



## TECHNICAL NOTE VIOLENCE AGAINST WOMEN IN LATIN AMERICA<sup>1</sup>

### BELÉM DO PARÁ

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) represents a **legally-binding mandate** for the Latin American and Caribbean States Party. This is the only regional agreement to explicitly address the issue of violence against women (VAW).
- The **States Party** to the Convention not only condemn, but also commit themselves to “...pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence”.
- Belém do Pará defines VAW as “...any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”, that is, in the family as well as the community or social/state spheres.
- Belém do Pará, in accordance with The American Declaration on the Rights and Duties of Man and The Universal Declaration of Human Rights, asserts that VAW is “...a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms.”
- Such violations of human rights have consequences for the physical and emotional well-being of women, boys and girls, and their participation in the social, political and economic spheres – it represents one of the most serious obstacles to sustainable human development in the Americas.
- According to Belém do Pará, VAW is a universal problem of epidemic proportions that “...pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations”.
- Belém do Pará makes the distinction between: (1) violence within the family or within any other interpersonal relationship; (2) violence which is practiced outside the domestic sphere, by any person, and “...includes among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place”; and (3) violence which originates from the arbitrary use of power by States themselves.
- Belém do Pará identifies the cause of VAW as “...the historically unequal power relations between women and men,” that is, **gender inequality**. It interprets VAW as gender-based violence, a type of violence that is socially and culturally constructed, and therefore susceptible to eradication.
- The Convention establishes women’s right to live a life free of violence and it outlines the human rights and universal freedoms needed in order to exercise this right.

<sup>1</sup>Prepared by Paz Castillo and Luciana Prado for the Inter-American Commission of Women (CIM), November 2010.

This technical note is a draft extracted from a report on the implementation of the Convention of Belem do Para, currently being prepared by the CIM. It cannot be quoted as the information contained in the report has to be verified/updated by the countries that are referred to in this note. The content relies on reports and studies by UNIFEM (especially the work of Roberta Clarke), ECLAC, the CIM/OAS and the ICHR/OAS.

The following Latin American countries have acceded to or ratified the Belém do Pará Convention:

Signatory	Signature	Status of the Convention
Argentina	06/10/94	07/05/96 (Ratification)
Bolivia	09/14/94	12/05/94 (Ratification)
Brazil	06/09/94	11/27/95(Ratification)
Chile	10/17/94	11/15/96 (Ratification)
Colombia	--	11/15/96 (Accession)
Costa Rica	06/09/94	07/12/95 (Ratification)
Dominican Republic	06/09/94	03/07/96 (Ratification)
Ecuador	01/10/95	09/15/95 (Ratification)
El Salvador	08/14/95	01/26/96 (Ratification)
Guatemala	06/24/94	04/04/95 (Ratification)
Honduras	06/10/94	07/12/95 (Ratification)
Mexico	06/04/95	11/12/98 (Ratification)
Nicaragua	06/09/94	12/12/95 (Ratification)
Panama	10/05/94	07/12/95(Ratification)
Paraguay	10/17/95	10/18/95 (Ratification)
Peru	07/12/95	06/04/96 (Ratification)
Uruguay	06/30/94	04/02/96 (Ratification)
Venezuela	06/09/94	02/03/95 (Ratification)

Source: Status of Signing and Ratification of the Convention of Belém do Pará, Inter-American Commission of Women (<http://www.oas.org/cim/english/Laws.Rat.Belem.htm>)

