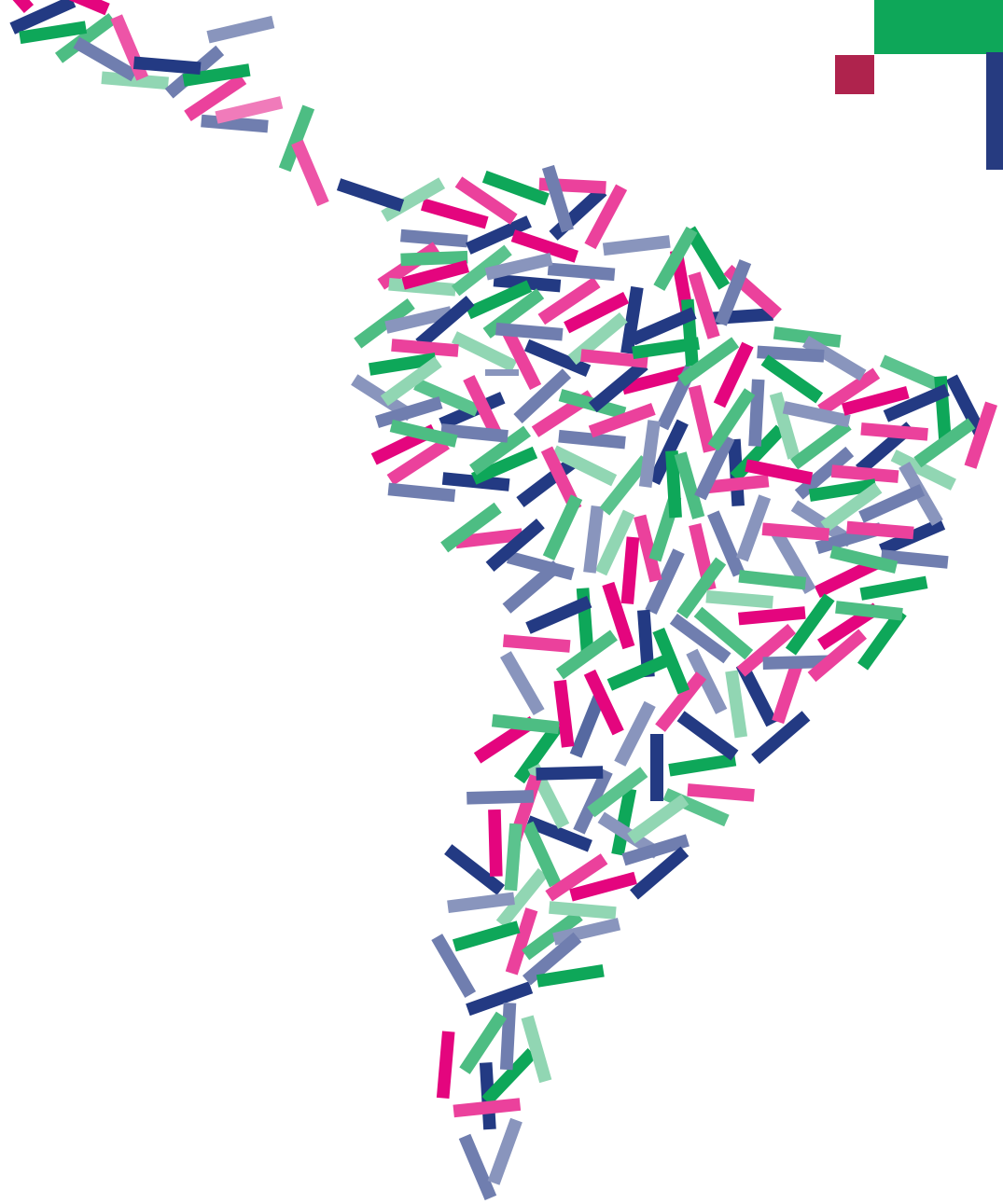

Sexual and Reproductive Rights for People with Disabilities: A Regional Overview

EXECUTIVE SUMMARY

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Executive summary

I. Introduction

The report Sexual and Reproductive Rights for People with Disabilities: A Regional Overview, presents the results of a study conducted within the framework of CLACAI's Disability and Abortion initiative.

This comparative study analyzes sexual and reproductive health (SRH) regulations for people with disabilities (PwD), based on the standards of the Convention on the Rights of Persons with Disabilities (CRPD). It was jointly developed by two CLACAI´s initiatives: Reproductive Health is Vital and Clacai´s Legal Network.

The study analyzed the laws of 13 Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay) to identify both the legal harmonization achieved and the remaining gaps in guaranteeing the rights of PwD regarding access to SRH, particularly abortion.

II. Key findings

- **All countries ratified the CRPD, which obliges them to implement its provisions.**

Before the adoption of the CRPD, the medical-rehabilitative model prevailed, based on the idea that the challenges faced by persons with disabilities (PwD) are directly related to their physical, sensory, or intellectual impairments.

