May 25, 2011

United Nations Committee on the Elimination of Discrimination Against Women
Office of the United Nations High Commissioner for Human Rights
Palais des Nations

Re: <u>Supplementary Information on Costa Rica</u>
<u>Scheduled for review by the CEDAW Committee in its 49th Session.</u>

Distinguished Committee Members:

This letter is intended to supplement the combined 5th and 6th reports submitted by the Republic of Costa Rica, scheduled for review by the Committee on the Elimination of Discrimination Against Women (the Committee) during its 49th session. The Center for Reproductive Rights (The Center), the Asociación Colectiva por el Derecho a Decidir (CPDD), the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC), Law Students for Reproductive Justice of the University of Washington School of Law, Planned Parenthood Federation of America (PPFA), the Agenda Política de Mujeres, the Alianza de Mujeres Costarricense, and the Fundación Promoción, Capacitación y Acción Alternativa (PROCAL), hope to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[1] This letter will address the right to comprehensive healthcare and information, and particularly Costa Rica's failure to guarantee access to comprehensive reproductive health services that only women need, such as legal abortion, emergency contraception and in vitro fertilization for women with infertility. This letter will further address the State's failure to implement comprehensive sexual education, and the discrimination faced by lesbian women in healthcare settings –all of which have had detrimental impacts on the health and rights of women and girls in Costa Rica and constitute violations of this Convention.

I. The Right to Comprehensive Health Care and Information (Articles 2, 10, 12, 14(2)(b), 16(1)(e)).

Reproductive rights are an essential part of women's rights to life, health, dignity, and equality, and as such, they are broadly and explicitly protected by CEDAW. The commitment of states parties to respect, protect and fulfill these rights thus deserves serious attention. Article 12 requires states to "take all appropriate measures to…ensure, on a basis

of equality with men and women, access to health care services, including those related to family planning." Article 14 requires that all women have "access to adequate health care facilities, including information, counseling and services in family planning." Article 16 requires states to ensure to women the "same rights [as men] 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." Article 10 of the Convention commits State parties to guarantee "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning." Article 2, overarchingly, requires that states "take all appropriate measures to eliminate discrimination against women" including modifying laws as well as "customs and practices" that discriminate against women. CEDAW General Recommendation No. 24 makes clear that for states to achieve women's equality, they have an affirmative duty to "respect, protect, and fulfill women's rights to health care," and characterizes a state's failure to provide healthcare services that only women need as a form of discrimination against women.

The obligation to protect, respect, and guarantee the right to health without discrimination as recognized by the CEDAW lies at the core of reproductive rights, which includes the right to access reproductive healthcare services and information without discrimination. Access to safe, legal abortion; to family planning; to comprehensive sexuality education; to reproductive health technologies; and to health care services without discrimination are all required to fulfill those obligations under CEDAW. Costa Rica's failure to guarantee those rights, as will be addressed in the following sections, violates this Convention.

A. Costa Rica's Failure to Guarantee Access to Legal Abortion

In Costa Rica, women and adolescent girls cannot adequately access legal abortion services, despite the fact that since 1971, under Article 121 of the Penal Code, abortion is not punishable if the life or health of the woman is in danger.[2] Though abortion is legal under these circumstances, Costa Rica has no guidelines, or "guía de atención," that informs doctors when and how to perform this essential reproductive healthcare service providing them with legal certainty in the scope of their medical practice; nor establishes an administrative or judicial procedure by which women can seek to claim their right to the service.[3] As a result, doctors and healthcare providers cannot be sure when and if they can carry out an abortion legally, whether they have the proper training or knowledge to provide the service, and whether they will have the proper technology on hand. Without a formal mechanism to instruct healthcare personnel when they are allowed to provide abortions, doctors opt not to perform abortions even if a woman or girl's health is at risk, and may not understand the scope of Article 121 restricting the World Health Organization's (WHO) understanding of the scope of the concept of health and how to guarantee access to abortion services when the health or life of a woman is in danger.[4] Since women don't have complete information on abortion, and there is no appeals mechanism by which a patient can lodge her disagreement with a decision not to allow an abortion, she may then be forced to seek a clandestine, unsafe illegal abortion, or to carry an unwanted, dangerous pregnancy to term, thus endangering her health and life. In July 2009, the Costa Rican Social Security Agency (CCSS) created an inter-institutional committee (CPDD, Caja de Seguro Social, and Asociación Demográfica Costarricense-

ADC) to develop a consensual guide to provide legal abortion care in Costa Rica. As a result a "guía de atención" was drafted, but as of May 2010, there has not been the political will to officially approve it.

The lack of a guideline for abortion services leads to large numbers of women endangering their health and facing stigma by seeking unsafe, clandestine abortions. Every year in Costa Rica an average of five (5) abortions are legally performed in CCSS facilities,[5] while at least ten thousand (10,000) women undergo unsafe abortions performed outside of the public healthcare system.[6] That figure evidences that higher numbers of illegal or clandestine abortions occur, since the 10,000 number represents only those women who seek post-abortion care in CCSS facilities. According to one account in 2007, around 27,000 abortions occurred outside the formal health sector.[7] Such a massive disparity reveals that the state is clearly failing to comply with its obligation under Article 12 of this Convention by failing to provide "access to health services" to women in a way that is safe, legal, and adequate to meet their needs. Such a practice is clearly discriminatory against women within the meaning of this Convention.[8]

Furthermore, in Costa Rica, having to seek an unsafe abortion is a violation of the right to health because Costa Rican hospitals do not provide adequate post-abortion care.[9] While the State, commendably, did develop a Guide to Post-Abortion Care, health care workers have reported to Asociación Colectiva por el Derecho a Decidir (CPDD) that many hospitals have failed to implement it properly.[10] According to health care personnel, not all hospitals have the equipment necessary to perform endouterine manual aspirations, which is the most modern, least invasive and most cost-effective form of post-abortion care.[11] Furthermore, even those institutions that do have the necessary equipment to perform the procedure, do so without using local anesthesia,[12] which runs contrary to WHO recommendations,[13] causes women unnecessary pain, and can discourage them from seeking post-abortion care. Another recurrent problem reported to CPDD is that some hospitals require that the procedure be performed in an operating room and by a specialist, causing women to wait long periods of time before actually undergoing the procedure.[14] The root cause of these problems is that women are not able to obtain safe abortions legally, owing in part to the state's failure to guarantee access to abortions in the cases that should already fall within the health exception in article 121 of the Penal Code.

The extent to which the lack of a guideline puts women and girls' physical and mental health and lives at risk was recently made visible in a case brought against Costa Rica before the Inter- American Commission of Human Rights (IACHR), by a young woman, A.N., who was pregnant with an occipital encephalocele fetus but was denied an abortion, even though her health was seriously endangered.[15] The lack of medical guidelines caused A.N. to suffer further, from the uncertainty of the system and the fact that she was treated arbitrarily, cruelly, and ignored by the officials to which she appealed.[16] She was forced to carry the pregnancy to term and deliver a stillborn girl.

The state's failure to make abortion available when women's health requires it may be part of the reason why maternal deaths due to "indirect" causes are increasing. While Costa Rica's maternal mortality ratio is relatively low, at 44 deaths per 100,000 live births,[17] the state estimates that at least 52% of these deaths are preventable.[18] Within those deaths,

those resulting from "indirect" causes are increasing.[19] "Indirect" maternal deaths are often caused by preexisting conditions that are aggravated by pregnancy or childbirth.[20] It is within the scope of the state's obligations under CEDAW to prevent those kinds of deaths by guaranteeing access to safe pregnancy termination when a pregnancy jeopardizes a woman or girl's health or life.

1. Costa Rica's Failure to Promulgate a Guideline for the Provision of Abortion for Health Indications.

This Committee has repeatedly expressed concern about clandestine abortions, which endanger women's ability to enjoy their rights to health and to life.[21] When maternal deaths are caused by clandestine abortions, this Committee has found such a situation to indicate that "[a] Government does not fully … respect the right to life of its women citizens."[22] CEDAW General Recommendation No. 24 makes clear that states must "respect, protect and fulfill women's right to health care."[23] Since abortion is an essential health service for women, states violate Article 12 when abortion is not accessible for health reasons. Further, since abortion is a health service that only women need, to fail to provide legally for it is a form of discrimination against women, as this Committee has long recognized.[24] Other treaty-monitoring bodies have similarly recognized that to fail to make legal abortion accessible violates women's right to equality.[25] Thus, failing to regulate and guarantee access to legal abortion for health indications violates women's rights to life, health, and to non-discrimination under this Convention and international human rights law.

