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THE PROTECTION OF LIFE IN GUATEMALA

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This report is backed by the
*Universidad del Istmo de Guatemala*³

Article 149 of the Political Constitution of the Republic of Guatemala:

“International relations: Guatemala will establish its relations with other states according to its principles, rules, and international practices with the sole purpose of contributing to the preservation of peace and freedom, for the respect and defense of human rights, to the empowerment of democratic procedures and international institutions which guarantee a mutual and equal benefit among the States”

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³ The Universidad del Istmo (UNIS) entered the Guatemalan educational field in 1996. Encouraged by a positive spirit of cooperation, joining forces with other institutions in initiatives that are oriented to the common good of society. The University has been designed to be a link, a bridge, an "isthmus" that combines scientific research and professional practice, values and the creative and innovative spirit, the social problems of the country and international events. The mission of this institution is to train professionals with excellent academic preparation and practice and a deep humanistic and ethical formation capable of promoting the culture of solidarity, to positively transform society. So his motto is: know to serve.

<http://www.unis.edu.gt/index.php/>

INTRODUCTION

Since its creation, Guatemala has been characterized as a state which protects life and the rights of its habitants. This may be clearly appreciated from the Diary of Sessions of the National Constitutional Assembly of the current Political Constitution of Guatemala, which concluded that the State of Guatemala is organized based on the human person.⁴ However, given that there is a tendency to redefine human rights and to distort their original meaning, Guatemala and other countries are being confronted with pressures of a severe nature to move forward with the recognition of a new range of rights which would put forth the idea that a woman has full authority to make decisions regarding her body and faculties, including the right to decide to put an end to a new life through abortion. *It is important to study how the State of Guatemala has regulated and protected, through the Political Constitution of the Republic, the international and internal standards of human rights, the fundamental right of human life; and more importantly, to identify the moment when, in Guatemala, a new life is worthy of the state's protection.*

⁴In the discussion made of the article 1 "Protection of the person" of the political constitution of the Republic of Guatemala, the following was argued: "A State may not exist if it was not of the presence of the person [...] the person is the fundamental base of the estate which multiplies, invests and supports the family; these are the two primary elements the State shall take care of. The person must be protected, lifted and placed as the primary element of all laws. None of the State purposes may be fulfilled if it's not through the law [...] and establishing that the bearer, the fundamental right entitlement is for the person [...] that is why we start by saying that the fundamental base is in the person and the family". Diary of Sessions of the Thirties Commission (The Commission Editor of the Draft Bill of the Constitution), National Constitutional Assembly, Guatemala, 1984.

I. THE CONTEXT AND CONDITION OF GUATEMALA

a. The political situation of Guatemala

The Republic of Guatemala is a unitary, sovereign, and independent state located in the north of Central America. From a territorial point of view, it is divided into 22 departments and its state capital is the city of Guatemala.

The Political Constitution of the Republic of Guatemala, promulgated in 1985 by the National Constitutional Assembly, determines the political, legal, and social structure of the state of Guatemala. According to the aforementioned regulation, the main purpose of the State of Guatemala is to guarantee its inhabitants the enforcement of their rights and liberties through governance by a democratic and representative system. According to the system administration, the Political Constitution states that the people delegate sovereignty to the three legal branches of the state: the Executive, Judicial, and Legislative, and these three branches have the power to exercise that sovereignty⁵. The legislative legal authority belongs to the Congress of the Republic (article 157 of the Political Constitution of the Republic) and the Executive branch authority goes to the President of the Republic, who will work jointly with the State Ministers or separately with each one of them (article 182 of the Political Constitution of the Republic). As for the judicial branch, its main function is to judge. The enforcement of laws belongs to the states courts (article 203 of the Political Constitution of the Republic).

The importance of the preface of the Constitution dwells in the identification of the guidelines and ideals which motivated the formation of the state of Guatemala. The preface is also the compass in which the spirit and foundations of any legal regulation are found. Within these guidelines, we may identify the following ideas: a) the acknowledgement of the state as the entity responsible for promoting the common good, legality, justice, security, freedom and peace; b) the acknowledgement of the supremacy of the human being as the subject and

⁵ The Political Constitution of the Republic of Guatemala issued by the National Constitutional Assembly in 1985, article 154.

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purpose of the social order; c) the recognition of the family as a primary origin of the society; and d) the promotion of the full enjoyment of human rights within a steady institutional order in which they act with absolute adherence to the law.⁶ According to the above mentioned guidelines, it may be interpreted that the intention of the constitution was to establish that the family is the origin of any society and therefore, of the state. It is the state's responsibility to protect the family and seek the common good of all of its members. Because the family is a social order that came before the state, the legal system must regulate it and make it a priority.

The first individual and recognized right in the Political Constitution of Guatemala is the right to life, which is jointly protected with the integrity and security of the person. This is how the Political Constitution of Guatemala regulates this right in the first and second articles: "Article 1. - The protection of the person. The state of Guatemala is organized to protect the person and the family; its supreme purpose is the fulfillment of the common good"; "Article 2. - The states duties. It is the state's duty to guarantee the life, liberty, justice, security, peace, and integral development of the person." Lastly, the third article of the constitution is extremely relevant, since it affirms the protection of human life from its conception and it also guarantees the security and human integrity of that life.

Subsequently, according to the social rights, the state of Guatemala also guarantees healthcare, establishing that the enjoyment of this right is fundamental for the human being without discrimination. Consequently, since the state of Guatemala has committed to guarantee healthcare and social assistance for all of its inhabitants, through the development of their institutions, actions of prevention, promotion and coordination, we can be assured that the preeminence of the physical, emotional, social, and mental well-being of the person is acknowledged from its conception.

⁶ Preface of the Political Constitution of the Republic of Guatemala, promulgated by the National Constitutional Assembly in 1985.

b. THE STATES ORGANISMS AND INSTITUTIONS

b. 1 EXECUTIVE BRANCH

The president of the republic is the main chief of the state of Guatemala and is the one who enforces the functions of the executive branch by legal mandate. Within the principal attributes of the presidency we may find the following: a) representation of the national unit and the interests of the nation's population; b) approbation, publication, execution and enforcement of the law; and c) the authority to submit before the Congress all international treaties, conventions, etc. for approval before their ratification.⁷ Considering that health is one of the main rights that the state of Guatemala protects and guarantees to its inhabitants according to article 93 of the Political Constitution of Guatemala, it becomes important to consider the Public Health and Social Assistance Ministry⁸ as one of the ministries that is part of the executive branch.⁹ This Ministry is dedicated to formulating policies and enforcing the legal health framework in its various aspects.¹⁰

b. 2 LEGISLATIVE BRANCH

According to the Constitution, the legislative faculties go to the Congress of the Republic, which is comprised of congressmen chosen by the voters of Guatemala, through a universal and secret vote. Within its main functions you may find the decree to reform and revoke the laws of the state of Guatemala; as well as to authorize international treaties and conventions before their ratification.¹¹

The Political Constitution of the Republic and the Organic law¹² of the legislative branch,¹³ sets the "Commission on Human Rights" as an integral organ of

⁷ The article 182 of the Political Constitution of the Republic of Guatemala: "Presidency of the Republic and integration of the Executive Branch".

