



## Paraguay

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### I. Introduction

Dignity and life have an essential value universally acknowledged, though not always equally protected. This is mainly the consequence of the fact that, underlying every legal system, is a certain understanding of mankind and their dignity.

This is why knowing the philosophical, cultural and legal understandings reflected in legislation, and how they influence defense and promotion of life is so important.

This paper will deeply analyze the following two areas in which legal development is intimately linked to the understanding each nation has about human dignity: (1) the protection of the right to life in general and (2) the issue of abortion in particular.

However, before doing so, we may say, in summary, (1) that acknowledging the dignity of every human being is an essential axiom of the Paraguayan Constitution and, therefore, of every local positive law; and (2) the right to life is

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the first right stated in the National Constitution. In article 4, it establishes that: “The right to life is inherent to each human being. In general, it is protected from the moment of conception”.

This article aims to be a tool that, combining an analysis of legislation and jurisprudence, serves as a guide for legislators, politicians, the media, young people and, in general, every person interested in defending the right to life in Paraguay.

## **II. Legislation Guaranteeing Human Dignity**

### **A. Political and Legal Organization**

The 1992 National Constitution establishes that the Republic of Paraguay is a unitary, indivisible, and decentralized social state, subject to the rule of law, as set forth by its National Constitution and legislation. The form of government adopted is the representative, participative and pluralist democracy, its foundation being the acknowledgement of human dignity.

This means that the State of Paraguay is unitary and the decentralization is minimal, mainly for administrative, and barely for political, purposes, since it acknowledges the autonomous character of Departments and Municipalities. The legislative power rests in the National Congress.

Article 137 of the National Constitution establishes the following clear and indisputable hierarchical order of the Paraguayan positive law:

1. National Constitution.
2. International treaties, conventions and agreements enacted and acknowledged.
3. Acts passed by the Congress.
4. Other, lower-ranked administrative regulations.

### **B. The Legal Worldview of Dignity and Life in Paraguay**

Acknowledging the dignity of every human being is an essential axiom of the Paraguayan Constitution and, therefore, of every local positive law.

The preamble and article 1 of the Constitution already established the “acknowledgement of human dignity” as the foundation for the form of government adopted. That means that, from the very beginning, the Paraguayan law recognizes that human beings, simply for being such, are entitled to inalienable rights.

In this regard, the right to life is the first right stated in the National Constitution. In article 4, it establishes that:



“The right to life is inherent to each human being. In general, it is protected from the moment of conception. The death penalty is hereby abolished. The state shall protect every person’s physical and psychic integrity as well as their honor and reputation. Legislation shall ensure to each person his freedom to consent a research on his own body, only for scientific and medical purposes”.<sup>3</sup>

In this way, the 1992 constitutional amendment expressly incorporated the right to life to its dogmatic part, using almost the same wording as the American Convention of Human Rights.<sup>4</sup>

It should also be mentioned that the National Constitution establishes that the rights of children prevail over other rights in case of conflict, and that by “children” it should be understood every person from their conception until the age of 18 years.<sup>5</sup> That means that, in the event of conflict between the unborn child’s right to life and any other right claimed by a third party (including the woman’s “reproductive rights”), the former shall prevail over the latter.

As article 54 of the National Constitution states:

“In case of conflict, the rights prevailing are the children’s rights”.

### C. International Instruments in Force

Paraguay is a signatory to most of the international instruments on human rights, both at global and regional levels. Some of the main instruments regarding the right to life are the ones presented below:

**International Covenant on Civil and Political Rights (ICCPR):** Signed on November 26, 1966 in the UN, passed by Act N° 5/92, effective as from September 10, 1992.

**American Convention on Human Rights, Pact of San José (ACHR):** Signed by Paraguay on February 2, 1971, passed by Act N° 1/89, effective as from March 26, 1993.

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3 Art. 4 of the National Constitution of Paraguay.

4 Article 4.1 of the American Convention of Human Rights establishes that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

5 Section 3, Act N° 2169/03.

**United Nations' Convention on the Rights of the Child (CRC):** Signed by Paraguay on April 4, 1990, passed by Act N° 57/90, effective as from October 26, 1990.

The following provisions from the instruments above are worth noting:

**International Covenant on Civil and Political Rights**

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.<sup>6</sup>

**American Convention on Human Rights**

“For the purposes of this Convention, ‘person’ means every human being”.<sup>7</sup>

“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.<sup>8</sup>

**United Nations Convention on the Rights of the Child**

“For the purposes of the present Convention, a child means every human being below the age of eighteen years unless according to the law applicable to the child, majority is attained earlier”.<sup>9</sup>

“States Parties recognize that every child has the inherent right to life”.<sup>10</sup>

The Convention on the Rights of the Child (CRC) considers that a child is every human being under the age of 18 years; however, since the National Constitution grants the right to life from the moment of conception, the definition of “child” in the Paraguayan law is completed, resulting in “every human being from the moment of conception until the age of 18 years”.

As mentioned before, international treaties are infra-constitutional (which means that, in case of contradiction, the Constitution shall prevail) and supralegal (which means that the national law shall be adjusted to the provisions set forth in such documents). However, most human rights acknowledged by international

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6 Art. 6, ICCPR.