The social model of disability, promoted by the CRPD, understands disability as a social deficiency rather than a personal one. It considers that disabling barriers persist in society, preventing all individuals from developing under equal conditions.

The thirteen countries ratified this Convention between 2007 and 2009, granting it different normative hierarchies: in most cases, a hierarchy above ordinary laws (6 out of 13), and in some, even constitutional status (5 out of 13). This means that the commitments made by states under this instrument prevail over other provisions in the local legal system, and therefore, domestic legislation must be harmonized with the standards established by the CRPD.

- **Gaps and rules that fail to recognize or promote the autonomy of PwD persist: legal capacity regulations must be reviewed to align with the CRPD**

Legal capacity has been regulated by civil codes and laws, many of which—even today—promote a guardianship and medical-rehabilitative model. All 13 countries studied address this issue in their respective civil codes. However, just as a specific Convention was needed to clarify how human rights should apply to PwD, it is also necessary to properly regulate legal capacity for PwD.

Some countries include provisions on the legal capacity of PwD in their civil codes (9 out of 13), and others also in their disability framework laws (4 out of 13). In the latter, most show legal inconsistencies due to the coexistence of norms based on the medical-rehabilitative model with more recent ones aligned with the social model of disability. While the most protective norms should be applied, the lack of harmony can lead to confusion.

- **Reproductive autonomy as a human right for PwD: gaps and limited specific legal development regarding the exercise of their SRHR**

Historically, persons with disabilities have been excluded from decision-making about their sexuality and reproduction. As a result, practices such as forced sterilization and abortion were frequently used. This changed with the emergence of the social model of disability, that established reproductive autonomy as one of its guiding principles. However, this shift has not necessarily been reflected in national legislation.

Two strategies were identified for regulating rights and access to SRH: on one hand, some countries have framework laws that protect these rights, from which general policies

and specific regulations are derived; on the other hand, some countries have developed specific laws to address various aspects and practices related to sexual and reproductive health. Additionally, some countries have jurisprudential developments on the matter from their highest courts.

However, most countries (10 out of 13) do not mention anything about PwD's access to these rights. In this context, only Brazil, Colombia, and Uruguay include specific provisions on PwD's access to SRH in their framework laws. But only Uruguay's legislation respects the principles established in the Convention, such as reproductive autonomy.

- **Informed consent as a guarantee of autonomy: regulations that substitute decision-making for PwD still persist**

Informed consent must comply with the principle of immediacy, meaning that it should be the PwD themselves who make decisions about their SRH, for example. The figure of a representative is reserved exclusively for situations in which, after exhausting all strategies, it is not possible to obtain such consent.

Most of the countries analyzed have specific regulations on the consent of PwD (8 out of 13). However, in some of them, informed consent regimes are based on substitute decision-making models that suppress the autonomy of PwD (5 out of 8). As a result, only three countries (3 out of 13) have regulations on this matter that are aligned with the CRPD.

- **Accessibility to SRH services for PwD: lack of regulation and development of normative strategies to promote inclusion**

The CRPD provides various mechanisms to ensure that PwD can adequately access health services:

➔ **Support system**: a set of measures, resources, and individuals chosen by the PwD to assist them in decision-making. It replaces substitution with support, promoting autonomy, equal participation, and respect for their will and preferences.

➔ **Reasonable accommodation**: a necessary adaptation that does not impose a disproportionate burden, aimed at ensuring that persons with disabilities can exercise their rights on equal terms. It is determined on a case-by-case basis, according to specific needs.

➔ **Safeguard**: a measure that protects PwD from abuse within support systems, ensuring respect for their will through periodic monitoring and review.

In countries with framework laws protecting the rights of PwD (12 out of 13), most include general provisions on accessibility. However, in the specific chapters dedicated to health, the necessary supports and accommodations to guarantee access to sexual and reproductive health practices are not considered or regulated—not even regarding informed consent.

- ### Abortion rights for PwD: the absence of regulation

Regulations on abortion for PwD were analyzed and, although the majority of countries (11 out of 13) recognize, to some extent, the right to terminate a pregnancy, only five (5 out of 13) specifically address the abortion rights of PwD: Argentina, Brazil, Chile, Colombia, and Ecuador. Only Argentina and Colombia regulate it in accordance with the standards established by the CRPD.

- ### Nothing about us without us: the participation of PwD in SRH policies remains an unfulfilled promise

The CRPD establishes that countries must ensure equal conditions for the participation of PwD in political and public life. This study found that most countries have provisions—in their disability framework laws—that explicitly recognize the right of PwD to participate in the formulation and implementation of public policies. However, the legislation does not provide an effective mechanism for participation beyond the recognition of the right.

Contact

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The full report is available at the following link.

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The Latin American Consortium Against Unsafe Abortion (Clacai) is a network made up of activists, researchers, healthcare providers, and professionals who work to reduce unsafe abortion in Latin America. It promotes access to information and to modern, safe technologies, within a framework of full respect for sexual and reproductive rights, from a gender and equity perspective