⁸ By its meaning in Spanish: Ministerio de Salud Pública y Asistencia Social

⁹ The executive branch is formed in the same time by the Vice-president of the Republic, the Ministries, the secretary's office of the Presidency, its dependences, departmental institutions and the entities which administratively or in a hierarchic manner depend of the Presidency of the Republic, the commissions and temporal committees of the Presidency and the specific cabinets.

¹⁰ The article 39 of the law of the executive branch, decree number 114-97, Ministry of public health and social assistance.

¹¹ The article 171 of the Political Constitution of the Republic of Guatemala: "Other assignment of the Congress".

¹² " Organic Law of the Legislative branch is the name of the law that regulates the aspects related to the internal functioning of that specific branch of the government.

Congress. It is composed of a member of each political party represented in the current legislative period.¹⁴ This commission proposes three candidates to congress for the position of the Solicitor General of Human Rights, whose main function is to defend the rights that the constitution guarantees.

In general terms the Human Rights Commission dedicates itself to the promotion of the study and actualization of the legislation regarding the fundamental inherent rights of the person, the person's dignity, physical and mental integrity, and the improvement of the quality of his or her life. For such purposes, the commission is empowered to carry out all studies about the current legislation with the purpose of adjusting it to adhere to human rights and international treaties and conventions accepted and ratified by Guatemala. In the same way, the Commission is also empowered to organize the Office of Human Rights¹⁵, according to what is established in its regulations.

b. 3. JUDICIAL BRANCH

Article 203 of the Political Constitution of the Republic of Guatemala establishes that justice is administered in accordance with the Constitution and the laws of the republic; and that the judicial function is exercised solely and exclusively by the Supreme Court and other inferior courts established by law. There may not be more than two judgments (the initial judgment and an appeal) in any legal procedure. Finally, article 204 states that the courts have the legal mandate to obey the legal principle that the Constitution prevails above any other law or treaty in every resolution or sentence declared.

b. 4 THE CONSTITUTIONALITY COURT

The Political Constitution of Guatemala foresees the creation of a Constitutionality Court. This is a permanent and private jurisdiction court, the

¹³ The organic bill of the legislative branch, decree number 63-94 of the Congress of the Republic of Guatemala, was created with the sole purpose to bring up to update the general accepted law principles and the democratic representation practices; as well as obtain the transparency within the legislative branch (Third preface of the mentioned law).

¹⁴ The Political Constitution of the Republic (article 273) and the organic law of the legislative branch, (article 25).

¹⁵ Information of this institution will be developed more extensively.

main purpose of which is the defense of the constitutional order. The Constitutionality Court is made up of five head magistrates. Included within its attributes is the authority to decide in a proceeding on the challenges presented against any laws or general dispositions that were challenged partially or totally as unconstitutional. Among other attributes, it is also empowered to issue opinions regarding the constitutionality of treaties, conventions, and draft bills upon the request of any of the state branches.¹⁶

b. 5 THE HUMAN RIGHTS OFFICE

The Human Rights Office is constitutionally created as an independent entity. The Ombudsman¹⁷ of Human Rights is the one who organizes and administers the “Office of Human Rights”.¹⁸ The Office is organized in the following manner: a) Solicitor General of Human Rights; b) Department of the Human Rights Office; c) Department of promotion and education; d) Administrative department; and e) Financial department.

The main function of the Solicitor General of Human Rights is to be in charge of the internal organization of the Office. Among its responsibilities, we may find: the appointment, admonishment, and removal of personnel; as well as the elaboration of the annual budget draft of the Office, so that it may be submitted before the Commission of Human Rights of the Congress of the Republic and therefore be included in the General State Budget of Income and Expenditures.

II. THE LAW OF GUATEMALA AND ITS LEGAL SOURCES

Before entering the discussion of the position that the law of Guatemala adopts regarding the protection of human life, it is necessary to identify the regulations

¹⁶ Article 272 “Functions of the Constitutional Court” of the Political Constitution of the Republic of Guatemala.

¹⁷ An official appointed to investigate individuals' complaints against maladministration, esp. that of public authorities.

¹⁸The Human Rights prosecutors' office is mainly regulated in the Agreement No. SG-15-98 of the Prosecutor of Human Rights “The regulation of the organization and function of the prosecutors office of human rights”, reformed by the Agreements number SG-03-2011, published March 5, 2011 SG-052-2003 published September 16, 2003.

and hierarchical order that is found integrated in the legal system of the state of Guatemala. Guatemala has a legal system which belongs to the civil law tradition¹⁹ where legislation is the primary source of law. Custom and jurisprudence are complementary to the law and their functions are limited to what the Judicial Branch Law of Guatemala²⁰ states²¹.

A. THE REGULATIONS HIERARCHY

The legal regulation with the most important position is the Political Constitution of the Republic. Article 9 of the Judicial Branch of Guatemala states the Constitutional legal supremacy and hierarchy within the following: *“The courts will always observe the legal hierarchy and supremacy principle of the Political Constitution of the Republic, among any law or treaty, except for the treaties or conventions of human rights that prevail amongst internal law. The laws or treaties prevail amongst any regulations. The dispositions which contradict a law of superior hierarchy have no legal validity”*.

¹⁹ Civil Law is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge’s role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge’s decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes. (<https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html>)

²⁰ The Law of the Judicial Branch, Decree number 2-89 of the Congress of the Republic of Guatemala, was issued to organize the judiciary and to harmonize it with the constitutional reform (article 10 of the Transitory and Final Dispositions of the Political Constitution of the Republic of Guatemala).

²¹ Specifically, article 2 (“Sources of Law”) of the referred legal body states: *“The law is a source of the legal system. Jurisprudence will complement it. Customs will regulate when there is no written law or when the law clearly permits it, as long as it is not contrary to morals, public order and its existence is clearly demonstrated”*. Because of Article 2, the law will always prevail and its application extends to all the territory of the Republic of Guatemala (article 5, law of the Judicial Branch and article 153 of the Political Constitution of the Republic of Guatemala).

