

Sexual and reproductive health laws in Latin America, 2021

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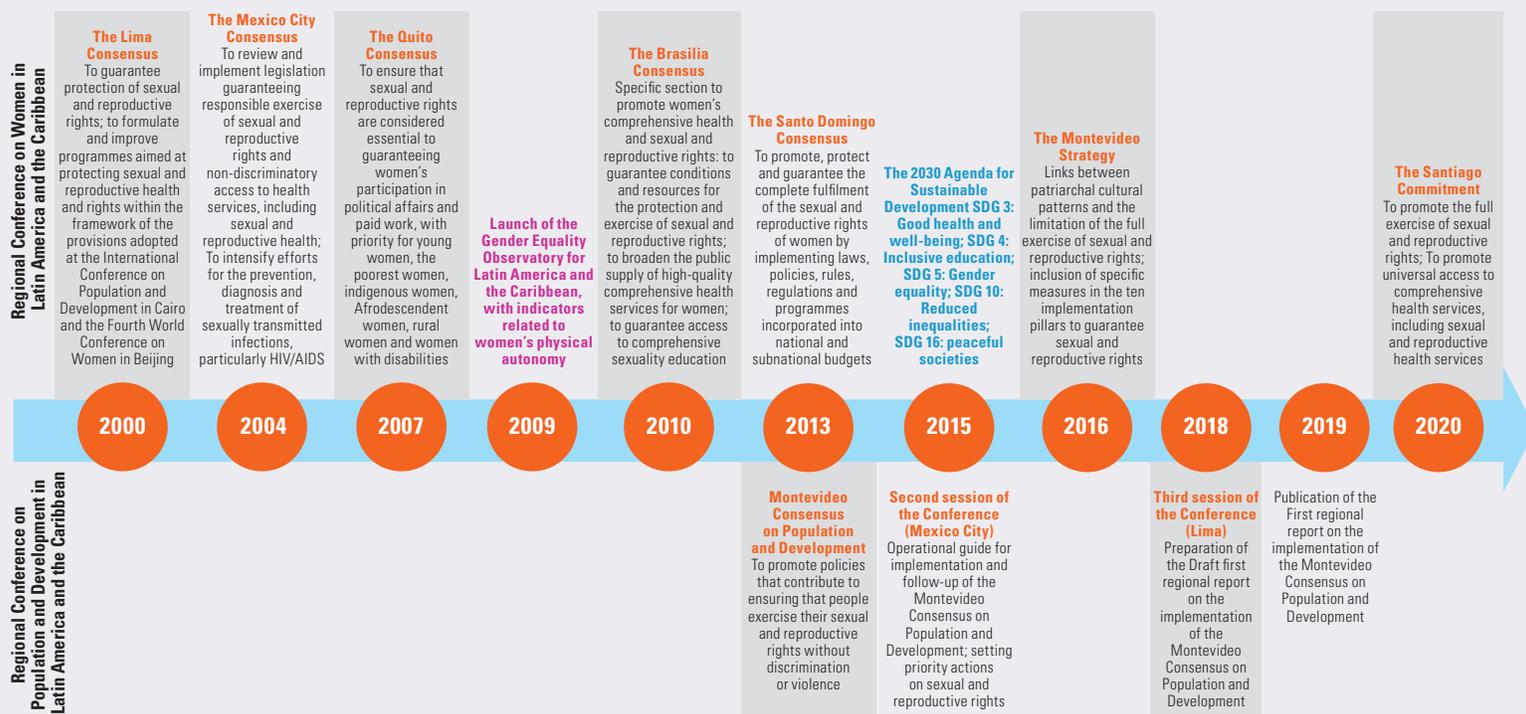


Introduction

Guaranteeing sexual and reproductive rights and promoting sexual and reproductive health have been integral components of the Regional Gender Agenda over the past 40 years. Specifically, since 2000, this has been reflected in the agreements adopted by ECLAC Member States at each of the meetings of the Regional Conference on Women in Latin America and the Caribbean, the milestones of which are shown in diagram 1.

Diagram 1

Regional Conference on Women in Latin America and the Caribbean and Regional Conference on Population and Development in Latin America and the Caribbean: milestones in the adoption of agreements on sexual and reproductive health, 2000–2020



Source: Economic Commission for Latin America and the Caribbean (ECLAC) (2016a), *40 Years of the Regional Gender Agenda* (LC/G.2682), Santiago, 2016.