7 Art. 1.2, ACHR.

8 Art. 4, ACHR.

9 Art. 1, CRC.

10 Art. 6.1, CRC.



legal instruments have been stated in the National Constitution after the 1992 amendment.<sup>11</sup>

It should also be noted that there are no records of the Republic of Paraguay having expressed reservations about the above mentioned international instruments. This confirms the fact that domestic legislation is in full accordance with international legislation, which expressly acknowledges that every person has the inherent right to life. Therefore, Paraguay is bound to respect and ensure the enforceability of this right.

#### **D. Domestic Legislation**

Below are the provisions regarding the right to life, stipulated by the domestic laws enacted by the National Congress:

- Civil Code (Act N° 1183/85).
- Health Code (Act N° 836/80).
- Childhood and Adolescence Code (Act N° 1680/01).
- Criminal Code (Act N° 1160/97, amended by Act N° 3440/08).

#### **National Civil Code**

Section 28 of the Civil Code recognizes that every physical person—from the moment of conception—has legal capacity to receive property as gifts, inheritance or legacy. This provision confirms that in the Paraguayan legal system a person is such from the moment of conception and, therefore, entitled to rights.

#### **Health Code**

Passed in 1980, the Health Code acknowledges that the condition of being a human and a child begins from the moment of conception.

The Health Code, passed by Act N° 836/80, states that:

“The parents have the obligation and the right to protect their as well as their children’s health from the moment when gestation begins”.<sup>12</sup>

“The State, on the other hand, shall sanitarily protect and help the child from his conception until he reaches the legal age”.<sup>13</sup>

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11 The right to life was thus expressly incorporated to article 4 of the Constitution.

12 Sect. 21, Health Code.

13 Sect. 22, Health Code.

### Childhood and Adolescence Code

This protective rule about childhood and adolescence acknowledges the condition of being a person from the conception, and ensures the protection of the unborn child. This is presented in section 10:

“The protection of unborn children is exercised by assisting pregnant women from the moment of their children’s conception until forty-five days after the birth. This assistance is mandatory for the parent and, in their absence, for those on whom the subsidiary responsibility lies, as established by this Code”.

### Criminal Code

Section 109 of the Paraguayan Criminal Code, amended by Act N° 3440/80, establishes the following:

“1. The person who murders (intentionally kills) a fetus shall be imprisoned for up to five years. The attempt to murder shall also be punished.

2. The punishment shall be increased up to eight years if the author of the crime:

- a. acted without the pregnant woman’s consent; or
- b. put, through their intervention, the pregnant woman’s life at risk or caused her serious injuries.

3. If the pregnant woman performed the criminal act, either by herself or by letting another person do it, the imprisonment shall not be greater than two years. In this case, an unsuccessful attempt shall not be punished. When establishing the punishment, it shall be considered if the state has failed in its duty to protect the child, under the constitutional provisions.

4. Indirectly causing the death of the fetus is not against the law, provided that—according to the doctor’s scientific knowledge and expertise—his death was necessary to protect the mother’s life”.

The Criminal Code classifies abortion as a crime, the fetus’s life being the interest legally protected.

This Code—after the enactment of Act N° 3440/08 amending it—defines the *fetus* as “the human being’s embryo until the birth”.<sup>14</sup> Act N° 3440/08 thus partially

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14 Sect. 14, par.1°, subpar. 18, Criminal Code.



amended the regime provided for in sections 349 to 353 of the 1914 Criminal Code—also in force in the 1997 Criminal Code—which did not define abortion or the person to be born, but simply used the terms without further specification.

By classifying the conduct of “the person who murders a fetus” and by considering fetus “the human being’s embryo until the birth”, what is not clearly defined is the legal situation of the person before being an embryo, since some medical definitions consider that the “embryo’s” existence begins on the fourteenth day of gestation. However, despite the terminology used to describe the embryo’s different development stages, the medical science does not question the fact that human life begins with the union of an ovum and a spermatozoid (fertilization).<sup>15</sup> Therefore, it should be considered that the Criminal Code protects human beings from that moment (i.e. from the moment of fertilization).

The basic class of acts is punished with imprisonment up to five (5) years. However, the punishment can be increased up to eight (8) years if the pregnant woman does not consent to criminal action or her life is put at risk or she is caused serious injuries.

If the pregnant woman performs the abortion herself, the time in prison is reduced (up to two (2) years), while the mere (unsuccessful) attempt is not punished.

The Criminal Code only contemplates one case of non-punishable abortion: when the death of the fetus is indirectly caused in an attempt to protect the mother’s life from serious danger. The word “indirectly” should be noted here, since the legislature is not using it to make reference to the possibility of choosing between the mother’s or the child’s lives, but is referring to the unintended (even if foreseen) death of the child, as a consequence of a risky operation or other extremely delicate situation.