Since access to abortion is essential if women are to enjoy their rights to life, health, and equality, this Committee has repeatedly emphasized that when abortion is formally legal – as it is in Costa Rica for health and life indications – States must ensure it is actually available. [26] Human rights bodies have further explained that when abortion is generally criminalized but is allowed in narrow circumstances, States must take special measures to make sure that women can obtain the service.[27] Abortion's presence in a State's Penal Code can cause a general "chilling effect,"[28] meaning that it can make healthcare providers reluctant to perform legal abortions, which appears to clearly be the case in Costa Rica. Guidelines must have a minimum set of core features in order to ensure that patients' rights are protected and so as to "alleviate this chilling effect."[29] First, as human rights bodies have explained, guidelines should set out procedures for decision-making that must be clear, timely, and take the individual's views and facts of her case into account.[30] Second, if a disagreement results between the patient and the doctor, there must be some kind of appeals mechanism, which must also be timely, and must provide the patient with fair process and an opportunity to be heard.[31] Third, the decision-making body should issue its decision in writing and explain the grounds for its decision.[32] All of this should be done swiftly, during the window of time in which the patient can still undergo a safe abortion.[33] A protocol that only offers a reason for a decision *after* a woman has given birth does not adequately protect her human rights.[34] In line with the right to health framework, all protocols should respect patients' dignity, privacy, and confidentiality at all times.[35]

Women who are pregnant as a result of sexual violence or who are pregnant with a fatally malformed fetus also face serious health risks, and thus Article 121's health exception

should be interpreted to permit legal abortions under either of these circumstances. The World Health Organization (WHO) has stated that pregnancy caused by rape can seriously endanger women's health. Victims of sexual assault, according to the WHO, "require comprehensive, gender sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event."[36] Such 'comprehensive, gender sensitive health services' must include access to safe abortion services.[37] An unwanted pregnancy that is the result of rape or incest extends women's' already intense physical and psychological suffering. Thus, treaty-monitoring bodies, including this Committee, have emphasized that states must provide therapeutic abortion in cases of rape and incest.[38] Article 121's health exception should thus be understood to allow abortion when pregnancy caused by rape endangers a woman's heath.

The Human Rights Committee (HRC) has also acknowledged that being pregnant with a fatally-malformed fetus can seriously endanger a woman's health.[39] In the case of *K.L. v. Peru,* the HRC determined that the state's failure to allow a young woman to protect her health by terminating a pregnancy with a fatally-malformed fetus not just violated her right to health, but constituted cruel and inhuman treatment.[40] As the *A.N.* case reveals, these situations are not uncommon in Costa Rica and are caused by the state's failure to make access to abortion for health indications a reality for women. As such, Costa Rica should ensure that women facing health risks in pregnancy – including those health risks caused by rape or by fetal abnormalities – can access safe abortion services. By failing to enact a guideline to ensure that abortion can be provided in line with human rights standards, the state violates Articles 12, 14, 2, and 16 of this Convention.

B. Costa Rica's Failure to Guarantee Access to Comprehensive Family Planning Services and Information

In addition to lacking access to abortion services, women in Costa Rica do not have adequate access to the complete range of contraceptive technologies. High and increasing rates of teen pregnancy[41] low contraceptive usage rates for young women,[42] rural-urban disparities,[43] and inadequate access for women not covered by CCSS insurance[44] indicate that the state has yet to make family planning access a reality for *all* women, as it is required to do under CEDAW. The National Institute for Women (INAMU) suggests that some reasons for these disparities include stigma, low resources, distance, lack of education, or lack of decision-making power in relationships.[45]

Additionally, the scope of contraceptives offered within the CCSS does not include many of the safest and most modern technologies. In the national registry, the only forms of contraception offered are the male condom, the copper IUD, first-generation oral hormonal contraceptive pills, injectable hormonal contraception (Depo-Provera), and surgical sterilization.[46] Many of these methods, such as surgical sterilization, are not appropriate for women seeking temporary contraception and are especially inappropriate for adolescents.[47] Other methods that may be healthier and more appropriate for individual women and for adolescents – such as the vaginal ring, the hormonal IUD (such as Mirena) and more recent

formulations of the pill, including progestin-only types – are not available through CCSS.[48] Most alarmingly, the state has failed to make emergency contraception available in the national registry.

1. Complete Unavailability of Emergency Contraception in Costa Rica

Like contraception and safe abortion healthcare services, emergency contraception (EC) is essential for women to be able to realize their right to the highest attainable standard of health. However, emergency contraception is not available within the formal health system in Costa Rica. While the use of EC is not criminalized, there is no commercial registry for the product, and so it is not available in hospital dispensaries or pharmacies.[49] A congressional bill introduced in 2007, seeking the availability in the public health system of emergency contraception, was archived by the Legislative Assembly's in 2008, and faced serious opposition from groups who claim that the drug is an abortifacient.[50] Both the WHO and the Pan American Health Organization (PAHO), however, have explained that emergency contraception does not have an abortifacient effect.[51] Likewise, the International Federation of Gynecology & Obstetrics (FIGO) states that emergency contraceptive pills do not interrupt a pregnancy and cannot prevent implantation of a fertilized egg.[52]

i. Costa Rica's Failure to Make Emergency Contraception Available Violates Women's Rights to Health, to Non-Discrimination, and to Family Planning

Emergency contraception is an effective and safe contraceptive method to prevent an unwanted pregnancy and the negative health outcomes that can result from such unwanted pregnancies.[53] Women in Costa Rica have some access to oral contraceptives and may use a high dose to prevent pregnancy after unprotected sexual contact; however, emergency contraception has substantially less severe side effects.[54] Moreover, knowledge of the appropriate dosage of oral contraceptives to achieve the emergency contraception effects is low, and therefore many women and girls who cannot obtain EC have no way of preventing pregnancy after intercourse.[55] Since pregnancy can pose major risks to women's health and life, emergency contraception is an essential medicine that states must provide to ensure that women can fully enjoy their rights to health and life. Since women bear the exclusive health risks of failed contraception, emergency contraception is a service that only women and girls need. Thus, to fail to provide it constitutes a violation of the right to non-discrimination in access to reproductive healthcare as determined by the CEDAW Convention. Indeed, this Committee has expressed particular concern over state parties' failure to provide adequate emergency contraception.[56]

Article 10 requires that all women have access to educational materials and advice on family planning, Article 16 protects women's right to decide on the number and spacing of their children and to have access to the information and the means to do so, and CEDAW General Recommendation No. 24 instructs states to "refrain from obstructing action taken by women in pursuit of their health goals."[57] This obligation entails the state's duty to ensure that women have access to information about emergency contraception, but Costa Rica has not only failed in this affirmative duty, it has actually taken active steps to *censor* information about emergency contraception: in October 2008, the Office of Advertising

Control (Oficina de Control de Propaganda) caved to pressure and suspended radio messages informing women of the existence of emergency contraception.[58]

Under this Convention's Articles 10, 12, and 16, Costa Rica is obligated to ensure that women and girls have access to a full range of contraceptive choices and to information about those options. In CEDAW General Comment No. 21, this Committee reiterated that inadequate access to contraceptives contravenes women's right to "decide freely and responsibly on the number and spacing" of children; and that "women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services."[59] In 2003, this Committee requested that Costa Rica strengthen its health care programs to provide women and men with timely and reliable information on the available contraceptive methods, including those capable of allowing them to exercise their right of free and informed choice of the number and spacing of the children they wish to have, as well as measures to prevent sexually transmitted diseases and HIV/AIDS.[60] To date, these recommendations have not been implemented, as is evidenced by the state's failure to make emergency contraception available in the national registry and within its public healthcare system. The state's failure to make emergency contraception available and to disseminate information about it thus violates women's rights to health, to information, and to family planning under this Convention.

ii. Costa Rica's Failure to Provide Emergency Contraception Violates the State's Obligations under CEDAW to Provide Special Protections for Rape Victims

Emergency contraception is also not included in Costa Rica's protocol for rape survivors, despite the fact that it is a particularly important resource for victims of sexual violence and that large numbers of girls become pregnant as a result of rape or incest each year in Costa Rica.[61] The WHO has stated that "[i]f a woman seeks health care within a few hours and up to five days after the sexual assault, emergency contraception should be provided."[62] An average of 500 girls under age 14 gives birth every year in Costa Rica, and every one of those is the victim of rape and/or incest under Costa Rican law.[63] This Committee has long emphasized that rape and sexual assault endanger women's health[64] and constitute gender-based violence.[65] Under CEDAW and other human rights treaties to which Costa Rica is a party, there is a positive obligation that the State must take affirmative steps to protect the health and dignity of victims of rape and sexual violence.[66] Such obligations include allowing women and girls to prevent pregnancy after rape.[67] This Committee has explained that states must provide training to sensitize health-care workers to the "health consequences of gender-based violence" and that the state must train health personnel to "manage" those consequences.[68] Such training and management should include the provision of emergency contraception to rape victims since pregnancy caused by rape can severely endanger a woman or girl's health.[69] Further, an unwanted pregnancy caused by rape does not just endanger a woman's health; it can be considered a free-standing act of harm, or an action that causes constant exposure to the violation committed against her,[70] according to the Committee Against Torture (CAT). Since this Committee has long condemned states' failure to allow for pregnancy termination in cases of rape,[71] in order to comply with its obligations under this Convention, the state must also ensure women's ability to *prevent* pregnancy after rape by means of EC.

Overall, to refuse to allow for legal provision of emergency contraception violates CEDAW's requirements that states guarantee women's ability to enjoy their rights on a basis of equality with men; including their rights to health (Art. 12), their right to family planning (Art. 10(h), 12(1), 14(2)(b)), to control their family size (Art. 16(e)), and their right to freedom from cruel and inhuman treatment, as well as to freedom from gender-based violence (Arts. 2(f), 5, 10(c), 16).[72]

C. Costa Rica's Failure to Provide Adequate Sexuality Education

This Convention and other human rights treaties require states to provide comprehensive sexuality education.[73] Sexuality education is not just a component of states' obligations under the right to health, it is also an essential component of strategies to end gender stereotyping and patriarchialism and thus act as "a guarantor of a democratic and pluralistic environment,"[74] as the Special Rapporteur on Education has recently stressed.[75] CEDAW requires that states must provide not just health care and family planning services and technologies, but *information* about the same.[76] In 2003, this Committee recommended that Costa Rica promptly implement a national comprehensive sexual education program.[77] However, to date, the state has failed to do so. The recent National Survey on Adolescence reports that only 44.1% of young adults aged 15 to 17 and 39.6% of those 18 to 24 have received sexuality information in educational centers.[78] 0% and 0.7% of those populations, respectively, have received this kind of information in public *health* centers.[79]

Unchanging rates of sexually transmitted infections, and extremely low condom use rates, also indicate that sexual education programs are not adequately educating young people about their sexual and reproductive health. According to recent reports, rates of syphilis, gonorrhea and HIV/AIDS have remained constant between 2004 and 2009,[80] and male condom use has dropped from 11% to 8% between 1999 and 2009.[81] This extremely low incidence of condom use means that girls and women are at high risk of contracting STIs even if they use other forms of birth control. Womens' health is disproportionately endangered by low condom use, since women who contract HPV are at a heightened risk of contracting cervical cancer, while men are only carriers of the virus and rarely experience any symptoms.[82] The high and increasing rates of pregnancy among girls and adolescents[83] also suggest that sexuality education in Costa Rica fails to educate children and adolescents adequately on family planning.