## PREVALENCE

- Belém do Pará defines violence against women as a phenomenon based on gender inequality, of great prevalence and with consequences<sup>2</sup> and significant costs for the individual and family as well for society and community.
- Some authors have estimated that one in every three women has been beaten, violated or abused in some way during her lifetime, most often by an intimate partner.<sup>3</sup> For women between the ages of 15 and 44, violence is the main cause of death and disability.<sup>4</sup> According to UNIFEM,<sup>5</sup> several studies establish that “...half of the women who die by homicide are murdered by their partners or by current or past husbands.”
- In the case of Latin America,<sup>6</sup> the number of women that have been physically abused by their partner at some point in their lives ranges from 19% in Paraguay (2004) to 42% in Peru (2000), at the national level. In Central America, the rate is 10% in Honduras (2001) and 22% in the Dominican Republic. Sexual violence within marriage is also common in Latin America, with estimates ranging from 4% of women in Ecuador to 47% of women in Cuzco, Peru.<sup>7</sup>
- Among the general risk factors for violence against women, the following are most commonly highlighted:<sup>8</sup> witnessing or suffering abuse as a child, exposure to violence as a child, male control over household decisions and resources, cultural norms that support the idea of male superiority or

<sup>2</sup> See for exampl, Morrison, Ellsberg, Bott. “Preventing and responding to gender-based violence in middle and low-income countries: a global review and analysis” World Bank Policy Research Working Paper 3618, June 2005.

<sup>3</sup>Heise, Ellsberg and Gottemoeller, 1999 in World Bank, *Addressing Violence against Women in Middle and Low-Income Countries: A Multi-Sector Approach*, p.1.

<sup>4</sup>Parliamentary Assembly of the Council of Europe, 2002, cited in UNIFEM, *Violence against Women-Facts and Figures*, 2007, p.1.

<sup>5</sup> UNIFEM, Op.cit., 2007, p.2.

<sup>6</sup> Ellsberg M., and Heise L., *Researching Violence against Women: A Practical Guide for Researchers and Activists*. WHO, PATH; 2005, p.13.

<sup>7</sup> Morrison, Ellsberg, and Bott. *Addressing Gender-Based Violence in the Latin American and Caribbean Region: A Critical Review of Interventions*, World Bank Policy Research Paper 3438, 2004, p.ii.

<sup>8</sup> This is a list of the risk factors that the literature considers to be general, without specifying as to type of violence.

violence as a method of conflict resolution, low educational levels, abuse of alcohol and other substances and laws and policies that discriminate against women.<sup>9</sup>

## JUDICIAL REFORM

- The Belém do Pará Convention establishes that adequate access to justice is a necessary condition for the elimination of violence against women. Accordingly, the ratification of Belém do Pará by its signatories supposes recognition of the right to a life free of violence as a human right and the need to protect it through both legal reforms and reforms to the justice institutions that are responsible for implementing these laws.
- Through their ratification of Belém do Pará, the countries of the region initially proceeded to reform their civil and penal codes and formulate new laws against VAW. The majority of countries focused their first efforts on the issue of domestic violence. Later efforts began to take into account the legal coverage of other types of violence (see table 1).

Table 1: LEGISLATION ON VIOLENCE AGAINST WOMEN IN LATIN AMERICA

Country	Domestic or intra-family violence	Rape in marriage	Human trafficking	Forced prostitution	Sexual harassment
<b>Argentina</b>	Yes	No	Penalized as “international trafficking for the purpose of prostitution”	Penalized as “international trafficking for the purpose of prostitution”	Yes
<b>Bolivia</b>	Yes	Not mentioned	Yes	Yes	Not mentioned
<b>Brasil</b>	Yes	No, but included within generic sexual violence	Yes	Yes	Yes
<b>Chile</b>	Yes	Yes, except when there is no force or intimidation	Yes, but not according to International standards	Yes, but not according to International standards	Yes
<b>Colombia</b>	Yes	Yes	Yes	Not mentioned	Yes, only labour-related
<b>Costa Rica</b>	Yes	Yes	Yes	Not mentioned	Yes
<b>Dominican Republic</b>	Yes	Yes	Yes	Not mentioned	Not mentioned
<b>Ecuador</b>	Yes	Not specifically, but as an aggravating factor of rape when the aggressor is the spouse or live-in partner	Yes	Yes	Yes
<b>El Salvador</b>	Yes	No, but included within generic sexual violence	Yes	Yes	Not mentioned

<sup>9</sup>Morrison *et al.*, 2004, p.ii.

