
6. Female detainees are subject to inspections of their private parts when entering a place of detention, and unqualified persons, including personnel without any medical training, may carry out such inspections.

**Jamaica** Participants at the workshop in Jamaica underlined the need to implement mechanisms to identify and monitor cases of discrimination, stigma, and other human rights violations in the context of the right to health and other related human rights.

Regarding Women's Rights, participants stressed the prevalence of violence against women, especially sexual violence and the lack of victim services and protection.

**Nicaragua** Participants at the workshop expressed concern over the following:

1. Killings of women arising from gender violence, and particularly domestic and sexual violence, has been increasing in recent years.
2. Authorities fail to separate women from men in police holding cells.
3. Despite being prohibited by law, sexual harassment in the workplace is still widespread.

**Panama** Participants expressed concerned that domestic violence, sexual harassment, and the high rates of murder suffered by women continues to be a persistent issue.

**Trinidad and Tobago** Regarding the right to health, participants at the workshop in Trinidad and Tobago emphasized the lack of access to health services for women, particularly women with HIV.

## Finding 2.2: High rates of violence and discrimination against LGBTI people because of their sexual orientation, gender identity, and/or gender expression

Participants in most of the workshops underscored high levels of violence and discrimination against LGBTI persons due to their sexual orientation, gender identity, and/or gender expression. Such violence may be manifested, *inter alia*, in unlawful arrests and extrajudicial killings. Discrimination is apparent in the absence of specific legislation that incorporates the considerations of the LGBTI community, selective prosecution, and limited access to health systems and information in the context of sexual and reproductive health.

Participants also discussed reports of the Inter-American Commission on Human Rights (IACHR). Thus in its 141<sup>st</sup> Regular Session, gave special thematic emphasis to the rights of LGBTI persons. The Commission was deeply concerned over the information it received on both *de jure* and *de facto* discrimination against these individuals, the effects of this discrimination on every aspect of their lives, and particularly the intolerable levels of violence to which they are subject throughout the entire region.<sup>74</sup>

### Responses and Observations Made by Various Participating Countries during the Workshops

**Barbados** Participants at the 2010 workshop held in Barbados recognized the need to review national laws that hinder the exercise of several human rights and freedoms. These laws include but are not limited to anti-sodomy laws and the criminal code, which criminalizes same-sex sexual conduct between consenting adults.<sup>75</sup>

Regarding the human rights of LGBTI persons, participants expressed concern that discrimination against homosexuals abounds, particularly through the criminalization of consensual sexual acts between adults of the same sex.

**Belize** Participants at the Belize workshop recognized the need to reform certain laws, policies, and programs that hinder the exercise of several human rights and freedoms in this context. These laws include the following:

1. the Public Health Act (Section 94 of which mandates the disinfection of public means of transportation after transporting a person with AIDS);
2. the Criminal Code (Section 53 of which criminalizes consensual same-sex sexual conduct);
3. the Immigration Act (Section 26 of which prohibits homosexual persons from entering the country); and
4. the Nationality Act (Sections 10 and 21 of which deny citizenship to homosexuals, people living with HIV, and their immediate families).<sup>76</sup>

Participants at the workshop also recognized that HIV/AIDS policies and programs lack a gender perspective.

**Costa Rica** Regarding torture, participants expressed concern over the following:

1. Authorities often fail to report or properly investigate reports of domestic violence lodged by persons whose partner is of the same sex.
2. There have been cases of abuse of immigrants and citizens on the grounds of their sexual orientation and/or transsexual identity.

<sup>74</sup> <http://www.cidh.oas.org/Comunicados/English/2011/28A-11eng.htm>

<sup>75</sup> PAHO Travel Report; Bridgetown, Barbados; 13–14 September 2010.

<sup>76</sup> PAHO Travel Report; Belize City, Belize; 30–31 October 2007.

Participants also expressed concern that only Catholic marriages have civil validity in Costa Rica. This situation discriminates against couples practicing other religions (or not any religion at all).

**El Salvador** Participants at the 2009 workshop in El Salvador recognized that discrimination against LGBTI persons is a widespread issue in the entire sub-region. More specifically, participants underlined the need to ensure that

1. the right to work, the right to housing, and the right to live free of discrimination on the basis of HIV/AIDS status, sexual orientation, and gender identity of LGBTI people be protected both de jure and de facto; and
2. LGBTI persons have access to health systems and information, especially that which relates to their sexual and reproductive health.<sup>77</sup>

Participants expressed concern that

3. The number of murders of LGBTI people is increasing, having risen from 4 in 2003 to at least 12 in 2009.
4. LGBTI people have fallen victim to brutal gang rapes.
5. There is a high level of societal homophobia, which is particularly reflected in employment and in the media.
6. Transgender persons experience difficulties when attempting to legally change their gender in official identity papers.
7. Despite the rise in the number of hate-motivated crimes against LGBTI persons, no institution compiles statistics on these individuals as victims of discrimination and violence.
8. There are cases of transgender women being detained in male prisons.

**Dominican Republic** Participants at the workshop recognized that men in same-sex relationships and transgender persons continue to suffer persistent discrimination by others and by the State.

**Guatemala** Participants at the sub-regional workshop emphasized the need to

1. promote the adoption and implementation of specific legislation and development programs that protect the rights of LGBTI persons, while always ensuring the active participation of the LGBTI community;
2. incorporate the considerations of young people, including LGBTI groups, into the national health agenda—especially in the context of sexual and reproductive health and HIV/AIDS—in conformity to the relevant international and regional instruments; and
3. strengthen mechanisms to investigate and monitor human rights violations, especially those affecting LGBTI persons.<sup>78</sup>

<sup>77</sup> PAHO Travel Report; San Salvador, El Salvador; 4-5 December 2008.

<sup>78</sup> PAHO Travel Report; Tegucigalpa, Honduras; 1-4 October 2008.

**Honduras** Participants at the workshop expressed concern that there are high rates of murders and other acts of violence, including sexual violence, targeting LGBTI persons and unlawful arrests of young persons, including homosexuals, are common.

**Jamaica** Participants at the Jamaica workshop underscored the need to reform national public health law and the Offences against the Person Act (Section 76 of which criminalizes sex between consenting adults), so as to ensure their conformity to international and regional human rights instruments, norms, and standards.

Regarding the right to health, participants at the workshop emphasized the need to reform the Towns and Communities Act, in order to provide individuals such as men who have sex with men, sex workers, and injecting drug users with access to prevention and treatment services, measures, and goods.

Participants expressed concern with the fact that homosexuals are kept in the “vulnerable persons unit” in places of detention, confinement in which functions in a punitive way and leads to a loss of such privileges as work, recreation, and sanitation.

**Nicaragua** Participants at the sub-regional workshop for Central America held in Honduras recognized the need to

1. promote the adoption and implementation of specific legislation and development programs to protect the rights of LGBTI persons, while always ensuring active participation on the part of the LGBTI community;
2. incorporate the considerations of young people, including those from LGBTI groups, into the national health agenda—especially in the context of sexual and reproductive health and HIV/AIDS—in conformity to the relevant international and regional instruments; and
3. strengthen mechanisms to investigate and monitor human rights violations, especially those affecting LGBTI people.<sup>79</sup>

**Trinidad and Tobago** Participants expressed concern over the lack of protection afforded by the Equal Opportunity Act of 2000 to LGBTI persons, on the grounds of sexual orientation.

<sup>79</sup> PAHO Travel Report; Tegucigalpa, Honduras; 1-4 October 2008.

### **Finding 2.3: High rates of violence and discrimination against children, including but not limited to domestic violence, sexual violence, corporal punishment, and extrajudicial killings of street children and those living in marginalized areas**

Participants in most of the workshops underscored high levels of discrimination against children and adolescents.

#### ***Responses and Observations Made by Various Participating Countries during the Workshops***

**Belize** Regarding Children's Rights, participants at the workshop expressed concern over the following:

1. The number of cases of murders, abductions, street violence, domestic violence, and sexual abuse of minors—especially girls—is growing dramatically.
2. Corporal punishment is still frequently practiced within the family, as well as in schools and other institutions.
3. Domestic legislation does not prohibit the use of corporal punishment.
4. Provisions of the Criminal Code and the Education Act legitimize the use of corporal punishment.
5. Girls, children with disabilities, migrant children, children living in poverty, children belonging to minorities, indigenous children, children infected with or affected by HIV/AIDS, children living in rural areas, and pregnant students and teenage mothers in schools, all face persistent discrimination.

**Costa Rica** Regarding torture, participants expressed concern that Article 143 of the Family Code states that parents have the right to correct children in a moderate manner, which has been interpreted as allowing the use of corporal punishment.

Participants also expressed concern that various legal and institutional measures taken to offer redress to victims of domestic violence have been insufficient in terms of addressing the increase in domestic violence against children.

**El Salvador** Participants at the workshop expressed concern over the following:

1. The Institute for the Comprehensive Development of Children and Adolescents has case files for approximately 15,000 children and adolescents who require protection from violence.
2. In 2008, the Institute registered a monthly average of 315 cases of children and adolescents who require protection from violence.
3. There are high rates of domestic violence, especially against girls. More often than not, the authorities believe this to be a private matter and thus choose to ignore it, unless it results in serious physical injuries.
4. There are high rates of sexual violence and abuse in the form of statutory rape and sexual harassment of girls.
5. There are high rates of violent murders of girls, accompanied by high levels of brutality, kidnapping, and sexual violence.

**Guatemala** Participants at the workshop expressed concern with the statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions that the homicide rate averaged 20 killings per day during the second half of 2008, with at least 591 of these victims being children or adolescents.

**Honduras** Participants at the workshop expressed concern over the following:

1. A high number of children fall victim to sexual abuse.
2. Domestic violence continues to be a problem.
3. The State is apparently unable to implement legislation to address these issues.

Regarding torture, participants expressed concern over the following:

1. There are reports of a high number of extrajudicial killings, particularly of children.
2. Some victims of extrajudicial killings appear to have been tortured before being killed.
3. Many forms of violence against girls still prevail, including sexual abuse and domestic violence
4. Authorities fail to separate children from adults in police holding cells.

Regarding Women's Rights, participants expressed concern that many forms of violence against girls continue to prevail, including sexual abuse—particularly incestuous abuse of girls—as well as rape, domestic violence, and femicide.

**Jamaica** Regarding Children's Rights in general and children's right to health and education in particular, participants expressed concern with insufficient budgetary allocations and inadequate social measures on the part of the State to promote and protect the rights of the child in such areas as health prevention and education.