Diagram of the legal sources in Guatemala

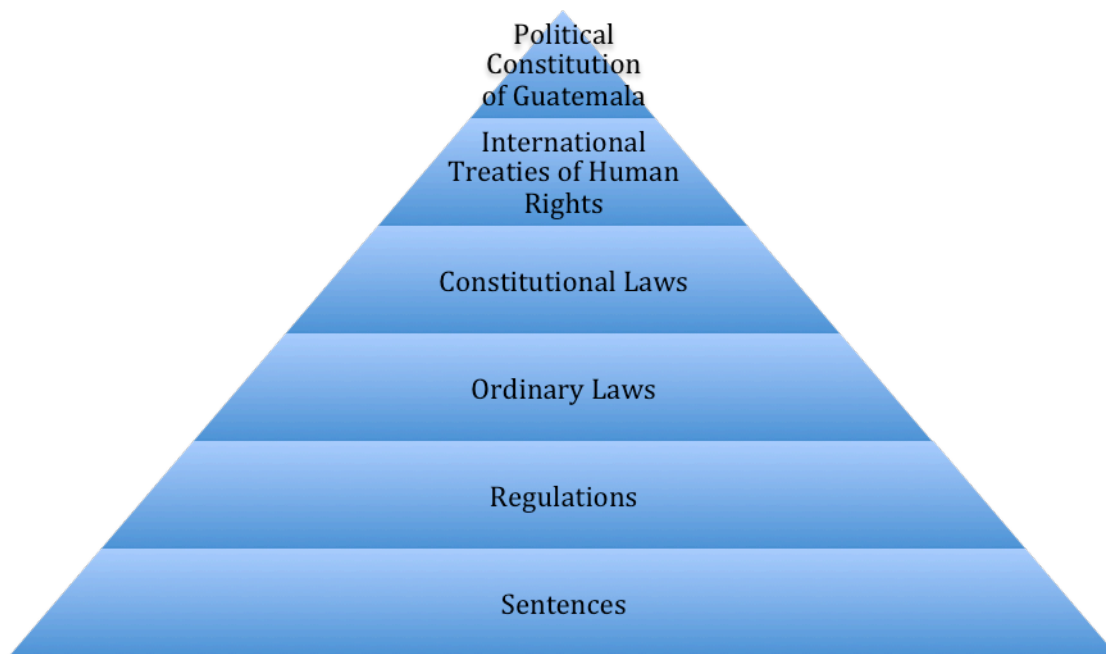


Figure 1

a. The Political Constitution of the Republic of Guatemala:²² This is the fundamental law of the state of Guatemala. It is first in the legal hierarchy and because of this no inferior regulation may contradict or distort it without giving cause to an unconstitutional action.

b. International Human Rights Treaties or Conventions: these are superior to internal law, but do not have legal superiority over the Political Constitution of the Republic of Guatemala.

c. Constitutional laws: specific laws which stem from the Constitution and are superior to ordinary laws. Modification of these regulations requires a majority vote of 2/3 of all the congressmen, which constitutes a single-chamber, and a favorable opinion of the Constitutional Court of

²² Article 175 of the Political Constitution of the Republic of Guatemala: "Constitutional hierarchy: no law may contradict the constitutional dispositions. Any laws, which violate or distort the constitutional dispositions, are void by law.

Article 204 of the Political Constitution of the Republic of Guatemala, "essential conditions of the justice administration": the justice courts must foresee that in every resolution and sentence the Constitution of the Republic will prevail over any law or treaty.

Guatemala (second part of article 175 “Constitutional hierarchy of the Political Constitution of the Republic²³), which contains the other requisites needed to modify an ordinary regulation.²⁴

d. Ordinary laws: these are all the regulations issued by the Congress of the Republic, such as international treaties that have been ratified by Guatemala and relate to any matter which does not refer to human rights.

e. Regulatory rules: these are the regulations issued by the executive branch with the sole purpose of describing the applications, procedures, and administrative descriptions of what has been established in a law.

f. Sentences: these are all the courts’ sentences, as well as every contract or administrative resolution. There are also resolutions issued by the Executive branch, for example the governmental agreements.

B. LEGAL HIERARCHY OF INTERNATIONAL TREATIES ON HUMAN RIGHTS

Regarding this point, it is important to settle an integral conflict over the hierarchical position that the Political Constitution of the Republic of Guatemala has and the privileged position that, at the same time, the Constitution grants to every international treaty of human rights above the internal legislation of the state of Guatemala, according to its article 46.

Article 46 of the Constitution (“Preeminence of the International Law”) establishes as a general principle that in aspects related to human rights, all the treaties and conventions accepted and ratified by Guatemala, are superior to internal law.

However, the composition of this article may cause confusion to its reader, because of the several interpretations regarding the significance of the term “internal law”. Specifically, there is discussion about whether the Political

²³ Article 175 of the Political Constitution of the Republic of Guatemala, “Constitutional hierarchy”: The laws considered as constitutional laws may only be reformed with two thirds of the totality of congressmen which form part of the Congress with the favorable judgment of the Constitutional Court.

²⁴In Guatemala, the constitutional laws are the following: (i) Law of the Public Order, (ii) Law of freedom of speech, (iv) Law of political parties; and (v) Law to protect constitutional rights, habeas corpus and constitutional actions.

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Constitution is part of the internal Guatemalan law or is considered superior to the same.

The predominant interpretation within Guatemala is the one which establishes that the Political Constitution of the Republic of Guatemala is considered internal law, because it is a superior law issued by the state of Guatemala and for the same, without the intervention of any other country or international entity. However the term “internal law” here is understood differently than the internal law stated in article 46 of the constitution.

The Constitutional Court of Guatemala has considered that the term “internal law”, within the context of article 46, does not include the Constitution, but only includes the ordinary law or regulation, as well as the international treaties which are not related to human rights. If article 46 of the Constitution is interpreted as establishing that the Political Constitution is part of the internal law of the state of Guatemala, we will be implicitly acknowledging that an international treaty related to human rights may modify the content of the Political Constitution of Guatemala, which is not reasonable. Therefore, the interpretation that prevails is the one which states that the Political Constitution is the primary law of all the legal system of the state of Guatemala, being above all ordinary law.

In addition to respecting the hierarchical position that the Political Constitution has, this interpretation also allows us to conclude that international treaties related to human rights have a privileged place within internal law in Guatemala, however, no more than the Political Constitution, since it does not form part of the internal Guatemalan law. If it was the case that an international treaty of human rights in any way modified the rights established and guaranteed by the Political Constitution of the Republic of Guatemala, such an international treaty

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would be clearly void under law²⁵, since the Political Constitution prevails over any law or treaty, regardless of its nature.²⁶

However, when an international treaty related to human rights pretends to add or modify something regulated in an ordinary law, the solution is different. According to article 44 of the Political Constitution of the Republic of Guatemala, the rights and guarantees that the Constitution grants, do not exclude others that, even though they are not expressly stated in the same, are inherent to the human being. Since international treaties related to human rights have a privileged position and become superior to any ordinary law, these shall prevail.²⁷

Finally, a third situation which may occur is one in which there is no conflict between the Political Constitution of the Republic of Guatemala and an international treaty related to human rights. In this case, both regulations are enforced and the international treaty has an innovative and complementary role.