Country	Domestic or intra-family violence	Rape in marriage	Human trafficking	Forced prostitution	Sexual harassment
Guatemala	Yes	No	Yes	Not mentioned	No
Honduras	Yes	No, but included within generic sexual violence	Yes	Not mentioned	Yes
México	Yes	Yes	No	Not mentioned	En 17 Estados de la federación
Nicaragua	Yes	No	Yes	Not mentioned	Not mentioned
Panama	Yes	No, but included within generic sexual violence	Yes	Not mentioned	Yes
Peru	Yes	Yes	Yes	Yes	Yes
Uruguay	Yes	No, but included within generic sexual violence	No	No	Yes, only labour-related
Venezuela	Yes	Yes	Yes	Yes	Yes

Source: Adapted from CIM. *MESECVI Hemispheric Report*. Washington, DC: Organization of American States, 2008. Answers provided by the States party to Belem do Para using the questionnaire circulated by the MESECVI Committee of Experts

- In addition to the legal and civil and penal code reforms, as well as the creation of new laws, the region has seen a number of different initiatives to improve the effectiveness of the justice sector in response to VAW, including:<sup>10</sup> training of justice sector officials (police, forensic doctors, judges, lawyers and other), the creation of women’s police commissions and family courts, and community and communication efforts to improve women’s knowledge of their own rights. Moreover, the various initiatives to improve the structural problems of the justice sectors of the region have probably had important consequences in the fight to eliminate VAW.
- According to the Inter-American Commission on Human Rights (IACHR) at the OAS, Latin America still faces a number of problems with: (1) the design of laws; (2) their implementation; (3) the absence of some laws (see Annex 1); and (4) still outstanding reforms to civil and penal codes that are necessary to guarantee the right of women to a life free of violence.
- Among the problems associated with the implementation of legal reforms by the justice system, the IACHR highlights, in addition to structural problems with the justice system, barriers to women’s access to judicial bodies, gaps and irregularities in research, flaws in prosecution and punishment and ineffectiveness of preventive mechanisms. Moreover, indigenous and afro-descendent women face additional barriers as a result of geography, identity, communication, socio-economic status and lack of trust in the system, linked to their lack of respect for traditions and culture of discrimination, among others.<sup>11</sup>
- These deficiencies, as well as women’s own perceptions of the inability of the justice sector to meet their needs, makes these systems ineffective, strengthens impunity in the face of violence against women and considerable limits the impact of other efforts to eliminate it.

<sup>10</sup> Ibid., p.iii; and Inter-American Commission of Human Rights. “Access to Justice for Women Victims of Violence in the Americas” Washington, DC: Organization of American States, 2007.  
<sup>11</sup> CIDH, op.cit., p.81-89.

## TREATMENT AND PREVENTION

- An effective public policy for the achievement of lives free of violence must include both treatment and prevention programs, bearing in mind that prevention of violence often requires the intervention of multiple sectors, organizations and even strategies.<sup>12</sup>
- Prevention is the key strategy for the elimination of violence and must be complemented by efforts to provide services to victims. According to several authors, prevention requires initiatives that seek to empower women and reduce gender inequalities and that change norms and attitudes which foster violence.<sup>13</sup> Others have pointed to the cost-effectiveness of these measures.
- Among prevention efforts, the region is characterized by programs in the formal education systems, as well as initiatives that target masculinities (including networks of men against violence and popular education programs directed at men),<sup>14</sup> community-based prevention efforts and communication campaigns, and education entertainment (*edutainment*) initiatives.
- With respect to service-provision programs, Latin America has been characterized by its efforts within the health sector,<sup>15</sup> the existence of treatment programs for aggressors and victims and a significant presence of emergency hotlines (see table 2). The region also has at least one shelter per country.<sup>16</sup>
- In terms of the health sector, it is worth highlighting medical treatment initiatives, as well as the formulation of protocols, referral and screening systems, psychological treatment and support, and community-based initiatives, among others.<sup>17</sup>