While Costa Rica has a number of public policies and laws that have the intention of protecting the right to sexuality education,[84] the state has failed to successfully maintain a financially-sustainable program that guarantees national sexuality education. Moreover, while the government issued an official policy in 2001 it has not been implemented.[85] In its report to this Committee, the state claims to have undertaken a campaign to disseminate sexual and reproductive health rights information.[86] This campaign, however, was extremely limited. It was directed at governmental and nongovernmental organizations, and its only resulting activities were two forums, held in 2003 and 2004. Meanwhile, the Ministry of Education developed sexuality education programs that were ready for implementation in 2009, but their implementation has been delayed until 2012.[87] Costa Rica is bound through this Convention and through other regional commitments, such as the 2008 *Ministerial Declaration: Prevention through Education,*[88] to implement sexuality education programs, but Costa Rica has violated that obligation by delaying

implementation of national curricula until 2012.[89]

Costa Rica's failure to prioritize this issue is also evidenced by other political decisions. While the Ministry of Education once included a Department of Comprehensive Education on Human Sexuality (*Departamento de Eduación Integral para la Sexualidad Humana*), this department has disappeared.[90] In December 2007, the Costa Rican legislature began the process of adding a Chapter on Sexual and Reproductive Health to the General Law on Health, with the aim of guaranteeing that all Costa Ricans would receive information and access to sexual and reproductive health services.[91] In the three years since the proposal of this amendment, however, there has been little political will to even discuss it within the legislature, and President Laura Chinchilla Miranda has indicated that it is not a priority for her government to do so.[92]

Costa Rica did establish a number of Sexual and Reproductive Health Counseling in 1999, under Executive Decree 27913-S, to help ensure that CCSS patients were provided with the information they needed to make informed decisions regarding family planning.[93] However, implementation of this Decree has been inadequate. Employees meant to provide the information lacked proper training and their personal beliefs often interfered with their ability to provide proper information to the patients. Furthermore, CPDD has been contacted by many women who reported that after receiving the necessary information about family planning options, they decided to undergo surgical sterilization but would become pregnant while waiting to actually receive the surgery.[94] These women clearly did not receive the necessary information about or had access to other forms of contraception. Under the same Executive Decree, Costa Rica also established the Inter-Institutional Commission on Sexual and Reproductive Health, but this Commission has not held a single meeting since 2008, given that the Ministry of Health, the only authority with the power to call a session of the Committee, has not done so, in spite of repeated requests from the civil society organizations that are part of it.

1. The State's Failure to Provide Comprehensive, Gender-Sensitive Sexuality Education Violates CEDAW

The Special Rapporteur on Education recently stressed that sexuality education is essential for states to be able to combat patriarchalism and gender inequality[95] and that sexuality education should "have a solid gender perspective."[96] He also emphasized that, as this Committee and the Special Rapporteur on the Right to Health have repeatedly noted, sexual health is an "obvious" component of the right to the enjoyment of the highest attainable standard of health.[97] This Committee has repeatedly emphasized that comprehensive and quality sexuality education contributes to reductions of maternal mortality, abortion and teen pregnancy rates, and HIV/AIDS infection rates, and is thus an important means of guaranteeing the right to health and to information under Articles 12.[98] It is also an essential means to ensuring the right to information on family planning as protected by Article 10(h), 14(b), and 16(e) of CEDAW. Comprehensive sexuality education with a gender perspective is also a crucial element of CEDAW's Article 5, which requires states to take "all appropriate measures" to eradicate "prejudices and customary" practices based on gender stereotypes and subordination.

Owing to the crucial role sexuality education has in promoting all of CEDAW's principles,

this Committee has repeatedly urged states to implement sexuality education in schools[99] and has often said that such programs should be mandatory.[100] This Committee has also highlighted the role sexuality education should play in state attempts to reduce adolescent pregnancies[101] – a pervasive problem in Costa Rica.[102] This Committee[103] and other United Nations treaty-monitoring bodies have instructed Costa Rica to improve sexuality education programs in schools and thus increase awareness and use of family planning options that also prevent STIs – namely, condoms.[104] However, Costa Rica has failed to implement an adequate sexuality education program notwithstanding its clear obligations under this Convention.

D. Costa Rica's ban on in vitro fertilization

In 2000, the Constitutional division of the Costa Rican Supreme Court of Justice declared the practice of in vitro fertilization (IVF) unconstitutional,[105] basing its decision on an interpretation of Article 21 of the Costa Rican Constitution, which establishes that "human life is inviolable."[106] According to the Court, a zygote, which is the union of an ovum and a spermatozoid, is legally "human life," and is thus is legally a person entitled to all the human rights. Following that logic, the Court asserted that the zygote is entitled to the right to life with no exceptions. Since the technique of in vitro fertilization requires that some zygotes and embryos are frozen and some discarded, the Supreme Court banned the practice.

Since 2000 Costa Rica has been the only country in the Western hemisphere to categorically ban IVF,[107] and this ban is considered the most restrictive in the world.[108] In Costa Rica, women who suffer from reproductive health or other health ailments, women or couples suffering from infertility, or women who desire to bear children later in life and thus require IVF, are effectively forbidden by the state from taking advantage of scientific progress to overcome a health problem, such as infertility. The ban on IVF has not only made the state, not individual couples, the decision-maker on questions of whether to have children; it has imposed stress on relationships, and some couples have separated as a consequence of being denied the possibility to try to have their own children.[109] Further, as some women have reached the end of their childbearing years since the ban was imposed, even if the ban is lifted, they will never have been able to found a family as they desired.[110] Seeking justice and redress, a group of ten couples challenged the ban before the Inter-American Commission on Human Rights (IACHR) in 2004. In 2010, the IACHR released its preliminary decision in that case, *Ana Victoria Sánchez Villalobos et al. v. Costa Rica* finding that the prohibition of IVF represented an obstruction of the full enjoyment of life, personal identity, and individual autonomy of those who decide to have biological children but who require access to in vitro fertilization in order to do so. The Commission noted that the decision to bear children belongs to the most intimate sphere of a woman's private and family life, and, consequently, state interference in this respect should be minimal.[111] The IACHR established that Costa Rica had violated the right to be free from arbitrary interference with one's private life, the right to found a family, and women's right to equality,[112] issuing a series of recommendations to Costa Rica's government that urge it to adopt proportionate measures allowing IVF in a manner that balances the fundamental rights to found a family, to privacy, to personal autonomy, and to equality, with the state's legitimate interest in safeguarding the right to life.[113]

To date, Costa Rica has failed to make IVF legal and safely available for women, and its only attempt to do so has been through a bill that would submit women to enormous economic, emotional, psychological, and health burdens, and is also incompatible with the manner in which the assisted reproduction procedure is meant to function.[114] (For more information about the extent to which that bill does not remedy the rights violations imposed by the IVF ban, please see the attached letters to the IACHR, included as Appendix I).

1. Costa Rica's Ban on IVF Discriminates Against Women

As the IACHR held, the ban on IVF has a discriminatory effect on women. The World Health Organization has similarly noted that barriers to accessing IVF disproportionately affect women, since women's ability to reproduce decreases at a more significant rate than men's.[115] Thus, infertile women and women who delay childbearing in Costa Rica may be left with no ability to have a biological child if they cannot use IVF. For a number of other reasons, IVF may be the only way that some couples can conceive. Women also face disproportionate stigma and blame for "infertility" as compared to men, and cultural stereotypes can sometimes expose them to alienation if they are unable to bear children.[116] Costa Rica's failure to allow IVF contravenes a number of CEDAW's protections of women's rights: to health, to found a family, to protection from arbitrary interference with one's private life; and to equality with men. The ban also violates women's specific right to family planning services and technology protected by Articles 10, 12, 14, and 16.

2. The Ban on IVF Violates Women's Rights to Health and the Right to Determine the Number and Spacing of Children Protected by CEDAW

IVF is an important reproductive health service for women whose health may be compromised by other types of conception, including women with scarred or damaged fallopian tubes.[117] It is also a crucial service used by women who are affected by infertility, which can be caused by a variety of health problems including ectopic pregnancy, reproductive tract infections, sexually-transmitted infections, and postpartum complications.[118] Up to 15% of reproductive-aged couples worldwide face infertility,[119] and these couples often rely on IVF to safely conceive children. Safe fertility care is thus a key part of reproductive health care. As the WHO has noted, "the outcome of quality fertility care is a healthy birth. Maternal and antenatal health does not begin during antenatal care, nor should it only be addressed at the time of birth. Rather, it starts with quality reproductive health care which includes pre-conception fertility care."[120] Along those lines, the Cairo Programme of Action of the International Conference on Population and Development (ICPD Programme of Action) articulates that women have the right to "access […] appropriate health-care services that will enable [them] to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant," and that "reproductive health care" thus includes all of the "methods, techniques, and services that contribute to reproductive health and well-being by *preventing and solving* reproductive health problems."[121] (emphasis added). Thus, the right to health requires that states do not create barriers to safe IVF services.

