

Health for all: a difficult target to attain



Costa Rica faces serious obstacles in extending the right to health to the whole population, and particularly to marginalized groups such as people living with HIV and AIDS. In addition to the restrictions placed on acquisition of medicines by the Free Trade Agreement with the US, the country needs to overcome conservative social resistance in order to adopt legislation promoting the rights of non-heterosexual women and men. Without devoting resources to meet these challenges, the country risks failing to meet the Millennium Development Goal targets related to health.

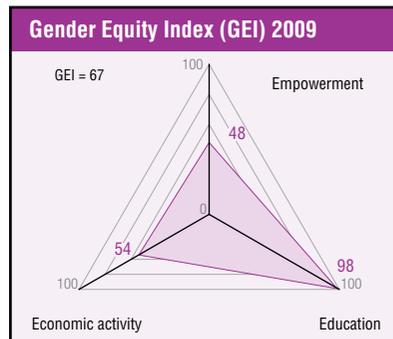
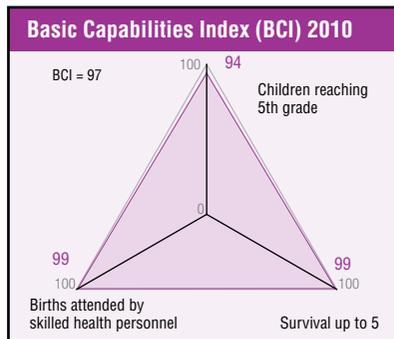
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Costa Rica's ratification, in October 2007, of the Free Trade Agreement between the Dominican Republic, Central America and the US (DR-CAFTA) has posed new social challenges with regard to health. Legal analysis of this document by major human rights watchdog organizations² makes it evident that the agreement will prevent the State from providing the basic right to health. Its implementation—especially of Chapter 15, which refers to intellectual property rights—will make universal coverage in the area of health, particularly the provision of drugs for all who need them, economically unsustainable.

Another serious issue is that although Costa Rica is considered a democratic and egalitarian country, there is underhand, discreet and veiled discrimination based on sexual orientation in a moralistic legal system within a rigid religious and traditional structure. The negligence of the Government in not submitting—or delaying the submission of—situation reports, such as in the case of the report to UNAIDS on the prevalence of HIV among populations considered to be high-risk, has left gay and lesbian organizations and those working in the field of HIV unprotected, having to adapt to the slow, bureaucratic pace of the State, to the detriment of their basic rights.

The provision of drugs

The Costa Rican Social Security Bank (CCSS) distributes about 11 different generic antiretroviral drugs to all medical centres in the country. Over the last six years there has been a significant increase in the consignment of these drugs for people living with HIV; at the same time, new, less invasive drugs with fewer side effects—discovered thanks to scientific and pharmaceutical advances—have been added to the services provided.³



It is precisely with regard to the distribution of these new drugs, which appear on the market gradually, that the State might face serious difficulties, along with increased financial costs. The consequences that applying the DR-CAFTA could have on the distribution of drugs in general, and on the consignment of antiretroviral drugs for people living with HIV and AIDS in particular, are exceptionally worrying.

The incapacity of the State to satisfy the demand for drugs will be made worse for several reasons, including: the rapid obsolescence of pharmaceutical products; the fact that the most expensive drugs are those used to counteract degenerative diseases (i.e., cancer and cardiovascular diseases), which mainly affect older adults; and the ban on approving the purchase and distribution of generic products, unless brand-name drugs have been granted five years' market exclusivity.

Defenceless minorities

The country's efforts in the field of maternal and child health and the prevention and treatment of HIV and AIDS, two of the eight Millennium Development Goals (MDGs), are hindered by discrimination against and exclusion of significant population groups who are striving to exercise their rights and promote legislation to obtain new ones. Such is the case with regard to gay, lesbian, transsexual, transgender and bisexual groups, whose rights as citizens of Costa Rica are violated daily.

It is within these population groups that the aims with regard to HIV/AIDS and sexual and reproductive health are particularly sensitive. Progress in terms of legislation, which is yet to be adopted—as are the corresponding budget allocations—clashes with a conservative cultural environment that is influential in political decision-making. There are also

contradictions in the State's approach to designing and implementing public policies for development, particularly with regard to the MDG targets on access to health services and treatment and prevention of HIV and AIDS.