### **E. Life, the Paramount Right Pursuant to the Paraguayan Courts’ Jurisprudence**

The Paraguayan Courts’ jurisprudence has always decided in favor of the

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15 “The main consequences of fertilization are that: (1) The diploid number of chromosomes (2n) is restored, (2) The embryo’s sex can be determined by the spermatozoid’s x or y chromosome, (3) The species variability is expressed by means of the combination of male and female chromosomes, (4) The ovum’s metabolism becomes active, and (5) The segmentation begins”. EYNARD, VALENTICH, ROVASIO, *Histología y Embriología del ser humano, bases celulares y moleculares*, 4 Edition, Editorial Médica Panamericana, Buenos Aires, 2009, p. 145.

supremacy of the right to life. This is established by the Supreme Court of Justice in several judgments<sup>16</sup> in which it states that:

“Among the fundamental values in our body of rules, freedom is, **after the right to life**, the base that underlies all rights protected by Law...”<sup>17</sup>

“**After the right to life**, the human beings’ most highly prized interest is their freedom...”<sup>18</sup>

“The convicted shall be set free since freedom is, **after the right to life**, the base that underlies all rights protected by Law, and the constituent has provided them with the highest guarantees effectively in force”.<sup>19</sup>

“Among the fundamental values in our body of rules, freedom is, **after the right to life**, the base that underlies all rights protected by Law; this means that the constituents, consistent with their philosophical stance that the rights that make up human dignity are the ones that justify the creation of the state, logically and ontologically preceded by said rights, have sought to provide them with the highest guarantees effectively in force”.<sup>20</sup>

Such statements prove that the Supreme Court of Paraguay has made its position very clear: the right to life is the first and the highest of all rights, being even more important than freedom.

Even though there is no case-law from the criminal jurisdiction about abortion in particular, there are rulings that protect the unborn. For instance, the

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16 This has also been pointed out by the lower courts. The Criminal Court of Appeals of Asunción has affirmed that “life is the highest legal interest that the State must acknowledge, since without it, there is absolute negotiation of the right; this is the reason why its protection is the most important one”. “Martín Fabian Duarte Rojas v. IPS” Criminal Court of Appeals of Asunción, Chamber 4. Agreement and Ruling N° 1, February 5, 2009. Voted by Emiliano Rolón Fernández.

17 Proceeding in the trial called “General habeas corpus in favor of the minors confined to the institution for young offenders ‘Panchito López.’” Supreme Court of Justice of Paraguay. Supporting minister: Oscar Paciello. Agreement and Ruling N° 562, December 23, 1993.

18 “Agustín Brizuela Sánchez and Santiago Higinio Alcaraz requesting habeas corpus”. Supreme Court of Justice of Paraguay. Supporting judge: Wildo Rienzi Galeano. Agreement and Ruling N° 416, June 20, 2002.

19 “Remedying habeas corpus filed in favor of Mr. Aldo René Ibarra Cubilla”. Supreme Court of Justice of Paraguay, Criminal Chamber. Agreement and Ruling N° 1, January 5, 2010.

20 “Stroessner, Gustavo Adolfo requesting Habeas corpus”. Supreme Court of Justice of Paraguay, Criminal Chamber. Agreement and Ruling N° 712, December 5, 2000.





Supreme Court has maintained that:

“The habeas corpus proceeding deserves to be approved and the arrest awaiting trial should be substituted with house arrest since the medical reports attached to this case prove that the **defendant is pregnant, and her life and the fetus’s life are at risk; thus it is imperative to safeguard their lives** and to take into account that the care the petitioner needs cannot be provided in the Penitentiary where she is currently confined”.<sup>21</sup>

As seen above, the Paraguayan Courts have clearly stated their stance by affirming the supremacy of the right to life, emphasizing its supreme importance, and holding that said protection also applies to the unborn. This has never been subjected to debate or dissent at the judicial level.

#### F. Legislative Bills to be Considered by the National Congress

Regarding the right to life, the main bill that the National Congress is analyzing is the one on “Sexual, Reproductive and Mother’s Perinatal Health”, filed for the second time by Senator Carlos Filizzola,<sup>22</sup> in August 2008.

It should be mentioned that the same Bill was filed in 2005, though with slight differences, and after debates and public hearings, the Plenary Congress rejected it by an overwhelming majority.

The current Bill is awaiting judgment by the Senate’s Advisory Committees: Equity, Gender and Social Development; Treasury, Budget and Accounts; Legislation, Codification, Justice and Labor; and Public Health, Social Security, Prevention and Fight against Drug Trafficking. Through November 2010, no judgment was rendered; however, it has already been subjected to a Public Hearing, where it was again widely repudiated.

This bill has been questioned mainly because of the ambiguous concept of “reproductive health” used. Said ambiguity arises from the scope this term has allegedly been given in international conferences<sup>23</sup>—such as the Fourth World

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21 “Remedying habeas corpus filed in favor of Ms. Liliana Verón”. Supreme Court of Justice of Paraguay, Criminal Chamber. Agreement and Ruling N° 4, January 8, 2010.

22 Senator elected in 2003, and reelected for the 2008–2013 term of office. He leads the *Partido País Solidario* (Party for a Country of Solidarity), adhering to the democratic socialism ideology.

23 “The ABC’s of an International Right to Abortion”, *The Human Life Review*, Summer 2010.

Conference on Women in Beijing (1995)—in which the termination of pregnancy is sometimes included.<sup>24</sup>

Questions have also been raised about section 12, par. c, since it grants women the right to “freely make decisions during pregnancy”, without specifying the scope and limits to the alleged right.

With regard to this and other bills, the Paraguayan Senate issued a Declaration on December 17, 2009, suggested by Senator Roger Caballero,<sup>25</sup> in which both Congressional Chambers were exhorted to reject every bill containing articles that make an attempt on life and the family.

Although said Declaration is not binding, it reflects the stance of the majority political groups of the Republic of Paraguay.

### III. Abortion

#### A. Regime Protecting the Right to Life

The extent of national legislation on abortion, the ratification of global and regional international treaties (with their consequent complaint, protection and control mechanisms), as well as the various recommendations on abortion that the Paraguayan State has received from international bodies, must all be analyzed and considered here in order to fully assess the true extent of the regime protecting the right to life in Paraguay.