A. Types of legislation

The repository of sexual and reproductive health legislation of the ECLAC Gender Equality Observatory for Latin America and the Caribbean contains 110 enactments, including articles in constitutions, general health laws that refer to sexual and reproductive health, specific laws on sexual and reproductive health and laws on issues related to sexual and reproductive health.¹

The constitutions of seven countries refer directly to the State's duty to guarantee the sexual and reproductive health of the population or aspects of it: Mexico (since the constitutional reform of 1974 and in subsequent reforms), Colombia (1991), Paraguay (1992), the Bolivarian Republic of Venezuela (1999), Ecuador (2008), the Plurinational State of Bolivia (2009) and Cuba (2019). Guaranteed exercise of all sexual and reproductive rights is enshrined in several constitutions, as is the right of individuals to decide freely whether to have children.

Six countries have provisions regarding sexual and reproductive health care and access in their general health laws: Cuba, Dominican Republic, Ecuador, Mexico, Peru and the Plurinational State of Bolivia. In the case of Guatemala, there are such provisions in the 2001 Social Development Act.²

The gender equality laws enacted during the 2000s by five countries —Panama (1999), Honduras (2000), Peru (2007), Nicaragua (2008) and El Salvador (2011)— also include provisions guaranteeing the sexual and reproductive health of women, young women and girls.

Five countries have specific laws on sexual and reproductive health: Argentina (2002), Guatemala (2005), Uruguay (2008), Chile (2010) and Paraguay (2011). Of these, three focus on creating and ensuring public management capacities to act in this area: those of Argentina and Guatemala, in relation to the creation of their public sexual and reproductive health programmes, and that of Paraguay, to ensure budgets are earmarked for reproductive health programmes. In the case of Uruguay, sexual and reproductive health is defined as a right that the State must guarantee and, lastly, in the case of Chile, the law establishes rules on information, guidance and benefits in the area of fertility regulation. Of these five laws, three recognize the existence of certain rights that must be guaranteed to users of the listed sexual and reproductive health services (Chile, Paraguay and Uruguay) and two (Argentina and Guatemala) establish sexual and reproductive health programmes and determine the powers and responsibilities of public institutions to implement them.

B. Specific aspects

Most of the compiled legislation relates to specific aspects of the field of sexual and reproductive health, such as access to contraception, treatment of sexually transmitted infections (STIs), maternal health, teenage pregnancy and assisted reproductive technology.³

Access to contraception is enshrined in the constitutions of six countries: the Bolivarian Republic of Venezuela, Cuba, Ecuador, Mexico, Paraguay and the Plurinational State of Bolivia. This access is central to the sections on sexual and reproductive health in the general health laws of six countries (Cuba, Dominican Republic, Ecuador, Mexico, Peru and the Plurinational State of Bolivia), while in Guatemala it is provided for in the 2001 Social Development Act. There are also specific laws, such as Brazil's Law 9263 of 1996, which establishes family planning as a right of every citizen, as well as the different conditions to ensure it is fulfilled. This is also the case of the 2013 regulation on access to and availability of contraception in the national health system of Ecuador, which aims to make available to women and men services for comprehensive quality care, as well as all required information on family planning, contraception, prevention of STIs including HIV/AIDS, emergency orally administered contraception, sexual and reproductive health, and prevention of teenage or unplanned pregnancies.

¹ The repository does not include the enactments of the English-speaking Caribbean countries.

² Article 25 of the Social Development Act defines reproductive health as a general state of physical, psychological, personal and social well-being in all aspects related to human sexuality, to the functions and processes of the reproductive system, to a sex life consistent with one's personal dignity and life choices, leading to a satisfying and risk-free sex life, and to the freedom to reproduce or not, and to decide when and how often, in a responsible manner. Article 26 stipulates that the Ministry of Public Health and Social Assistance, in coordination with the Ministry of Education, shall design, coordinate, implement and promote the Reproductive Health Programme, which must be participatory, non-discriminatory and inclusive and take into account the characteristics, needs and demands of women and men. In addition, it lists several provisions with which the Programme must comply.

³ Legislation related to the various types of cancer is not included.

There are 23 laws that govern the care of people with HIV/AIDS, the protection of their rights, and public institutions to address this epidemic, enacted between the 1990s and 2010. The first of these was enacted by Argentina in 1990, the most recent, by El Salvador in 2017, and the majority were enacted between 2000 and 2009.

Four laws specifically address maternal health. The first is Guatemala's Healthy Motherhood Act (2010), which created a legal framework to ensure that women have universal, timely and free access to accurate and full information and high-quality services before and during pregnancy, childbirth and postpartum to prevent and progressively eradicate maternal and neonatal mortality. Ecuador's 2006 Law on Free Maternity and Child Services provides for State financing of various health benefits for women relating to reproductive health, as well as for newborns and children aged under five. The other two laws are from Argentina: Law 25,929 of 2004 on humanized childbirth, which sets out the rights of all women in relation to pregnancy, labour, childbirth and postpartum (article 2), and the rights of every newborn (article 3), and the National Law on Comprehensive Health Services and Care during Pregnancy and Early Childhood 27,611 of 2020.