There is a broad legal framework in Costa Rica that protects all of its inhabitants, and equality is stipulated in Art. 33 of the Constitution, which states that "all persons are equal before the Law" and that "no discrimination which is contrary to human dignity shall be effected." However, the rights of gays, lesbians and people living with HIV and AIDS are only reflected in the General AIDS Act (Nº 7771), which stipulates in its Art. 48 that "whosoever should apply, rule or practice discriminatory measures on the basis of race, nationality, gender, age, political, religious or sexual choice, social status, economic situation, civil status or any ailment with regard to health or illness, shall be punished by a twenty to sixty days' sentence."

This article provides for less severe punishment than that for offences unrelated to discrimination against persons, which is another indication of the lack of protection that the gay/lesbian population, as well as persons with HIV and AIDS, experience. It is also evidence of discrimination, since this is the only law in which they are recognized as subjects with rights.

Criminal Code

Due to the fact that legislation allows the "value criteria" of judges to affect their sentencing, this is often imbued with "moralistic and religious prejudice," which can lead to the application of more stringent punishment when an "offence" is committed by a homosexual (Arts. 156, 161 and 167 of the Criminal Code).

1 Prepared with the support of Francisco Madrigal Ballesterero, Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC); José Carvajal, Asociación Demográfica Costarricense; Ericka Rojas and Soledad Díaz de Asociación Madreselva and Red de Control Ciudadano, based on the study by Family Care International, *Los ODM y la salud sexual y reproductiva: Una mirada desde Costa Rica* (2009); and Mario Céspedes, CEP-Alforja.

2 *Roces Inconstitucionales del TLC*, Special Commission on Constitutional Implications of the FTA, San José, 2007.

3 Data from CCSS Pharmacotherapy Department, 2007.

Labour Code

Labour discrimination is more social than legal; there is nothing explicit in the Labour Code that provides for punishment or censure of workers for their sexual orientation. However, there are no procedural mechanisms in the private sector or in government service to prevent or eliminate discrimination due to sexual orientation.

Housing Law

Cases are constantly arising where the gay/lesbian population has clearly been discriminated against in one way or another related to housing. One reason is the stipulations of the Program on Housing Act, in which it is established that in order to obtain financing for a dwelling from state entities, a traditional heterosexual nuclear family must exist; that is, a legally married or common law couple of man and woman and children. With the purpose of protecting such nuclear families, access to housing for non-heterosexual persons is limited and they must finance their dwellings through trust funds or other more burdensome procedures. These financial guidelines leave gays and lesbians at a disadvantage when it comes to obtaining financing at a standard cost and in conditions of equality with the heterosexual population.

Family Code

The lack of legal recognition for same-sex couples also prevents them from gaining access to the benefits of social services, legacies, pensions, migratory status, inheritance procedures, proprietary guarantees, and so on.

Other laws and regulations

Differences, invisibilization and open discrimination are present in many other legal instruments in the country. This tendency is sometimes hidden in laws, but it is evident in the administrative or operational regulations of some institutions such as the CCSS, the National Insurance Institute, or the Patronato Nacional de la Infancia (National Children's Board).

In addition, as a result of charges brought by the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC)⁴ to the People's Ombudsman, this agency initiated an investigation into the Ministry of Public Education's policies with regard to education in human sexuality. It should be noted that the Catholic Church still maintains a great deal of power and influence within this ministry. The Ombudsman has only made statements related to education for the prevention of HIV and AIDS; a resolution with regard to heterosexism and the concept of family, which is implied and fostered by means of such policies, is pending.

4 A leading NGO that seeks to eradicate social inequity associated with sexual choice and gender identity.

Access to reproductive health services

Costa Rica has one of the highest prevalence rates in the use of birth-control methods in Latin America and the Caribbean: 81 out of every 100 women between the ages of 15 and 49, who have partners, use contraceptives. This might suggest that Costa Rica is fulfilling target 5b of the MDGs: "Achieve, by 2015, universal access to reproductive health."