Some of the legal considerations are briefly presented below, respecting the hierarchical order established in Art. 137 of the National Constitution:<sup>26</sup>

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[http://www.humanlifereview.com/index.php?option=com\\_content&view=article&id=113:the-abcs-of-an-international-right-to-abortion&catid=52:2010-summer](http://www.humanlifereview.com/index.php?option=com_content&view=article&id=113:the-abcs-of-an-international-right-to-abortion&catid=52:2010-summer)

24 In the City of New York, on June 5–9, 2000, in the extraordinary period of sessions of the United Nations’ General Assembly, the Fourth World Conference on Women renewed its commitment to the goals set in the 1995 Beijing Conference. Since then, it has been known as Beijing +5. The Beijing Declaration and Platform of Action define a set of strategic goals and explain the measures that the State must adopt in order to eliminate the obstacles holding up women’s advancement. Among said obstacles allegedly is the lack of accessibility to contraceptive methods, including abortion.

25 National Senator for the Party *Partido Unión Nacional de Ciudadanos Éticos* (UNACE – National Union of Ethical Citizens).

26 See *supra* the hierarchical order of the Paraguayan legal rules.



### • International Instruments of Legal Protection

The human right to life has been expressly acknowledged in several international treaties that establish that the state's duty is to guarantee its effective enforceability.

Paraguay, in being a signatory to those treaties, has undertaken to respect this right without any restrictions, and to the maximum extent possible, based on the *pro hominem* principle ruling the interpretation of every human right.

In this regard, articles 3, 6, 25 and 30 of the **Universal Declaration of Human Rights**, and article 6.1 of the **International Covenant on Civil and Political Rights**, acknowledge that, in accordance with the principles stated in the United Nations Charter, “the right to life is inherent to human beings”.

The **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW) also provides for the protection of the unborn. It establishes in article 12, par. 1 that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care”, and in par. 2, that “the States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services when necessary, as well as adequate nutrition during pregnancy and lactation”. It can thus be interpreted that the Convention's purpose is to ensure to women accessibility to health services on equal terms as men, especially recognizing and protecting pregnant women and their unborn children.<sup>27</sup>

The **Declaration of the Rights of the Child**,<sup>28</sup> in paragraph 3 of its Preamble establishes that, due to their physical and mental immaturity, children need special safeguards and care, including appropriate legal protection, before and after birth. Article 4 establishes that “the child shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care”.

Furthermore, the **Convention on the Rights of the Child**<sup>29</sup> in article 6 states that the “States Parties recognize that every child has the inherent right to life”,

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27 Despite the fact that some people have intended to interpret this article—as well as article 16, par. 1, e), which provides for women's right “to decide freely and responsibly on the number and spacing of their children”—as recognizing women's sexual and reproductive rights, including an alleged right to abortion, the truth is that the Convention does not mention any of these anywhere. Please see “B. Maternal Mortality: Alleged Ineffectiveness of Abortion Penalization” in this paper.

28 Passed by the United Nations' General Assembly on November 20th, 1959.

29 Passed by the United Nations' General Assembly on November 20th, 1989.

defining the child in article 1 as “every human being below the age of eighteen years”, though not specifying the moment when childhood begins. This has raised the question about whether said moment begins with the birth, the conception or some other instance in between the other two.<sup>30</sup> The truth is that Paraguay specifically recognizes that the child is each person from conception to adulthood<sup>31</sup> that is why, there is no doubt about the scope of the right to life recognized by the Republic of Paraguay: every child, from the moment of conception until the age of 18 years, has the inherent right to life.

In a 1982 General Observation on the right to life, the United Nations’ **Human Rights Committee** (formed pursuant to the provisions of the ICCPR) affirmed that said right has too frequently been construed in a restrictive manner: “The expression ‘the right to life is inherent to human beings’ cannot be interpreted in a restrictive manner and the protection of this right requires that the states adopt positive measures. In this regard, the Committee considers that it would be appropriate that the State Parties take all possible measures to reduce child mortality and to increase life expectancy, especially by taking measures to eliminate malnutrition and epidemics”.<sup>32</sup>

Regarding the regional international instruments on human rights, article 4.1 of the **American Convention on Human Rights** expressly states that “every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception”.

#### • **National Legislation: Penalization of Abortion**

It has been mentioned before that the Civil, Health, and Childhood and Adolescence Codes unequivocally protect the human life as from the moment of conception. And this protection is strengthened through the criminal law, by classifying abortion as a crime.

Pursuant to Section 109 of the Criminal Code, amended by Act N° 3440/2008, in force since July 16<sup>th</sup>, 2009, “the person who murders a fetus shall be imprisoned

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30 There are opinions that understand that the reason why the Convention states nothing about the beginning of life is because that issue would have been a threat to the universal ratification of the Convention. Rachel Hodgkin and Peter Newell. Implementation Handbook for the Convention on the Rights of the Child. UNICEF. 2004.

31 In accordance with the Civil, Health, and Childhood and Adolescence Codes mentioned before.

32 Human Rights Committee, General Observation 6, 1982, HRI/GEN/1/Rev.7, paragraph 5.



for up to five years, the attempt also being punishable”.<sup>33</sup> It also states that the punishment can be increased up to eight years when the author “acted without the pregnant woman’s consent; or when his intervention put the pregnant woman’s life at risk or caused her serious injuries”.

