



TOWARDS FULFILLING SEXUAL AND REPRODUCTIVE RIGHTS IN LATIN AMERICA

Some reflections for the implementation of the
Montevideo Consensus on Population and
Development

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I. Presentation and objective of the paper

The challenge of complying with the Montevideo Consensus on Population and Development, adopted at the First Regional Conference on Population and Development held in August 2013 in Uruguay is huge. It involves the need to create spaces for meetings, agreements and coordinated efforts between all state actors involved and, of course, feminist organizations and social movements that supported the Montevideo Consensus and witnessed its birth with great hope. At the same time, this new work agreement undertaken between the States of the region has a very valuable tool: a review phase and a guide for implementation, tools that improve the conditions for its effective compliance.

Therefore, it is of strategic value and central importance that main actors in the full implementation of the Montevideo Consensus in each State understand and use the elements (priority lines, goals, targets and indicators) that these instruments offer. The idea is that they become their diagram for the implementation of policies, that they make them their own, transforming them and adapting them to their needs. On the right and honest grasp of this language -to be materialized into actions, measures and programs- depends avoiding waste of time, efforts and resources of all kinds in the race to guarantee the fundamental rights of people that are embodied in this valuable tool.

As already mentioned, the involvement of feminist organizations and social movements in this process is essential. The reality of our region shows that changes in political administrations of our countries or governments often impact, although they should not, in the achievement of human rights that might have occurred during the previous administration. Therefore, strengthening the policies required to guarantee the rights that result in an adequate level of development and growth with good institutional frameworks and processes of accountability is a priority.

This document is expected to be a tool that also serve as an excuse to think how compliance with the Consensus is materialized in each reality and how applicable the goals and indicators presented in the Implementation Guide are to these institutional structures and contexts.

The paper is organized as follows: in the first part some concepts that are considered relevant and its objectives in the general scheme concerning the Montevideo Consensus (hereinafter MC) and its monitoring and evaluation process are introduced. In section III, those concepts related to the most important aspects for this MC paper, that is, the institutional framework, are developed. In section IV, delving deeper into the above, some central concepts of this institutional framework are presented: **public policies with a rights perspective**. In section V progress is made in defining the relevance of the indicators for a process that refers to the functioning of the state in the establishment of public policies (Additional Protocol to the American Convention on Economic, Social and Cultural Rights, called Protocol of San Salvador). All this to being able to analyze the best ways to feed the Operational Guide by analyzing its relevance to determine the state of progress in a particular case. Thus, by analyzing the case of Tucuman, a province of Argentina, a federal state, we verify whether or not seeking for compliance with the commitments of the Consensus and the Guide for its

implementation are useful and help to accelerate progress on sexual and reproductive rights of the population. Finally, a few short paragraphs are devoted to final thoughts.

II. Background

The priority actions defined by the governments of the Region in the Montevideo Consensus (MC) to reinforce the implementation of the International Conference on Population and Development Programme of Action (hereinafter ICPD PoA) and its follow-up show that in 2013 they could understand that it is not possible to address population and development issues without ensuring the full realization of all human rights for all people. And they did so by paying enough attention to the realization of sexual and reproductive rights and gender equality, perhaps as never before. In fact, in several paragraphs of the MC the linkage between population, development and human rights is clear¹. So, although the agenda under discussion is set out in terms of population and development, this paper builds up the inclusive idea of "development of the population" as the targeted goal of what we understand should seek synergy between both elements in states based on the rule of law committed to the mandate to ensure the human rights of its population.

In doing so they took into account the agreements on the frameworks necessary for the proper and effective implementation and follow-up of the instrument. Taking into account what showed the nearly 20 years since the Programme of Action of the International Conference on Population and Development adopted in Cairo in September 1994, this aspect was especially present in the negotiations. It has always been an additional concern that there were opportunities for exchange, monitoring and accountability and, for this reason, the States underscored "the need for operational instruments, monitoring systems and resources for action in the area of population and development in the region to address the emerging challenges in this sphere"².

That is why an occasion specifically aimed at thinking and designing how this task should be performed was generated. A document emerged from the negotiations within this framework, which was adopted in October 2015. The *Operational Guide for the implementation and monitoring of the Montevideo Consensus on Population and Development*³ was welcomed, through a resolution, by the Regional Conference on Population and Development as a technical instrument that seeks to guide the implementation and monitoring of the priority actions of the Montevideo Consensus on Population and Development, with particular attention to achieving progress in the lines of action suggested. It is worth noting that the issues considered in Chapter J of the Montevideo Consensus, referred to this issue, have had special treatment in this *Operational Guide*, by virtue of its strategic importance and are therefore developed in the main body of the guide.

¹Thus, in the Montevideo Consensus, in its preamble, it is argued "Recognizing the important linkages existing between the Cairo Programme of Action, human rights, the Millennium Development Goals and the post-2015 development agenda (page 6)". Or more clearly when it states "Recognizing that, notwithstanding the significant advances achieved in the region in promoting, protecting and guaranteeing human rights over the past 20 years, these advances have not reached the entire population and that, while economic and social inclusion policies have enhanced opportunities and well-being, many people still live in extreme poverty and face inequalities as a result of historically entrenched patterns and new forms of discrimination, and, as such, are unable to exercise their rights fully" (page 6). And by stating "Highlight the need for a cross-cutting, universal, comprehensive, inclusive and equitable approach, based on equality, solidarity, and respect for dignity and human rights in order to address the needs of all vulnerable groups and related issues in connection with health, education, community, governance and sustainability for the implementation of the Cairo Programme of Action at the regional level and key actions for its further implementation and follow-up beyond 2014;" (page 8).

²Montevideo Consensus, Priority Action J, page 25.

³The document is available at the following link: http://repositorio.cepal.org/bitstream/handle/11362/38937/1/S1500859_en.pdf

So, the objective of this material is also to analyze the importance and relevance of tentative indicators, especially those referring to institutional measures, to accompany the steps taken or that are being taken by the States in the long way that implies compliance with the MC, especially in the case of federal states. This analysis will be done by analyzing the applicability of all these elements to the Argentine case in relation to the Province of Tucuman.

III. A new paradigm for institutional frameworks

The MC's main feature is that under the pretext of improving population and development issues, it refers to a set of measures and actions aimed at the realization of human rights of all people, with special attention to those groups that show greater difficulties to access these rights.

i. The importance of making commitments from a human rights' perspective

The inclusion of the rights arising from the International human rights law in the new constitutions, in view of the trends set in constitutional reforms produced in democracies in our region since the 80's⁴, has strengthened the central role of state policies in this new social constitutionalism for the fulfillment of fundamental rights.

This comes as a double opportunity to transform the State, its role and functioning. On the one hand, through the strengthening of the commitments assumed in International human rights law, a state structure that accounts for the enforceability of these rights should be planned, especially those identified as economic, social and cultural rights⁵. On the other, strategies to strengthen social and development structures are suggested, keeping in mind these rights that resulted in a series of commitments in various fields⁶. And at the same time, this process is strengthened by the particular contribution of feminism that, especially in our region, was able to consolidate that discussions are carried forward with a vision of human rights and a gender sensitive approach as an essential guideline.

Thus, this is a moment to think how a State, as primarily responsible for the effective enforcement of human rights of all its people, designs and implements public policies in general, and social policies in particular.

⁴See Uprinmy, Rodrigo: "Las Transformaciones Constitucionales recientes en América Latina. Tendencias y Desafíos, in C. Rodriguez Garabito, editor, "El Derecho en América Latina. Un Mapa para el Pensamiento Jurídico del Siglo XXI, Siglo XXI Publisher, Buenos Aires, 2011.