Since 2013, laws governing assisted reproduction have been enacted in Argentina (Law 26,862: Medically Assisted Reproduction, on comprehensive access to medically assisted fertility procedures and medically assisted reproduction technology, of 2013), Uruguay (Law 19,167 on Regulation of Assisted Human Reproduction Technology, of 2013) and Colombia (Law 1953, establishing guidelines for formulation of public policy for the prevention and treatment of infertility within the parameters of reproductive health, of 2019).

C. Identification of rights holders

The repository contains 20 enactments that guarantee the rights of children, adolescents and young people to access sexual and reproductive health policies and programmes, such as general laws on children and young people or different codes concerning children and adolescents.⁴

Many enactments refer to teenage pregnancy (10), although most of them refer to ensuring continuity of studies in the school system (Argentina, 2000, 2002 and 2003; Costa Rica, 1997 and 2002; Panama, 2002; Paraguay, 2010; Peru, 2010). Only Argentina has a National Programme of Comprehensive Sex Education (Law 26,150), which dates from 2006 and provides for the right of all students to receive comprehensive sex education in public, state-run and private educational establishments in the national, provincial and municipal jurisdictions and the Autonomous City of Buenos Aires. The Law defines comprehensive sex education as education that links biological, psychological, social, affective and ethical aspects.

Since 2010, provisions relating to sexual and reproductive health have been included in legislation governing the rights of persons with disabilities. This is the case in Chile (2010), Mexico (2011), Nicaragua (2011), Peru (2012), the Plurinational State of Bolivia (2012), the Dominican Republic (2013), Costa Rica (2016) and El Salvador (2020).

Argentina's National Law on Comprehensive Health Services and Care during Pregnancy and Early Childhood 27,611 of 2020 recognizes, for the first time, the rights of people of other gender identities with the ability to bear children. The purpose of this Law is to strengthen comprehensive care for the health and lives of women and other childbearing persons and of children in early childhood. In Latin America, equal marriage laws have been passed in five countries (Argentina, Brazil, Colombia, Costa Rica and Uruguay). Only two of them provide for the possibility of adoption by same-sex couples (Law 26,618 on Civil Marriage of Argentina and Law 19,075 on Equal Marriage of Uruguay). In Brazil (2010), Colombia (2015) and Costa Rica (2020), adoption by same-sex couples is allowed through court rulings. Two other countries, Ecuador and Mexico, have equal marriage laws that do not allow same-sex adoption (in Mexico it is only allowed in some states).

There is no specific legislation guaranteeing the sexual and reproductive rights of indigenous and Afrodescendent women and girls. There are some partial mentions of these rights in the Constitution of the Plurinational State of Bolivia —enshrining the right to safe motherhood, with an intercultural vision and practice— in the Health Act of Ecuador (2006), in the Social Development Act of Guatemala (2001) and in Panama's Law No. 4 (1999), which establishes equal opportunities for women. Regarding specific legislation on sexual and reproductive health issues, the rights of indigenous and Afrodescendent women and girls are explicitly mentioned in the Healthy Motherhood

⁴ The 20 enactments are from the following countries: Bolivarian Republic of Venezuela, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Plurinational State of Bolivia.

Act of Guatemala (2010) and its regulations (2012), in the Code on Children and Adolescents of Honduras (1996) and in the Regulation of Law 820 on the promotion, protection and defence of human rights in relation to prevention of and care for HIV and AIDS, of Nicaragua (2015). Indigenous women and girls are explicitly identified in the resolution amending Official Mexican Standard NOM-005-SSA2-1993, on family planning services (2004) and in the General Health Act of Mexico (1984, amended in 2021), as well as in the Code on Children and Adolescents of Paraguay (2001). Afrodescendent women and girls are explicitly provided for in the Act on the Rights of Children and Adolescents of Mexico (2014) and in the Equal Rights and Opportunities Act of Nicaragua (2008).

D. Voluntary interruption of pregnancy

With respect to voluntary interruption of pregnancy, 5 countries allow it without restrictions on the grounds and up to a certain point in the pregnancy, 12 allow it on certain grounds and 4 prohibit it under any circumstances (see map 1).

Map 1
Latin America: laws on interruption of pregnancy, 2021



Source: Economic Commission for Latin America and the Caribbean (ECLAC), Gender Equality Observatory for Latin America and the Caribbean [online] <https://oig.cepal.org/en>.

Note: The boundaries and names shown on the maps included in this publication do not imply official endorsement or acceptance by the United Nations.

For further information on the work of the Division for Gender Affairs of ECLAC on this and other issues, go to:
www.cepal.org/en/work-areas/gender-affairs and <http://oig.cepal.org/en>.