Regarding the mitigating situations, said article establishes that “if the pregnant woman performed the criminal act, either by herself or by letting another person do it, the imprisonment shall not be greater than two years. In this case, an unsuccessful attempt shall not be punished. When establishing the punishment, it shall be especially considering whether the act was motivated by the lack of child’s support guaranteed by the Constitution”.

The Code punishes all kinds of abortion, but mentions “the lack of support guaranteed to children by the Constitution” as a possible mitigating situation. Is it then possible to say that there are mitigating circumstances based on social and/or economic reasons? The constitutional principle of Child Protection, referred to by the article, implies that the state shall have plans and programs to assist those families in situations of social disadvantage, extreme poverty, and/or neglect, particularly programs that prevent abandonment, malnutrition, violence, abuse, and child and adolescent traffic and/or exploitation, and finally, sexual and reproductive health plans to prevent unwanted pregnancies. If the state fails in its duty, an abortion is still penalized, though the judge hearing the case, may consider this in mitigation.

Paragraph 4 of Sect. 109 of the Criminal Code incorporates the legal type of “indirect death due to necessity during labor”—though not using the same words—which occurs when the fetus dies as a result of the medical intervention which, based on the doctor’s scientific knowledge and expertise, is necessary so as to protect the mother’s life. The legislation establishes that the doctor who acts in such a manner is not performing an unlawful action.

Regarding chemical abortion, the Criminal Code does not classify it as a special crime. Neither is there in Paraguay any official judgments issued by the competent authorities regarding the effects of certain emergency contraceptives. According to what has been mentioned above, and considering that abortion is an unlawful practice, it would seem logical that no drug whose abortion-inducing effect is still to be determined can be offered as part of the services provided by health care public or private institutions.

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33 According to Sect. 26 of the Criminal Code, the attempt occurs when the author makes the decision to carry out a punishable action by means of acts that, in representing the action, immediately precede the purpose of the executed action classified as a crime.

Abortion in Paraguay may be reported as a crime for subsequent prosecution. In some cases, some clandestine private abortion clinics have been dismantled by the authorities. The information about such clinics has been provided by public health centers which assist women –usually in very serious conditions and with their lives at risk– who have had incomplete abortions performed in said private clinics.

Further, there is no case-law about cases of non-punishable abortion (indirect abortion).

### **B. High Rates of Maternal Mortality: Alleged Ineffectiveness of Abortion Penalization**

The CEDAW<sup>34</sup> Committee, in its 15 period of sessions,<sup>35</sup> received the report by the Republic of Paraguay, which reads as follows: “The country has one of the highest mother mortality rates in Latin America, with abortion being the second cause of death”. The Committee has expressed its concern about abortion performed under insanitary conditions, and recommended that the state revise the penalization of abortion in the country.

The questions is (i) whether the CEDAW Committee is empowered to make recommendations of this kind, and (ii) whether the decriminalization of abortion is a truly effective measure to avoid maternal mortality.

With regard to the first question, there is no doubt that the CEDAW’s Committee lacks the necessary powers to make recommendations that entail not only a threat to the unborn’s right to life (which is expressly acknowledged by international treaties and the Paraguayan domestic legislation), but also an unjustified interference in matters that are exclusive to each State, by virtue of the principle of national sovereignty.

Furthermore, although the Convention recognized that the Committee is empowered to assess the reports that each state presents before the United Nations’ General Secretariat regarding the progresses made in the application of the Convention,<sup>36</sup> there is no reference to abortion in its text. On the contrary, the lives and health pregnant women and their unborn children are thereby protected.<sup>37</sup>

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34 Convention on the Elimination of All Forms of Discrimination Against Women.

35 Concluding Observations: Paraguay: CEDAW. 15 Period of Sessions. January 15 to February 2, 1996. Supplement N° 38 (A/51/38).

36 Pursuant to article 18 of the CEDAW Convention.

37 As mentioned before, article 12, par. 2 of the Convention establishes that “States Parties

Regarding the second question, the decriminalization of abortion must also be rejected as an effective means to reduce maternal mortality rate. In a country where 40% of the population live under poverty (their monthly income not exceeding USD 50) and 19% of the population live under extreme poverty (their monthly income not exceeding USD 15); where 250,000 people are illiterate; where population density is low and the number of inhabitants is average; where there is a high degree of social inequity and the government is inefficient; intending to reduce maternal mortality by decriminalizing abortion means taking an ineffective measure which will not reduce maternal mortality. On the contrary, it seems that improvements and greater accessibility to health services, without any kind of discrimination, are the viable means of reducing maternal mortality.