**Nicaragua** Regarding Children's Rights, participants expressed concern over the following:

1. Article 155 of the Penal Code makes an exception to the prohibition on corporal punishment for “disciplinary correction.”
2. The administrative regulations set down by the Ministry of Education (MINED) to prohibit physical punishment in schools are not being adequately enforced.
3. A high number of children live in the streets as a consequence of abandonment, maltreatment, and domestic and sexual violence.
4. The State does not provide adequate protection to children who fall victim to abuse, domestic violence, sexual and economic exploitation, abduction, and human trafficking—or to the witnesses of such crimes—as required by the Convention on the Rights of the Child and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, annexed to the Economic and Social Council Resolution 2005/20 of 22 July 2005.

Regarding torture, participants at the workshop expressed concern over the following:

1. Domestic violence, including sexual violence, and child abuse are an enduring and persistent phenomenon.
2. Authorities fail to separate children from adults in police holding cells.

**Panama** Regarding Children's Rights, participants expressed concern over the following:

1. Societal discrimination persists against girls; children belonging to indigenous, minority and other marginalized groups; children with disabilities; children of migrant workers; and refugees.
2. Child abuse and the sexual exploitation of children continue to be serious problems.

**Trinidad and Tobago** Regarding discriminatory practices affecting the right to health, participants at the workshop identified the existence of discrimination against children and adolescents living with HIV/AIDS as well as a lack of access to preventive and treatment services for these groups.

Regarding Children's Rights, participants also recognized the following:

- insufficient budget allocation for children on the part of the State party;
- insufficient enforcement of Children's Rights;
- the existence of discriminatory practices against children living with HIV/AIDS with regard to their access to health services; and
- a high incidence of domestic violence and neglect, including sexual violence and incest.

### Topic 3: Legislation, policies and programs that incorporate the particular considerations of adolescents with respect to their sexual and reproductive health

#### Summary of Topic 3: Trends

Contributions to Finding 3 revealed that countries are not incorporating the needs of their youthful population into national legislation, policies, and plans. The report underlines high levels of teenage pregnancy and teenage suicide—particularly among young adolescent women. It further underlines limited access to health services and information—not only sexual and reproductive health information, but also prevention and treatment services for HIV and other STIs. In most of the countries examined, the following factors come into play:

- There is a shortage of family counseling services and parent education programs.
- Adolescents do not have access to safe, legal, and confidential sexual and reproductive health services—including information, counseling, and pregnancy termination.
- Contraception is not widely available.
- Children, adolescents, and pregnant women do not have universal access to HIV-related prevention, treatment, care, and support.

**Finding 3.1:** Breach of confidentiality and privacy in the context of HIV/AIDS through mandatory testing

**Finding 3.2:** High school dropout rates and subsequently high illiteracy rates, especially among girls

**Finding 3.3:** High rates of teenage pregnancy

**Finding 3.4:** High rates of teenage suicide

**Finding 3.5:** Insufficient data disaggregated by sex, gender identity and/or sexual orientation

**Finding 3.6:** Limited access on the part of pregnant women and adolescents to safe delivery resources including access to skilled childbirth personnel and midwives

**Finding 3.7:** Limited access to prevention and treatment services for persons living with HIV/AIDS, including consciousness-raising campaigns and antiretroviral medicines

The table below includes a summary of the responses and observations made by the participating countries during the workshops.

| Topic 3                                                                                                                                              | Finding 3.1                                                                                | Finding 3.2                                                                              | Finding 3.3                     | Finding 3.4                   | Finding 3.5                                                                       | Finding 3.6                                                                                                                                            | Finding 3.7                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|---------------------------------|-------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legislation policies and programs that incorporate the particular considerations of adolescents with respect to their sexual and reproductive health | Breach of confidentiality and privacy in the context of HIV/AIDS through mandatory testing | High school dropout rates and subsequently high illiteracy rates, especially among girls | High rates of teenage pregnancy | High rates of teenage suicide | Insufficient data disaggregated by sex, gender identity and/or sexual orientation | Limited access on the part of pregnant women and adolescents to safe delivery resources, including access to skilled childbirth personnel and midwives | Limited access to prevention and treatment services for persons living with HIV/AIDS, including consciousness-raising campaigns and anti-retroviral medicines |
| Barbados                                                                                                                                             | X                                                                                          |                                                                                          | X                               | X                             | X                                                                                 | X                                                                                                                                                      |                                                                                                                                                               |
| Belize                                                                                                                                               |                                                                                            | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| Costa Rica                                                                                                                                           |                                                                                            | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      |                                                                                                                                                               |
| Dominican Republic                                                                                                                                   | X                                                                                          | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| El Salvador                                                                                                                                          | X                                                                                          | X                                                                                        | X                               | X                             | X                                                                                 | X                                                                                                                                                      |                                                                                                                                                               |
| Guatemala                                                                                                                                            | X                                                                                          | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      |                                                                                                                                                               |
| Honduras                                                                                                                                             |                                                                                            | X                                                                                        | X                               | X                             | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| Jamaica                                                                                                                                              | X                                                                                          | X                                                                                        | X                               | X                             | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| Nicaragua                                                                                                                                            |                                                                                            | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| Panama                                                                                                                                               |                                                                                            | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |
| Trinidad and Tobago                                                                                                                                  | X                                                                                          | X                                                                                        | X                               |                               | X                                                                                 | X                                                                                                                                                      | X                                                                                                                                                             |

### Finding 3.1: Breach of confidentiality and privacy in the context of HIV/AIDS through mandatory testing

The participants in most of the workshops recognized the fact that mandatory testing for HIV/AIDS as a requirement for employment is a widespread issue throughout the entire sub-region.<sup>80</sup>

#### Responses and Observations Made by Various Participating Countries during the Workshops

**Barbados** Participants at the workshop in Barbados recognized the need to review policies restricting human rights, such as the right to a private life and a person's right to security. This type of restrictive policies requires the disclosing and disseminating information included in death certificates, as well as the results of mandatory HIV testing.<sup>81</sup>

**Dominican Republic** Participants at the workshop in the Dominican Republic recognized the need to reform Law No. 55-93 (the national HIV law). This law violates the right to privacy of persons living with HIV, by requiring health care professionals to notify the relevant national and regional public health authorities of their status (Article 1). It also violates the right to privacy of employment applicants or employees by requiring them to undergo mandatory HIV testing either as a condition to secure employment or to remain employed, respectively (Article 3).<sup>82</sup>

Participants were also concerned that pregnancy tests are routinely carried out in free-trade zones as a pre-condition for employment.

**Guatemala** Participants at the Guatemala workshop recognized the need to support efforts to reform national laws, policies, and programs dealing with HIV and adolescent health, in order to ensure their conformity to international and regional human rights instruments, norms, and standards. Special attention should be given to the following topics:

1. the right to informed consent in the context of blood donations;
2. the right to work of persons living with HIV/AIDS (who are denied work cards);
3. the right to information in one's native language, especially indigenous languages;
4. the right to social security;
5. the right to live free of stigma and discrimination;
6. the disintegration of health data, including data on HIV and other sexually transmitted infections, by sexual orientation and gender identity, so that LGBTI people—especially adolescents—are accounted for; and
7. the clarification of the terms “sexual orientation,” “gender identity,” “gender expression,” and “gender equality” in the context of suicide rates among adolescents and other adolescent health issues.<sup>83</sup>

<sup>80</sup> PAHO Travel Report; Bridgetown, Barbados; 13–14 September 2010.

<sup>81</sup> PAHO Travel Report; Bridgetown, Barbados; 13–14 September 2010.

<sup>82</sup> PAHO Travel Report; Santo Domingo, Dominican Republic; 25–26 May 2010.

<sup>83</sup> PAHO Travel Report; Guatemala City, Guatemala; 29 November – 3 December, 2010.

**Jamaica** Participants at the workshop identified the need to recognize the right to privacy with regard to HIV status, including mandatory testing. Participants also recognized the right to orientation and counseling both before and after submitting oneself to the process of voluntary testing.

**Trinidad and Tobago** The workshop recognized the need to ensure that HIV prevention be available to all under the principles of non-discrimination and equality before the law.

### **Finding 3.2: High school dropout rates and subsequently high illiteracy rates, especially among girls**

#### **Responses and Observations Made by Various Participating Countries during the Workshops**

**Belize** Regarding Women's Rights, participants at the workshop expressed the following concerns:

1. There are high school dropout rates, especially among girls.
2. There are no measures in place to ensure that teenage mothers stay in or return to school.
3. Schools are free to expel girls because of pregnancy.
4. Only a few secondary schools allow girls to continue their education after pregnancy.
5. Schools are allowed to dismiss unwed teachers who become pregnant.

Regarding Children's Rights, participants were concerned that initiatives to combat high school dropout rates are not being properly implemented.

**Costa Rica** Participants at the workshop expressed concern that the secondary school dropout rate is increasing, fueled, inter alia, by family disintegration, lack of pedagogical attention, child labor, and child drug abuse.

**Dominican Republic** Participants expressed the following concerns:

1. Children in remote areas, Dominican-born children of Haitian descent, and children of migrants continue to face difficulties in initial enrollment in and access to education.
2. The overall quality and quantity of education is low, particularly among disadvantaged and marginalized groups as well as in rural areas.
3. There are high school dropout rates, high rates of pupils repeating grades, and high illiteracy rates, especially among young people.
4. There are high school dropout rates and high rates of pupils who repeat grades. Only about 60% of all children complete the basic educational cycle.
5. Secondary school enrollment remains low.
6. Pregnant girls are not encouraged to continue their education.
7. Public spending on education remains one of the lowest in the region, at less than 4% of the State party's gross domestic product (GDP).

**El Salvador** Regarding Women's Rights, workshop participants expressed concern over the following:

1. There are high rates of illiteracy among women, particularly in rural areas.
2. There are increasingly high school dropout rates and high rates of pupils who repeat grades at the different levels of schooling, with girls affected more than boys.
3. According to official figures for 2008, the national illiteracy rate is 14.1% overall; but when disaggregated by sex, the illiteracy rate is 16.4% for females and 11.5% for males.
4. A total of 2,731 girls between 12 and 14 years of age have already had their first baby; and most of these girls drop out of school. Currently, they are not benefiting from any sort of formal or informal educational or training program that could facilitate their returning to school in the future.

**Guatemala** Participants expressed concern that illiteracy poses a major problem throughout Guatemala. This is most marked among indigenous peoples, with 38% of indigenous women being illiterate. The Special Rapporteur adds that this problem directly affects health outcomes, as the use of planned methods of contraception is significantly lower in illiterate populations.

With regard to the right to education, there is concern over the following:

1. Guatemala continues to have the lowest completion rates for primary schooling in the entire region (72.5% in 2006).
2. Enrollment rates for secondary schooling are the lowest in Latin America (at 34.7% for the basic stage and 20% for the specialized stage).
3. A systematic disparity between boys and girls is also apparent, with the percentage of enrolled students who fail to complete primary schooling on schedule being greater in the case of girls (43%) than of boys (37%).
4. The right to education of indigenous peoples is confined to the issue of bilingualism, while most other substantive topics are ignored.