III. THE RIGHT TO LIFE

²⁵Article 204 of the Political Constitution of the Republic "Essential conditions in the justice administration.

²⁶ To sustain the legal argument article 44 of the Political Constitution (Inherent rights of the human person) establishes that the laws and governmental dispositions or any other one will be void by law if it in any way contradicts, limits, diminishes or distorts the rights that the constitution guarantees.

In conclusion, no law or treaty of any nature may contradict what the constitution establishes.

²⁷ According to these criteria, it becomes necessary to mention a sentence issued by the Constitutional Court of Guatemala about a partial unconstitutional action of the law in a general manner related to article 201 Bis of the Criminal Code of Guatemala. This law was questioned because of the violations of human rights that the constitution guarantees in article 46. The unconstitutional action main argument issued by the court was the following: the legislative branch has an action margin in the configuration of criminal laws, this discretionary margin that the congressman may have, may not conceive itself in an absolute manner, since the punitive activity of the state finds its formal and material limits which come from the Constitution and the regulations integrated in the constitutional segment. Within this context, the Political Constitution of Guatemala and international treaties of human rights form Constitutional segment in Guatemala. The main effect of this sentence is granted by the action of declaring the unconstitutional action of an ordinary law when its content is in contradiction with the dispositions established in an international treaty in human rights. Before, the disposition that a treaty of human rights prevailed over internal law of Guatemala was only used as an argument but was never given a concrete action.

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As it has been described, the Guatemalan legal structure contemplates different types of law, each one within a hierarchical order that reflects the rigidity within the dynamism that the law requires.

The protection of life is determined in the following institutions:

a. THE POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA

The right to life and its protection in all of its development is found in the state constitution on which the legislative structure is built. It protects human life from its conception. This grants the state with the necessary institutions, tools and resources to defend life without any exception according to the first articles of this legal structure.

Art. 1 – The protection of the person. The state of Guatemala is organized to protect the person and the family; its supreme purpose is the fulfillment of the common good.

Art. 2 – The state’s duties. It is the state’s duty to guarantee the life, liberty, justice, security, peace and the integral development of a person.

Art. 3 – The right to life. The state guarantees and protects human life from its conception, as well as the human integrity and security of the person.

As a means to protect these fundamental principles, the constituents acknowledge that the guarantees will depend on the empowerment that the power branches and specialized institutions have and use, and the faculties established in the constitution.

b. CONSTITUTIONAL LAWS

LAW TO PROTECT CONSTITUTIONAL RIGHTS, HABEAS CORPUS AND CONSTITUTIONAL ACTIONS (Amparo)

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The law of amparo contains three different actions or appeals that seek the protection of human rights in different situations and contexts. The actions of protecting constitutional rights and preventing unconstitutionality are elemental to the continued protection of our fundamental rights, especially life.

The amparo is an action by which people who identify a violation to one of their constitutionally protected and legitimate rights seek the repayment of the damage caused or seek the prevention of the same.

An action for a declaration of unconstitutionality may be brought in two different ways. First, upon the request of a declaration of the unconstitutionality of a judicial resolution of a concrete case, which will only affect that particular case. The second, in an unconstitutionality declaration in a general resolution that will bind all similar cases. In this case, the request is made based on arguments, which prove that such a resolution affects the principles, guarantees, and rights recognized in the constitution and, therefore, should be protected in an orderly way.

LAW OF FREEDOM OF SPEECH

The law of freedom of speech is strictly bound to the fundamental right of free will. In this right we may gather all the matters related to the liberty of the person to have an opinion and its divulgation²⁸. This is the resource that most organizations submit in order to promote or encourage a dialogue among those people who defend life from its conception until natural death and the ones who propose alternative methods which causes a person's death.

c. ORDINARY LAWS

THE CRIMINAL CODE

The intention of the criminal law is to prevent damage to society, and therefore, the individuals that break the law are deprived of freedom for the benefit and protection of others. It identifies punishment as the act of society which assigns

²⁸ The National Constitutional Assembly, Decree number, 1985

part of its liberty and sovereignty for a bigger and collective good, so, in this way, it may encourage obedience to the law in the coexistence of the people²⁹.

For the integral protection of human life, the code classifies abortion as several negative felonies, and considers several punishable actions; based on the protection of the rights coming from the *ius naturales*, the human rights based on *ius penale*.³⁰

The Guatemalan criminal code defines abortion as the death of the product of conception in any moment of the pregnancy³¹.

Within the same felony of abortion, congressmen consider several ways it can be committed, which for the most part are punishable by law, and there is only one felony which does not have a penalty.

- The abortive practices which are penalized are the following:

1. ASSURED ABORTION

ARTICLE 134. The woman who causes an abortion or allows another person to cause it, will be penalized with 1 to 3 years in prison. If the abortion is caused by reasons bound intimately to her state that may cause her a psychological alteration, the punishment will be up to 6 months to 2 years of prison.

2. ABORTION WITH OR WITHOUT CONSENT

ARTICLE 135. Who intentionally causes an abortion will be punished with:

1o. Prison for 1 to 3 years, if the woman consented.

2o. Prison for 3 to 6 years, if the woman did not consent.

If violence, threats or deceits were used, the punishment will be 4 to 8 years of prison.

3. QUALIFIED ABORTION

ARTICLE 136. If the woman's death is caused as a consequence of the consented abortion or of the abortive consented maneuvers used, the responsible will be

³⁰ Mata Vela, José Francisco. Guatemalan criminal law: General and special part.). Magna Terra Editores, 2010. (By its name in Spanish: Derecho Penal guatemalteco: Parte general y parte especial

³¹ Art. 133 of the criminal code.

punished with 3 to 8 years in prison. If abortion or abortive maneuvers are used without the consent of the woman and her death is caused, the responsible will be punished with prison of 4 to 12 years.

4. INTENTIONAL ABORTION

ARTICLE 138. Who, by acts of violence causes an abortion, without having the intention of causing it, but was aware that the woman was pregnant, will be punished with prison of 1 to 3 years. If the acts of violence cause injuries, for which a superior punishment has to be applied, the punishment will be increased by a third part.