⁵Under the rights approach, poverty reduction is considered a legal obligation rather than a charity or a moral obligation (idem), and social protection itself begins to be viewed as such. Thus, ECLAC, for example, postulates that "Applying a human-rights based approach to certain aspects of social protection brings us into the realm of enforceability, in which rights holders should be seen as citizens demanding their legitimate right to resources and services" (ECLAC, 2006), and that "at this juncture, the region needs to make the transition from a social policy package to a comprehensive social protection system" (p. 37).

⁶The United Nations, at least since 1997, seeks to integrate human rights into the work of the organization, especially regarding poverty reduction strategies. In this regard, it recognizes that, either explicitly or implicitly, norms and values shape policies and institutions and assumes, therefore, that the human rights approach offers an explicit regulatory framework (United Nations, 2002) that can illuminate policies on social empowerment.

Therefore, rather than a set of "new commitments" made to the international community, the MC should be described as an agreement that has the ability to express the rights of people in a concrete and practical way from a more holistic view of themselves than traditional human rights standards. Its priority actions relate to the fulfillment of several human rights simultaneously: sexual rights and reproductive rights, gender equity, comprehensive sexuality education.

It is therefore an agreement on the strategies (priority goals) to be taken by States to comply with the fundamental rights of persons in each State. Following that line of argument the guide, that seeks to set the steps to meet those priority goals, is a tool that can help shape the "new institutional framework" required for that purpose.

ii. The human rights perspective in public policies

In the MC, this new name given to human rights can be seen through the vision it gives on development and growth, focused on living well and access to rights⁷. And its following step on the way to their realization - the Operational Guide adopted by the States-, materializes the structural idea of enforceability of certain services or benefits, the claim of comprehensiveness in its design and supply, and the duty of provision for the entire population, particularly those sectors most excluded from the enjoyment of rights (vulnerable, marginalized, disadvantaged or socially excluded people). In short, its effective and full implementation will also contribute to the compliance with many of the rules adopted by the International Human Rights Law (IHRL), the Sustainable Development Goals (SDG) and other international commitments.

From this "premises" (human rights as the basis of development, with concrete targets to be met and indicators to track progress) arise the principles that create the need of state institutions that work with a notion of public policies with a rights-based approach. This means ensuring universal access, enforceability, social participation, inclusiveness and progressiveness.

a. Universality

The principle of universality means specifically that the right in question is defined for the entire population. That is, when seeking the full realization of the respective right, emphasis should be put on those individuals and groups who suffer discrimination because of structural inequality.

Addressing this issue based on the requirement of equal rights and non-discrimination in International human rights law -and particularly considering the idea that seeks to clarify the difference between de jure and de facto equality- materializes when States declare:

" Recognizing that, notwithstanding the significant advances achieved in the region in promoting, protecting and guaranteeing human rights over the past 20 years, these advances have not reached the entire population

⁷ *The States in the Montevideo Consensus express this by "Underscoring the fact that the inclusion of alternative and participatory development models and approaches in the region, such as "good living", reconciles economic development with human development, human rights and respect for the environment and that these are enriched by the energy, dynamism and creativity of those persons who traditionally were discriminated against" (page 6).*

and that, while economic and social inclusion policies have enhanced opportunities and well-being, many people still live in extreme poverty and face inequalities as a result of historically entrenched patterns and new forms of discrimination, and, as such, are unable to exercise their rights fully"⁸.

b. Enforceability

The enjoyment of a right by the population requires an authority responsible for their implementation. It is not enough to recognize it; it is necessary to establish a way to provide it in a timely and appropriate manner for all people, and the authorities must account for this. Otherwise, this right can be enforced, even in court⁹. Accountability is essential¹⁰.

An example of the presence of this agreement is priority action 49:

"49. Take steps to promote and strengthen the preparation, implementation and accountability of gender-sensitive budgets, in order to achieve equal spending in the public sector, the inclusion of the principles of gender equality in the different stages of planning, budgeting and meeting the specific social needs of women and men".

c. Participation

A proper human rights approach implies - and needs - social participation. In fact, there are rights regarding participation and consultation defined in international or constitutional norms and also considered in action programs, such as Priority Action 8¹¹, 21¹².

A very good expression of this is Priority Action 88.

"88. Respect and guarantee the territorial rights of indigenous peoples, including those of peoples living in voluntary isolation and those in the initial phase of contact, with special attention to the challenges presented by extractive industries and other major global investments, mobility and forced displacements, and design policies that facilitate free, prior and informed consultation on matters that affect these peoples, pursuant to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples";

⁸Montevideo Consensus, page 6.

⁹An example of such agreements is priority action 34, which states: With regard to accountability, this aspect is present when States agree to: "Recognize further that effective governance is based on accountability, broad-based participation, transparency and the enforcement of the rule of law, and that strengthening national and local governments is key for achieving the objectives of development, peace and security".

¹⁰With regard to accountability, this aspect is present when States agree to: "Recognize further that effective governance is based on accountability, broad-based participation, transparency and the enforcement of the rule of law, and that strengthening national and local governments is key for achieving the objectives of development, peace and security".

¹¹Montevideo Consensus, PA 8. "Guarantee also the existence of mechanisms for the effective participation, without any form of discrimination, of adolescents and young people in public debate, in decision-making and in all policy and programme phases, in particular on matters that affect them directly, and strengthen institutional mechanisms for youth";

¹²21. Ensure the inclusion and equitable participation of older persons in the design and application of policies, plans and programmes that concern them;

d. Integrality

The interdependence of human rights should be a starting point, since the state cannot establish categories of rights but the enjoyment of certain rights may be dependent on or contribute to the enjoyment of others¹³.

e. Progressiveness

Progressiveness in the realization of these rights implies the possibility for states to gradually advance towards the fulfillment of the full implementation of these commitments. But this progress must meet certain immediate rules with respect to the duty to take steps and especially regarding the flip side of this principle which is non-regressiveness. The principle of non-retrogression means that even in times of crisis or slowdown in the economy, the maximum available resources must be guaranteed to meet the enjoyment of these rights especially by the most impoverished and neglected populations.

An example of this commitment is expressed in Priority Action 46:

"46. Guarantee sufficient financial, human and technological resources in order to provide universal access to sexual health care and reproductive health care for all women, men, adolescents, young people, older persons and persons with disabilities without any form of discrimination".

iii. Optimizing the institutional design of each country

The combination of the paradigm of the International human rights law with the elements mentioned above also places the republican and federal organization in the center of the analysis. On this last point, authors like Abramovich or Dulitzky analyze that the increasing internationalization of public law (through constitutional reforms, advances in case law matters or compliance with international decisions) forces to review or reconsider the traditional dynamics of federal organization in countries.

This leads to not ignore the attention that must be paid to the distribution of responsibilities between the federal state and the provinces or local states, not only at the normative level but at more operational levels as the spaces of intergovernmental coordination, where institutional mechanisms of coordination between these different spaces act or should act. This aspect is also relevant in the MC Operational Guide¹⁴.

Human rights most relevant treaties to our region (namely PICyP¹⁵ ICESCR¹⁶ and ACHR¹⁷) have norms that, although worded slightly differently, were interpreted in a consistent way: in both protection systems

¹³A good example of this is Priority Action 77 as it states: "77. Promote the development and well-being of people in all territories without any form of discrimination, and provide full access to basic social services and equal opportunities for populations whether they live in urban or rural areas, in small, intermediate or large cities or in isolated areas or small rural settlements";

¹⁴A good example of this is Priority Action 19 of the MC that states: "Design and implement public policies, plans and programmes —at all political and administrative levels— that take into account changes in the age structure, in particular population ageing, and the opportunities and challenges associated with these changes over the medium and long term".