**Honduras** Regarding Children's Rights, participants expressed the following concerns:

1. The quality of education is low.
2. There are considerable differences between urban areas and remote rural areas with respect to both the quality and accessibility of education, the number of school registrations, the level of infrastructure, and dropout rates.
3. The number of annual school days and actual school hours is low when compared to international standards.
4. The number of teachers is low, and most of them lack training.
5. There is limited availability of preschool educational centers, especially in rural areas.
6. There are high illiteracy rates.

**Jamaica** Participants expressed concern for high school dropout levels—especially among girls who are forced to join the sex trade.

**Nicaragua** Regarding Children’s Rights, participants at the workshop expressed the following concerns:

1. About half a million children do not attend school, especially in rural areas.
2. Dropout rates are high.
3. Budgetary allocation does not suffice to cover the reconstruction of a well-equipped school infrastructure and the expansion needed to bring all children to school and ensure that they stay longer.

**Panama** Regarding Children’s Rights, participants at the workshop expressed concern over the following:

1. There are persistent disparities in access to education of children in vulnerable situations, which do not have access to adequate education in terms of their cultural values and identity.
2. There is a low level of both retention and completion, especially among youth in secondary education.
3. The country has not taken measures to increase the amount of resources available to fight illiteracy and promote primary and secondary education.

**Trinidad and Tobago** Regarding Children’s Rights, participants expressed concern that pregnant teenagers are not encouraged to continue with their education.

### Finding 3.3: High rates of teenage pregnancy

#### Responses and Observations Made by Various Participating Countries during the Workshops

**Barbados** Participants at the workshop expressed concern over the high rates of adolescent pregnancy.

**Belize** Participants at the workshop expressed concern over the high rates of teenage pregnancy.

**Costa Rica** Participants at the workshop expressed concern over the high rates of teenage pregnancy.

**Dominican Republic** Participants at the workshop expressed concern over the high rates of teenage pregnancy.

**El Salvador** Participants at the workshop expressed concern over the high rates of teenage pregnancy, which reveals the ineffectiveness of both the preventive and consciousness-raising measures currently being taken by the State institutions. According to the 2007 household population survey, at least 48,000 girls between 12 and 19 years of age have had at least one baby.

**Guatemala** Participants at the workshop expressed concern over the fact that the fertility rate for adolescent girls between 15 and 19 years of age stands at 92 per 1,000.

**Jamaica** Participants at the workshop expressed concern over the high rates of teenage pregnancy.

**Honduras** Participants at the workshop expressed concern over the high rates of teenage pregnancy, which has serious consequences for girls' health and education.

**Nicaragua** Participants at the workshop expressed concern over the high rates of teenage pregnancy.

**Panama** Regarding Children's Rights, workshop participants expressed concern over the high prevalence of teenage pregnancy.

**Trinidad and Tobago** Regarding Children's Rights, workshop participants expressed concern over the high rates of teenage pregnancy.

### Finding 3.4: High rates of teenage suicide

#### *Responses and Observations Made by Various Participating Countries during the Workshops*

**Barbados** Participants at the workshop expressed concern that the rate of girls who either attempt or actually commit suicide is particularly high.

**El Salvador** Participants at the workshop expressed concern over the high rates of teenage suicide, which accounts for 40.6% of all cases associated with indirect maternal mortality.

**Honduras** Participants at the workshop expressed concern that the suicide rate has been increasing.

**Jamaica** Participants at the workshop expressed concern over the high suicide rates.

### Finding 3.5: Insufficient data disaggregated by sex, gender identity and/or sexual orientation

#### *Responses and Observations Made by Various Participating Countries during the Workshops*

**Barbados** Regarding Children's Rights, participants at the workshop expressed concern over the complete lack of sufficient data, disaggregated by gender, related to all aspects of the implementation of the CRC.

**Belize** Regarding women's and Children's Rights, participants at the workshop expressed concern over the complete lack of sufficient statistical data disaggregated by sex.

**Costa Rica** Participants at the workshop expressed concern over the following:

1. Data on persons deprived of liberty (PDLs, i.e., prisoners) are not broken down by sex.
2. The Legal Department of the Ministry of Public Safety has no data broken down by sex.

**El Salvador** Participants at the workshop expressed concern that statistics neither contain specific information on violence against women, nor is all their data disaggregated by sex, gender identity and/or sexual orientation. This occurs despite the fact that the Office of the Procurator-General and the Ministry of Health and Social Assistance are responsible for collecting data on and monitoring the implementation of the Intra-Family Law.

**Guatemala** Regarding women's and Children's Rights, participants at the workshop expressed concern over the fact that there are no reliable data disaggregated by sex, gender identity and/or sexual orientation on the issues of the sale and trafficking of children, child prostitution, and child pornography.

**Honduras** Regarding Women's Rights, participants at the workshop expresses concern over the complete lack of sufficient statistical data disaggregated by sex on the situation of women in all areas covered by the CEDAW.

**Jamaica** Regarding Women's Rights, participants at the workshop expressed concern over the complete lack of sufficient statistical data disaggregated by sex, gender identity and/or sexual orientation.

**Nicaragua** Participants at the workshop expressed concern that the State does not provide detailed statistical data disaggregated by sex in the context of acts of torture and ill-treatment allegedly committed by law enforcement, as well as on related investigations, judgments reached, and criminal sentences or disciplinary sanctions imposed in each case.

**Panama** Regarding Children's Rights, participants at the workshop expressed concern that the State does not collect statistical data disaggregated by sex on the situation of children belonging to groups in situation of vulnerability.

**Trinidad and Tobago** Regarding Children's Rights, participants expressed concern for the lack of an adequate data collection system.

### **Finding 3.6: Limited access on the part of pregnant women and adolescents to safe delivery resources, including access to skilled childbirth personnel and midwives**

#### **Responses and Observations Made by Various Participating Countries during the Workshops**

**Barbados** Regarding Children's Rights, participants at the workshop expressed concern on the State efforts to raise awareness of reproductive health and human rights through initiatives such as the Family Life Development Program have been largely ineffective, given the high levels of adolescent pregnancy, abortion, and HIV/AIDS.

**Belize** Regarding Women's Rights, participants at the workshop expressed concern that reproductive health and rights are not adequately recognized and protected. For this reason, participants agree with CEDAW's recommendations as follows:

1. Enhance sex education and the availability of contraceptives, so as to prevent women from having to resort to unsafe abortions.
2. Give priority attention to adolescents' situation *vis-à-vis* sexual and reproductive health and provide sex education targeted at girls and boys, devoting special attention to preventing early pregnancies and sexually transmitted infections (STIs).

Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. No consciousness-raising campaigns have been implemented to prevent all forms of violence against children, combat child abuse—including sexual child abuse—and change public attitudes and prevailing cultural practices in this respect.
2. Young people under 18 years of age are not allowed to have any medical counseling, including counseling on reproductive health, without parental consent.
3. The availability of preventive programs and campaigns to boost awareness of HIV/AIDS is limited.

**Costa Rica** Participants at the workshop expressed concern that no preventive measures have been taken to address the problem of the high rates of teenage pregnancy.

**Dominican Republic** Participants at the workshop recognized the need to

1. increase and improve access to sexual and reproductive education on the part of children and adolescents who attend school;
2. promote and strengthen secular education by incorporating human rights principles into school curricula;
3. incorporate adolescents into social policies and programs related to adolescent health, so as to better address their needs; and
4. facilitate access on the part of adolescents to contraceptive methods.<sup>84</sup>

**El Salvador** Participants at the workshop expressed concern for the high levels of teenage pregnancy, HIV/AIDS, and other STIs that could be significantly reduced if sex education and family planning were generally and openly addressed in school curricula.

Participants at the workshop expressed concern over

1. weaknesses in the financial and organizational structures of family planning programs aimed at women and men, as well as at providing broad access to contraceptives for all women and men, including teenagers and young adults;
2. the ineffectiveness of sex education programs for girls and boys in school curricula; and
3. the lack of ready availability to information on the impact of programs to reduce and prevent pregnancy among adolescents.
4. No measures have been taken to combat HIV/AIDS and to guarantee adequate medical treatment for persons with this illness.
5. School curricula do not openly address the subjects of sex education and family planning.

**Guatemala** Participants at the workshop recognized the need to

1. correct the lack of access to antiretroviral drugs, condoms, and other methods of contraception;
2. inquire into the high number of HIV/AIDS patients hospitalized in the national psychiatric hospital (*Hospital Psiquiátrico Nacional*); and
3. reform the national HIV law to fit a context of adolescent sexual health.<sup>85</sup>

Participants at the workshop expressed also the following concerns:

1. Although there have been encouraging increases in reproductive health-related indicators at the national level—41% of births are currently attended by skilled health personnel and contraceptive prevalence is recorded at 43.3%—these changes do not appear to have had a substantial effect on indigenous communities. Of all births attended by skilled personnel, 70% of them were deliveries among non-indigenous pregnant women. Similarly, only 40% of women who utilized contraceptives were of indigenous descent. Moreover, 27.6% of all fertile, sexually active women who wish to delay or prevent subsequent births are not using any form of contraception at all.

<sup>84</sup> PAHO Travel Report; Santo Domingo, Dominican Republic; 25–26 May 2010.

<sup>85</sup> PAHO Travel Report; Geneva, Switzerland; 10–11 May 2010.

2. There is a clear tension between modern medical treatment and traditional healing methods—including the utilization of traditional midwives, whose role is highly valued by many indigenous communities.
3. The Universal and Equitable Access to Family Planning Services Law does not specifically target indigenous women and families, nor does it include culturally appropriate birth control options alongside more novel methods. In this regard, the Special Rapporteur notes that any initiative to promote family planning in indigenous communities must necessarily utilize community and religious leaders to ensure adequate engagement of these communities.

Regarding Women's Rights, participants at the workshop expressed the following concerns:

1. No information on services and counseling is being made available to women suffering from mental health problems.
2. Since the veto of the Act on Universal and Equitable Access to Family Planning Services and Their Integration into the National Reproductive Health Program, there has been an unsatisfied need for birth control and sex education.
3. Women, particularly rural women, have limited coverage and access to medical services.
4. No educational campaigns have been organized regarding women's sexual and reproductive health.

Regarding Children's Rights, participants at the workshop expressed concerned that there is a general lack of consciousness-raising and prevention campaigns to educate people on the provisions and offenses covered in the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.