The Beijing Platform for Action, the ICPD Programme of Action, and this Convention also recognize that women's right to control their fertility is a key component of the right to

health.[122] The ICPD explains that "reproductive health is a state of complete physical and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health implies that people…have the capability to reproduce and the *freedom to decide if, when, and how often to do so*."[123] (emphasis added).[124] Being able to seek IVF is thus an essential manner by which women can actualize and protect their right to reproductive health.

But the ban not only evinces the state's failure to protect women's right to health, it creates an active barrier to women's health and a number of other human rights. The Committee on Economic, Social and Cultural Rights, interpreting the content of the right to health, stated that "the right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom,"[125] This Committee's General Recommendation No. 24 instructs states to "refrain from obstructing action taken by women in pursuit of their health goals."[126] The Beijing and Cairo statements, like CEDAW's General Recommendation No. 19, similarly require states to prevent coercion with regard to fertility and reproduction.[127]

Not only does the ban fail to *prevent* coercion, the ban is a type of coercion itself – it forces women who need IVF not to have biological children. This Committee has found that a state's coercion in matters of reproductive choices violates the right to non-discrimination in health care (Article 12) as well as the right to determine the number and spacing of children (Article 16(1)(e)).[128] Costa Rica's ban on IVF clearly violates those rights.

E. Discrimination against lesbian women in access to healthcare services

Lesbian women in Costa Rica face social discrimination, stereotypes, as well as formal discrimination in the law. Women who have intimate relationships with other women cannot enjoy the same rights to marriage, social security, and inheritance – along with other civil rights – that women who are in relationships with men enjoy. For example, same-sex marriage is not permitted, nor is there any law regarding same-sex domestic partnerships.[129] Three bills recognizing same-sex partnership have been introduced since 2006, but all have stalled in Congress.[130] The government of President Chinchilla has "assured" the public that recognizing same-sex partnerships will not be a priority for her government.[131]

We are concerned that this explicit state policy of de-prioritizing the rights of lesbian women is also present in the context of access to sexual and reproductive health. For example, IVF is a reproductive technology that is frequently used by same-sex partners wishing to start a family. As such, its prohibition, described above, likely has especially detrimental effects on that population. Moreover, a 2009 study by Centro de Investigación y Promoción de América Central (CIPAC) revealed a prevalence of discriminatory attitudes against lesbians in the health sector.[132] It is likely that these attitudes are similarly present vis-à-vis bisexual and trans women. CIPAC found that negative views towards homosexuals (such as that their sexual orientation is "not natural") were prevalent throughout the health workers surveyed, but were most prevalent among pharmacists and nurses as compared to dentists, doctors, administrators, etc.[133] Such a finding is alarming, since pharmacists and nurses, unlike, for example, surgeons and administrators, are among those health care personnel most likely to interact directly with patients. The survey also

found a marked bias on the part of health-care workers against same-sex partners raising children.[134] If a woman in a lesbian relationship seeks reproductive health care because she intends to start a family with her partner, that bias may result in poorer provision of health services, including maternal and obstetric care. Another barrier to adequate care may be the fact that 39% of health-care workers believed that a homosexual person – male or female – "always has the potential to transmit HIV." Only 41% disagreed with that statement, while the remaining 19% were not sure.[135] That inaccurate and alarming view likely inhibits health care personnel's ability to provide quality care to LBT women.

The study further revealed that while health-care personnel harbor negative views about homosexuality's moral and legal status, they viewed themselves as not being homophobic, and overwhelmingly claimed that they would not be uncomfortable providing healthcare to this population.[136] Actual access to health care for this population should be scrutinized, however, to determine whether negative attitudes revealed by CIPAC do in fact translate into barriers to care, especially if LBT women are discouraged from seeking care in the first place.

1. *Sexual-orientation-based stereotyping and discrimination in the health sector is prohibited by CEDAW*

Under this Convention and international human rights law, states must eradicate negative "gender-based stereotypes."[137] That requirement includes the obligation to address harmful stereotypes of lesbian, bisexual, and transgendered women.[138] This Committee has recently told states to take active steps to combat discrimination against women for their sexual orientation,[139] including the health sector.[140] The Yogyakarta Principles affirm that the right to freedom from discrimination on the basis of sexual orientation is especially important in the context of the right to health.[141] In order to comply with the obligation to protect, promote, and fulfill the right to health without discrimination, the state should undertake to eradicate the hetero-normative stereotypes present in the health sector.

II. Questions for the state

In light of the information provided above, we hope that this Committee will consider addressing the following questions to the government of Costa Rica:

1. What is the Costa Rica government doing to guarantee access to legal abortion services? Is Costa Rica planning to adopt a service delivery protocol (*guia de atención)* for legal abortion, which has been awaiting approval since December 2009? Is Costa Rica planning to ensure the implementation of these guidelines once they are approved? Is Costa Rica planning to guarantee that access to legal abortion services respects the full meaning of the rights to life and health of women in accordance with international human rights standards?

2. Why has the state not made emergency contraception pills available to all women and adolescents within the public health system, in line with WHO recommendations?

3. Does Costa Rica plan to ensure that all health facilities provide victims of rape and sexual violence with access to emergency contraception? Does Costa Rica plan to raise awareness among women of their right to emergency contraception, particularly in instances of rape?

4. What plan does the state have to guarantee the full realization of the right to comprehensive sexuality education for girls and adolescents in Costa Rica? Is Costa Rica planning to guarantee that such a program will be financially sustainable and well-equipped with both material and human resources for its effective implementation?

5. What is the State doing to provide access to IVF in a way that complies with the IACHR's determination that the ban on IVF violates women's rights to privacy, to found a family, and to equality?

6. How does the State intend to sensitize health-care personnel to the health needs of lesbian, bisexual, and trans women and to ameliorate negative stereotypes of non-heteronormativity held by personnel in the health sector?

III. Recommendations for the State

In light of the information provided above, we hope that this Committee will consider making Costa Rica the following recommendations:

1. Urge Costa Rica to guarantee access to legal abortion by adopting binding guidelines that would regulate the procedure in its technical and due process aspects respecting the full meaning of the rights to life and health, including physical and mental health of women, in accordance to international human rights standards.

2. Urge Costa Rica to register emergency contraception in their National Drugs Registry and make the drug available in the public health system, especially for women and girls victims of sexual violence.

3. Urge Costa Rica to reinstate in vitro fertilization in compliance with the IAHRC recommendations and international human rights standards by regulating the procedure in a way that does not put at risk women's health.

4. Urge Costa Rica to implement a comprehensive and scientific based sexuality education plan that is sustainable and its binding to public and private educational institutions.

5. Urge Costa Rica to design and implement public policies (guidelines or other regulation) to prevent women´s discrimination because of their sexual orientation or gender identity.

Please contact the undersigned should you have any questions.

Respectfully,

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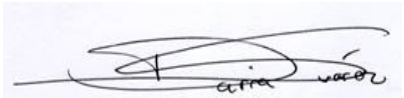

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Maricel Salas
Agenda Política de Mujeres

And on behalf of

Ana Hernández
Alianza de Mujeres Costarricense

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[1] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

[2] PENAL CODE (1970) (Costa Rica), art. 121: "Aborto impune. No es punible el aborto practicado con consentimiento de la mujer por un médico o por una obstétrica autorizada, cuando no hubiere sido posible la intervención del primero, si ha hecho con el fin de evitar un peligro para la vida o la salud de la madre y este no ha podido ser evitado por otros medios. [Legal abortion. Abortion is not punishable if performed, with the consent of the woman, by a doctor or authorized midwife, if a doctor is unavailable, and if the procedure is the only means through which to avoid danger to the life or health of the mother.]" (Translated by the Center for Reproductive Rights.).

[3] *A.N. v. Costa Rica* (complaint before the Inter-Am. Comm'n. H. R.), para. 61 (petition on file with Center for Reproductive Rights).

[4] In the *A.N.* case, the Medical Association told her that, contrary to the clear text of art. 121, abortion was only legal in cases where the mother's life was at risk. *Id.* para. 12.

[5] Data from the Caja Costarricense de Seguro Social [Social Security Fund of Costa Rica] (CCSS) shows that 26 induced abortions were performed during a five-year period (2002 to 2006). That number divided by 5 years gives an average of 5.2 per year. CCSS, DEPARTAMENTO DE ESTADÍSTICAS DE SALUD [DEPARTMENT OF HEALTH STATISTICS], *available at* http://www.ccss.sa.cr/html/organizacion/gestion/gerencias/medica/dis/dep_estadistica/des/publicaciones.html (last visited May 23, 2011).

[6] During a four-year period (2005-2009) there were 40,072 hospital admissions for women seeking post-abortion care in CCSS facilities. 40,072 divided by 4 years gives an average of 10,018 per year. *Id.*

[7] C. GÓMEZ RAMÍREZ, ASOCIACIÓN DEMOGRÁFICA COSTARRICENSE [COSTA RICAN DEMOGRAPHIC ASSOCIATION], ESTIMACIÓN DEL ABORTO INDUCIDO EN COSTA RICA [ESTIMATION OF INDUCED ABORTION IN COSTA RICA], 2007 9 (2008).