¹⁵The International Covenant on Civil and Political Rights, Article 50 states: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

¹⁶The International Covenant on Economic, Social and Cultural Rights, Article 28 mentions: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

¹⁷American Convention on Human Rights, Article 28. Federal Clause: 1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. // 2. With respect to the provisions over whose subject matter the constituent units of

(universal and regional) it is understood that the federal State has not only the duty to respect those obligations, but also to take positive measures to enforce them. International human rights law imposes on governments of federal or national States the obligation to act within the international sphere and to be accountable for any breach of those obligations in the domestic sphere. It responds whatever the state agent that caused it, even if it was another state power or a local authority (provincial or state) on which the obliged party has no direct jurisdiction.

A similar situation exists in international spaces devoted to population and development issues, where the one who enters into the commitment and reports is the national government, but it is clear that its realization should be the work of all powers and state levels, as exemplified in PA No. 20¹⁸, or 47¹⁹. Everyone knows that although it is the national authority who responds in international headquarters, the other branches and institutional levels are necessary to achieve the commitments undertaken internationally.

So, if met, the MC will improve compliance rates of human rights in our countries, as described in detail by the Operational Guide. But doing so is a priority that presents many challenges to public institutions that no one can ignore. Therefore, the Operational Guide pays attention to these aspects.

the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

¹⁸Montevideo Consensus, PA "20. Design policies at the national, federal and local levels to guarantee quality of life, the development of potential and the full participation of older persons, taking account of the need for intellectual, emotional and physical interaction and the different situation of men and women, with emphasis on the groups that are most susceptible to discrimination, such as older persons with disabilities, those without economic resources or pension coverage, or those who live alone or lack a support network;"

¹⁹Montevideo Consensus, PA "47. Fulfill the commitment to strengthen institutional machineries in order to build development policies with equality that will guarantee the autonomy of women and gender equality, and give these machineries the autonomy and the necessary human and financial resources to enable them to have a cross-cutting impact on the structure of the State, recognizing the strategic role that they play and establishing them at the highest level";

IV. The journey towards the multidimensional and comprehensive public policies based on the human rights based approach

The MC is an ambitious and comprehensive agenda which breadth and multidimensionality is the result of understanding that sustainable development requires different comprehensive policies to the full satisfaction of rights of all individuals and peoples in the region. To avoid dispersion of efforts and resources when addressing a job of this magnitude it is necessary to establish synergies between the different responsibilities, the governments and other actors in the various state levels, whether in the context of a centralized or federal state.

It is worth noting some issues raised by the MC used to measure the huge initial effort needed:

- It attaches great importance to sexual and reproductive rights (SRR), to achieving gender equality and a fair social organization of care, eradicating violence in general and against girls and women in particular and subverting inequalities, both structural and intersected by gender, race-ethnicity, age, sexual orientation, gender identity, socioeconomic status, territories for building patterns of sustainable and fair development in the region.
- It tries to ensure that population and development issues are prioritized over other areas of the State - those that define the economic, social and environmental policies-, while deepening concerns about including gender, race-ethnicity and youth issues.
- It also demands the development and/or promotion of the concept of integrated work between the areas involved, properly trained, and points out, in a cross-cutting manner, the need for interactions within each State.
- It emphasizes the production of information sensitive to the different populations and the inequalities they face. Thus, it highlights the importance of having relevant and adequate information -baselines, disaggregated statistics-, so conditions should also be created. Statistical or average data mask inequalities that cross, in a significant way, the enjoyment of rights associated with age, race, ethnicity or area of residence.
- It implies a change in policy design to have the necessary participation and, above all, build capacity to being able to perform an adequate monitoring and follow-up, apart from developing enforcement mechanisms.

Faced with this, it is possible to anticipate that no effort will be exaggerated for each State to investigate the best way to take accurate steps to address compliance with the Consensus in an integrated, coordinated and efficient manner.

In general, there are many difficulties to adequately respond to these challenges when it comes to a paradigm shift that introduces changes in the functioning of the State; it invites to create new institutions and new ways of working.

First, to design and implement a policy with a rights perspective require reforms in many aspects, some of which were not sufficiently explored and still require our greatest attention²⁰: financing, special designs in institutions and management of the entities that formulate and implement policies, to name just a few. The mechanisms aimed to enforceability, a comprehensive approach and at allowing social participation become central and an essential condition of functioning of the state committed to this program.

And on the other two aspects, it is worth taking into account the analysis by Cunill Grau in the text mentioned, in what refers to the need to build a "systemic governance" to solve the challenges of ensuring a right or reverse situations that make an impact on many of them.

The author refers precisely to the synergy that, as described in Chapter J of the MC, should characterize the functioning between state actors directly or indirectly concerned in the exercise of a civil right, as they must maintain organic and sustained relations of cooperation to provide and produce comprehensive solutions to the problems challenged by law²¹.

To describe the meaning of this, the author speaks of three dimensions that need to be addressed in order to ensure that the systemic governance constitutes an attribute of public institutions. They are as follows:

Spatial dimension: refers to the need to create opportunities for mutual communication between the actors who have some impact on the implementation of a policy. Agreeing on the contents based on the differences of interest between the actors, to subscribe shared meanings (Lane and Bachmann, 1998) and increase the perception of their interdependence. As the author says, this expresses the metaphor of *the meeting*. They are especially important precisely when there is need for intersectoral arrangements to implement public policies on multidimensional social issues. In fact, the kind of public policies that involve integrated solutions would be demanding the development of *institutional arrangements of sustained dialogue*, that turn into shared visions and the articulation of resources and knowledge across sectors and levels of government; therefore, it would not be enough only to improve coordination between them (Repetto, 2009; Engel, 2005; Cunill, 2005; Junqueira, 1998).

Instrumental dimension: management instruments can be a tool or an obstacle to the coordination between actors. It will not be possible to produce integration if management instruments are not inclusive. The aim is to build management to generate planning processes, budget and evaluation determination as possible integrating mechanisms among the various actors involved in the implementation of a policy.

Value dimension: it refers to two aspects: first: achieving a systemic governance must be relevant to all those who conduct the policy. Therefore, the intention is to achieve *goals expressly aimed at generating governance*. Second: the values can also model the institutions. If public policy makers do not integrate the human rights

²⁰Cunill Grau says that there is a specialized literature about changes in funding. However, the literature is not specific regarding those changes affecting public institutions and their management. Published in the Journal of CLAD, *Reforma y Democracia*. No. 46. (Feb. 2010). Caracas.

²¹Idem, page 10.

based approach, "it is highly likely that they will either grant value to interdependence, diversity, the public and, subsequently, equity, and therefore cannot form a *community of practices*"²².