However, despite this, the rate of unwanted pregnancy is 42%, the annual number of abortions is reckoned to be 27,000, and the birth rate among women aged between 15 and 19 is 71 per thousand.⁵

According to the International Planned Parenthood Federation/Western Hemisphere Region classification, this birth rate is medium.

The CCSS, which 80% of family planning users consult, offers only two kinds of contraceptive pills: Norgyl and, occasionally, Ovral or Primovlar. These are first-generation oral contraceptives that contain high levels of estrogen (ethinylestradiol) and progestogens (norgestrel) and should be used only for emergency contraception (e.g., the Yuzpe Regimen). Ideally, third-generation contraceptives should be used. These act in a manner similar to progestogens, but have many advantages and far fewer contraindications.

There is no specific legislation or public policy in Costa Rica prohibiting, encouraging or promoting the use of emergency contraception, which is not included among the services offered by the country's public health system. Recently, the Board of the CCSS rejected the use of emergency contraception on legal rather than medical grounds. In this regard, the country is still led by the unscientific opinions of fundamentalist groups that continue to have a great deal of influence on political decisions affecting sexual and reproductive health.

The female condom is not yet available in the country. The CCSS has shown interest in making it available to sex workers, but this has not yet been implemented. Moreover, this method can provide vital (and autonomous) protection for all sexually active women, not just sex workers, from unwanted pregnancy as well as from sexually transmitted diseases, including the human papilloma virus and HIV (Goal 6 and targets 6.1 and 6.2 of the MDGs).

Between 1999 and 2009, use of intrauterine devices fell from 6% to 2% among women aged between 15 and 49 with partners.⁶ This drop could be related to the fact that not all primary health care centres, known as Basic Comprehensive Health Care Units (EBAIS), are equipped to provide this method.

5 Carbajal, José, *Tasa de Partos entre mujeres de 15 a 19 años por Cantón 1995 y 2008*, San José, 2008.

6 Cristian Gómez, *National Reproductive Health Survey* (San José: Costa Rican Demographic Association, 2009).

The lack of a wide range of birth control choices in the public health services could also be affecting maternal mortality. Many of the 25 maternal deaths that occur, on average, every year are preventable, since they are associated with conditions existing prior to pregnancy that are aggravated because of it. For example, according to figures provided by the National Statistic and Census Institute, 24% of maternal deaths in 2008 occurred as a result of cardiovascular disease.⁷ In these cases, latest generation oral gestagens, the female condom, and emergency contraception are effective alternatives.

With regard to adolescents, 63.1% of women had sexual relations for the first time between the ages of 15 and 20, and the average age was 17.1. The average age of their sexual partners was 28.2, which means that the difference in age was 11 years.⁸ As for the birth control method used in the first sexual encounter, 56% said they used none. A survey carried out in 2009 among third cycle high school students (7th, 8th, and 9th grades) included the following question: Have you been taught how to use a condom or contraceptive sheath in any of your classes during this school year? According to Ministry of Health data, 30% answered yes and 70% answered no.

Conclusion

Despite the existence of laws such as the Children's Code (Law N° 7739 of 1998) and policies such as the Ministry of Public Education's Policies for Comprehensive Education in the Expression of Human Sexuality (2001), there is no formal program for comprehensive education on sexuality in schools. The many attempts that have been made in this area have failed in the face of fierce opposition from the fundamentalist groups that, as mentioned above, have great influence in political decision-making related to sexual and reproductive health.

From all of this it can be concluded that the country still needs to make greater efforts to fulfil Goal 5 of the MDGs, specifically with regard to targets 5a and 5b related to reducing maternal mortality and achieving universal access to reproductive health. ■

7 National Statistics and Census Institute, "Chart 3.10. Maternal deaths by age group, according to cause of death, 2008," in *Vital Statistics 2008*. Available from: <www.inec.go.cr/AMT/Población percent20y percent20Demografía/Defunciones/Generales/Publicaciones/CO/2008/Publicaciones percent20de percent20Estadísticas percent20Vitales.pdf> [in Spanish].

8 Gómez, *op. cit.*