5. ATTEMPT AND CULPABLE ABORTION

ARTICLE 139. The woman who attempted to cause her own abortion, and the negligent abortion caused by herself, will be unpunished. The negligent abortion caused by another person, shall be punished with imprisonment of one to three years, provided that such person has prior knowledge of the pregnancy.

6. SPECIFIC AGGRAVATION

ARTICLE 140. The doctor who abuses his or her profession and causes an abortion or cooperates in one, will be punished according to article 135, with a fine of Q500 to Q3,000, as well as with a professional disqualification for 2 to 5 years. The same penalties shall be imposed on medical residents or people with sanitary functions, without detriment to the combination of other crimes.

In the Criminal Code, the following article goes beyond the constitutional provisions for the protection of life from conception. This has been classified as Therapeutic Abortion.

THERAPEUTIC ABORTION

Article 137. An abortion practiced by a doctor, with the consent of the woman, prior to a favorable diagnostic of at least one other physician is not punishable if the abortion was practiced without the intention of directly causing the death of the product of conception but with the only purpose being to avoid a risk,

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properly demonstrated, to the life of the mother, after having exhausted every scientific and technical means.

One is exempted of punishment, in the case of an abortion practiced by a doctor, if the abortion is performed without the intention of eliminating the product of the conception, and as a result of a practice executed in order to avoid a risk for the life of the mother, after having exhausted every scientific and technical means aimed to that purpose.³²

CIVIL CODE

The Civil Code, as a complementary legislation, defines and guarantees the principles enshrined in the Constitution, and provides the definition of the human person.

Although in its first articles the Civil Code commands that the civil personality *begins at birth* and ends with death, it is important to highlight that *the one who is about to be born*, is considered born for everything that favors it³³. That is to say, that people who have been born are put on a same level as those who are still in the womb, regarding the legal protection that the Law provides.

The Civil Code, in its function of defining the constitutional guarantees, is itself in full accordance with the ordinary laws, thus forming a protective block of life from conception to natural death.

UNIVERSAL AND EQUITABLE ACCESS OF FAMILY PLANNING SERVICES AND ITS INTEGRATION TO THE NATIONAL REPRODUCTIVE HEALTH PROGRAM BILL 87-2005

Guatemala has undertaken international commitments regarding sexual and reproductive health of women. From its participation in international

³² Criminal Code, article 137.

³³ Civil Code, article 1.

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discussions such as the World Conference on Women, The Convention on the Elimination of All Forms of Discrimination Against Women, and the Tenth Regional Conference on Women in Latin American, Guatemala undertook the obligation to participate actively in the projects of family planning.

For that purpose, the State of Guatemala enacted the Universal and Equitable Access of Family Planning Methods Bill,³⁴ which is incorporated within the National Program of Reproductive Health,³⁵ in accordance with a questionable Social Development Bill³⁶ with the purpose of constituting a legal framework that allows the Ministry of Health and Welfare to foster actions³⁷ regarding responsible fatherhood and the promotion of sexual and reproductive rights. The provisions of the statute are applicable at a national level, in every elementary and high school, as well as in every institution of the public health networks, including the Guatemalan Institute of Social Security³⁸ and the Non-Governmental Organizations that render basic health services.

Article 1 of the statute, states that its object is to ensure that the population is provided with and has access to family planning services, including those relating to information, the ministry, and education about sexual and reproductive health of the people. To accomplish that purpose, the Public Health and Social Assistance Ministry, the Guatemalan Institute of Social Security,³⁹ and other public and private entities, must guarantee, in a sustainable way, access to all of

³⁴ Universal and Equitable Access to Family Planning Services and its Integration to the National Reproductive Health Program. Decree number 87-2005 of the Congress of the Republic of Guatemala, in force and effect since 2005, hereinafter referred to as "Family Planning Bill"

³⁵ The National Program of Reproductive Health has as its principal object to provide the guidelines for supplying reproductive health services to the population, with the intention that the people, the couples, the families and the society enjoy a satisfactory and a healthy reproductive life without risks (Web page of the Ministry of Public Health and Social Assistance).

³⁶ Social Development Bill, Decree number 42, in force since 2001. Its principal object is to create a normative framework that allows promotion, planning, coordination, execution and follow up to the governmental actions directed toward the development of the human person in its social, family and human aspect.

³⁷ Report of Guatemala presented at the Tenth Regional Conference on Women in Latin America and the Caribbean, Quito, Ecuador, August 2007, Number 7 "Reproductive Health", page 30, available at <http://www.cepal.org/mujer/noticias/paginas/4/29404/InformeGuatemala.pdf>

³⁸ Report of Guatemala presented in the X Regional Conference on Women in Latin America and the Caribbean, Quito, Ecuador, August of 2007.

³⁹ Article 100 "Social Security" of the Political Constitution of the Republic of Guatemala: "The State recognizes and guarantees the right to social security for the benefit of the inhabitants of the nation. The application of the system of social security is the responsibility of the Guatemalan Social Security Institute, which is an autonomous entity with a juridical character, patrimony, and its own functions."

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the traditional and modern methods of birth spacing in the institutions of the public health network. In turn, it is established that such a family planning program, must be integrated with other aspects of the Reproductive Health Program, such as prenatal, postpartum, and puerperal attention, detection of cervical, uterine and breast cancer, sexually transmitted infections testing, and the prevention of osteoporosis.

Last, a relevant aspect that must be taken into consideration with respect to the law that regulates family planning issues, is that it creates the National Commission of Contraceptive Assurance, the object of which is to look after the availability of artificial contraceptives, both the pill and others, in order to guarantee to the Guatemalan population access to family planning services.

Analysis of the Regulation

Now, it is important to recognize, following the previous arguments, that the sale of all these medicines and drugs or the execution of proceedings that have abortion as a purpose, would be illegal. However, the illegality of said practices does not imply that they are not being carried out in Guatemala, as the open sale of abortive pills and proceedings are a fact in the country. This subject will be examined hereafter.

IV. THREATS

a. INTERNATIONAL DOCUMENTS

1. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND WORLD CONFERENCE ON WOMEN (BEIJING 1995) AND INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (CAIRO 1994)

The Convention on the Elimination of All Forms of Discrimination Against Women, is an international treaty promoted by the Commission of the Status of

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Women within the framework of the United Nations, and has the principal purpose of fostering the participation of women in society and guaranteeing the equality of rights, in every area, with respect to men. This instrument, as an international treaty, requires the ratification of the different States for its execution. Guatemala ratified it on August 12th of 1982.

Specifically, when talking about the right to health, article 12.1 of the Convention establishes that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” Likewise, in this context, article 16.1 of the Convention establishes that: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: [...] (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”.

The World Conferences, meanwhile, have been promoted within the framework of the United Nations to encourage the States in the effective application of the recognized rights of the international conventions.