The operational guide takes the provisions of Chapter J of the Consensus and correctly highlights this way to go in a cross-cutting manner, unifying other PA established in other chapters before Chapter J. It does so by proposing actions, targets and indicators that the Guide itself presents as follows:

- Institutional: Having in the countries permanent institutions devoted to population and development issues, acting through a holistic approach that enables to overcome the traditional approach by sector, which also has a national mechanism for inter-agency coordination, involving civil society organizations and that can have a permanent and regular operation, with the modalities and specificities of each country.
- Statistical information²³: Strengthen the sources of statistical information, specifically as regards official statistics and traditional sources of demographic information, providing them with financial and technical sustainability for the production and processing of socio-demographic information of the countries and the region.
- Training²⁴: Strengthen regional education and training programs on population and development. Elaborate new ones and sustain the existing ones.
- Monitoring and accountability²⁵: both regional and national, as a means to ensure adequate progress in the effective implementation of the Montevideo Consensus on Population and Development, also including the encouragement and the mechanisms to achieve an active participation of civil society.
- Financing²⁶: Ensure financial resources for the implementation of the Montevideo Consensus on Population and Development --both through international cooperation and national budgetary commitments.

In short, some PA in the MC and the entire chapter J need all the powers of each of the States, in each of their institutional levels, to generate or deepen the capacity to address -through their own performance or together with other governmental actors- the causes of structural inequalities to achieve true universalization of rights. But in doing so, they must be able to ensure social participation in feasibility conditions (i.e. favoring that relevant and appropriate information can be obtained), and make a commitment to accountability and the promotion of the possibility to present a complaint in case of a breach.

²²Cunill Grau. op.cit.

²³Montevideo Consensus, PA 102, 103 and 104

²⁴Montevideo Consensus, PA 106.

²⁵Montevideo Consensus, PA 101 and 107, mainly.

²⁶Montevideo Consensus, PA 105.

v. The importance of being able to measure advances: progress indicators

Every day States address dissimilar measures, actions, programs, policies that, consciously or not, tend to satisfy various rights of their people and, through this, they comply with their international commitments whether these are obligations on human rights, priority actions of the Montevideo Consensus or the Programme of Action. But what matters is to find a common language to translate that diversity of actions and impacts into indicators and targets to get to know the degree of progress in each of these commitments. This is the basis of any process of monitoring and accountability that should be able to report achievements, delays and setbacks. But, as this is about human rights, in doing so the notion of de facto equality and respect for diversity must be at the basis in order to identify internal gaps in access and enjoyment of these rights.

It was therefore relevant and critical that the MC emphasizes the need for "regional and national monitoring and accountability" mechanisms and then, in the Operational Guide, establish a system of tentative indicators and targets for each priority action to facilitate the common language necessary to, a *posteriori*, know how and how much progress is made.

i. The contributions of the Operational Guide in terms of indicators

The Operational Guide was developed with the aim of making the priority actions defined in the MC operational and assist in the measurement of compliance²⁷. Starting from the PA, "possible lines of action", "targets" and "tentative indicators" were defined, without any claim to completeness but rather seeking to give just a reference²⁸.

Example

Priority action 3 of the MC.

"Build and strengthen national and subnational public institutions with responsibility for population and development issues, and ensure that they function in an integral and sustainable manner with the active participation of non-governmental stakeholders".

Therefore, the targets will be "1. To have an established institutional structure defined to ensure the integrated treatment of population and development issues. 2. To have a public institution designated and operating as coordinator of population and development measures. 3. To have formal mechanisms established and operating to allow active participation by non-governmental stakeholders."

And in this line, to being able to assess progress in meeting these targets, the following tentative indicators are determined: "1 Existence of a focal point on population and development issues prior to the third meeting of the Presiding Officers of the Regional Conference on Population and Development in Latin America and the Caribbean. 2. Existence of a public institution responsible for coordinating population and development issues, acting as the country's counterpart to the Regional Conference on Population and Development in Latin America and the Caribbean, before the third session of the Regional Conference. 3. Existence of a mechanism for broad participation, including by non-governmental stakeholders."

²⁷In the presentation of the Guide (page 8) it is mentioned that "the Chair of the Presiding Officers suggested that the outcome of the second session of the Regional Conference on Population and Development should be an instrument that would offer countries not only clear and specific guidance for implementing the Montevideo Consensus but also the means for monitoring that implementation, i.e. an instrument to ensure that the Consensus is put into effect".

²⁸In the text, exception is made that breakdowns in some targets or for some indicators may be missing, so a subsequent operationalization is required.

The contribution of the Operational Guide is precisely to have established the objectives in relation to each priority action (targets) and based on this, to propose how progress (indicators) could be measured. If achieved, these elements will facilitate the task of identifying not only groups, social sectors or geographical areas discriminated against in the access to certain rights, but also the causes of this. And in the same logic, they will allow a permanent assessment - mid-term or in progress- that can help to prevent prolonging shortcomings in compliance.

As shown in the guide, it contains both impact indicators and process indicators (those targeting only to procedural or institutional matters, for example the approval of specific legislation or endorsement of a specific international instrument for the protection of rights). Some indicators require a subsequent operationalization, which should be performed according to the contexts of each country. Tentative indicators can be obtained from various sources, both of domestic origin (e.g., censuses, surveys, administrative records and national reports presented in various multilateral levels) and from specialized international organizations and multilateral agencies (statistics, standardized national reports and reports of special rapporteurs, among others).

The experience provided by the Cairo Programme of Action monitoring since 1994, or arising from processes such as the MDGs or the SDGs, makes it likely that many States will fail to show the strength in the realization of some results (or indicators) in the next meeting space. Therefore, and due to the nature of the obligations that frame the achievement of the PA, it is probably useful to take into account other processes where States adopted indicators that can be adapted to the specific needs set out by the MC.

ii. Other processes that may be taken into account

We pointed out previously how beneficial is the linkage between development and human rights recognized by all States in the region. Therefore, it may be especially helpful to analyze the open process in the OAS to achieve to monitor the compliance with the obligations contained in the Protocol of San Salvador²⁹, a treaty that complements the American Convention on Human Rights referring to economic, social and cultural rights (hereinafter PSS or the Protocol).

In this system, and after a process of elaboration and analysis within the OAS by experts who submitted a proposal that included contributions from all States, a model of measuring compliance with rights in the Additional Protocol of San Salvador was adopted, based on three types of indicators: i) structural; ii) process, and iii) outcome. As it can be seen in the Guide, the kind of tentative indicators are comparable to the outcome indicators.

²⁹ This section is based on the contents of the document "Progress Indicators for Measuring Rights Under the Protocol of San Salvador", OEA/Ser.L/XXV.2.1, GT/PSS/doc.2/11 rev.2 of December 16, 2011.

Structural indicators provide information for evaluating *how* the State organizes its institutional machinery and legal system to meet its obligations under the Protocol³⁰. They inquire about measures, legal rules, strategies, plans, programs, or policies, including government agencies to implement those rights. They should focus foremost on *the domestic laws relevant to the concerned right and the institutional mechanisms that promote and protect the standards*, but trying also to understand some of their chief characteristics, for example, if standards are operational or not, or the rank or functional jurisdiction of a particular government agency or institution; in other words, they examine the normative framework and strategies that the State indicates as appropriate and effective for a particular right.

Process indicators seek to measure the quality and extent of the state's efforts to implement rights. These indicators help to monitor directly the application of public policies in terms of progressive realization of rights and can also offer information about fluctuations in the quality or coverage of social services or programs over a given time. They have a more dynamic and changeable component than structural indicators as they must reflect the efforts of different State structures or entities to achieve or progress toward the desired outcome³¹.

Outcome indicators capture attainments, individual and collective, that reflect the status of realization of human rights in a given context. They seek to measure the actual impact of government strategies, programs, and interventions. To some extent they are an indication of how those government measures impact on the aspects that determine how effective a right recognized in the Protocol is. Thus, they offer a quantitatively verifiable and comparable measurement of the *performance* of the State in terms of the progressive realization of rights. An improvement in outcome indicators may be a sign of the adequacy of the measures adopted and of progressive improvements towards full realization of rights.