[8] Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24 (Article 12): Women and Health*, para. 11, U.N. Doc. A/54/38/Rev.1 (1999)) [hereinafter CEDAW Committee, *General Recommendation No. 24*].
[9] Healthcare personnel have reported to Asociación Colectiva por el Derecho a Decidir [Collective Association for the Right to Decide] (CPDD) that post-abortion care equipment and implementation of protocols in CCSS hospitals are not adequate [hereinafter Reports by healthcare personnel to CPDD]. In response to these reports, CPDD filed a complaint (*denuncia*) with the Auditoría Médica [Medical Audit] of CCSS on Aug. 25, 2009, which was accepted on Sept. 13, 2009 and sent to the Gerencia Médica [Medical Director] (in *oficios* 189-01 and 189-02). To date, however, no response has been made to this complaint.
[10] *See id.*
[11] *Id*.
[12] *Id.*
[13] According to the World Health Organization (WHO), "Medication for pain management should always be offered. In most cases, analgesics, local anesthesia and/or mild sedation supplemented by verbal support are sufficient. Local anesthesia, such as lidocaine injected around the cervix, should be used to alleviate women's discomfort where mechanical cervical dilatation is required for surgical abortion. General anesthesia is not recommended for abortion as it has been associated with higher rates of complication than local anesthesia." WHO, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 21 (2003), *available at* http://whqlibdoc.who.int/hq/2010/WHO_FCH_10.06_eng.pdf [hereinafter WHO, SAFE ABORTION].
[14] Reports by healthcare personnel to CPDD, *supra* note 9.
[15] A.N., a 26-year-old woman, was vomiting, suffering constant bleeding and pain; her ultrasounds showed her fetus to have a fatal abnormality. *A.N. v. Costa Rica*, *supra* note 3, paras. 1 – 10. This caused A.N. to become severely depressed and eventually suicidal. *Id.* paras. 12 – 13. A.N.'s case has been pending before the InterAmerican Commission since 2008.
[16] A.N. verbally appealed to various hospital personnel, and wrote a letter to the chief of obstetrics at the hospital where she was interned, but those appeals were ignored. She was teased by hospital staff for having an 'unplanned' pregnancy, for seeking an abortion, and was told that she was now facing God's judgment. *A.N. v. Costa Rica*, *supra* note 3, para. 18.
[17] United Nations Children's Fund, Childinfo, Monitoring the Situation of Children and Women, Estimates of Maternal Mortality 2008, http://www.childinfo.org/maternal_mortality_countrydata.php (last visited May 24, 2011).
[18] Government of Costa Rica, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, *Combined fifth and sixth periodic report of States parties,* para. 536, U.N. Doc. CEDAW/C/CRI/5-6 (2010), *available at* http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.CRI.5-6_sp.pdf [hereinafter Costa Rica Report before CEDAW].
[19] INSTITUTO NACIONAL DE ESTADÍSTICAS Y CENSOS [NATIONAL INSTITUTE OF STATISTICS AND CENSUS] (INEC) (COSTA RICA), ESTADÍSTICAS VITALES 2001 [VITAL STATISTICS 2001] 74 (2003), *available at* http://www.inec.go.cr/A/MT/Población%20y%20Demograf%C3%ADa/Defunciones/Generales/Publicaciones/C0/2001/Publicaciones%20de%20Estad%C3%ADsticas%20Vitales.pdf; INEC (COSTA RICA), ESTADÍSTICAS VITALES 2008 [Vital Statistics 2008] 79 (2009), *available at* http://www.inec.go.cr/A/MT/Población%20y%20Demograf%C3%ADa/Defunciones/Generales/Publicaciones/C0/2008/Publicaciones%20de%20Estad%C3%ADsticas%20Vitales.pdf. (15 direct and 8 indirect maternal deaths were reported in 2001 while 7 direct and 17 indirect maternal deaths were reported in 2008.).
[20] "*Indirect maternal deaths* are those resulting from previously existing disease or disease developing during pregnancy which was not due to direct obstetric causes, but which was aggravated by physiologic effects of pregnancy." WHO, BEYOND THE NUMBERS: REVIEWING MATERNAL DEATHS AND COMPLICATIONS TO MAKE PREGNANCY SAFER 23 – 25 (2004), *available at* http://whqlibdoc.who.int/publications/2004/9241591838.pdf.
[21] *See, e.g.*, CEDAW Committee, *Concluding Observations: Argentina*, para. 304, U.N. Doc A/52/38 Rev.1, Part II (1997); *Bolivia*, para. 43, U.N. Doc. CEDAW/C/BOL/CO/4 (2008); *Chile*, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); *Nicaragua*, para. 17 U.N. CEDAW/C/NIC/CO/6 (2007); *Belize*, para. 56, U.N. Doc. A/54/38 (1999); *Colombia*, para. 393, U.N. Doc. A/54/38(1999); *Dominican Republic*, para. 337, U.N. Doc. A/53/38 (1998).
[22] CEDAW Committee, *Concluding Observations: Belize*, para. 56, U.N. Doc. A/54/38 (1999).
[23] CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 14.

[24] *Id.* para. 11.
[25] Many treaty-monitoring bodies have made the link between state restrictions on abortion and women's right to equality. The Human Rights Committee (UNHRC), in *General Comment No. 28: The Equality of Rights between Men and Women*, discussed "life-threatening clandestine abortions" as something implicating women's right to life under Article 6, and thus a potential barrier to women's ability to equal enjoyment of rights. UNHRC, *General Comment No. 28 (Article 3): The Equality of Rights Between Men and* Women, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). The Committee on Economic, Social, and Cultural Rights (ESCR Committee) also explained that women's ability to enjoy their right to health under Article 12 on an equal basis with men requires "the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality. This includes, inter alia,…the removal of legal restrictions on reproductive health provisions." ESCR Committee , *General Comment No. 16 (Article 3): The Equal Right of Men and Women to the Enjoyment of all Economic, Social, and Cultural Rights*,34th Sess., para. 29, U.N. Doc. E/C.12/2005/4 (2005).
[26] CEDAW Committee, *Concluding Observations: Colombia*, paras. 22-23, U.N. Doc. CEDAW/C/COL/CO/6 (2007); *Peru*, U.N. Doc. CEDAW/C/PER/CO/6 (2007).
[27] *Tysiąc v. Poland*, 5410/03, Eur. Ct. H.R., para. 116 (2007); Committee on the Rights of the Child (Children's Rights Committee), *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, para. 31, U.N. Doc. CRC/GC/2003/4 (2003) [hereinafter Children's Rights Committee, *General Comment No. 4*].
[28] The European Court of Human Rights, for example, held that since when abortion is generally criminalized but for exemptions, this can cause a "chilling effect" and doctors may opt not to perform the service. Thus, there is an important need for medical guidelines, which must be "formulated in a way as to alleviate" that chilling effect. *Tysiąc v. Poland*, *supra* note 27, para. 116.
[29] *Id*.
[30] The WHO has emphasized that the law must be clear: "It is essential for health professionals, and others such as police or court officers as well as the public, to have accurate information and to understand clearly what is allowed under the [abortion] law in their country." WHO, SAFE ABORTION, *supra* note 13, at 85. The European Court of Human Rights held that procedures must take account of "the particular circumstances of the case," and has said that the individual must be involved "to a degree sufficient to provide her…with the requisite protection of [her] interests." *Tysiąc v. Poland*, *supra* note 27, para. 113.
[31] If a woman and her doctors disagree, there must be "some form of procedure before an independent body competent to review the reasons for the measures and the relevant evidence." At minimum, such procedures "should guarantee to the pregnant woman at least a possibility to be heard in person and to have her views considered." *Tysiąc v. Poland*, *supra* note 27, para. 117.
[32] *Id.*
[33] *Id.* para. 118.
[34] The procedures in place should ensure that decisions "are timely so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion," and must not be ex post facto. *Id.*
[35] The right to health requires that health services be provided in an ambit of privacy, respect, and confidentiality. CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 31(e). *See also* Children's Rights Committee, *General Comment No.4*, *supra* note 27, para. 33.
[36] WHO, GUIDELINES FOR MEDICO-LEGAL CARE FOR SEXUAL VIOLENCE 2 (2003), *available at* http://whqlibdoc.who.int/publications/2004/924154628X.pdf [hereinafter WHO, GUIDELINES FOR MEDICO-LEGAL CARE FOR SEXUAL VIOLENCE].
[37] *Id.* at 63.
[38] *See, e.g.*, CEDAW Committee, *Concluding Observations: Panama*, para. 201, U.N. Doc. A/55/38/Rev.1 (1998); *Nicaragua*, para. 17, U.N. Doc. CEDAW/C/NIC/CO/6 (2007); Children's Rights Committee, *General Comment No. 4*, *supra* note 27, para. 22; Children's Rights Committee, *Concluding Observations: Chile*, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Guatemala*, para. 40, U.N. Doc. CRC/C/15/Add.154 (2001); Committee against Torture, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); Children's Rights Committee, *Concluding Observations: Nicaragua*, paras. 58, 59, 64, 65, U.N. Doc. CRC/C/NIC/CO/4 (2010); UNHRC, *Concluding Observations: Nicaragua*, para. 13, U.N. Doc. CCPR/C/NIC/CO/3 (2008); ESCR Committee, *Concluding Observations: Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008); Children's Rights Committee, *Concluding Observations: Argentina*, paras. 57-58, CRC/C/ARG/CO/3-4 (2010).