**Honduras** Participants at the workshop underlined the need to

1. facilitate adolescents' access to emergency contraception and other family planning methods;<sup>86 87 88</sup> and
2. ensure access to information and education on sexual and reproductive health, pursuant to the international and regional obligations to which the State is party—especially in the context of sexual violence (rape and other sexual assaults) against girls and adolescents.<sup>89</sup>

**Jamaica** Regarding Women's Rights, participants at the workshop recognized that inadequate attention is being paid to women's differential and specific health needs beyond primary and secondary care.

**Nicaragua** Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. There is a lack of availability to family counseling services and parent education programs.
2. Adolescents do not have access to safe, legal, and confidential sexual and reproductive health services, including information, counseling, and pregnancy termination.
3. Contraceptives are not widely available.
4. Children, adolescents, and pregnant women do not have universal access to HIV-related prevention, treatment, care, and support—which may eventually be responsible for the State failing to meet the target of eliminating mother-to-child HIV transmission and congenital syphilis by 2015, within the framework of the United Nations Millennium Development Goals.

<sup>86</sup> PAHO Travel Report; Geneva, Switzerland; 10–11 May 2010.

<sup>87</sup> PAHO Travel Report; Guatemala City, Guatemala; 7–9 September 2010.

<sup>88</sup> PAHO Travel Report; Guatemala City, Guatemala; 29 November – 3 December, 2010.

<sup>89</sup> PAHO Travel Report; Guatemala City, Guatemala; 29 November – 3 December, 2010.

Participants at the workshop also highlighted the importance of openly discussing the subjects of sex education and family planning methods in the school curriculum. This could help prevent early pregnancies and the transmission of sexually transmitted infections.

Regarding Women's Rights, participants at the workshop expressed concern over the following:

1. Most women and girls lack knowledge of and/or access to family planning and services.
2. The fact that appropriate family planning and contraceptive services are largely inaccessible, partially due to cost, makes women more likely to seek such unsafe medical procedures as illegal abortions.
3. School curricula do not include any age-appropriate sex education targeted at girls and boys to prevent early pregnancies and sexually transmitted infections, despite the need for concerted efforts along these lines.

**Panama** Regarding Children's Rights, participants at the workshop expressed concern over the following:

1. Children and their families have limited access to the services provided by the National Council for Children and Adolescent Rights, the Children's Delegate in the Ombudsperson's Office, and the Ministry of Youth, Women, Children and Family Affairs.
2. There are serious disparities in access to basic social services, such as education and health, among population different groups—particularly between those living in urban and rural areas. This subsequently hampers the enjoyment of rights, especially on the part of children living in rural areas and indigenous children.
3. While there is an increased demand for recovery and counseling services for victims of child abuse and neglect, there is a shortage of available services.
4. There are no programs in place to adequately meet current needs for reproductive health, sex education, family planning, and mental health.

**Trinidad and Tobago** Regarding Children's Rights, participants at the workshop acknowledged that adolescent health is not receiving enough attention in terms of developmental, mental, and reproductive health concerns.

### **Finding 3.7: Limited access to prevention and treatment services for persons living with HIV/AIDS, including consciousness-raising campaigns and antiretroviral medicines**

#### **Responses and Observations Made by Various Participating Countries during the Workshops**

**Barbados** Regarding Children's Rights, participants at the workshop expressed concern that the State's efforts to boost awareness of reproductive health and rights through initiatives such as the Family Life Development Program have been largely ineffective, given the high levels of adolescent pregnancy, abortion, and HIV/AIDS.

**Belize** Participants at the Belize workshop recognized the need to reform national laws, policies, and programs that hinder the exercise of several of the basic human rights and freedoms of people living with HIV.

Regarding Women's Rights, participants agree with the CEDAW recommendations that the State should:

1. accord priority attention to adolescents' situation by providing sex education targeted at girls and boys, devoting special attention to preventing early pregnancies and STIs;
2. step up its efforts to prevent and combat HIV/AIDS, and improve the dissemination of information on its risks and modes of transmission; and
3. include a gender perspective in its policies and programs on HIV/AIDS.

Regarding Children's Rights, participants at the workshop expressed concern over the limited availability of preventive programs and consciousness-raising campaigns against HIV/AIDS.

**Dominican Republic** Participants at the workshop expressed concern that the Basic Health Plan covers neither antiretroviral treatment nor specific HIV-related tests.

**El Salvador** Participants at the workshop expressed concern with the high levels of teenage pregnancy, HIV/AIDS, and other STIs that could be significantly reduced if sex education and family planning were generally and openly addressed in school curricula.

Participants at the workshop also expressed concern over the following:

1. No measures have been taken either to combat HIV/AIDS or to guarantee adequate medical treatment for people with this illness.
2. School curricula do not openly address the subjects of sex education and family planning.

**Guatemala** Participants at the Guatemala workshop recognized the need to

1. correct the lack of access to antiretroviral drugs and to condoms and other contraceptive methods;
2. inquire into the high number of HIV/AIDS patients hospitalized in the national psychiatric hospital (*Hospital Psiquiátrico Nacional*);<sup>90</sup> and
3. reform the national HIV law in the context of adolescents' sexual health.<sup>91</sup>

**Jamaica** Participants at the workshop underlined the need to reform the Towns and Communities Act, in order to increase access to prevention and treatment services—particularly among people living with HIV.

**Nicaragua** Regarding Children's Rights, participants at the workshop expressed concern that children, adolescents, and pregnant women do not have universal access to HIV-related prevention, treatment, care, and support. This in turn may eventually contribute to the State failing to meet the target of eliminating mother-to-child HIV transmission and congenital syphilis by 2015, within the framework of the United Nations Millennium Development Goals (MDGs).

<sup>90</sup> PAHO Travel Report; Guatemala City, Guatemala; 26-28 November 2007

<sup>91</sup> PAHO Travel Report; Geneva, Switzerland; 10-11 May 2010

**Panama** Regarding Children's Rights, participants at the workshop expressed concern over the following:

1. The State party does not allocate sufficient resources to combatting HIV/AIDS.
2. No expanded anti-retroviral treatment is provided to prevent vertical HIV transmission from mother to child, pursuant to the Committee's general comment No. 3 on HIV/AIDS and the rights of the child.
3. HIV/AIDS prevention campaigns both for adolescents and for the general population have tended to be fragmented.

**Trinidad and Tobago** Participants at the workshop held in Trinidad and Tobago emphasized the need to ensure that HIV prevention and treatment services be made available to such groups in situation of vulnerability as women, young people, children, men who have sex with men, injecting drug users, persons deprived of liberty (PDLs/prisoners), sex workers, and migrants.

## Topic 4: Legislation, policies and programs incorporating the needs of the LGBTI community

### Summary of Topic 4: Trends

The workshops identified high levels of discriminatory practices towards LGBTI persons. Legislation, policies, and plans do not take into consideration the needs of members of the LGBTI community. One of the countries analyzed (El Salvador) has introduced legislation to protect the LGBTI community from persecution and has recognized the need to protect this vulnerable group. However, there is no other evidence of progress made towards reforming laws, policies, and programs that hinder the exercise of several human rights and freedoms in the context of the LGBTI community, and that effectively exclude these persons, especially young people, from gaining access to civil, political, economic, social, and cultural rights—and fundamental freedoms including the ‘right to health.’

Participants at all the workshops underscored the high levels of discrimination against LGBTI persons due to their sexual orientation, gender identity, and/or gender expression as a widespread issue of concern in the sub-region (Central America and Caribbean countries). More specifically, they recognized the need to ensure that

1. the right of LGBTI persons to work, the obtain housing, and live free of discrimination on the basis of sexual orientation and/or gender identity be protected both in law and in practice; and
2. LGBTI persons have access to health services and information, especially that which relates to their sexual and reproductive health.

### Responses and Observations Made by Various Participating Countries during the Workshops

| <b>Finding 4: Legislation, policies and programs incorporating the needs of the LGBTI community</b> |   |
|-----------------------------------------------------------------------------------------------------|---|
| Barbados                                                                                            |   |
| Belize                                                                                              | X |
| Costa Rica                                                                                          | X |
| Dominican Republic                                                                                  |   |
| El Salvador                                                                                         | X |
| Guatemala                                                                                           | X |
| Honduras                                                                                            | X |
| Jamaica                                                                                             | X |
| Nicaragua                                                                                           |   |
| Panama                                                                                              |   |
| Trinidad and Tobago                                                                                 | X |

**Belize** Participants at the workshop recognized the need to reform certain laws, policies, and programs that hinder the exercise of several human rights and freedoms in the context of LGBTI groups. Among these laws are the following:

1. the Public Health Act (Section 94 of which mandates the disinfection of public means of transportation after transporting a person with AIDS);
2. the Criminal Code (Section 53 of which criminalizes consensual same-sex sexual conduct);
3. the Immigration Act (Section 26 of which prohibits homosexual persons from entering the country); and
4. the Nationality Act (Sections 10 and 21 of which deny citizenship to homosexual persons, persons living with HIV, and their immediate families).<sup>92</sup>

**Costa Rica** Participants at the workshop expressed concern over the following:

1. Authorities often fail to register or properly investigate reports of domestic violence lodged by persons with a partner of the same sex.
2. There have been cases of abuse of immigrants and citizens on the grounds of their sexual orientation and/or transsexual identity.
3. Only Catholic marriages have civil validity in Costa Rica. This situation discriminates against couples practicing other religions (or not any religion at all).

**El Salvador** The sub-regional workshop for Central America recognized the need to

1. promote the adoption and implementation of specific legislation and development programs that protect the rights of LGBTI people, while always ensuring the active participation of the LGBTI community;
2. incorporate the considerations of young people, including those from LGBTI groups, into the national health agenda—especially in the context of sexual and reproductive health and HIV/AIDS—in conformity to with the relevant international and regional instruments; and
3. strengthen mechanisms to investigate and monitor human rights violations, especially those affecting LGBTI people.<sup>93</sup>
4. The number of murders of LGBTI persons is increasing, having risen from 4 in 2003 to at least 12 in 2009.
5. LGBTI persons have fallen victim to brutal gang rapes.
6. There is a high level of societal homophobia, which is particularly reflected in employment and in the media.
7. Transgender persons experience difficulties when attempting to legally change their gender in official identity papers.
8. Despite the rise in the number of hate-motivated crimes against LGBTI persons, no institution compiles statistics on these victims of discrimination and violence.
9. There are cases of transgender women being detained in male prisons.

<sup>92</sup> PAHO Travel Report; Belize City, Belize; 30–31 October 2007.

<sup>93</sup> PAHO Travel Report; Tegucigalpa, Honduras; 1–4 October 2008.

**Guatemala** Participants at the workshop expressed concern that attacks are taking place in the State that target people for being gay, lesbian, transgender, or transsexual.