The World Conferences on Women have been motivated by promoting the progress of women’s rights.

During the Fourth World Conference on Women, that took place in Beijing from the 4th to the 15th of September in 1995, “The Beijing Declaration and the Platform for Action,” that was intended to create the necessary conditions to improve the rights and participation of women in the society, was approved. Within said platform, there were presented, as well, important definitions about reproductive health and women’s reproductive rights. Consequently, it was established that reproductive health refers to women’s capacity to enjoy a satisfactory sexual life without risks, as well as the right to access information

and methods related to family planning and the prevention of sexually transmitted infections.⁴⁰

Once the concept of reproductive health had been defined, the definition of women's reproductive rights was also established. The Fourth International Conference on Women defined them as those rights "that rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children," as well as access to information with the purpose of reaching a high level of sexual and reproductive health.⁴¹

Another important issue associated with women and health that was explained, is the issue of the measures that governments had to adopt, in cooperation with non-governmental organizations and other entities, with the purpose of promoting the access of women to healthcare services and proper information. Through paragraphs 106, letters "J" and "K" of the World Conference on Women (Beijing 1995), an integration was made with the Program of Action of the International Conference on Population and Development, carried out in 1994 with the intention of adopting socioeconomic politics to promote economic growth and the movement of human and financial resources⁴². In paragraph 8.25 of the Conference it was established that States must reduce the recourse to abortion through expanded and improved family-planning services. One purpose of this Conference was to urge all governments and intergovernmental and non-governmental organizations to: i) Increase their commitment to women's health; ii) take care of the effects that abortions which are executed in non-adequate conditions cause as an important public health issue; iii) reduce the recourse to abortion by the provision of the widest and best services of family planning. Last, it was established that any means or changes related to abortion that could be

⁴⁰ United Nations, Report of the Fourth World Conference on Women, Beijing, September of 1995, paragraphs 94 and 95, available in: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

⁴¹ United Nations, Report of the Fourth World Conference on Women, Beijing, September of 1995, paragraph 223, available in: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

⁴² Report of the International Conference on Population and Development, Cairo, September of 1994 "Programme of Action of the International Conference on Population and Development <http://www.un.org/popin/icpd/conference/offeng/poa.html>

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introduced in the healthcare system, must be determined only at a national level and according to the respective legislative process.

Now, to relate the previously explained with regard to the specific situation of Guatemala, we must remember that the State of Guatemala is organized around the human person and with the purpose of the protection of the right of life. In the Conference, the delegation of the State of Guatemala expressed their interest in having all the deliberations about life and the future of the development of mankind be in favor of respect for life and human dignity. In that sense, the Government of Guatemala entered an express reservation on the use of terms, stipulations, and provisions which are implicitly or explicitly inconsistent with: 1.The American Declaration of the Rights and Duties of Man; 2.The American Convention on Human Rights (Pact of San Jose); 3.The guidelines adopted at the fifteenth summit meeting of Central American Presidents; 4.The Constitution of the Republic of Guatemala; 5. Civil, criminal and human rights legislation; and 6.The Multisectoral Agreement on Population Education issued by the Ministry of Education of Guatemala and the teaching approach used in such education⁴³.

This first reservation must be understood as a boundary that Guatemala imposes on the international community, by establishing that above any discussed⁴⁴ regulation, its sovereignty prevails regarding its legal system and whatever is protected within it. Because the Convention leaves a margin of appreciation when regulating the legal status of abortion, the State of Guatemala is firm in defending the Constitutional mandate of protecting human life from its conception⁴⁵.

In addition, the delegation of the State of Guatemala entered a second reservation with respect to Chapter II of the Conference (adopted principles), by establishing

⁴³ Report of the International Conference on Population and Development, Cairo, September of 1994 "Programme of Action of the International Conference on Population and Development" <http://www.un.org/popin/icpd/conference/offeng/poa.html>

⁴⁴ A statement from an international meeting or conference is not binding among States, because it lacks legal force. Consequently, they accomplish a mere guiding function.

⁴⁵ Article 1 and 3 of the Political Constitution of the Republic of Guatemala.

that the State accepts the chapter but notes that life exists from the moment of conception and that the right to life is the source of every other right⁴⁶.

Last, the delegation entered a reservation on the whole fourth chapter (Reproductive Health and Rights), based on the fact that the General Assembly's mandate to the Conference does not extend to the creation or formulation of rights; this reservation therefore applies to all references in the document to "reproductive rights", "sexual rights", "reproductive health", "fertility regulation", "sexual health", "individuals", "sexual education and services for minors", "abortion in all its forms", "distribution of contraceptives" and "safe motherhood."⁴⁷ This reservation is again a manifestation of the tendency that predominates within the State of Guatemala related to the respect of the rights and warranties that are therein guaranteed.

The State of Guatemala is characterized for being a State that defends the traditionally recognized rights in its internal legal framework and in the international arena, provided that the rights that are defended on an international level pursue a wide protection of human life and do not oppose the Political Constitution of the Republic of Guatemala.

2. THE TENTH REGIONAL CONFERENCE ON WOMEN IN LATIN AMERICA AND THE CARIBBEAN

In 2007, the State of Guatemala took part in the Tenth Regional Conference on Women in Latin America and the Caribbean. The conference is a subsidiary body of the Economic Commission for Latin America and the Caribbean (ECLAC) and took place in Quito, Ecuador. In the report developed by the State of Guatemala as a consequence of the Conference, it was expressed that the State is committed to guaranteeing the national mechanisms for the advance of women, as well as the commitment to promote international cooperation in the implementation of

⁴⁶ Report of the International Conference on Population and Development, Cairo, September of 1994
"Programme of Action of the International Conference on Population and Development
<http://www.un.org/popin/icpd/conference/offeng/poa.html>

⁴⁷ Idem.

the Program of Action of Beijing. Concerning women's rights, specifically within the context of sexual and reproductive health, the State of Guatemala committed itself to examining and implementing legislation that guarantees the responsible exercise of the sexual and reproductive rights, as well as access without discrimination to public health services, sexual and reproductive health included.

3. CONCLUSION ON THE RELATION OF WOMEN'S RIGHTS AND THE RIGHT TO LIFE.

As it is established in the Fourth World Conference on Women, "In most countries, the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic and political empowerment."⁴⁸ Consequently, the principal purpose of those discussions has been to increase the participation of women in the acts and the decision-making process that are related in one or another way with their welfare and quality of life. It is important to analyze women's sexual and reproductive health, not just to understand how to improve the situation of today's women, but also to understand the scope that rights and faculties that have been protected have in the feminine sector. At first, one can argue that women's rights, particularly those related to sexual health, have the function of equating women's conditions to men's by eliminating any possible situation of disadvantage or disproportion existing between both genders. However, it is necessary to establish that within this range of women's reproductive and sexual rights, certain sectors have twisted and misunderstood its scope of application. Particularly, they have misunderstood the faculties that women have, as mothers, to exercise their sexual rights of reproduction. It is often argued that the freedom of women to make reproductive decisions is assimilated to the faculty to decide, by use of abortion methods, about the life of a being who is starting its development. This assimilation cannot be tolerated.