Table 2: SERVICES FOR THE TREATMENT AND PREVENTION OF VAW

Country	State/Civil society shelters	Self-help groups	Free assistance hotline	Free legal advice	Police stations or services with attention protocols	Prevention measures
<b>Argentina</b>	X	X	X	No response	Commissions, Protocols in preparation	X
<b>Bolivia</b>	X 22 non-public	X	X Family protection brigades and some legal services	X Public and NGO	X Family protection brigades have protocols	X
<b>Brazil</b>	X 87 public	X	X	X Public in the specialized ombudspersons and some municipalities	X Specialized commissions, not clear whether protocols exist	X Campaigns and programs
<b>Chile</b>	X Public and civil society.	X	X	X Within general services	X Police do not have protocols	X
<b>Colombia</b>	X 2 civil society	Unclear	X	X	No response	X

<sup>12</sup> Morrison *et al.*, op.cit., p.14.

<sup>13</sup> Ibid., p.10.

<sup>14</sup> In spite of this, and according to the 2008 MESECVI Hemispheric Report (p.14), almost half of countries that have ratified Belém do Pará do not have treatment programs for aggressors.

<sup>15</sup> Within this context, it is important to highlight the leadership of the Pan American Health Organization, among other regional actors.

<sup>16</sup> MESECVI. "Hemispheric Report". Second Conference of States Party, Caracas, Venezuela (July 9-10, 2008), p.37.

<sup>17</sup> Morrison *et al.*, op.cit., p.iv.

	shelters, public to be implemented					
<b>Costa Rica</b>	X Public and civil society	X	X	X	X Police delegations have protocols	X
<b>Dominican Republica</b>	X 1 civil society shelter	No	X	X	X Not explained whether commissions or district attorneys offices have protocols	X
<b>Ecuador</b>	X 7 public and civil society shelters	No response	Only general emergency lines	X	No	X
<b>El Salvador</b>	X 1 public	X	X	X	Departmental delegations have protocols	X
<b>Guatemala</b>	X Public and civil society	X Sí, de sociedad civil	X	X	X Not in indigenous languages	X
<b>Honduras</b>	X 1 public, civil society and external cooperation	X	X	X	X Police, ministry and courts have protocols	X
<b>Mexico</b>	X In 25 of 32 states	X	X	X Information on coverage missing	X Protocols for specialized services. In indigenous languages only for some areas	X Part of the family and gender violence prevention and care program
<b>Nicaragua</b>	X 3 civil society shelters	No	X Only general emergency lines	X	X Commissions have protocols, not in indigenous languages	X
<b>Panama</b>	X 1 public. Others exist for children and adolescents	No	X	X	X Police Family Violence Service has protocols	X
<b>Paraguay</b>	X Civil society	X	X	X	X Commissions do not have protocols in indigenous languages	X
<b>Peru</b>	X 39 public shelters across the country	X	X	X	X Women's Commissions have protocols and procederes manual, not	X

					translated to indigenous languages	
<b>Uruguay</b>	No	Not at the national level	X	X State and civil society	Women's commissions, do not have protocols	X
<b>Venezuela</b>	X 3	Not mentioned	X	X National, state and municipal women's institutes, shelters, Ombudsman and NGOs	Not mentioned	X

**Sources:**

- Information on shelters, self-help groups, hotlines, free legal advice and the existence of protocols taken from the MESECVI 2008 Hemispheric Report.
- Information on free legal advice in Peru and Uruguay taken from Peru CEDAW Report, 2009 (p.18) and Government of Uruguay. *Hay Respuestas: Guía de Recursos en violencia domestica*, respectively.
- Information on
- Information on prevention measures gathered from the national responses to the questionnaire circulated by the Gender Affairs Division of ECLAC on the implementation of the Beijing Declaration and Platform for Action and its five-year follow up, 2009, the national reports prepared as a follow-up to the Quito Consensus (2007) and presented to the Eleventh regional conference on women in Latin America and the Caribbean (Brasilia, 13-16 July, 2010), and the reports of the States Party to CEDAW.