At the same time, "in order to improve the possibility of analysis and better organize information collected", it is suggested to States that it be divided into three categories: (i) incorporation of the right³²; ii) financial context and budgetary commitment³³; and iii) state or institutional capabilities. Given the subject and purpose of this paper, it is important to note how we seek to know or inquire about this third category.

³⁰Idem, according to paragraph 33.

³¹Idem, according to paragraph 34.

³²The first category is the *incorporation of the right* in the legal system, the institutional apparatus, and public policies. The idea is to collect relevant information on how the right recognized in the Protocol is incorporated in the domestic law books and in public policy. On one hand, the aim is identify the level of the provisions that recognize it, as well as their effectiveness and statutory rank. For more information, see paragraph 37 of the document mentioned.

³³Another category to include in the evaluation process is the *basic financial context and budgetary commitment*. This category refers to the effective availability of state funds for public social spending and how it is distributed, whether it be measured in the usual manner (as a percentage of gross domestic product for each social sector) or by other indicators, and the budgetary commitment that allows an assessment of the importance that the State ascribes to the right in question. The importance of measuring this category stems from the fact that if a state institutes a public-spending policy that entails a cutback in the area of social infrastructure (for instance, health care or privatization of strategic areas or services), apart from acting as a regressive measure, it will have the effect of transferring the costs of care directly to families and, within the family, to women. Hence the importance of identifying the financial responsibilities of the state as precisely as possible. Cf. paragraph 39 of the document

State and institutional capabilities, according to the document of the PSS monitoring system, "describes a technical-instrumental and distributive aspect of government resources within the state apparatus"³⁴. They inquire about how to establish their development strategies and goals and under what parameters the implementation of the rights to be met (in this case, rights contained in the Protocol of San Salvador) is inscribed.

The document referred to the PSS reads as follows:

"41. The purpose of including state capabilities is to recover core information that account for the materialization of the political and technical will of states in implementing the Protocol. Its aim is also to verify if the conditions are right for effectively implementing a rights-based approach in the context of the current state structure through public policies or other appropriate mechanisms. The introduction of this category is also intended to evaluate in greater detail obstacles faced by the State in meeting its obligations, facilitating identification of problems or shortcomings with respect to political decision making or of technical-administrative difficulties, and distinguishing them from problems to do with governance. For example, a structural indicator of a state's capability is the existence of specific agencies within the state for the protection or implementation of a social right. A structural indicator can also be used to inquire about their responsibilities and functions. A process indicator of state capacity determines the scope and coverage of the programs and services deployed by those agencies, or changes in the quality and scope of such interventions over a period of time."

The relevance of this category of analysis is complete considering what was said of the MC in terms of "Frameworks for the implementation of the future regional agenda on population and development". And, as can be seen, the relevance is such that what is said in the document approved by the Member States of the OAS regarding institutional capabilities can be applied almost literally to Priority action N°3 of Chapter J of the MC.

Not needing to analyze what are the indicators used in each of the categories and aspects to be studied, it may be interesting to contribute to the monitoring process of the MC and the Operational Guide with some elements of this system referred to the PSS. On the one hand, the possibility to work with other kind of indicators, more intended to accompany the process; the Guide recognizes that there are tentative indicators that may require further operationalization, which should be performed according to the contexts of each country. On the other hand, to use state or institutional capacities as a category of analysis.

Thus, we have seen in sections III and IV that to operationalize the MC requires as a starting point to improve the institutional framework committed to this task and grasp the human rights based approach as a form of work, given that this is about fulfilling human rights. But it was also analyzed that achieving this systemic

³⁴ This document identifies four types of state capabilities: (i) administrative capacity, understood as the ability of States to deliver goods and services; (ii) technical capacity, which interprets the ability of States to analyze and implement economic and social policies to satisfy ESCR; (iii) political capacity, which refers to the ability of States to meet to social demands and allow the channeling of social interests by enabling citizen participation in decision making and conflict resolution; and (iv) institutional capacity, which identifies the ability of States to introduce and strengthen rules on political and economic interaction.

governance -as Cunill Grau says-, or improving the "state or institutional capacities" -as the PSS Monitoring System affirms- is a huge challenge. In addition, in the development of this chapter, the relevance of establishing a monitoring system with appropriate indicators was evident, not only outcome indicators, but also process and structural indicators.

vi. The analysis in the specific case of a federal state

When we start by recognizing that the MC is interesting because of the linkage it establishes between human rights and development, we must also carefully observe the magnitude of the effort that must be made for its effective compliance. Perhaps that is why many of the priority actions for some States appear as a "target maximum". Although this can be argued -as there are many issues to improve even in the MC-, it can be agreed that, they should be a "guide", and we should move slowly towards it.

As already mentioned, learning the monitoring processes to the Cairo Programme of Action and the Millennium Development Goals, which relate primarily to matters covered by structural public policies, emphasized that to know the baseline and be able to measure when the expected result is reached is as important as to identify that the path chosen to do it is the right one or that it is addressed with the appropriate action and strength. In other words, we should be able to monitor progress, not only through results, but also through data on the process³⁵.

By the nature of the commitments, we believe that civil society can be essential, especially in accompanying the monitoring of this phase, since many of the outcome or structural indicators arise from information produced by the state. Instead, an external eye can often be a better analyst of the state machinery.

In short, the aim is to build tools that allow us to measure not only the compliance with the goals that can describe the fact of having achieved the priority action, but also have indicators that show progress in each of the areas that can serve to show that something is done and that is relevant and sustainable.

Therefore, this paper focused on certain aspects that become relevant when studying the relevance of the system proposed by the Guide to operationalize the MC. In the following sections we will try to apply the MC and the elements provided by the Operational Guide to analyze the relevance of the proposed goals and indicators in a particular case: Tucuman, Argentina in relation to the overall institutional framework that should be established to ensure the priority action referred to sexual and reproductive rights. And, if it be the case, think about how to provide feedback to the instrument.

i. The importance of properly measuring the challenges of each context

Our governments are organized into ministries with specific competencies that each head of ministry administrate, determining the corresponding priorities. This decision of institutional design that seems to add order becomes a complicated issue when it comes to reverse situations that cannot be dissected in such a clear way. Let's consider a very clear example, present in our region: a certain sector of a country, for example a

³⁵ According to the PSS monitoring system, *"the progress indicators system examines processes and affords insight into progress made in the various different fields of rights, helping, inter alia, to spot trends, propitious conditions, and recurrent obstacles, and thus be in a position to recommend concrete measures"*. Cf. Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. p.; cm. (OAS. Official records; OEA/Ser.D), paragraph 22, page 21.

rural area, does not have the same benefits as the urban sector has for its inhabitants. The same complexity may result from the division of powers that organizes the state's role in at least three different organs.

And this complexity is enlarged when this division is projected at different state levels (Nation, provinces or states, municipalities or localities). As it was discussed in general terms, in federal States there are concurrent powers between the central level and the state (or provincial) level because no matter what have been the assignment of competences made by the federated states, with the emergence of international human rights law and public international law in general the responsibility towards the satisfaction of fundamental rights is at least shared.

The aim is then to give the right magnitude to a matter of institutional coordination in an area that has a huge impact and is not resolved only with the authoritative use of international human rights law. This argument serves to determine the responsibility for the noncompliance reported to the international community, but it is not decisive to achieve compliance at the local level.