⁴⁸ United Nations, Report of the Fourth World Conference on Women, Beijing, September of 1995, paragraph 223, available in: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

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In the Fourth World Conference on Women it was established that “The ability of women to control their own fertility forms an important basis for the enjoyment of other rights.”⁴⁹ However, there are no international rules of interpretation that allows us to infer that such affirmation extends to the faculty of a mother to decide whether to end the life of the child that is inside her womb. In that sense, to promote the welfare and development of women in terms of sexual and reproductive health is synonymous with empowering a mother to carry out acts that take another person’s life: her son exists from conception, no matter the premature condition of his development or the degree of growth.

Particularly, when talking about promoting and facilitating access to information about sexual health and family planning, it is not used to promote the use of abortive methods. On the contrary, the purpose that the States have assumed is an international compromise to look after women’s welfare in order to improve the access and quality of healthcare services available for them, eliminating in that way any type of discrimination that can exist in the medical attention sector.

For that, one can conclude “the rights, as objects demanded by human nature, are conceived as interrelated with each other. The convergence of opposed interests on the same object does not invalidate the previous affirmation, because the interests, the aspirations, are not *per se* rights, and because sociability is part of human nature. Each right is not antisocial, nor can it be recognized by ignoring the requests – basics in the case of fundamental rights – of the rest of the people”⁵⁰.

Now then, besides the risk of the abovementioned interpretation, it is necessary to analyze the contradiction that comes from the affirmation that there is predominance in the faculty of a woman to decide on her own body and on the life that develops within her. In the Fourth International Conference on Women, paragraph 96, it was established that equal relationships between women and

⁴⁹ Ibid.

⁵⁰ Cianciardo, Juan, *The conflict on human rights*, Pamplona, ENSA, 2000, p. 370. (By its name in Spanish: el conflictivismo de los derechos humanos).

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men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent, and shared responsibility for sexual behavior and its consequences. In addition, on a national level, there is a similar regulation foreseen in the Political Constitution of the Republic of Guatemala. Article 47 (“Protection of the Family”) mandates that “The State guarantees the social, economic, and juridical protection of the family. It will promote its organization on the legal basis of marriage, the equal rights of spouses, responsible paternity, and the right of individuals to decide freely the number and spacing of their children”. In addition, we can cite articles of the Civil Code of Guatemala where the same tendency is established. Articles 1109 (“Conjugal Representation”) and 253 (“Obligations of both parents”) of the Civil Code of Guatemala establish that “the conjugal representation belongs equally to both husband and spouse, who will have equally authority and considerations at home”, and “the father and the mother are forced to take care of and support their children”. Consequently, in Guatemala it is recognized that, within a family relationship, both parents are on an equal level with respect to the rights and obligations that belong to both. Additionally, even if there is no official family constituted, it is expressed that a mother never could, by the argument of exercising her sexual and reproductive rights, decide to end the life of her child, since the life of the child is protected from conception.

b. PILLS AND INVASIVE CLANDESTINE METHODS

1. PILLS

In Guatemala, there is free access to pills, a fact that impedes a stricter protection of life, since a combination of certain medicines sold in pharmacies is sufficient to initiate an abortion; directly threatening the legal framework that explicitly protects the right to life.

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The “Asociación Probienestar Familia” (APROFAM)⁵¹ describes on its web page the use of pills as follows:

1. 4 tablets of Microgynon or Lofemenal each 12 hours (2 doses = total of 8 tablets):
 - a. The first dose as soon as possible, but not until 72 hours after the unprotected sexual relation.
 - b. The second dose, 12 hours after the first dose⁵².

The use of these pills is a free practice, not regulated as a means of abortion.

2. CLANDESTINE INVASIVE METHODS

The practice of clandestine methods is an image of the institutional inefficiency in complying with the legal system that leans toward the protection of human life, and contravenes the rule of law and the protection of life that the Constitution pursues.

According to the Guttmacher Institute,⁵³ 33% of the pregnancies in Guatemala are unintended, 12% of which end in abortion. In addition, Guttmacher claims that “induced abortion is relatively common but frequently unsafe”⁵⁴. However, there are no official statistics that confirm this percentage, nor is there any law or health regulation that protects such a practice.

c. PRO ABORTION ORGANIZATIONS OR INSTITUTIONS WITH INCIDENCE IN GUATEMALA

⁵¹, Is a private association, founded in 1964, that gives health care services, and promotes emergency contraceptives.

⁵² <http://www.aprofam.org.gt/servicios-medicos/consultas/planificacion-familiar/>: The web page explains that the method is not abortive since it avoids the release of the ovule, however it is an “emergency” method that must be taken the day after the sexual act.

⁵³ Guttmacher Institute: Unintended pregnancy and induced abortion in Guatemala.

⁵⁴ Idem.

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Faced with the prohibitive legislation that frames Guatemala's position towards the protection of life,⁵⁵ a lot of non-governmental organizations and governmental institutions have shaped a contact network ready to fight for the legality and validity of abortion. The arguments presented are of different natures: economic, social, regional; but all of them pursue the same end: that the mother has the option to decide whether she wants to give birth to her child or whether she wants to abort.

c.1. PRO ABORTION INTERNATIONAL ORGANIZATIONS

The international community has created a significant level of pressure to induce Guatemala's government to ratify treaties, agreements, and charters related to sexual rights, including women's right to abortion.

c.2 UNITED NATIONS (UN)

The United Nations Human Rights Council, which has created many documents promoting regulation of abortion, can be cited as the principal source of international pressure. Their arguments are focused on a supposed high rate of non-induced and clandestine abortions, on the risk that these represent to the mother, and on the "necessity" to protect human population growth in the countryside area of Guatemala.

In one of the reports, the Special Reporter, Anand Grover, when talking about the right of every person to the enjoyment of the highest level possible of physical and mental health, expressed that: "it is alarming that in Guatemala abortion is prohibited (...),"⁵⁶ Within the analysis, he recommended that even if abortion is not suggested directly as a solution, it should not be dismissed either, and expressed, as well, his dissatisfaction with the prohibition of the act before the Guatemalan legal system.

⁵⁵ Penal Code of Guatemala, Decree 17-73 and its amendments.