[39] UNHRC, *K.L. v. Peru*, *Views of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights Concerning Communication No. 1153/2003*, Annex, U.N. Doc. CCPR/C/85/D/1153/2003 (Oct. 24, 2005) [hereinafter *K.L. v. Peru*].
[40] *Id.* para. 6.3.
[41] Costa Rica has high and increasing teen pregnancy rates. The fertility rate for adolescents aged 14 –19 increased from 18.66% in 2005 to 19.44% in 2009. (Calculations provided to CPDD by INEC (COSTA RICA), DEPARTAMENTO DE ESTADÍSTICAS DEMOGRÁFICAS, Aug. 27, 2010 (on file with CPDD). Moreover, Costa Rica persists in having high pregnancy rates for very young girls, those aged 10 – 14, with over 500 births in that age group per year. INEC (COSTA RICA), ESTADÍSTICAS VITALES 2009 49 (2010), *available at* http://www.inec.go.cr/A/MT/Población%20y%20Demograf%C3%ADa/Nacimientos/Publicaciones/C0/2009/Publicaciones%20de%20Estad%C3%ADsticas%20Vitales.pdf.. There were 570 births in 2009 in the 14 and under age group. All of those pregnancies represent victims of statutory rape and incest, since sex with a girl under age 15 is a crime in the Penal Code (PENAL CODE (1970) (Costa Rica), arts. 156(1), 159).
[42] INSTITUTO NACIONAL DE LAS MUJERES [NATIONAL INSTITUTE ON WOMEN] (INAMU), PRIMERA ENCUESTA NACIONAL DE PERCEPCIÓN DE LOS DERECHOS HUMANOS DE LAS MUJERES EN COSTA RICA [FIRST NATIONAL SURVEY OF THE PERCEPTION OF WOMEN'S HUMAN RIGHTS IN COSTA RICA] 16 (2008), *available at* http://www.inamu.go.cr/index.php?option=com_content&view=article&id=1195&Itemid=1738 [hereinafter INAMU, PRIMERA ENCUESTA NACIONAL] . While data from Costa Rica's INAMU indicate that 74.7% of Costa Ricans in general have "easy access" to contraception (INAMU, PRIMERA ENCUESTA NACIONAL, at 14). This "access" does not translate into actual use. 52.5% of the population in general reports not using any method of contraception (INAMU, PRIMERA ENCUESTA NACIONAL, at 17). Most alarmingly, while young populations - those aged 18 to 29 – reported having the most access to contraceptives and very high levels of "knowledge" about family planning methods, those populations have higher rates of non-use than of lack of knowledge or lack of access. 50% of women aged 18 to 24 use no form of contraceptives and 35.2% percent of women aged 25 to 29 report using no form of contraception (INAMU, PRIMERA ENCUESTA NACIONAL, at 16).
[43] In rural areas, only 69.8% of women report having "easy access" to contraceptives, compared to 72.3% of the female population at large (*id.* at 14). However, only 40.48% of rural women report actually using contraceptives, in comparison to the global average of 47.5% (*id.* at 16).
[44] Women not covered by CCSS insurance have 14.2% less ability to access contraceptives than women covered by CCSS (*id.* at 15).
[45] *Id.* at 14. INAMU found a correlation between lower levels of education and lower use of contraceptives (*id.* at 17).
[46] The CCSS offers a variety of contraceptive options, including male condoms, intrauterine devices (Copper-T 380A), oral contraceptives (Norgyl® y Norgylen®) and injectable contraceptives (Depo-provera®) and surgical contraception (Salpingectomy). The complete list of contraceptive options is *available at* Dirección de Farmacoepidemiologia [Office of Pharmacoepidemiology], Comité Central de Farmacoterapia [Central Committee of Pharmacotherapy], Lista Oficial de Medicamentos 2008 [Official List of Drugs 2008], http://www.binasss.sa.cr/libros/lista2008.pdf.
[47] Dr. Rita Peralta Rivera, OBGYN, Adolescent Specialist, Founder of the Center for Comprehensive Care for Minors, Hospital Dr. Rafael Ángel Calderón Guardia. These conclusions were presented on Oct. 2010 in a petition to the Pharmacotherapy Central Committee. The petition was rejected.
[48] The fact that second- and third-generation formulations of the pill are unavailable may be one reason why use of the pill is not increasing in accordance with population growth and may in fact be decreasing. INAMU found that the number of oral contraceptives distributed by CCSS health centers has either remained constant or decreased since 2001. INAMU, PRIMERA ENCUESTA NACIONAL, *supra* note 42, at 17.
[49] INTERNATIONAL CONSORTIUM FOR EMERGENCY CONTRACEPTION (ICEC), *EC Status and Availability: Costa Rica*, *available at* http://www.cecinfo.org/database/pill/countrieDisplay.php?countdist=Costa%20Rica (last visited Mar. 27, 2011) [hereinafter ICEC, *EC Status and Availability*]; GRUPO DE REFLECCIÓN Y TRABAJO POR EL DERECHO A LA ANTICONCEPCIÓN DE EMERGENCIA EN COSTA RICA [REFLECTIONS AND WORKING GROUP FOR THE RIGHT TO EMERGENCY CONTRACEPTION IN COSTA RICA], ANTICONCEPCIÓN DE EMERGENCIA [EMERGENCY CONTRACEPTION]: ASPECTOS GENERALES PARA LA TOMA DE DECISIONES [GENERAL INFORMATION FOR DECISION MAKING] 7, 28 (2004), *available at* http://ns.ccp.ucr.ac.cr/ac/ae_decisiones.pdf.

[50] Press Release, Women's Link Worldwide, The Prohibition of Emergency Contraception in Honduras is Inadmissible (Nov. 26, 2009), at 2, *available at* http://www.womenslinkworldwide.org/pdf_press/press_release_20091126_en.pdf. *See also* Asamblea Legislativa de la República de Costa Rica [Legislative Assembly of the Republic of Costa Rica], Detalle del proyecto de ley [Bill details], No. 16887, http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=16887.

[51] WHO, GUIDELINES FOR MEDICO-LEGAL CARE FOR SEXUAL VIOLENCE, *supra* note 36, at 64; Pan-American Health Organization (PAHO), *Fact Sheet: Emergency Contraception in the Americas*, *available at* http://www.paho.org/english/hdp/hdw/emergencycontraception.PDF [hereinafter PAHO, *Fact Sheet: Emergency Contraception in the Americas*].

[52] ICEC and International Federation of Gynecology& Obstetrics (FIGO), *Statement on Mechanism of Action* (Oct. 2008), at 2, *available at* http://www.figo.org/files/figo-corp/International%20consortium%20for%20emergency%20contraception%20statement.pdf.

[53] PAHO, *Fact Sheet: Emergency Contraception in the Americas*, *supra* note 511.

[54] *Id.*

[55] Knowledge of the Yuzpe method is low. ICEC, *EC Status and Availability*, *supra* note 49.

[56] CEDAW Committee, *Concluding Observations: Mexico*, paras. 32-33, U.N. Doc. CEDAW/MEX/CO/6 (2006).

[57] CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 14.

[58] Asociación Demográfica Costarricense [Costa Rican Demographic Association], *Información Sobre Anticoncepción de Emergencia es Un Derecho de Todas Las Mujeres* [*Information about Emergency Contraception is the Right of all Women*], *available at* http://www.adc-cr.org/adc_informacion_ae.php (last visited Jan. 4, 2011).

[59] CEDAW Committee, *General Recommendation No. 21: Equality in Marriage and Family Relations*, para. 22, U.N. Doc. A/47/38 (1994).

[60] CEDAW Committee, *Concluding Observations: Costa Rica*, para. 69, U.N. Doc. A/58/38 (2003).

[61] One Costa Rican study reported that 95% of girls who became pregnant before age 15 had suffered from incest. ISIS INTERNATIONAL, AGENDA SALUD [HEALTH AGENDA] No. 23/2001 4 (2001), *available at* http://www.isis.cl/temas/salud/agenda/AGENDA23.pdf. For one example of a case like this in Costa Rica, see Rónald Moya, *Padre Condenado a 90 Años Por Violar a Hijas* [*Father Sentenced to 90 years for Raping Daughters*], LA NACIÓN, Jun. 6, 2010, http://www.prensaescrita.com/adiario.php?codigo=AME&pagina=http://www.nacion.com ("un padre de familia…[fue condenado] por la violación de dos hijas suyas menores de edad…Una de las menores quedó embarazada como resultado de la comisión del delito.") [A family man…[was convicted] for the rape of two of his young daughters…One of the youths became pregnant as a result of the crime.].

[62] WHO, GUIDELINES FOR MEDICO-LEGAL CARE FOR SEXUAL VIOLENCE, *supra* note 36, at 2.

[63] Yalena de la Cruz, *Violacion, no gestación* [*Rape, not pregnancy*], LA NACION, Aug. 15, 2010, http://www.prensaescrita.com/adiario.php?codigo=AME&pagina=http://www.nacion.com.

[64] CEDAW Committee, *General Recommendation No. 19: Violence Against Women,* para. 23, U.N. Doc. A/47/38 (1992).

[65] *Id*. para.1.