**NATIONAL PLANS OF ACTION**

- Latin America is characterized by the creation of national action plan to prevent and treat violence against women (see table 3). These plans have generally been designed and are often implemented by the national mechanisms for the advancement of women, in coordination with other national and international institutions and organizations.

Table 3: **NATIONAL PLANS BY COUNTRY**

Country	National Mechanism	Gender Equality Plan	VAW Plan
<b>Argentina</b>	Consejo Nacional de las Mujeres (CNM)	--	National Action Plan <sup>18</sup>
<b>Bolivia</b>	Viceministerio de Igualdad de Oportunidades (VIO)	National Plan for Equality of Opportunities: Women building the new Bolivia (2010-2020)	National Plan for the Prevention and Care of Intra-Family Violence (2006-2010) and Plan to fight gender-based violence
<b>Brazil</b>	Secretaria de Políticas para las Mujeres de la Presidencia de la Republica (SPMRP)	II National Plan for Policies on Women (PNPM) (2008-2011)	National Agreement on Addressing Violence against Women (2007)
<b>Chile</b>	Servicio Nacional de la Mujer (Sernam)	Equal Opportunities Plan (2000-2010)	--
<b>Colombia</b>	Consejería Presidencial para la Equidad de la Mujer (CPEM)	--	Integrated Program on Violence against Women (2008-2011)
<b>Costa Rica</b>	Instituto Nacional de las Mujeres (INAMU)	Action Plan for the National Gender Equality and Equity Policy (PIEG) (2007-2017)	National Plan for the Care and Prevention of Intra-family Violence and Extra-family sexual abuse (PLANNOVI)
<b>Dominican Republic</b>	Secretaria de Estado de la Mujer (SEM)	National Plan for Gender Equity and Equality (PLANEG)	--

<sup>18</sup> En noviembre de 2009 este plan se encontraba en fase de elaboración.

Country	National Mechanism	Gender Equality Plan	VAW Plan
		(2006-2016)	
<b>Ecuador</b>	Comisión de Transición Hacia el Consejo de las Mujeres y la Igualdad de Género	Plan for Ecuadoran Women's Equal Opportunities (PIO) (2004)	National Plan for the Eradication of Gender-based violence against children, adolescents and women (2007)
<b>El Salvador</b>	Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU)	Action Plan for the National Women's Policy (2005-2009)	Program for attention to violence against women (2009)
<b>Guatemala</b>	Secretaria Presidencial de la Mujer (SEPREM)	Equal Opportunities Plan (PEO) (2008-2023)	Plan to Prevent, Punish and Eradicate Intra-family violence and violence against women (PLANOVI) (2004-2014)
<b>Honduras</b>	Instituto Nacional de la Mujer (INAM)	II Plan for Gender Equality and Equity of Honduras (2008-2011)	National Plan on Violence against Women (2006-2011)
<b>Mexico</b>	Instituto Nacional de las Mujeres (INMUJERES)	National Program for Equality between Women and Men (PROIGUALDAD) 2008-2012	Integrated Program to Prevent, Attend, Punish and Eradicate Violence against Women (2010-2012)
<b>Nicaragua</b>	Instituto Nicaragüense de la Mujer (INIM)	National Gender Equity Plan 2006-2010	National Plan for the Prevention of Intra-family and Sexual Violence (2001-2006)
<b>Panama</b>	Dirección Nacional de la Mujer (DINAMU)	Women's Equal Opportunity Plan (PIOM II) 2002-2006	National Plan to Fight Domestic Violence (2004-2014)
<b>Paraguay</b>	Secretaria de la Mujer de la Presidencia de la Republica (SMPR)	III National Plan for Equal Opportunities between Women and Men (2008-2017)	National Plan for the Prevention and Punishment of Violence against Women
<b>Peru</b>	Ministerio de la Mujer y Desarrollo Social (MIMDES)	National Plan for Equal Opportunities between Women and Men (2006-2010)	National Plan against Violence towards Women (2009-2015)
<b>Uruguay</b>	Instituto Nacional de las Mujeres (INMUJERES)	National Plan for Equal Opportunities and Rights (2007-2011)	National Plan to Fight Domestic Violence 2004-2010
<b>Venezuela</b>	Instituto Nacional de la Mujer (INAMUJER)	Women's Equality Plan (2004-2009)	National Socialist Plan on Women's Right to a Life Free of Violence (2010-13) <sup>19</sup>