⁵⁶ United Nations, General Assembly: Human Rights Council, "Report submitted by Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Mission to Guatemala.

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The commitment of Guatemala to the United Nations is exclusively limited to the performance of the rules contained within the international treaties and conventions ratified by the State. However, under any circumstance, recommendations made by committees or any specialized international organisms, such as the Human Rights Council, can put national sovereignty and the protection of the right to life that the State of Guatemala guarantees to all its inhabitants at risk.

c.3 WORLD HEALTH ORGANIZATION (WHO)

Within the structure of the United Nations, the World Health Organization⁵⁷ leads the subject of reproductive health and access to medicines. The World Health Organization assembles the efforts of the international community to attack those problems that violate the world population's health and welfare.

With the purpose of promoting abortion, the department of Reproductive Health of the WHO has published a technical and policy guideline⁵⁸ that trains the health sector to assure an abortion "without risks." Notwithstanding the prohibition of the practice, included within the technical guideline is information on how to practice an abortion while lacking the equipment, medicines, and professional supplies necessary for the "safe" practice of an abortion. This guideline pretends to introduce to the population a methodology prohibited by Guatemalan legislation, and to train the interested in the practice of a "safe" abortion. The technical guideline has been issued already in two printed and electronic editions for free access.

c.4. PRO ABORTION NATIONAL ORGANIZATION

⁵⁷ <http://www.who.int/en/>

⁵⁸ Safe abortion: technical and policy guidance for health Systems. Second Edition. Available in: http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/

Asociación Probienestar Familia – APROFAM [its acronym in Spanish] is a private association founded in 1964⁵⁹ as an effort to provide accessible health services to the population; prioritizing the sexual and reproductive health of the Guatemalan population. Among its services is access for women to ultrasounds, pelvic examinations, gynecology, and, as a massive service, the production and distribution of information related to sexual health, as well as the sale of medicines. APROFAM denominate themselves as “pro-family” (neither pro-choice, nor pro-life). And despite the fact they say they protect the family, this organization facilitates methods that interrupt pregnancy, such as the “morning-after pill.” This facilitation represents a contradiction not only to the effort of the legislator to protect life from conception, but to the protection of the family as well.

V. CONCLUSIONS

The legal structure of Guatemala present a solid framework to protect the State from the permanent international pressure that puts the protection of the right to life at risk. As was mentioned throughout this report, the State of Guatemala is characterized by a position that protects and guarantees the human right to life from its conception (article 3 “Right to life” of the Political Constitution of the Republic); and for that reason, the Penal Code of Guatemala⁶⁰ qualifies as a felony any action that has as a purpose the suspension of pregnancy.

However, as has been demonstrated in the report, there exists in Guatemala unofficial abortive practices, either through the sale of emergency contraceptive pills or through the clandestine practice of abortion. In effect, even if in Guatemala there is a problem with the absence of official statistics that illustrate the aforesaid situation, studies indicate that “Guatemalan women do everything possible to keep their abortions secret”⁶¹, and that conduct impedes a precise

⁵⁹ Asociación Probienestar Familia – APROFA – website: <http://www.aprofam.org.gt/>

⁶⁰ Penal Code, Decree 17-73 of the Congress of the Republic of Guatemala, articles 133-140.

⁶¹ PRADA E., et al., “Induced Abortion and Unintended Pregnancy in Guatemala”, Guttmacher Institute, New York, 2006, page 4.

measure of the practice, which avoids the magnitude of the problem being shown through official statistics.

According to a study by the World Health Organization in 2006, the registered cases of hospitalized women as a consequence of having practiced an abortion, indicate that they favored such proceedings because of the following socio-economic causes: a) they did not want to have more children; b) they could not support another child; c) they would be rejected by their parents if they continued with their pregnancy; d) they were single mothers⁶².

Aside from the causes that motivated the practice of an abortion, according to the information published in 2010 by the Center of Epidemiological Investigation on Reproductive and Sexual Health, it is affirmed that abortion is the fourth cause of maternal death in Guatemala. The clandestine nature of the proceeding causes it to be practiced in inadequate conditions by low trained professionals and midwives. Generally, the practice of an abortion under the aforesaid conditions causes hemorrhages and a series of diseases that puts at risk the life of the mother⁶³.

In the face of that situation, an argument that is constantly presented is that a way to avoid maternal mortality during the execution of the abortive proceeding would be to legalize it. However, the mistake of this argument consists in equating the term “legal” with the term “secure,” because none of the abortive proceedings is free of physical, psychological, or emotional consequences to the mother. To support this affirmation, there is the example of the list named as “Blackmun wall,” prepared by the American organization “Life Dynamics.” This list purports to show the identity and conditions in which mothers that have practiced a legal abortion have died in the United States of America, to illustrate how an abortion, even if legal, in addition to making an attempt against the life of

⁶² Grajeda R et al., Estudio multicentro sobre el aborto, Guatemala City, Guatemala: World Health Organization (WHO), 1995, page 12.

⁶³ VALENZUELA URBINA, Lucía, lawyer at the Constitutional Court of Guatemala “Breve análisis sobre el estado laico y el derecho a la libertad de conciencia y de educación en la jurisprudencia constitucional en Guatemala”, page 141, available in: <http://www.injuve.es/sites/default/files/2012/44/publicaciones/revista-91-capitulo-10.pdf>

a new human being, also makes an attempt against the life of the mother. The list receives the name of “Blackmun Wall” taking because it was Justice Harry Blackmun who legalized abortion in the United States after having ruled in *Roe v. Wade*⁶⁴.

Having discussed that giving the quality of “legal” to an abortive proceeding does not modify the consequences that are implicitly found within it, it has to be concluded that an abortion is not an option to be considered by any person. The solution cannot be found in suspending the pregnancy; the solution is found in promoting sexual health and reproductive education. To inform about the existence of preventive methods and of pregnancy spacing would establish the basis to eliminate unintended pregnancy and end the lives of the children as well as the mothers.

Family planning alone is not an absolute solution, since the economic and social situation of pregnant women must be considered as well. Principally, the subject of access to education and work opportunities, as well as the limits to participation and development that women face, especially young women, must be taken into consideration. Consequently, the country has a big challenge ahead: to intensify the efforts to improve the situation of vulnerable women fundamentally in education, health, work and social participation. The main objective should be to provide support to any woman who in her capacity as mother intends to self overcome.

The defense of life from its conception is fundamental in Guatemala and for the rest of the world, with the shield that the Guatemalan normative hierarchy offers; it can guarantee, before eminent threats, the life and integrity of every human person.

⁶⁴ http://www.lifedynamics.com/Pro-life_Group/Pro-choice_Women/