For this reason, coordinating or promoting a certain policy to meet an international commitment (development or human rights, as preferred) in a federal state involves developing strategies to ensure a minimum and equal basis and the adherence of the other levels that are a central link for the effective realization³⁶. Realizing this willingness to work and common goals involves, at least, to have standards, frameworks, agreements and many other administrative acts. The objective, as can be seen, is to coordinate and strengthen inter-institutional relations to achieve an appropriate division of tasks and ensure the existence of resources (of all kinds) to carry out the tasks defined.

In fact, at least in Argentina, a large proportion of the policies for the development and living conditions of the population, a saying of human rights, to the fulfillment of ESCR are implemented by different levels of government, but mainly provincial and local (municipal) levels. This makes it essential to allocate wealth of efforts to achieve a good distribution of powers and responsibilities among various levels of government.

The success of the task depends on a proper synergy in this regard. If today in Argentina we went back the same way to try to explain why so much efforts were made with so little result in some areas (e.g. indexes related to death of women from pregnancy-related causes) or successes in others (e.g., infant mortality) it could be seen that many of the causes are related to the underestimation or the relevance given to these institutional questions. And this, surely, can be transferred to other countries, even if they had a single central power to tackle issues involving one or more ministries, or when referring to breaches for liability of the other branches of government.

³⁶Indeed, based on a consistent interpretation between what is known as federal clause (art. 28 of the American Convention on Human Rights, ACHR) and the general obligations on human rights (art. 1 and 2 of the ACHR), the national power is the one responsible for ensuring an equal access basis to the right to all persons *subject to its jurisdiction*. Provincial governments may, at most, take that basis as a starting point from which to provide a better right under the *pro homine* principle (art. 29 of the ACHR) or a more favorable interpretation to the recognition of the rights.

ii. The importance of analyzing the quality of processes

Taking into account what has been mentioned in general terms in section III regarding the new institutional framework needed to meet the MC in letter and spirit, we must be very demanding when constructing the indicators for monitoring the coordination process or institutional design established by the MC, whether the general one of goal 3, the integral ones of Chapter J or the specific ones found throughout the document.

Given the concepts in section IV, when analyzing the steps to materialize the MC, we should witness a State that establishes a "systemic governance" for these issues.

This system will have to reach agreements and understandings, so there should exist spaces and incentives to generate them. All government sectors with responsibilities must take part in this, including tough areas like economy or industry. The aim is that there is scope for deliberation and agreement on how to reverse a situation, for example the contempt of rural areas. This is not an opportunity to exchange information on the objectives of each area in this subject (as can be an inter-institutional meeting of agreements to improve coordination of actions decided unilaterally) but to establish common goals and how to reach them³⁷.

And, at the same time, they must be occasions with a particular concern to meet the cross-cutting principles of ensuring i) equality and non-discrimination; ii) access to justice and iii) access to information and political participation.

If we recall the provisions of the Operational Guide regarding PA 3, it may be necessary to add some indicators that account for what was mentioned above. Thus, the following could be added as process indicators towards meeting the tentative Indicator 3 (3. Existence of a mechanism for broad participation, including by non-governmental stakeholders):

- Existence of a framework agreement for compliance with the MC between the national State and each of the provinces, where the areas and hierarchies of state participants are determined.
- Generation a formal space of collective construction of the national plan, with budget allocation for the exercise of the following year, to comply with the MC, with formally established participation of non-governmental actors;
- Establishment of a space and a mechanism of periodic monitoring.

These statements are only examples, used to clarify that the aim is to identify those guidelines that may be concrete evidence that progress is made in the right direction.

³⁷ Quoting Grau again: "The important feature of genuine deliberation is that participants find reasons that they can accept in collective actions, not necessarily that they completely endorse the action or find it maximally advantageous (Fung and Wright, 2003). Deliberation can promote mutual understanding to deal with the complexity of the problems and the diversity of actors. It may also lead to more impartial and rational decisions (Elster, 2001), and to fairer and more legitimate decisions (Fung, 2003)".

iii. The case: Argentina and Tucuman.

This section seeks to analyze some priority actions of the MC according to the goals set by the Guide and see if they are adequate or if tentative indicators should be strengthened with others intended for specifically analyzing the institutional adjustments that should be made to comply with the PA.

This should be done, as we said before, assuming that in the Argentine context the condition set by the constitution of this country³⁸ is often put forward as the cause of many of the institutional misunderstandings that negatively impact on the enjoyment of sexual rights and reproductive rights. This is often simplified under the term "health federalism" or "educational federalism".

However, as has been demonstrated, the correct interpretation of the various applicable rules³⁹ implies that the Argentine State -as a whole- should prevent federalism from becoming an obstacle to the enjoyment of the fundamental rights of people⁴⁰ and ensure, instead, that it be a better protection framework for each of them. The way is to strengthen the working, coordination and cooperation structures between the Federal State and the provincial and municipal states, with a view to complying with human rights in this matter.

For example, if we take special account of the health organization, we have the following table:

- The national Constitution recognizes the right to health through different human rights treaties standards that are incorporated by art. 75 subpar. 22. A harmonious reading of these standards - backed by the peaceful construction in the case-law of the Supreme Court of Justice of the Nation - concludes that people have right to the highest attainable standard of health. Health, according to the World Health Organization (WHO), is a state of complete physical, mental and social well-being⁴¹. Sexual and reproductive health is an integral part of this right.
- According to the Law on Ministries -Law 26.338-, it is up to the Ministry of Health of the Nation to "be in charge of the coordination and complementarity of systems of state health services of the national, provincial and municipal spheres of social security, and the private sector" (item 14) with the primary aim of ensuring a minimum level of equality in the enjoyment of rights. It is also the responsibility of this Ministry to, "within its scope, be in charge of the development, implementation

³⁸In a federal structure like the one in Argentina, where health and education are fundamental rights that are part of the subjects that provincial states have not delegated to the nation, the need for proper coordination between the various levels is emphasized.

³⁹This is the criterion that has prevailed in the case-law of our Supreme Court (CSJN, case "Campodónico of Beviacqua, Ana Carina w/ Ministry of Health and Social Action Ministry of Health Programs and Bank of Neoplastic Drugs", Judgment of October 24, 2000) which declares the national State is the ultimate - and main - guarantor of the effective enjoyment of human rights of people living in Argentina. It is also the criterion adopted by the Inter-American Court of Human Rights that repeatedly affirmed that, given the international regulation, the State cannot "invoke its federal structure to fail to comply with an international obligation" (e.g. Inter-American Court of Human Rights, Advisory Opinion No. 11 of August 10, 1990, para. 34).

⁴⁰The degree of responsibility of the national state in federal countries like ours has been established by the Supreme Court of Justice. For example, in the case "Campodónico de Beviacqua", the Court held that "With respect to the execution mode in states with a federal structure, the Committee on Economic, Social and Cultural Rights of the United Nations has recognized that this structure requires that the cantons be responsible for certain rights, but has also reaffirmed that the federal government has the legal responsibility to ensure the implementation of the covenant". And it reaffirms this in the following whereas: "20) That, also, the "federal clause" under the American Convention on Human Rights requires the national government to comply with all obligations related to the subject matters over which it exercises legislative and judicial jurisdiction and the duty to take "immediate" appropriate measures in accordance with its constitution and laws, so that the authorities of the federal State can comply with the provisions of that treaty (art. 28, subpars. 1 and 2)" (CSJN, case "Campodónico de Beviacqua", op. Cit.).

⁴¹Pan American Health Organization, Constitution of the World Health Organization in Basic Documents, Official Document No. 240, Washington, 1991, page 23.

and monitoring of integrated programs that cover the inhabitants in case of specific diseases and certain population groups at risk" (item 34).