Participants discussed that in 2006, the *Inter-American Commission on Human Rights* granted precautionary measures in favor of several members of the Organization to Support Integrated Sexuality (OASIS), a nongovernmental organization working on behalf of the LGBTI community. This came about after two transsexual persons were the target of a violent attack involving four policemen. According to the Commission, sources confirmed that the LGBTI community faces attacks and threats that often involve the police, which create the fear of an existing clandestine policy of social cleansing.<sup>94</sup>

**Honduras** Participants at the workshop expressed concern that there are high rates of murders and other acts of violence, including sexual violence that specifically target LGBTI persons.

The working groups shared that in 2010, the *Inter-American Commission on Human Rights* (IACHR) granted precautionary measures in favor of two members of Cattrachas, a nongovernmental organization that works on behalf of the LGBTI community. This came about after a transsexual member was the target of a violent attack involving the police.<sup>95</sup> In 2009, the Commission had similarly granted precautionary measures in favor of three LGBTI persons who had been arbitrarily detained.<sup>96</sup>

Participants at the workshop also discussed that in 2008, the Commission condemned that allegedly 27 LGBTI persons had been murdered since the beginning of that year.<sup>97</sup> In 2003, the Commission likewise issued a statement condemning the fact that LGBTI persons were subject to constant harassment and violence, including approximately 14 murders from June to September of that year.<sup>98</sup>

**Jamaica** Participants at the Jamaica workshop emphasized the need to adapt national legislation (the public health law and Offences against the Person Act) to ensure its conformity to international and regional human rights instruments, norms, and standards, in such a way as to avoid discrimination against LGBTI persons.

**Trinidad and Tobago** Participants at the workshop in Trinidad and Tobago recognized that legislation, policies, and plans could discriminate against LGBTI persons. They further recognized the need to incorporate the considerations of young people, including those from LGBTI groups, into the national health agenda—especially in the context of sexual and reproductive health and HIV/AIDS—in conformity to the relevant international and regional instruments.

<sup>94</sup> <http://www.cidh.oas.org/medidas/2006.eng.htm>

<sup>95</sup> <http://www.cidh.oas.org/medidas/2010.eng.htm>

<sup>96</sup> <http://www.cidh.oas.org/medidas/2009.eng.htm>

<sup>97</sup> <http://www.cidh.oas.org/medidas/2008.eng.htm>

<sup>98</sup> <http://www.cidh.oas.org/medidas/2003.eng.htm>

## Topic 5: Mechanisms for identifying, investigating, prosecuting, penalizing, and monitoring human rights violations and freedoms (including capacity-building for civil society)

### Summary of Topic 5: Trends

The workshops identified inadequate enforcement mechanisms for identifying, investigating and prosecuting, penalizing, and monitoring human rights violations of such groups in situations of vulnerability such as children, women, adolescents, and LGBTI persons. Some laws do not recognize ‘gender’ in the Constitution as grounds for non-discrimination; others consider discrimination merely as a misdemeanor subject to a fine. Civil society organizations involved in the defense of LGBTI persons have very limited human resources, capacity, and funding at their disposal to respond to allegations of human rights violations in the context of health. There are no mechanisms to monitor implementation of international and regional instruments or to evaluate the impact of laws, policies, and programs.

The sub-regional workshop in Honduras recognized the need to

1. build the capacity of civil society organizations involved in the defense of LGBTI people to respond to allegations of human rights violations in the context of health;
2. encourage organizations responsible for the prosecution of human rights violations to be more proactive with their criminal investigations and assertive with their sentences, especially in the context of groups in situations of vulnerability; and
3. ensure the existence of a formal, uniform, and strong mechanism to receive, review, address, and monitor complaints regarding human rights violations, especially in the context of HIV/AIDS.

### Responses and Observations Made by Various Participating Countries during the Workshops

| <b>Finding 5: Mechanisms for identifying, investigating, prosecuting, penalizing, and monitoring human rights violations and freedoms (including capacity-building for civil society)</b> |   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| Barbados                                                                                                                                                                                  | X |
| Belize                                                                                                                                                                                    | X |
| Costa Rica                                                                                                                                                                                | X |
| Dominican Republic                                                                                                                                                                        | X |
| El Salvador                                                                                                                                                                               | X |
| Guatemala                                                                                                                                                                                 | X |
| Honduras                                                                                                                                                                                  | X |
| Jamaica                                                                                                                                                                                   | X |
| Nicaragua                                                                                                                                                                                 | X |
| Panama                                                                                                                                                                                    | X |
| Trinidad and Tobago                                                                                                                                                                       | X |

**Barbados** Participants at the workshop expressed concern over the fact that the State has not set up a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly Resolution 48/134, Annex).

Regarding racial discrimination, participants at the workshop expressed concern that ‘gender’ is not included in the Constitution as a ground for non-discrimination, and that none of the complaints of discrimination before the High Court since 1994 have been submitted before the Police Complaints Authority.

There is a lack of policy and legislative response to human trafficking.

Regarding Children’s Rights, participants at the workshop expressed concern over the following:

1. The State, through the National Committee for Monitoring the Rights of the Child, has not devoted adequate attention to the need for a thorough review of existing legislation. This needs to be done to determine whether it complies with the provisions of the Convention, putting emphasis on any remaining inconsistencies—especially with regard to the definition of the child, the acceptability of certain forms of physical abuse, and in the area of juvenile justice.
2. The State has not developed and implemented effective projects and programs to address the need to prevent child abuse and protect children from it, including procedures to protect children from possible further victimization by the legal system.
3. The Domestic Violence (Protection Orders) Act of 1992, despite having shown progress in removing police discretion in court referral of cases involving domestic violence, still fails to ensure a sufficient level of protection for children in such cases.

**Belize** Regarding Women’s Rights, participants at the workshop expressed concern over the following:

1. Laws and policies outlawing discrimination against women, as well as the provisions of the CEDAW, are inadequately enforced and insufficiently implemented.
2. Women lack access to justice.
3. The national machinery for the advancement of women is underfunded, understaffed, and has neither the capacity nor the authority to work effectively for the full implementation of the above Convention. Nor has it been capable of coordinating the implementation of the gender mainstreaming strategy across all sectors of Government.
4. There are no mechanisms either for monitoring implementation of the above Convention or for evaluating the impact of laws, policies, and programs aimed at achieving equality for women.
5. Marital rape is not prosecuted by the pertinent authorities.

Regarding Children’s Rights, participants at the workshop expressed concern that the Office of the Ombudsman is not properly equipped, in terms of either its mandate or its human and financial resources, to deal with complaints filed by or on behalf of children.

**Costa Rica** Participants at the workshop expressed concern over the following:

1. Only one complaint of torture has been reported, and no convictions have been handed down for it since the new law against torture entered into force.
2. Some possible cases of torture have been investigated as abuses of authority, despite their seriousness.
3. Victims and witnesses of torture are not provided with adequate protection.
4. Human trafficking is not an offense under national legislation.
5. Various legal and institutional measures taken to offer redress to victims of domestic violence have been insufficient in terms of addressing the increase in domestic violence against women.
6. Human trafficking may go unpunished in light of the lack of appropriate penalties.

Regarding racial discrimination, participants at the workshop expressed concern that, under national legislation, discrimination on the basis of race is considered merely a misdemeanor and subject only to a fine.

**Dominican Republic** Participants at the workshop expressed concern over the following:

1. There is a shortage of adequate funding to enforce and monitor the National Action Plan against the Trafficking of Persons and Smuggling of Migrants.
2. National legislation to define and penalize family violence, such as Article 42 of the Constitution and Law No. 24-97, has proven to be ineffective in addressing this issue.
3. No independent body exists to investigate the many complaints of torture and cruel, inhuman, or degrading treatment.
4. Acts of torture have not been investigated.
5. Perpetrators of these acts have, in the majority of cases, not been brought to trial.
6. Victims and their families have not been compensated.

Regarding Children's Rights, participants at the workshop expressed concern that the State does not have a monitoring mechanism in place to promote and protect Children's Rights.

Regarding racial discrimination, participants at the workshop expressed concern that the State does not provide adequate resources to prevent, investigate, and punish human trafficking.

**El Salvador** Participants at the workshop expressed concern over the following:

1. Authorities fail to properly investigate, prosecute, and punish those responsible for gender-based violence, which contributes to an environment of impunity and in turn results in scant confidence in the justice system.
2. Investigations into trafficking in women and girls are rare.
3. According to non-governmental organizations (NGOs) researching the phenomenon of femicide, there is no proper standard by which to investigate the cases that are being reported.
4. Victims and witnesses of human trafficking do not receive adequate protection and support services.
5. Law enforcement officials respond to human trafficking in inappropriate ways.

**Guatemala** Participants at the workshop expressed the following concerns:

1. Guatemala has failed to identify the causes of femicide and the rapid increase in violence against women.
2. The justice system continues to fail to adequately investigate and prosecute such cases.
3. Police continue to demonstrate a gender bias in the early stages of investigations, discrediting the victim either by blaming her for the crime, claiming she is a member of a gang, speculating about her sexual history, or alleging that she is a prostitute.
4. Attacks against human rights defenders are still not adequately investigated, and requests for protection are met with slow and insufficient responses.
5. Grave deficiencies in the police, prosecuting, and justice systems—along with the refusal of witnesses to testify due to the danger of reprisals—are the reason why approximately 98% of crimes continue to go unpunished.

Regarding Women's Rights, participants at the workshop expressed the following concerns:

1. There have been insufficient investigations into reported cases of femicide and violence against women.
2. The climate of impunity has yet to be eradicated.
3. Women are still afraid to report cases of violence inflicted upon them.
4. No appropriate legislation or other measures have yet been implemented to prevent human trafficking for purposes of sexual exploitation or forced labor, both of which directly affect women and girls.

Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. The State does not allocate adequate funds to coordinate the promotion of child protection, prevention of crimes against children, and care for child victims. Nor does it adequately fund activities to investigate and suppress acts covered by the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography and the National Plan of Action to Combat Commercial Sexual Exploitation.
2. The State has not taken the necessary steps to adequately define and criminalize human trafficking in its criminal legislation, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

**Honduras** Participants at the workshop expressed concern over the following:

1. The special prosecutors for human rights have failed to promptly investigate alleged human rights violations.
2. The National Bureau of Criminal Investigation is inefficient when it comes to investigating members of the police or armed forces because of its direct link to the Police Department.
3. Allegations of police brutality and torture are investigated by the police force itself, which constitutes a conflict of interest.
4. There is no existing independent external oversight mechanism for alleged unlawful acts committed by the police.
5. Cases of violence against women and extrajudicial killings of children, human rights defenders, and members of the judiciary are not effectively, thoroughly, and impartially investigated.
6. Officials suspected of human trafficking activities are not properly investigated.
7. High numbers of deaths in custody have not been investigated.
8. There is widespread impunity for acts of torture.
9. Legal provisions do not cover human trafficking for reasons other than sexual purposes.