### Maternal Mortality per Year According to their Causes (Ratio Registered Per 100,000 Live Births)

CAUSES	2000		2001		2002		2003		2004		2005		2006		2007		2008		2009	
	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate	N°	Rate
1. Abortion (O00-O07)	35	40.7	32	38.1	39	43.3	36	41.5	35	34.7	37	35.0	31	30.4	33	34.4	25	25.1	23	22.5
2. Toxemia (O10-O16)	37	43.0	20	23.8	27	30.0	32	36.9	31	30.7	27	25.5	29	28.4	33	34.4	20	20.1	25	24.5
3. Bleeding (O20; O44-O46; O67; O72)	22	25.6	33	39.3	48	53.3	28	32.3	36	35.6	26	24.6	27	26.4	25	26.1	28	28.1	21	20.6
4. Sepsis (O75.3; O85)	15	17.4	22	26.2	19	21.1	16	18.4	21	20.8	15	14.2	8	7.8	9	9.4	10	10.0	8	7.8
5. Obstetrical Tetanus (A34)	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
6. AIDS (B20-B24)	0	0.0	2	2.4	0	0.0	0	0.0	1	1.0	0	0.0	1	1.0	1	1.0	0	0.0	0	0.0
7. Other Complications during Pregnancy, Labor and Post-natal (O21-O29; O30-O43; O47-O48; O60-O66; O68-O71; O73-O75; O86-O92; O95-O99)	32	37.2	25	29.8	31	34.4	39	45.0	31	30.7	31	29.3	28	27.4	21	21.9	34	34.1	51	49.9
<b>GENERAL TOTAL</b>	<b>141</b>	<b>164</b>	<b>134</b>	<b>159.7</b>	<b>164</b>	<b>182.1</b>	<b>151</b>	<b>174.1</b>	<b>155</b>	<b>153.5</b>	<b>136</b>	<b>128.5</b>	<b>124</b>	<b>121.4</b>	<b>122</b>	<b>127.3</b>	<b>117</b>	<b>117.4</b>	<b>128</b>	<b>125.3</b>

**NOTE:** Data corresponding to the deceased's place of residence

LIVE BIRTHS IN 2000 = 86,000

LIVE BIRTHS IN 2005 = 105,808

LIVE BIRTHS IN 2001 = 83,919

LIVE BIRTHS IN 2006 = 102,109

LIVE BIRTHS IN 2002 = 90,085

LIVE BIRTHS IN 2007 = 95,862

LIVE BIRTHS IN 2003 = 86,739

LIVE BIRTHS IN 2008 = 99,688

LIVE BIRTHS IN 2004 = 101,000

LIVE BIRTHS IN 2009 = 102,162

Source: Vital Statistics Data Sub-System (Sub-Sistema de Información de las Estadísticas Vitales – SSIEV).  
Biostatistics Office. MSPyBS.

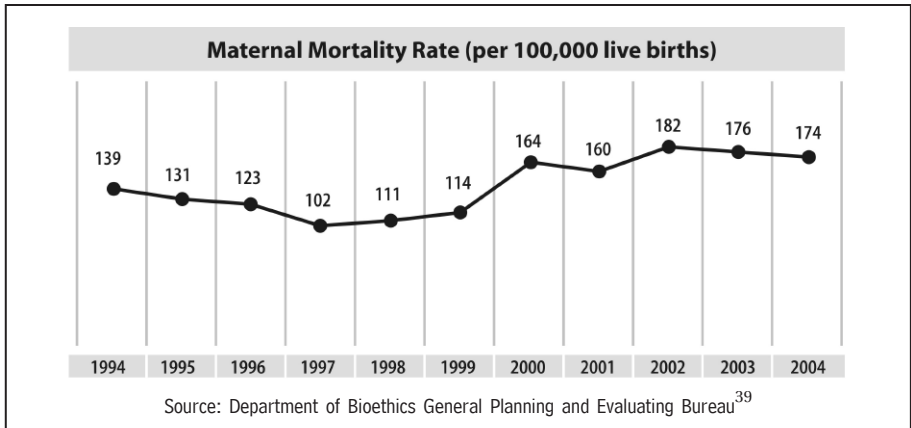
shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”.

In this regard, the World Bank has calculated that, if every woman had access to medical services to assist their complications during pregnancy and confinement, especially to obstetric emergency care, 74% of women could be saved.<sup>38</sup>

Moreover, in accordance with the statistics provided by the *Ministerio de Salud Pública y Bienestar Social* (MSPyBS – Ministry of Public Health and Social Welfare), the main causes of maternal mortality in Paraguay are toxemia, bleeding and other pregnancy, labor and postnatal complications.

This proves that it is essential to improve health care services so as to avoid every maternal death, as well as to support pregnant women whose health is at risk so that they find viable alternatives and avoid abortion.

Some Indicators



Maternal mortality recorded in Paraguay in 1999 was 114.4 per 100,000 live births, which meant a 23.8% reduction as compared to 1990, 20% of such deaths being adolescents.

In 2000, 2001 and 2002, by implementing an audit of maternal deaths, the recorded rates were 164, 160.7 and 182.1 per 100,000 live births respectively.

Maternal mortality rates present significant variations depending on the

38 WAGSTAFF, A. and M. CLAESON, 2004 *The Millennium Developments Goals for Health: Rising to the Challenges*. Washington DC: The World Bank, cited by the Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 3.