[66] CEDAW requires states to enact and implement adequate "health-care protocols and hospital procedures to address violence against women", and states must "ensure the provision of appropriate health services" to care for victims of gender-based violence including rape. CEDAW Committee, *General Recommendation No. 24, supra* note 8, para. 15(b)). General Recommendation No. 19 also requires states to take measures to prevent and oppose gender-based violence, including providing rehabilitative and health services for victims. CEDAW Committee, *General Recommendation No. 19,* para. 24, *supra* note 64. General Recommendation No. 19 instructs states to "prevent coercion" with regard to fertility and reproduction," and to ensure that women are not forced to seek illegal abortion (CEDAW Committee, *General Recommendation No. 19*, *supra* note 64, para. 24(m)). If women have access to emergency contraception (EC), they may be less likely to need and therefore to seek abortion after sexual violence. The state has similar obligations with regard to teen and child victims of rape and incest under the Convention on the Rights of the Child (Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. 49, at 166, arts. 19, 34, 37(a), 39, U.N. Doc. A/44/49 (1989)).

[67] In General Recommendation No. 19, this Committee noted that states must establish "services for victims of family violence, rape, sexual assault, [etc]" and should ensure that adequate services are available for victims of sexual assault to control their fertility and reproduction. CEDAW Committee, *General Recommendation No.* 19, *supra* note 64, paras. 24(k), 24(m).
[68] CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 15(b).
[69] WHO, GUIDELINES FOR MEDICO-LEGAL CARE FOR SEXUAL VIOLENCE, *supra* note 36, at 2.
[70] Committee against Torture, *Concluding Observations: Nicaragua*, *supra* note 38, para. 16.
[71] *See* CEDAW Committee, *Concluding Observations: Colombia*, para. 393, U.N. Doc. A/54/38 (1999); *Jordan*, paras. 180 – 181, U.N. Doc. A/55/38 (2000); *Myanmar*, para. 129, U.N. Doc. A/55/38 (2000); *Nepal*, para. 147, U.N. Doc. A/54/38 (1999); *Concluding Observations: Panama*, para.201, U.N. Doc. A/53/38/Rev.1 (1998); *Concluding Observations: Venezuela*, para.236, U.N. Doc. A/52/38/Rev.1 (1997).
[72] *See* CEDAW Committee, *General Recommendation No. 19*, *supra* note 64, paras. 11 – 23.
[73] *See generally* United Nations Special Rapporteur on the Right to Education, *Report of the Special Rapporter on the right to education*, *Note of the Secretary General*, Vernor Muñoz, 65th Sess., U.N. Doc. A/65/162, *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/65/162 [hereinafter *Report of the Special Rapporteur on the Right to Education*]
[74] *Id.* para. 6.
[75] "Patriarchialism is a system of social order imposing the supremacy of men over women, although it also determines strict roles for men and even divides the sexes against themselves. In addition to gender inequality, patriarchalism impedes social mobility and stratifies social hierarchies…Patriarchalism is therefore a system which causes and perpetuates serious and systematic human rights violations, such as violence and discrimination against women." *Id.* paras.7 – 9.
[76] CEDAW, *supra* note 1, arts. 14(2)(b), 16(1)(e), 10(h); CEDAW Committee*, General Recommendation No. 24*, supra note 8, para. 23.
[77] CEDAW Committee, *Concluding Observations: Costa Rica*, paras. 68 – 69, U.N. Doc. A/58/38 Supp. 38 (2003).
[78] CONSEJO NACIONAL DE POLITICA PÚBLICA DE LA PERSONA JOVEN [NATIONAL COUNCIL OF THE PUBLIC POLICY OF YOUNG PERSONS], PRIMERA ENCUESTA NACIONAL DE JUVENTUD [FIRST NATI ONAL SURVEY OF YOUTH]: COSTA RICA 2008: PRINCIPALES RESULTADOS [MAIN RESULTS] 71 (2008), *available at* http://www.unfpa.or.cr/dmdocuments/Encuesta_Juventud.pdf.
[79] *Id.*
[80] Estado de la Nación [State of the Nation], *Estadísticas sociales* [*Social Statistics*]*: Salud* [*Health*], www.estadonacion.or.cr/index.php/estadisticas/costa-rica/compendio-estadistico/estadisticas-sociales.
[81] Ministerio de Salud [Ministry of Health], *Encuesta Nacional de Salud Sexual y Reproductiva 2009* [*National Survey of Sexual and Reproductive Health 2009*]*: Principales Resultados y Conclusiones* [*Main Results and Conclusions*], slide 12, *available at* http://www.slideshare.net/jpcarranza/encuesta-nacional-de-sexualidad (last visited Mar. 27, 2011).
[82] *See* WHO, HUMAN PAPILLOMA VIRUS AND HPV VACCINES: TECHNICAL INFORMATION FOR POLICY-MAKERS AND HEALTH PROFESSIONALS 4 (2007), *available at* http://whqlibdoc.who.int/hq/2007/WHO_IVB_07.05_eng.pdf.
[83] *See supra* note 41.
[84] Some of the laws and policies which in theory guarantee a right to sexuality education are the Public Policy on Young People (La Política Pública de la Persona Joven), *available at* http://cpj.go.cr/pol-tica-p-blica-de-la-persona-joven.html; and the Ministry of Education's Policy on Comprehensive Education on Human Sexual Expression (Política de Educación Integral de la Expresión de la Sexualidad Humana (Ministry of Education, 2001), *available at* http://www.mep.go.cr/CentroDeInformacion/DOC/3_6%20Pol%C3%ADtica%20de%20Educaci%C3%B3n%20Integral%20de%20la%20Sexualidad%20Humana-30320098348.pdf.
[85] Políticas de Educación Integral de la Expresión de la Sexualidad Humana [Comprehensive Policies for Education and the Expression of Human Sexuality] (Consejo Superior de Educación, 2011) [Higher Education Council, 2011], http://www.gparlamentario.org/pdf/Costa%20Rican%20Legislation/Politicas%20educ%20sexual%20Costa%20Rica.pdf.
[86] Costa Rica Report before CEDAW, *supra* note 18, para. 224.

[87] Jairo Villegas S., *MEP retrasa tres años nueva educación sexual* [*MEP Delays New Sexual Education for Three Years*], LA NACIÓN, Jul. 24, 2010, http://www.nacion.com/2010-07-24/ElPais/Relacionados/ElPais2458394.aspx (last visited Mar. 26, 2011).
[88] Resolución Ministerial Prevenir con Educación [Ministerial Resolution, Prevention with Education], *signed by* health ministers of various Latin American countries (*See* UNAIDS, Feature Story, Preventing HIV through education in Latin America and Caribbean (Jul 31, 2009), http://www.unaids.org/en/Resources/PressCentre/Featurestories/2009/July/20090731edu/ (last visited Mar. 26, 2011).
[89] Villegas S., *supra* note 87.
[90] This organizational chart of the Ministry of Education shows that the Department of Sexuality Education no longer appears. Ministerio de Educación Pública [Ministry of Public Education] (Costa Rica), *Directorio Desarrollo Curricular* [*Curriculum Development Directory*], http://www.mep.go.cr/DesarrolloCurricular/departamentos.aspx (last visited Apr. 17, 2011).
[91] Asamblea Legislativa de la República de Costa Rica [Legislative Assembly of the Republic of Costa Rica], *Detalle del proyecto de ley* [Bill details], No. 16887, *Adición de un Nuevo Capítulo III Referenta a los Derechos en Salud Sexual y Salud Reproductiva* [*Adding a New Chapter III relating to the Rights in Sexual and Reproductive Health*], http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=16887 (last visited Apr. 17, 2011); *see also* Ana Helena Chacón Echeverría, *Encuentro de Mujeres Parlamentarias* [*Meeting of Women Parliamentarians*]*: Hacia una Agenda Política para la Igualdad de Género* [*Towards a Policy Agenda for Gender Equality*] 4-6 (2009), *available at* http://www.fondoespanapnud.org/2009/07/presentaciones-del-encuentro-de-mujeres-parlamentarias-de-america-latina-y-el-caribe/.
[92] Villegas S., *supra* note 87.
[93] *See* Costa Rica Report before CEDAW, *supra* note 18, para. 558; Decree No. 27913-S (Costa Rica), *available at* www.inamu.go.cr/documentos/decreto27913-S.doc. *See also* ASOCIACIÓN DEMOGRAFICA COSTARICCENSE [COSTA RICAN DEMOGRAPHIC ASSOCIATION], DERECHOS SEXUALES y DERECHOS REPRODUCTIVOS EN COSTA RICA [SEXUAL RIGHTS AND REPRODUCTIVE RIGHTS IN COSTA RICA] 9 (2004), *available at* http://www.redeser.org/informe_resultados_asociacion.pdf.
[94] Reports by healthcare personnel to CPDD, *supra* note 9.
[95] *Report of the Special Rapporteur on the Right to Education*, *supra* note 73, para. 8.
[96] *Id.* para. 21.
[97] *Id.* para. 11.
[98] CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 56; CEDAW Committee, *Concluding Observations: Lithuania*, para. 25, U.N. Doc. CEDAW/C/LTU/CO/4 (2008); *Nigeria*, para. 33, U.N. Doc. CEDAW/C/NGA/CO/6 (2008); *see also* Children's Rights Committee, *Concluding Observations: Colombia*, para. 48, U.N. Doc. CRC/C/15/Add.137 (2000); *Ethiopia*, para. 61, U.N. Doc. CRC/C/15/Add.144 (2001); ESCR Committee, *Concluding Observations*: *Honduras*, para. 27, U.N. Doc. E/C.12/1/Add.57 (2001); *Senegal*, para. 7, U.N. Doc.E/C.12/1/Add.62, para.7 (2001); *Ukraine*, para. 31, U.N. Doc. E/C.12/1/Add.65 (2001).
[99] *See* CEDAW Committee, *Concluding Observations: Venezuela*, para. 32, U.N. Doc. CEDAW/C/VEN/CO/6 (2006); *Burundi*, para. 62, U.N. Doc. A/56/38 (2001); *Ireland*, *para.* 310, U.N. Doc. A/54/38 (1999); *Cape Verde*, paras. 29-30, U.N. Doc. CEDAW/C/CPV/CO/6 (2006); *Chile*, para. 20, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); *Philippines*, para. 28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006).
[100] CEDAW Committee, *Concluding Observations: Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006); *Turkmenistan*, para. 31, U.N. Doc. CEDAW/C/TKM/CO/2 (2006).
[101] CEDAW Committee, *Concluding Observations: Chile*, *supra* note 21, para. 18.
[102] *See supra* note 41.
[103] CEDAW Committee, *Concluding Observations: Costa Rica,* paras. 68 – 69, U.N. Doc. A/58/38, Supp. 38 (2003).
[104] Children's Rights Committee, *Concluding Observations: Costa Rica*, para. 44, U.N. Doc CRC/C/14/Add.138 (2005); *Costa Rica*, para. 22, U.N. Doc. CRC/C/15/Add.117 (2000).