Regarding Women's Rights, participants at the workshop expressed the following concerns:

1. The ability of women to bring cases of discrimination before the courts is limited, *inter alia*, by negative attitudes on the part of law enforcement and judicial officials, which create obstacles for women seeking access to justice.
2. Measures to combat human trafficking, such as the reform of the Penal Code in 2006, have not been effective.
3. Mechanisms to eliminate violence against women—such as the National Plan to Prevent, Punish and Eradicate Violence against Women (2006-2010), the proposed unit in the Public Prosecutor's Office to deal with violent crimes against women, and specialized domestic violence courts in Tegucigalpa and San Pedro Sula—are hindered by insufficient allocation of resources.

Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. There is no independent, child-sensitive, accessible system for reporting, processing, and investigating complaints made by children; nor does such a system exist to prosecute and punish cases of mistreatment or abuse.
2. Despite the ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, no governmental body is in charge of policies to implement it; and little has been done to raise awareness of this problem.

**Jamaica** Regarding Women's Rights, participants at the workshop expressed concern that there are no victim services and protection and that the Constitution does not include sex as prohibited grounds for discrimination.

**Nicaragua** Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. National legal bodies do exist to prosecute human rights and child and adolescent cases (the *Procuraduría Nacional de Derechos Humanos* and the *Procuraduría Especial de la Niñez y la Adolescencia*), and they are involved in promoting and protecting Children's Rights. However, they do not have adequate human, technical, and financial resources at their disposal to effectively carry out their assigned tasks.
2. Children's facilities are not equipped to file complaints of child abuse in institutions or to enforce prosecution of any offences.
3. Mediation is used in cases of physical and sexual abuse.
4. Although the Penal Code establishes urgent protective measures for victims of sexual violence and exploitation, there are no effective strategies and institutional developments to ensure rapid detection, protection, and support for the victims.

Regarding Women's Rights, participants at the workshop expressed concern over the following:

1. Laws enacted to protect women against violence are not enforced.
2. Perpetrators of violence against women are neither prosecuted nor punished.
3. Women lack access to justice in cases of violence—especially women and girls from poor and rural areas, as well as indigenous women and women of African descent.

**Panama** Regarding Children's Rights, participants at the workshop expressed the following concerns:

1. There are not enough financial resources available to implement a comprehensive national policy to protect Children's Rights, including a reform of juvenile penal procedures.
2. Government bodies—such as the National Council for Children and Adolescent Rights; the Children's Delegate in the Ombudsperson's Office; and the Ministry of Youth, Women, Children, and Family Affairs—do not cooperate with each other in their mission and lack clarity as to their roles.
3. There are no specific measures for the full implementation of Law 38 on domestic violence and mistreatment of children and adolescents, which allows for the removal of the alleged perpetrator of violence against the child from the home.
4. Due to a lack of training, law enforcement officials, social workers, and prosecutors are ill-equipped to report, monitor, investigate, and prosecute complaints in a child-sensitive manner.
5. There is still a need for more effective measures to guarantee adoption procedures that respect the rights of the child and prevent adoption abuses, e.g., adoption as a front for trafficking of children.

**Trinidad and Tobago** Regarding Children's Rights, participants at the workshop expressed concern over the absence of any independent mechanism with a specific mandate to regularly monitor and evaluate progress in the implementation of the Convention on the Rights of the Child.



## 5. Case Study: PAHO Technical Collaboration in Central America using Human Rights Instruments and Standards in the Context of Sexual and Reproductive Health of Young People

This case study shows us that appropriate interventions in the form of training workshops on international human rights norms and standards, as well as following the recommendations of the UN treaty bodies, can open the way for the reform of national policies, plans, and programs to ensure their conformity to international human rights norms and standards as provided by those bodies and PAHO technical guidelines.

### Step 1

Upon request by the Ministries of Health in some Central American countries, PAHO held a capacity-building workshop to address some of the issues relating to sexual and reproductive health of young people, as identified by the UN/OAS human rights bodies.

The recommendations included the following:

1. capacity-building for health workers using human rights instruments and standards in the context of sexual and reproductive health;
2. amending laws and policies that do not conform with international human rights instruments and standards;
3. adopting mechanisms to protect the human rights of adolescents in the health services; and
4. respecting the right of “informed consent” with respect to adolescents.

### Step 2

PAHO collaborated with the CEDAW Committee in identifying limitations in access on the part of adolescents to sexual and reproductive health, particularly maternal health. PAHO also presented a technical report to CEDAW that covered those limitations.

### Step 3

The CEDAW committee provided final recommendations to the country, such as the following:

1. The term “equality” should be used in a systematic manner.
2. Information on family planning should be intensified.
3. There is an obligation to provide emergency contraception for women and adolescents.
4. There is a need to re-evaluate the concept of therapeutic abortion.
5. There is a need to provide access to quality health care in the case of unsafe abortions.

**Step 4**

PAHO provided capacity-building upon request by the Ministries of Health, in line with recommendations made by the CEDAW committee. Capacity-building was conducted for health care providers, doctors, general hospitals, NGOs, ombudspersons, judges, congressional delegates, etc.

**Step 5**

PAHO collaborated with the legislative, executive, and judiciary branches to amend legislation and practices related to therapeutic abortion and emergency contraception.

**Step 6**

PAHO provided a technical opinion to the Ministry of Health on emergency contraception and assisted in the reform of the public health law with respect to therapeutic abortion, as well as guaranteeing access to emergency contraception provided by some Governments of Central America.

## Case Study: Paho Technical Collaboration In Central America Using Human Rights Instruments And Standards in the Context of Sexual And Reproductive Health of Young People

| When          | What was happening                                                                                                                                                                                                                                        | Where it was happening                                                                                                                                                                                                                              | Who was involved                                                                                                                                                                   | Why                                                                                                                                                                                                 |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prior to 2006 | National legislation and policies did not recognized international human rights norms and standards regarding sexual and reproductive health of young people                                                                                              | Recommendations by different UN treaty bodies and Special procedures identified some countries of Central America                                                                                                                                   | Women and young people who did not have access to information regarding sexual and reproductive health as well as health care services.                                            | Young people's needs had gone largely unnoticed in the policies and laws in the countries. Cultural and religious principles had influenced the formulation of sexual and reproductive health laws. |
| 2007 and 2008 | PAHO conducted a number of workshops (capacity building) using the human rights instruments and standards in the context of sexual and reproductive health and disseminated the recommendations of the different UN treaty bodies and special procedures. | In several countries of Central America where under the auspices of PAHO Member States and UN agencies, "Workshops on Basic Human Rights and Fundamental Freedoms in the context of sexual and reproductive health of Young People" were conducted. | Participants represented health workers, government, civil society, and international organizations. PAHO identified issues addressed by the treaty bodies and special procedures. | Rights of young people under the CRC and other human rights instruments and standards were not respected in health services. The right to "informed consent" of young people was not respected.     |
| 2009          | The human rights treaty bodies (CRC and CEDAW) produced the final recommendations to the countries.                                                                                                                                                       | The countries involved recognized the need to accept the recommendations of the UN treaty bodies and Special Procedures.                                                                                                                            | Human rights treaty bodies (CEDAW and CRC), the countries and PAHO.                                                                                                                | To amend national laws and policies to address: information on family planning, access to emergency contraception and therapeutic abortions.                                                        |

## Case Study: (continued)

| When | What was happening                                                                                                                                                                                                                                                        | Where it was happening                                                                                                   | Who was involved                                                                                | Why                                                                                                                                                                                      |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2009 | Countries requested several PAHO's capacity building workshops to follow up on the final recommendations of the CEDAW and CRC                                                                                                                                             | Recommendations by different UN treaty bodies and Special procedures continued to target some Central American Countries | Collaboration of PAHO with legislative, executive, and judiciary branches to amend legislation. | Young people's needs had gone largely unnoticed in the policies and laws in the countries. Some laws and policies prohibited access to emergency contraception and therapeutic abortion. |
| 2009 | PAHO provided a technical opinion to the Ministries of Health on emergency contraception and human rights. PAHO also collaborated with the Governments in the reform of the public health law with respect to access to therapeutic abortion and emergency contraception. | Ministries of Health, Supreme Courts and Parliaments of some countries of Central America.                               | PAHO, Ministries of Health, civil society, Parliaments and Constitutional Courts.               | Need to transform law and policies to recognize and protect the human rights and fundamental freedoms of adolescents, in particular adolescent girls.                                    |

## Annex 1: Human Rights Protection Instruments in the Context of the Right to Health of Young People and Gender Identities

United Nations binding instruments for the protection of human rights:

1. **Universal Declaration of Human Rights**  
<http://www.un.org/en/documents/udhr/>
2. **International Covenant on Civil and Political Rights** <http://www.un.org/millennium/law/iv-4.htm>
3. **International Covenant on Economic, Social, and Cultural Rights**  
<http://www2.ohchr.org/english/law/pdf/cescr.pdf>
4. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**  
<http://www2.ohchr.org/english/law/cedaw.htm>
5. **Convention on the Rights of persons with disabilities**  
<http://www.un.org/disabilities/convention/conventionfull.shtml>
6. **Convention on the Rights of the Child**  
[http://www.unhchr.ch/tbs/doc.nsf/7ceec89369c43a6dfc1256a2a0027ba2a/4c6c8d9ee8b9c104c12569-ce0054e917/\\$FILE/G0045810.pdf](http://www.unhchr.ch/tbs/doc.nsf/7ceec89369c43a6dfc1256a2a0027ba2a/4c6c8d9ee8b9c104c12569-ce0054e917/$FILE/G0045810.pdf)
7. **Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**  
<http://untreaty.un.org/english/treatyevent2001/pdf/07e.pdf>

Inter-American binding instruments for the protection of human rights:

1. **American Declaration on the Rights and Duties of Man**  
<http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>
2. **American Convention on Human Rights** <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>
3. **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights** <http://www.oas.org/juridico/English/treaties/a-52.html>
4. **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities** <http://www.oas.org/juridico/English/treaties/a-65.html>
5. **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women** <http://www.oas.org/cim/english/convention%20violence%20against%20women.htm>
6. **Inter-American Convention to Prevent and Punish Torture**  
<http://www.oas.org/JURIDICO/ENGLISH/Treaties/a-51.html>

International human rights standards and guidelines applicable in the context of Young People