In this case, in Tucuman, the right to health is recognized in the Provincial Constitution in the following terms:

"Art 125. The Province will seek legitimate, effective, efficient and viable measures and resources, to the highest degree possible, conducive to the maintenance, restoration and promotion of physical and spiritual health of all, respecting their dignity and the rights therefrom, protecting the life, within the sphere of its powers, from conception.

The Province will set health policy and coordinate it with the National Government and those of other provinces, as well as with institutions of public or private health. The Province reserves for itself the legal authority of police power in legislation and administration of health".

This means that under this normative framework, the right to health of people living in Argentina requires state actions that allow access to the system of primary health care, and progressive and continuous development of a system of coverage for all the population of the country. This is ultimately achieved by the establishment of a comprehensive public policy that guarantees this, in which the national state serves the primary function of standardizing practices and policies on health care throughout the territory of the republic. And the provincial government, in this case Tucuman, should seek "the measures and resources" to fulfill the right to health -in the terms set forth in the Constitution as supreme framework for the establishment of rights- of its inhabitants. And set health policy -in coordination with the national government and other provinces-, being its responsibility to ensure that these provisions are complied with. That is, the local authority will have the control over the level of attention and, despite this, if there is a violation of a right, the ultimate guarantor will be the national State.

There is a similar situation with respect to the right to education, a public good that is recognized as a right that must be guaranteed by the State both for the individual that enjoys this right and for society. Therefore, under the Law of National Education, a public policy should be developed whose main social objective is "to build a just society, reaffirm the sovereignty and national identity, deepen the exercise of democratic citizenship, respect human rights and fundamental freedoms and strengthen the economic and social development of the Nation (art. 3 of the national Education law)". In this way the main and essential actors will be the educational entities as executing, managing and responsible agencies. And, with few exceptions, the National State does not manage schools, the provinces do so.

Now, with this in mind, it is worth analyzing some PA of the MC that relate to some of the aspects concerning their sexual and reproductive rights and the targets and indicators proposed by the Operational Guide. It would be good to do the exercise of trying to analyze what should be the institutional capacities that should be generated to achieve that goal and test how to measure progress.

Exercise 1

Priority action 11

Ensure the effective implementation from early childhood of comprehensive sexuality education programmes, recognizing the emotional dimension of human relationships, with respect for the evolving capacity of boys and girls and the informed decisions of adolescents and young people regarding their sexuality, from a participatory, intercultural, gender-sensitive, and human rights perspective.

According to it, the Operational Guide sets out the following Targets:

1. All public and private education institutions to have programmes of comprehensive sexuality education aligned with the Montevideo Consensus on Population and Development and international standards.
2. Increase the number and percentage of children, adolescents and young people who have information and knowledge about sexual and reproductive topics adequate for their respective ages.
3. Increase the number and proportion of children, adolescents and young people who take informed decisions in sexual matters with a degree of autonomy consistent with their age.

The following tentative indicators were identified for these targets:

1. Consistency of the official curriculum for comprehensive sexuality education with the criteria of the Montevideo Consensus on Population and Development and with international standards.
2. Percentage of children, adolescents and young people who have completed an annual comprehensive sexuality education course for each school level.
3. Percentage of children, adolescents and young people who have information and knowledge about sexual and reproductive topics adequate for their respective ages.

But given the institutional design of Argentina, for that to be possible in the Province of Tucuman, the Federal Board of Education would need to determine which are the adequate contents under the terms of the PA. This has already been done in Argentina since the Comprehensive Sexual Education Act (ESI) and its contents were approved by the Board, where the ministers of education of the Nation and the 24 provinces are present, and is in effect. This means that target number 1 and its indicator would be achieved.

However, in Tucuman not all schools provide this content. The reasons (or excuses) are diverse and different in nature⁴², but the most relevant are: a) the lack of training of the teaching staff, b) the scope of action of each school, especially private ones, to establish their contents despite receiving state funding, c) to allege the right of parents to choose the education they give their children, d) the lack of effective control over compliance with ESI from areas of government to each of the effectors (educational establishment).

When analyzing this situation and observing the other goals and indicators, it can be seen that if these situations are not reversed, despite having achieved goal 1, we will not achieve goals 2 and 3 and, in the process, we will not have data on what is going wrong. We must recognize that, at least with regard to Argentina, in the provision of ESI the State is not the only one involved as a uniform subject and with an unambiguous will. Therefore, the aim is to establish which is the institutional mechanism that can achieve this

⁴² There may be more examples, but the idea is to identify those causes which are also structural issues.

goal, together with state actors and at the same time, limiting the spaces for any possible resistance. The first step for a national state in this context is, for example, to improve its coordination and motivation capacity for the provinces to comply with ESI national law and, at the same time, make efforts to achieve the effective provision of these contents in provincial schools.

Given this situation, we can think of new targets and indicators aimed at paying attention to the institutional frameworks engaged in comprehensive sexuality education:

Target: Generate the mechanism that does not leave to the discretion of a province to implement or not the ESI

Indicator: incentive system (budget or resources of various kinds) for compliance with the ESI Act

Target: Generate a mechanism for compliance evaluation and monitoring with ESI from the State but with the participation of non-governmental actors, and especially adolescents;

Indicator: reporting system on non-compliance with ESI

Target: Generate institutional frameworks that improve the control capacity of the authority of each province

Indicator: survey system of educational institutions and sanctions for non-compliance.

At the same time, it can also be considered in this sense, how compliance with goals 2 and 3 can be measured, given that in order to realize these objectives there is a need to generate capacities to measure them.

Exercise 2

The MC establishes in its Priority Action 12

Implement comprehensive, timely, good-quality sexual health and reproductive health programmes for adolescents and young people, including youth-friendly sexual health and reproductive health services with a gender, human rights, intergenerational and intercultural perspective, which guarantee access to safe and effective modern contraceptive methods, respecting the principles of confidentiality and privacy, to enable adolescents and young people to exercise their sexual rights and reproductive rights, to have a responsible, pleasurable and healthy sex life, avoid early and unwanted pregnancies, the transmission of HIV and other sexually transmitted infections, and to take free, informed and responsible decisions regarding their sexual and reproductive life and the exercise of their sexual orientation.

According to this, the Operational Guide sets out the following Targets:

1. Eliminate the barriers that obstruct or limit universal access for adolescents and young people to sexual and reproductive health services.
2. Eliminate the barriers that obstruct or limit adolescents and young people in the exercise of their sexual and reproductive rights.
3. Establish sexual and reproductive health programmes for adolescents and young people through the health ministry.

4. Provide local sexual and reproductive health services with staff trained and motivated to offer a service that is friendly to adolescents and young people.
5. Meet the demand for contraception among adolescents and young people.
6. Reduce unplanned pregnancies among adolescent girls and young women.
7. Reduce violence, particularly sexual violence, against adolescents and young people.

The tentative indicators to face this are:

1. Existence of a legal framework guaranteeing the exercise of sexual and reproductive rights for adolescents and young people, including universal access to timely and high-quality comprehensive reproductive health services.
2. Number of health centers that offer youth- and adolescent- friendly services and guarantee confidentiality and respect for sexual orientation and gender identity.
3. Percentage of adolescents and young people whose demands for contraception are met with modern methods.
4. Percentage of women aged 20-24 years who had their first child before the age of 20 years.
5. Percentage of births to adolescent mothers that are unplanned.