39 Edgar Giménez Caballero. Viceminister of Health. “La salud en los procesos de integración”. October 24 and 25, 2008.

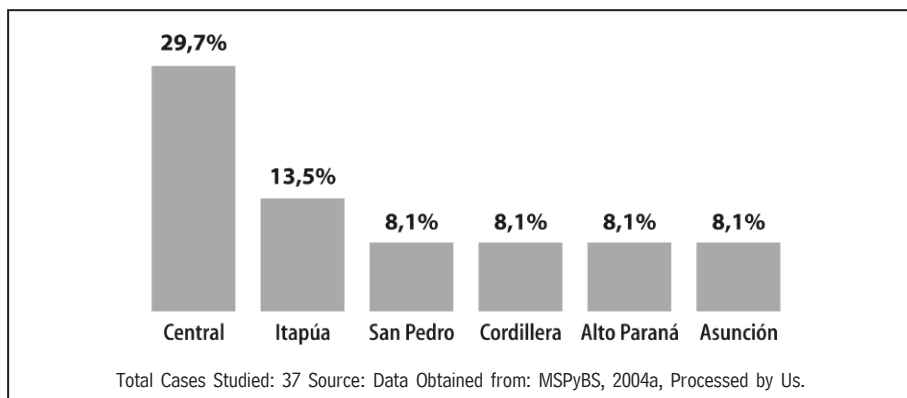




different regions.<sup>40</sup> Thus, the percentages can be observed depending on the place of residence.

According to the Ministry of Public Health and Social Welfare, the causes of maternal death in Paraguay are related to the difficulty to access to health care services – 46% due to the delay in arriving at the health center, 23% to the services' inefficiency, and 31% to a complete lack of assistance (deaths thus occurring in women's homes).<sup>41</sup>

Percentages depending on the place of residence

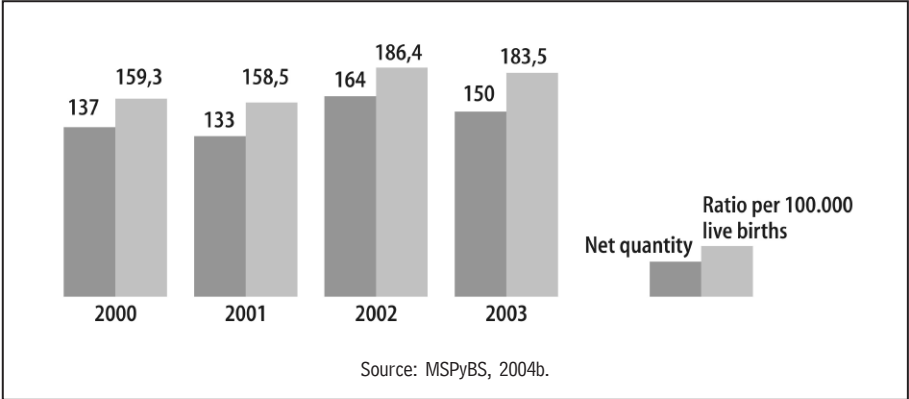


40 "Latin America and the Caribbean are characterized as regions with great diversity in terms of both economic development level and geographic distribution as well as disparities between countries and within countries with respect to access to maternal health services. As a result, 50% of maternal deaths are concentrated in the poorest 20% of the region while only 5% of such deaths are found in the richest 20%". Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 3.

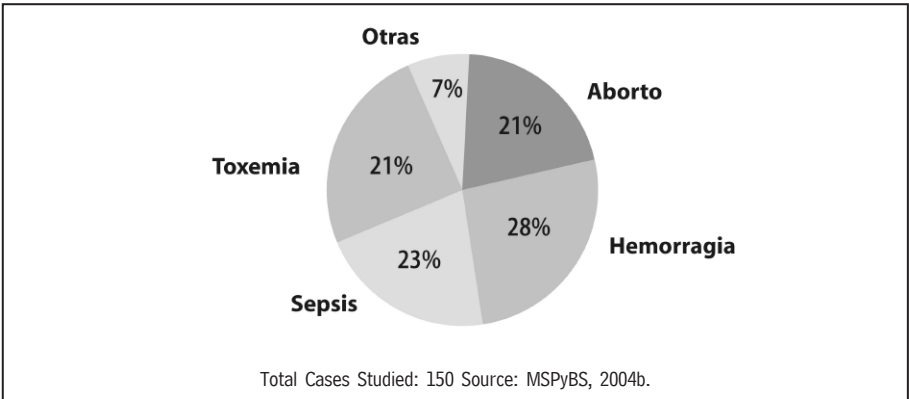
41 A similar situation can be seen in other countries of the region. The Inter-American Commission of Human Rights (IACHR) has expressed that in Peru, 74% of women in rural areas give birth at home without qualified professional care, compared to 90% of women in indigenous communities, even though one of the factors recognized internationally as associated with reducing maternal morbidity and mortality is childbirth attended by qualified personnel. In Bolivia, a country with the highest maternal mortality rate in the Andean region (290), the rate of maternal mortality varies significantly depending on geographic region (high plateau, valleys, or tablelands) and depending on place of residence (urban or rural), with obstetrical complications, hemorrhage, and infections being the principal causes of maternal mortality. Cfr. Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 4.

We can once again affirm that this means that the maternal mortality problem is mainly associated with the inadequate health care system, reflected in the lack of timely access to health care assistance and to proper treatments.