United Nations standards and guidelines for the protection of human rights

1. **General Comment No. 14. The Right to the Highest Attainable Standard of Health (Article 12, International Covenant on Economic, Social, and Cultural rights). Committee on Economic, Social and Cultural Rights.** [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.en](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.en)
2. **General Recommendation No. 24. Women and Health. Committee on the Elimination of Discrimination against Women.** <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>
3. **General Comment No. 4. Adolescent Health and Development in the context of the Convention on the Rights of the Child. Committee on the Rights of the Child** [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.4.En)
4. **General Comment No. 5. Persons with Disabilities. United Nations Committee on Economic, Social and Cultural Rights.** <http://www1.umn.edu/humanrts/gencomm/epcomm5e.htm>
5. **General Comment No. 28. “Equality of rights between men and women”. United Nations Human Rights Committee.** [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)
6. **General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights. United Nations Committee on Economic, Social and Cultural Rights.** [http://www.unhchr.ch/tbs/doc.nsf/0/7c6dc1dee6268e32c125708f0050dbf6/\\$FILE/G0543539.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/7c6dc1dee6268e32c125708f0050dbf6/$FILE/G0543539.pdf)
7. **General Comment 20. Non-discrimination in economic, social and cultural rights. United Nations Committee on Economic, Social and Cultural Rights.** <http://www.unhcr.org/refworld/docid/4a60961f2.html>
8. **Resolution “Human Rights, Sexual Orientation and Gender Identity”. Human Rights Council (2011). A/HRC/17/L.9/Rev.1.** <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement>

Inter-American standards and guidelines for the protection of human rights

1. **“Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2600), of 2010 of the OAS Member States.** <http://www.ciem.ucr.ac.cr/documentos/resolucion2010.pdf>
2. **“Human Rights, Sexual Orientation, and Gender Identity” (AG/RES. 2653), of 2011 of the OAS Member States.** <http://www.ciem.ucr.ac.cr/documentos/resolucion2011/9/9.pdf>
3. **“Regional Strategy for Improving Adolescents and Youth Health” (PAHO CD 48/8) and Resolution CD48 R.5.** <http://www.paho.org/english/gov/cd/cd48-08-e.pdf>  
<http://www.paho.org/english/gov/cd/cd48.r5-e.pdf>
4. **Plan of Action on Adolescents and Youth Health (PAHO CD 49/12) and Resolution CD 49.R14** <http://new.paho.org/hq/dmdocuments/2009/CD49-12-e.pdf>  
[http://new.paho.org/hq/dmdocuments/2009/CD49.R14%20\(Eng.\).pdf](http://new.paho.org/hq/dmdocuments/2009/CD49.R14%20(Eng.).pdf)
5. **“Gender Equality Policy” PAHO CD46.R16 and “Plan of Action for Implementing Gender Equality Policy” (PAHO CD49/13) and Resolution (PAHO CD 49.R.12).** <http://new.paho.org/hq/dmdocuments/2009/CD49-13-e.pdf>  
[http://new.paho.org/hq/dmdocuments/2009/CD49.R12%20\(Eng.\).pdf](http://new.paho.org/hq/dmdocuments/2009/CD49.R12%20(Eng.).pdf)
6. **“Regional Strategy for Maternal Mortality and Morbidity Reduction” (PAHO CSP 26/14) and Resolution PAHO (CSP26 R.13)** <http://www.paho.org/english/gov/csp/csp26-14-e.pdf>  
<http://www.paho.org/english/gov/csp/csp26.r13-e.pdf>
7. **“Scaling up of treatment within a comprehensive response to HIV/AIDS” PAHO CD45/11 and Resolution CD 45.R.10.** <http://www.paho.org/english/gov/cd/CD45-11-e.pdf>  
<http://www.paho.org/english/gov/cd/CD45.r10-e.pdf>
8. **“Health and Human Rights” (Concept Paper) PAHO CD 50/12 and Resolution CD 50 and Resolution CD 50/R.8** <http://new.paho.org/hq/dmdocuments/2010/CD50-12-e.pdf>

## Annex 2

### International Human Rights Binding Instruments Applicable to the Health of Young People

| United Nations human rights system                          |                                       |                                                      |                                                                 |                                       |                                                                            |                                                                                  |                                                                     |
|-------------------------------------------------------------|---------------------------------------|------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Examples of specific human rights and fundamental -freedoms | Universal Declaration of Human Rights | International Covenant on Civil and Political Rights | International Covenant on Economic, Social, and Cultural Rights | Convention on the Rights of the Child | Convention on the Elimination of All Forms of Discrimination against Women | Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries | International Convention on the Rights of Persons with Disabilities |
| Life                                                        | Art. 3                                | Art. 4                                               |                                                                 | Art. 6.1                              |                                                                            |                                                                                  | Art.10                                                              |
| Personal integrity                                          | Art. 5                                | Art 5                                                |                                                                 | Art. 37.a                             |                                                                            | Arts. 1 and 16                                                                   | Art.17                                                              |
| Personal freedom                                            | Art. 9                                | Art. 7                                               |                                                                 | Art. 37.b                             |                                                                            |                                                                                  | Art. 14                                                             |
| Judicial guarantees                                         | Art.10                                | Art. 8                                               |                                                                 | Art. 40.2                             |                                                                            | Art.13                                                                           | Art.13                                                              |
| Privacy                                                     | Art.12                                | Art. 11                                              |                                                                 | Art. 16                               |                                                                            |                                                                                  | Art.22                                                              |
| Freedom of expression                                       | Art.19                                | Art. 13                                              |                                                                 | Art. 13                               |                                                                            |                                                                                  | Art. 21                                                             |
| Given name and surname                                      |                                       | Art. 18                                              |                                                                 | Art. 7.1                              |                                                                            |                                                                                  |                                                                     |
| Freedom of movement and residence                           | Art. 13                               | Art. 22                                              |                                                                 | Art. 10.2                             | Art. 15.4                                                                  |                                                                                  | Art. 18                                                             |
| Equal protection                                            | Art.7                                 | Art. 24                                              |                                                                 | Art. 2                                | Arts. 3 and 15.1                                                           | Art. 3                                                                           | Arts. 5 and 12                                                      |
| Judicial protection                                         | Art. 8                                | Art. 25                                              |                                                                 | Art. 40.2                             | Art. 15.2                                                                  | Art. 13                                                                          | Art.13                                                              |
| Work                                                        | Art. 23                               |                                                      | Arts. 6 and 7                                                   | Art. 32                               | Art. 11                                                                    | Art. 20                                                                          | Art. 27                                                             |
| Highest attainable standard of health                       | Art. 25                               |                                                      | Art. 10                                                         | Arts. 17, 19.1 and 24                 | Art. 12                                                                    | Art. 25                                                                          | Art.25                                                              |
| Education                                                   | Art. 26                               |                                                      | Art. 13                                                         | Art. 28                               | Art. 10                                                                    | Arts. 26 and 27                                                                  | Art.24                                                              |
| Benefits of the scientific progress                         | Art. 27                               |                                                      | Art. 14                                                         | Art. 31.2                             | Art. 13.c                                                                  |                                                                                  | Art. 32                                                             |

## International Human Rights Binding Instruments Applicable to the Health of Young People (continued)

| Examples of specific human rights and fundamental -freedoms | United Nations human rights system    |                                                      |                                                                 |                                       |                                                                            |                                                                                  |                                                                     |
|-------------------------------------------------------------|---------------------------------------|------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------|
|                                                             | Universal Declaration of Human Rights | International Covenant on Civil and Political Rights | International Covenant on Economic, Social, and Cultural Rights | Convention on the Rights of the Child | Convention on the Elimination of All Forms of Discrimination against Women | Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries | International Convention on the Rights of Persons with Disabilities |
|                                                             | Social security                       | Art. 22                                              | Art. 9                                                          | Art. 26                               | Art.11                                                                     | Art.24                                                                           | Art. 28                                                             |
|                                                             | Food and nutrition                    | Art. 25                                              | Art. 12                                                         | Art.24                                | Art.14                                                                     |                                                                                  | Art. 28                                                             |
|                                                             | Protection of the family              | Art. 16                                              | Art. 17                                                         | Arts. 5 and 27                        | Art.16                                                                     |                                                                                  | Art.23                                                              |
|                                                             | Protection of older persons           | Art. 25                                              | Art. 17                                                         |                                       |                                                                            |                                                                                  | Art.25                                                              |

### Paho Member States Party to the Above United Nations Human Rights Conventions

**Universal Declaration of Human Rights:** Not subject to ratification.

**International Covenant on Civil and Political Rights:** Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent, and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela.

**International Covenant on Economic, Social and Cultural Rights:** Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Convention on the Rights of the Child:** Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Convention on the Elimination of All Forms of Discrimination against Women:** Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries:** Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru, Venezuela.

**International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities:** Argentina, Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay.

## International Human Rights Binding Instruments Applicable to the Health of Young People (continued)

| Inter-American human rights system                          |                                                      |                                                        |                                                                                                                                                |                                                                                                                |                                                                                                                                 |
|-------------------------------------------------------------|------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Examples of specific human rights and fundamental -freedoms | American Declaration on the Rights and Duties of Man | American Convention on Human Rights (Pact of San José) | Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) | Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities | Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) |
| Life                                                        | Art. I                                               | Art. 4                                                 |                                                                                                                                                |                                                                                                                | Art. 4.a                                                                                                                        |
| Personal integrity                                          | Art. XXV                                             | Art. 5                                                 |                                                                                                                                                |                                                                                                                | Art. 4                                                                                                                          |
| Personal freedom                                            | Art. I                                               | Art. 7                                                 |                                                                                                                                                |                                                                                                                | Art. 4.c                                                                                                                        |
| Judicial guarantees                                         | Art. XVIII                                           | Art. 8                                                 |                                                                                                                                                |                                                                                                                | Art. 7.f                                                                                                                        |
| Privacy                                                     | Art. V                                               | Art. 11                                                |                                                                                                                                                |                                                                                                                | Art. 4                                                                                                                          |
| Freedom of expression                                       | Art. IV                                              | Art. 13                                                |                                                                                                                                                |                                                                                                                | Art. 4                                                                                                                          |
| Given name and surname                                      |                                                      | Art. 18                                                |                                                                                                                                                |                                                                                                                | Art. 4                                                                                                                          |
| Freedom of movement and residence                           | Art. VIII                                            | Art. 22                                                |                                                                                                                                                |                                                                                                                | Art. 4                                                                                                                          |
| Equal protection                                            | Art. II                                              | Art. 24                                                |                                                                                                                                                | Arts. II and III                                                                                               | Art. 4.f                                                                                                                        |
| Judicial protection                                         | Art. XXVI                                            | Art. 25                                                |                                                                                                                                                |                                                                                                                | Arts. 4.g and 7                                                                                                                 |
| Work                                                        | Art. XIV                                             |                                                        | Arts. 6 and 7                                                                                                                                  | Art. III.1.a                                                                                                   | Art. 4                                                                                                                          |
| Highest attainable standard of health                       | Art. XI                                              |                                                        | Art. 10                                                                                                                                        | Arts. III.2.a and III.2.b                                                                                      | Art. 4.b                                                                                                                        |
| Education                                                   | Art. XII                                             |                                                        | Art. 13                                                                                                                                        | Arts. III.1.a and 2.b                                                                                          | Art. 4                                                                                                                          |
| Benefits of the scientific progress                         | Art. XIII                                            |                                                        | Art. 14                                                                                                                                        | Arts. III.2 and IV.2                                                                                           | Art. 4                                                                                                                          |

International Human Rights Binding Instruments Applicable to the Health of Young People (continued)

| Inter-American human rights system                          |                                                      |                                                        |                                                                                                                                                |                                                                                                                |                                                                                                                                 |
|-------------------------------------------------------------|------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Examples of specific human rights and fundamental -freedoms | American Declaration on the Rights and Duties of Man | American Convention on Human Rights (Pact of San José) | Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) | Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities | Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) |
| Social security                                             | Art. XXXV                                            |                                                        | Art. 9                                                                                                                                         |                                                                                                                | Art. 4                                                                                                                          |
| Food and nutrition                                          | Art. XI                                              |                                                        | Art. 12                                                                                                                                        |                                                                                                                | Art. 4                                                                                                                          |
| Protection of the family                                    | Art. XVI                                             |                                                        | Art. 17                                                                                                                                        |                                                                                                                | Art. 9                                                                                                                          |
| Protection of older persons                                 | Art. VI                                              | Art. 17                                                | Art. 15                                                                                                                                        |                                                                                                                | Art. 4                                                                                                                          |

PAho Member States Party to the Above Inter-American Treaties on Human Rights

American Declaration on the Rights and Duties of Man: Not subject to ratification.