We see that this presents a complexity similar to the situation in Example 1, especially regarding the knowledge of the aspects we know operate when realizing sexual rights and reproductive rights in general and those of adolescents in particular. In our country, since 2003 - regulated in 2005 - there is the law creating the National Program of sexual health and responsible procreation, with special attention to the adolescent population. But having met goals 1 and 3 has not impacted the others. When analyzing the tentative indicators it can be observed that compliance with the first (very structural indicators) does not seem to influence the others (outcome indicators) and much less account for what is wrong.

We can see again the need to review the functioning and institutional capacities of the State as a whole to enable compliance with these rights in Tucuman. This refers to being able to identify appropriate process indicators on institutional capacities to fulfill sexual and reproductive rights of the population. Our contribution points to this⁴³⁴⁴.

Faced with the reality in Tucuman, it is clear that to achieve to "Implement comprehensive, timely, good-quality sexual health and reproductive health programmes for adolescents and young people", it is necessary that all institutional levels involved have normative frameworks that recognize these rights and are not opposed to each other.

Although the recognition of rights at the constitutional level is clear and the prevalence among standards is clear, the resistance seen in practice makes it relevant that there be policy coherence until the level of control and monitoring is improved. In fact, as the theme often puts into question "the dominant moral", the existence of specific legislation on the subject becomes relevant. On sexual and reproductive rights, especially when it

⁴³ A document elaborated by the Center for Reproductive Rights and the United Nations Population Fund (UNFPA), "Reproductive rights: A tool for monitoring States obligations" was also considered for this.

⁴⁴ This section is adapted from a paper co-written by the author for the Center for Legal and Social Studies with support of IPPF, which is being printed.

comes to minors, the existence of situations that may be described as "conflicts of rights" facilitates the generation of institutional practices that are just access barriers. Therefore, it may be important to focus on establishing the recognition of these programs or policies or regulations on conscientious objection / informed consent / confidentiality or the limits of parental authority over the rights of adolescents, just to give some examples.

In this case two situations coexist: there is legislation at the national level but there is none at the provincial level. Until today, in the most general level (the existence of a program) the synergy was protected by the communion of interests between the policy designed by the national government and the provincial government that, even without law but under the shelter of an operational intra-ministerial guideline has managed to set aside its own budget and have a team at the central level.

This situation that on the programmatic aspect depends on the will of a public decision-maker, is clearly fragile as it may be impacted by a change in the authorities, something inherent to all systems with periodic elections, even if an eventual regressive situation can be discussed in court. But at the same time it is very precarious when defining and allocating resources - of all kinds - for operational levels (effectors system) and even reversing the subjective resistance of the subject. And, as adolescents are concerned, it was not established in specific or mass terms.

At this level it is worth noting the importance of expressly recognizing, in the design of the public policy, the respect for the diversity of populations, the obligation to comply with the principle of universal access or level of coverage, as well as the formal occasions of civil society participation, the establishment of opportunities to favor enforceability and accountability, especially of the most neglected populations.

To achieve compliance with the action indicated, in the light of these first reflections, we should set targets related to the operational capacity of each of the levels involved in the development of this policy. The indicators for these kinds of issues could be:

- Each institutional level has the adequate quantity and quality of health personnel. The areas tend to be hierarchically organized and strengthen according to their responsibilities and target population, especially tending to increase the coverage of sexual and reproductive health services by gender, age and geographic region. In this case, the target will be referred to adolescents care.
- There is a continuous training and education program for each of the levels involved, appropriate to their levels of responsibility and role. In this case it will be referred to adolescents.
- There is a joint strategic planning system in which, in addition to agreeing the objectives -which will be shared between all levels involved in the implementation of the policy-, management control and monitoring mechanisms are set and designed. A system of non-compliance intolerance and sanction is defined.
- A single system of registration and evaluation across all levels is agreed, designed and implemented.
- The budgetary burden that implies a quality service is identified and the mode of convergence and contributions is organized, taking into account the significant regional disparities in spending and health coverage.

- In programming and execution there is an explicit willingness to reverse inequalities in access and care to vulnerable groups. Participation and monitoring forums are generated accordingly with these priorities.
- Spaces of violence prevention and care for victims of sexual violence are generated in the provision of basic health services, with provision of resources (materials, professional, awareness and training).

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With these two examples we seek to highlight the importance of filling those spaces that the Guide left when defining what the mechanism to operationalize and monitor compliance with the MC would be. These spaces that the States established in the Operational Guide regarding the targets and especially the tentative indicators are an opportunity to the non-governmental sector to underpin this process seeking an institutional design suited to reality and the particularities of each territory which will be the basis for consolidating state apparatus committed to the realization of human rights. And above all, institutional dynamics that will be more effective both to address those access barriers that come from specific social dynamics and to generate outcome indicators to capture the needs of the target populations.

VII. Final words

What was learned in the last twenty years justifies that inter-institutional coordination is placed at the center of the scene in this document. First, because it aims to reaffirm the centrality of the State in any process of realization of all human rights. But also because it aims to show the relevance of the fact that in these processes all state levels - and all areas of each one of them - work together to meet these objectives as rights. To address population and development issues in the terms expressed by the States in the priority actions in the MC, decision-making processes must be generated on objectives, goals, expected results and form of financing that can really include all the stakeholders.

But at the same time, this new institutional framework must be able to work from the respect and appreciation of differences and aim to ensure the rights not only formally but on a de facto equality basis. That is, an institutional dynamics that takes on the challenge of generating tools to enable progress in universality with an effective concern about measuring availability, accessibility, acceptability and quality of services for each population, in a permanent and transparent manner.

On the other hand, committing to advance in terms of population, as we saw, implies to honor the state's duty to progressively improve the situation of human rights or to constantly seek more and better development in terms of equity and equality. This means advancing the normative dimension while implementing every law (factual dimension), solving access gaps between different populations in each of these dimensions. And it means, especially and emphatically, the prohibition of reducing levels of protection of rights existing or achieved.

However, we see that this is understood when facing an assessment before an international body or forum, but does not seem to be present at the time of planning and designing policies, which is often precariously

presented. But it seems to matter much less in those areas where a government analyzes the best measures to get out of a difficult financial situation or simply seek to improve state functioning, takes actions without considering the impact they will have on each sector of the population. It is decided to reduce investment in social programs without analyzing its impact on the target population or to face a layoff process to reorganize the state without examining the general characteristics of the population that will become unemployed.

However, it is understood that there are reasons that lead to believe that a bureaucracy that learns to act based on a priority scheme in terms of human rights and indicators that lead to - or move away from - specific goals, will have much more resilience capacity to face regressive processes in rights. Much less when it is possible to know - because the information exists and is available - that these are decisions that can structurally affect certain sectors of the population.

This is why it is important to show that it is worth that non-governmental actors make efforts to generate or accompany follow-up and monitoring processes to gradually but irreversibly transform the state apparatus. This transformation should be primarily oriented to create the conditions to keep what has been achieved in terms of rights, especially those related to freedom and social improvements, outside situations of power switching.

Taking this into account, and in view of the analysis in the specific case, the MC and the Operational Guide appear to be valuable and relevant tools. Even what in the Guide can be seen as an inadequacy in an initial level, is reconfigured as a virtue in that it enables the addition of more appropriate goals and actions to reverse the reasons of non-compliance or the more useful indicators to know if people access their rights (such as adopting a free and informed decision in reproductive health).

But this adaptation is no minor or irrelevant task to do when consolidating a monitoring system on compliance with a set of measures that although essential seem to little govern the fate of our countries.

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