**Maternal Mortality between 2000 and 2003**

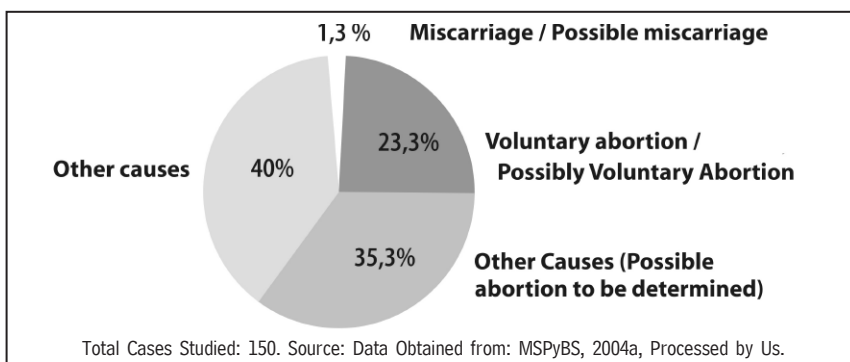
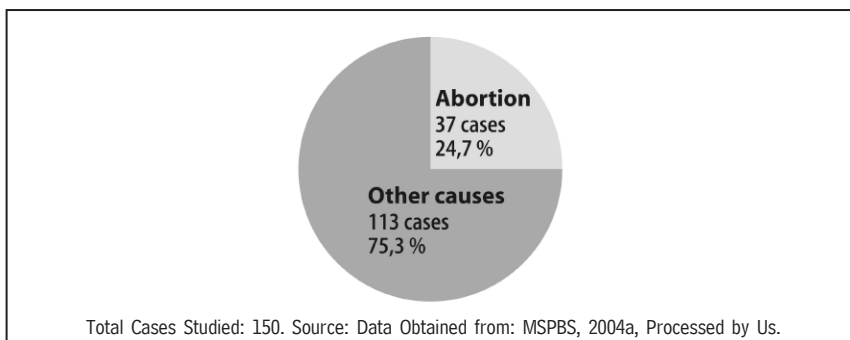


**Maternal Death According to their Causes**

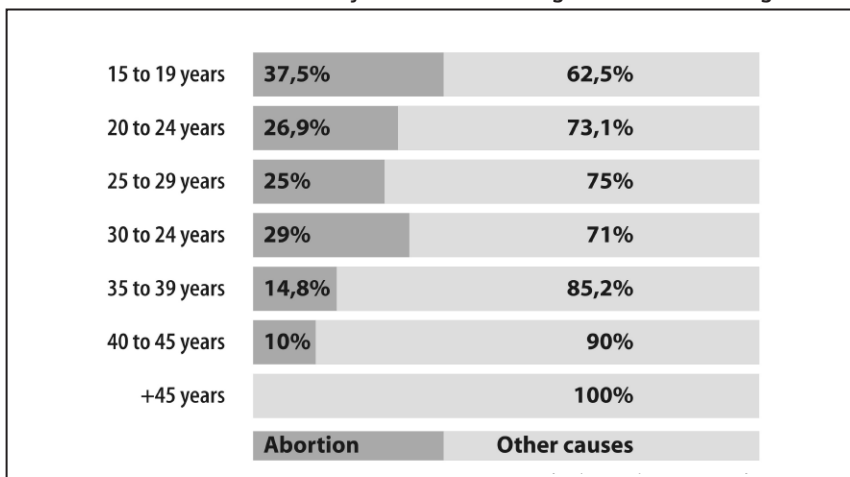




### Abortion as a Cause of Maternal Death



### Maternal Deaths Caused by Abortion According to the Women's Age



Based on the charts above, it becomes clear that the maternal deaths caused by abortion affect mainly young women and adolescents. Such data should be

taken into account when planning government policies to support and protect pregnant women.

It should also be noted that high rates of maternal mortality in adolescents do not occur only in cases of abortion. On the contrary, pregnant adolescents have between two and five times more risks of maternal mortality than women of 20 years of age or more.<sup>42</sup>

Considering the indicators mentioned and, in particular, the reading by the Ministry of Public Health and Social Welfare of Paraguay, which coincides with that by the World Bank, regarding the importance of improving maternal health services as an essential measure to reduce maternal mortality rates; and considering that said improvement is stated as one of the Millennium Development Goals,<sup>43</sup> it can be concluded that the solution to reduce mortality rates and to prevent every avoidable death does not lie in an alleged legalization of abortion.

In this regard, the Inter-American Commission of Human Rights has considered that the states shall implement measures related to (i) the elimination of barriers to have access to medical and emergency obstetric services, and to pre- and post-natal assistance; (ii) investment in more resources to make effective the accessibility to maternal health services, especially for indigenous women as well as for those living in poverty or in rural areas; and (iii) the education of users of health services available, among others.<sup>44</sup>

#### **IV. Threats and Potential Action Channels to Decriminalize and/or Legalize Abortion**

As shown previously, abortion is illegal in all the ways specified by the Criminal Code, and an action must to be specified by the Code in order to be considered a crime. Nevertheless, there are situations not regulated by legislation that could lead to the decriminalization of abortion:

- One is by the courts being asked to hold as “non-punishable” abortions

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42 Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 6.

43 Please visit <http://www.un.org/spanish/millenniumgoals/maternal.shtml>

44 Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective*, Organization of American States, Washington DC, 2010, p. 7.



performed by a woman or a group of people.

- The other channel is the administrative channel, by which cases not legally regulated could be permitted by resolutions or health assistance protocols. An example of this could be an Official Rule on Sexual and Reproductive Health, by which “emergency contraception” could be offered. As explained before, Paraguay does not have this kind of regulations, nor are there provisions about chemical abortion or “emergency contraception”. However, there are, as a matter of fact, groups of pressure that intend to include it as part of public policies. That is why it is essential to regulate this matter with provisions that –in accordance with all the Paraguayan legal system that protects life from conception and prohibits abortion in all its forms– expressly prohibits “emergency contraception”.