American Convention on Human Rights (Pact of San José): Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador): Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Uruguay.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará): Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

## Annex 3: Model Agenda National Workshop

### To Promote the Development of Children and Adolescents Through Programming and Planning Using a Human Rights Law Approach

#### General Objectives:

1. To provide capacity building and awareness raising on the use of international human rights instruments and standards in planning and programming, with emphasis on the Millennium Development Goals (MDG), the Convention of the Rights of the Child (CRC), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
2. To formulate and obtain consensus on basic principles in programming and planning with a multi-sectorial approach based on human rights instruments and standards.
3. To promote the establishment of a multi-sectorial alliance for respecting and promoting human rights of children and adolescents in the country.

#### DAY 1

Logical Schedule: (1) International instruments and political agreements (MDGs), as a means to answer: (2) how children and adolescents should be treated? (3) How is the real situation? What are the most relevant social problems of children and adolescents in the country?

8:00 -9:00- Registration of participants

9:00- 9:45- Inaugural Act

9:45-10:00- Presentation of methodology and objectives of the workshop

10:00-10:30- International instruments for the development of children and adolescents and importance of their application.

10:30-11:00 Coffee break

11:00-11:30- Regional system of Human Rights: a basic tool for the promotion and protection of human rights and freedoms related to children and adolescents

11:30-12:00- The MDGs and their importance for the exercise of human rights in the development of boys, girls and adolescents.

12:00-13:00 PANEL 1

Situation of children and adolescents in the country: answers to the human rights treaty bodies.

Children and Health

Prevention of violence

Child Labor

13:00- 14:00 Lunch

14:00- 14:30- Practical links between development and human rights and their relevance for children and adolescents.

14:30-15:30 PANEL 2

The country and its responses to the human rights treaty bodies' recommendations (practical example or leave it for next day-depending on the group).

Recommendations from CEDAW, CRC, Inter-American system, etc.)

Legislation and policies for the protection of children and adolescents.

15:30-16:00- Introduction to human rights law approach in programming for development

16:00-16:30 Conclusions and recommendations of the day.

## DAY 2

8:30-9:00 Conclusions from previous day

9:00- 10:30- Value added in the use of the human rights approach to programming and planning

10:30 -11:00 – Coffee

11:00-11:30- Practical activity for understanding the importance of international human rights instruments, the difference between rights and needs.

11:30-13:00- Working Groups: planning and implementation of programs using human rights law based approach.

13:00-14:00- Lunch

14:00 to 15:00- Presentation of working group

15:00-16:00- Integration of knowledge (practical exercise)

16:00-16:30- Closing and evaluation

## DAY 3

8:30-9:00- Conclusions from previous day

9:00-10:30- Workshop: identification of barriers and strengthens: what kind of support do you need? Multi-sectorial alliances? Next steps “plan of action”.

### *Coffee*

10:30-11:30 Presentation by working groups

11:30-12:30 Panel: How children and adolescents live their rights? Videos, stories from real life (story of death for malnutrition).

12:30-13:00 Declaration and compromises.

### *Lunch*

Documents for workshop, CD with international human rights instruments, summary of the workshop. etc.

## Annex 4 Questionnaire (1)

### Workshop- Actual situation of human rights and fundamental freedoms with respect to people living with HIV/AIDS

1. Governments have the obligation to promote and protect the rights of people living with HIV/AIDS through the establishment and implementation of policies, plans, and legislation.
  - a. What are the areas in which governmental entities should pay special attention? Examples:
    - Mental and physical quality and integrity of life of persons living with HIV/AIDS, in the context of: general hospitals, national institutions, psychiatric institutions, health services, orphanages, and public institutions that restrict the freedom of movement.
    - Actual situation of people living with HIV/AIDS in prisons, detention facilities and access to healthcare.
    - The special situation of men who have sex with men and injecting drug users.
  - b. What are the essential elements to be identified, considered and incorporated in policies, plans and laws regarding HIV/AIDS, for example:
    - With respect to receiving basic health services.
    - With respect to living and working in the community
    - With respect to access to health services by: men who have sex with men, women, children, prisoners, and other groups in situation of vulnerability, including access to anti-retroviral treatment, condoms, and clean injections in the case of injecting drug users).
    - With respect to the right not to be discriminated: equal protection before the law, liberty and freedom, as well as HIV/AIDS obligatory exams, scientific experimentation, due process, dissemination of confidential information used by public health personnel or tribunals.
  - c. What are the common practices in policies, laws and legislation that limit access to healthcare services with respect for people that live with HIV/AIDS?  
Consider in particular:
    - The situation of men who have sex with men
    - Sex workers
    - Injecting drug users in the context of existing criminal laws.
    - Personal liberty, freedom of movement, freedom of expression (including information regarding sexual and reproductive health) in the context of HIV/AIDS.

- d. What measures should be taken by the Government to guarantee the effective implementation of policies, plans and national legislation with respect to HIV/AIDS?  
For example:
  - Establishment of inspection plans in prisons, psychiatric institutions, orphanages, and long term care facilities, etc.
  - Promotion at the national level (national human rights committees, Ombudspersons offices, and attorney general offices) of adequate mechanisms to: present, investigate and resolve queries regarding the fulfillment of human rights and fundamental freedoms of persons living with HIV/AIDS in conformity with national policies, plans and laws.
  - Dissemination information with respect to prevention and treatment of HIV/AIDS among persons in situation of vulnerability taking into account cultural and religious background as well as sexual orientation.
2. Certain groups are more vulnerable to HIV/AIDS and to violations of their human rights and fundamental freedoms due to social condition, and cultural, ethnic and economic background. For example: women, children, indigenous peoples, adolescents, refugees and displaced persons, and men who have sex with men, among others.
  - a) Are there any measures in policies, plans or national laws in HIV/AIDS that protect these groups?
  - b) Are there special programs regarding HIV/AIDS that have been incorporated in national policies to protect specifically persons in situation of vulnerability?
3. Some governmental institutions, such as, Ombudspersons have an essential role in the protection and promotion of fundamental human rights and freedoms with respect to people living with HIV/AIDS.
  - a. What functions and roles may those institutions play?
  - b. Are there any specific initiatives by those institutions for the defense of human rights and freedoms of persons living with HIV/AIDS with respect to: access to treatment, goods, services, voluntary and confidential medical exams as essential requirements to guarantee the right to life, personal integrity, and equal treatment in accordance with constitutional provisions?
  - c. Are tribunals aware of international standards that protect the human rights and liberties of persons that living with HIV/AIDS?

## Questionnaire (2)

Actions and strategies that could be adopted by governmental entities, civil society, users and their families in accordance with international standards and general human rights provisions with the objective of establishing a local network that promotes and protects persons living with HIV/AIDS and their families.

1. What legislative, judicial, administrative, educative or other type of action can be taken by Governmental agencies to disseminate and implement by appropriate means (through Government authorities and civil society) international standards and general human rights provisions that protect basic rights and fundamental freedoms of persons living with HIV/AIDS?

Some examples to be considered:

- To incorporate in national policies, plans and laws, international standards and general human rights provisions.
- To present basic human rights principles and freedoms established by international human rights instruments and standards in national institutions, such as waiting rooms in hospitals and health centers, psychiatric hospitals, orphanages, long term care facilities etc.
- To establish mechanisms of public education and dissemination such as (education material, pamphlets, etc.).

2. The International Guidelines of the UN regarding HIV/AIDS and Human Rights, could be used as a Guidance for:
  - Structuring and/or reforming health systems in the context of HIV/AIDS.
  - Reforming legislation in order to:
    - Evaluate practices in health systems that may have an effect on the exercise of basic human rights of people living with HIV/AIDS.
    - Guarantee access to treatment, care and information regarding HIV/AIDS.
    - Establish monitoring mechanisms those guarantee the protection of human rights and fundamental freedoms of people living with HIV/AIDS.

Could you please let us know if these guides have been used nationally?

3. What actions have been taken by governmental agencies to promote and implement national legislation and plans regarding HIV/AIDS healthcare services with the primary objective of integrating persons living with HIV/AIDS in the society? Were users and other members of the community have been consulted, including associations of persons living with HIV/AIDS?
4. Please provide examples of measures that may be taken by civil society in order to disseminate international instruments and standards regarding the protection of fundamental human rights and freedoms of peoples living with HIV/AIDS.
5. Provide examples of concrete actions taken by civil society to protect and promote fundamental human rights and freedoms of persons living with HIV/AIDS, in particular:
  - To guarantee adequate living conditions in general hospitals, psychiatric institutions, community services, orphanages and long care facilities.
  - To guarantee medical care and treatment in accordance with international standards.
  - To combat stigma and discrimination regarding HIV/AIDS (education, employment, access to public facilities, etc.)
  - To train to public health personnel in mental health facilities with regard to international human rights and fundamental freedoms.
6. Please mention actions taken by civil society, with Governmental entities in order to implement policies, plans and laws to protect the human rights and fundamental freedoms of persons living with HIV/AIDS. Issues to be considered:
  - Difficulties in establishing a network for cooperation
  - Areas for cooperation
  - Role of PAHO/WHO
7. Please clarify the role of HIV/AIDS patients associations and families at a national level. Refer to specific activities. Please give examples for improving participation.