[105] Sala Constitucional de la Corte Suprema de Justicia de Costa Rica [Constitutional Chamber of the Supreme Court of Costa Rica], Expediente [Record] No. 95-001734-0007-CO, Voto [Vote] No. 2306-00, Mar. 15, 2000.
[106] CONST. (1949) (Costa Rica), Art. 21. ("La vida humana es inviolable.").
[107] *Costa Rica Pressured to Reverse IVF Ban*, CATH. WORLD NEWS, Jan. 10, 2005, http://www.cwnews.com/news/viewstory.cfm?recnum=34533.
[108] *See, e.g.*, Robert L. Paarlberg, *The Great Stem Cell Race*, FOREIGN POLICY, May-June 2005, http://www.foreignpolicy.com/story/cms.php?story_id=2831; Martin Penner, *Vatican Set to Claim Victory on Fertility as Voters Stay Away,* TIMES ONLINE, Jun. 13, 2005, http://www.timesonline.co.uk/article/0,,3-1652082,00.html; *Italian No-Shows May Kill Fertility Vote*, THE AUSTRALIAN, Jun. 14, 2005, http://theaustralian.news.com.au/common/story_page/0,5744,15606488%255E2703,00.html.
[109] Center for Reproductive Rights, *Center Joins Couples' Legal Battle Against Costa Rica's IVF Ban* (Dec. 12, 2004), http://reproductiverights.org/en/press-room/center-joins-couples%E2%80%99-legal-battle-against-costa-rica%E2%80%99s-ivf-ban.
[110] *Id.*
[111] The preliminary report was made public knowledge in Costa Rican daily newspapers such as *La Nación* and *El País*. *See* Luis Edo. Díaz, *Comisión Interamericana pide reactivar fecundación in vitro* [*The InterAmerican Commission requests reinstatement of in vitro fertilization*], LA NACIÓN, Sept. 23, 2010, http://www.nacion.com/2010-09-24/ElPais/NotasSecundarias/ElPais2532537.aspx; and *Costa Rica permitirá fecundación in vitro pero sin congelación de embriones* [*Costa Rica will permit in vitro fertilization but without freezing embryos*], EL PAÍS, Oct. 15, 2010, http://www.elpais.cr/articulos.php?id=34312. Further, it was made public in the proposed law on in vitro fertilization (*Expediente No. 17.900*), *presented before* the Legislative Assembly of the Republic of Costa Rica by the executive branch on Oct. 22, 2010, which summarizes the contents of the honorable Commission's report in detail. Preliminary Report 85/10 (2010), Case 12.361 (*Ana Victoria Sánchez Villalobos v. Costa Rica*).
[112] *Id.*
[113] *Id.*
[114] For more detailed information on this bill, see appendix No.1.
[115] WHO, WOMEN AND HEALTH: HOW FAR HAVE WE COME SINCE BEIJING? REPORT OF AN ONLINE DISCUSSION, 25 Nov. 2009 – 25 Jan. 2010 16 (2010).
[116] *Id.*
[117] "For many infertile women, particularly those with problems such as blocked or severely scarred fallopian tubes where surgical tubal repair is either not successful or not advisable, in vitro fertilization (IVF) can help. This technology enables eggs to be fertilized directly by sperm outside the woman's body, without the egg or sperm having to pass through a blocked tube. The fertilized embryo is then transferred back into the woman's uterus." *Mother or nothing: the agony of infertility*, 88 WHO BULLETIN 12, 882 (Dec. 2010).
[118] *Id.* at 881.
[119] *Id.*
[120] *Id.* at 882.
[121] *Programme of Action of the International Conference on Population and Development,* Cairo, Egypt, Sept. 5 – 13, 1994. para. 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter ICPD Programme of Action].
[122] *Beijing Declaration and the Platform for Action*, Fourth World Conference on Women, United Nations, Sept. 4-15, 1995, , *Fourth World Conference on Women,* Beijing, China, Sept. 4 – 15, 1995, paras. 92, 100, 107(d), U.N. Doc. A/CONF.177/20 (1996) [hereinafter *Beijing Declaration and the Platform for Action*]; ICPD Programme of Action, *supra* note 121 Principle 4.
[123] ICPD Programme of Action, *supra* note 121 para. 7.2.
[124] *Id.*
[125] ESCR Committee, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, para. 8, U.N. Doc. E/C.12/2000/4 (2000).
[126] CEDAW Committee, *General Recommendation No. 24*, *supra* note 8, para. 14, U.N. DOC A/54/38/REV.1 (1999).
[127] CEDAW Committee, *General Recommendation No. 19*, *supra* note 64, para. 24(m); *Beijing Declaration and the Platform for Action*, *supra* note 122, para. 107(d); ICPD Programme of Action, *supra* note 121, para. 7.3.

[128] CEDAW Committee, *A.S. v. Hungary*, Communication No. 4/2004, para. 11.4, U.N. Doc. CEDAW/C/36/D/4/2004 (2006).
[129] In 2006, the Constitutional Chamber of the Supreme Court rejected a challenge to Costa Rica's marriage law for failing to permit same-sex partners to marry. The Court rejected the constitutional argument on the basis that "there is no legal impediment to same sex partners living together," and held that the only prohibition in the challenged law had to do with "the institution called marriage." Sala Constitutional [Constitutional Chamber], Corte Suprema de Justicia [Supreme Court], Voto No.7262-06.
[130] Three bills have been offered since 2006, but all have stalled in Congress: Expediente No. 16390, a proposed "Civil Unions" law, was tabled in Sept. 2010 by the Human Rights Commission of the Legislative Assembly, *available at* http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=16390; Expediente No. 17668, a proposed "Domestic Partnerships" law, and Expediente No. 16182, which would modify Art. 242 of the Family Code to recognize "*uniones de hecho*" [common-law unions] between same-sex partners, have both not been up for debate nor advanced in the legislature, *available at* http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=17668, and http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=16182.
[131] *Nuevo Proyecto para legalizar union homosexual en Costa Rica* [*New Project to Legalize Homosexual Marriage in Costa Rica*], RADIO LA PRIMERÍSIMA, Apr. 13, 2010, http://www.radiolaprimerisima.com/noticias/resumen/74458.
[132] A survey of health care personnel undertaken by the Centro de Investigación y Promoción para América Central de los Derechos Humanos [Research and Promotion Center for Central American Human Rights] (CIPACDH) found that discriminatory views towards LGBT persons are prevalent in spite of some indicators revealing perceived tolerance. For example, while most health-care workers agreed that an adult's choice of sexual partners was "very personal," only one-third of respondents agreed that "homosexuality is an acceptable lifestyle," and the majority of respondents did not agree that homosexuality is "normal." CIPACDH, ACTITUDES Y ESTEREOTIPOS DEL PERSONAL DE LOS EBAIS HACIA LA DIVERSIDAD SEXUAL EN EL VALLE CENTRAL DE COSTA RICA [STAFF ATTITUDES AND STEREOTYPES OF SEXUAL DIVERSITY OF THE EBAIS IN THE CENTRAL VALLEY OF COSTA RICA] 11 (2009). The majority of healthcare workers surveyed also believed that homosexual sex should not be criminalized, but also that same-sex partnerships should not be formally recognized. CIPACDH, at 14.
[133] *Id.* at 11, 13.
[134] 60.5% believed that same-sex partners should not have the right to adopt children. Only 16% affirmatively agreed that same-sex partners should be able to adopt; with 23% unsure. *Id.* at 15.
[135] *Id.* at 28.
[136] *Id.* at 16.
[137] CEDAW Committee, *General Recommendation No. 25: Article 4, Paragraph 1*, para. 4, U.N. Doc. A/59/38(SUPP) (2004). Articles 5(a) and 2(f) of the Convention also require states to eradicate harmful stereotypes, which includes the stereotype of heteronormativity. CEDAW, *supra* note 1, arts. 5(a), 2(f).
[138] *See generally* International Commission of Jurists, The Yogyakarta Principles – Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Mar. 2007, *available at* http://www.unhcr.org/refworld/docid/48244e602.html.
[139] CEDAW Committee, *Concluding Observations: South Africa,* para.40, U.N. Doc. CEDAW/C/ZAF/CO/4 (2011); *Belarus*, para. 42, U.N. Doc. CEDAW/C/BLR/CO/7 (2011).
[140] CEDAW Committee, *Concluding Observations: Belarus,* para. 42, *supra* note 139.
[141] *Id.* Principle 17.