- The existence of national plans has allowed, among other achievements, the creation of coordination mechanisms among the different sectors that are involved in their implementation. This inter-sectoral coordination has often happened under the supervision of national commissions charged with improving coordination and monitoring the implementation of these plans and policies,<sup>20</sup> and has allowed for improvements in service delivery and the effectiveness of these services.
- From diverse but often multi-sectoral approaches – generally including the justice and health sectors and some social services – these plans have facilitated coordination between government-led initiatives and those of the women's movement and, on occasion, the private sector.
- Moreover, these plans have allowed for the inclusion of treatment and prevention strategies, though, with some exceptions and in spite of their importance for the elimination of BAW, prevention strategies have taken a back seat with respect to service delivery. In its turn, service

<sup>19</sup> En mayo de 2010 este plan se encontraba en fase de aprobación.

<sup>20</sup> Morrison *et al.*, op.cit., p.v.



delivery has been insufficient and unequal, as have coordination, the involvement of the private sector and monitoring and evaluation.

- The region needs to improve information systems, the rigorousness of evaluations, service coverage, the participation of education systems, coordination with civil society and the private sector and ensure the necessary budget and adequately trained human resources.

## RECOMMENDATIONS

- According to the First Hemispheric Report of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI),<sup>21</sup> the countries of Latin America and the Caribbean “...have made important strides in the prevention and punishment of violence against women and there is a greater awareness on the part of countries of the need to address the problem. However, there remains much to be done in order to make women’s right to a life free of violence a reality”<sup>22</sup>
- In this context, MESECVI and other authors and institutions have proposed the following recommendations in order to strengthen the results of government efforts:<sup>23</sup>
  - Develop national plan on violence against women. These plans can facilitate the achievement of the Belém do Pará commitments, their coordination and effectiveness as well as their monitoring and evaluation.
  - Approaches to eliminating VAW must be integrated and multi-sectoral, bringing together the justice/security sector with the health sector and social services in order to provide adequate and appropriate services combined with effective prevention strategies.
  - Guarantee the resources and funding needed to effectively and appropriately treat VAW.
  - Continue with strengthening the national mechanisms for the advancement of women, not only financially but also at the institutional level.<sup>24</sup>
  - Generate knowledge of what works through rigorous evaluation.
  - Strengthen research and knowledge of VAW – its causes, risk factors, costs and consequences.
  - Create data collection systems that allow for improvement of available information/data and the production of indicators from a gender perspective.<sup>25</sup>
  - Close the significant gaps between international standards and national laws and practice,<sup>26</sup> and between these and governmental action.<sup>27</sup>
  - Strengthen the legal response to different types of VAW and especially to cases of incest, marital rape, workplace harassment and trafficking and forced prostitution.
  - Improve the efficiency of protection measures for women victims of violence and their families.
  - Promote compliance with international conventions, particularly Belém do Pará and CEDAW.
  - Promote the ratification of Belém do Pará by all Latin American countries and support its follow-up mechanism, MESECVI.
  - Establish national mechanisms to follow-up the implementation of Belém do Pará.
  - Strengthen the provision, quality and coverage of services.
  - Train and sensitize. Develop permanent programs and make them obligatory to those officials responsible for the treatment and prevention of VAW.
  - Generate support services and information and referral services for victims.
  - Use the potential of the formal education system to prevent VAW and modify potentially harmful patterns of conduct and attitudes in student with respect to VAW.

<sup>21</sup> Follow-up Mechanism to the Belém do Pará Convention (MESECVI).

<sup>22</sup> MESECVI, op.cit. p. 3.

<sup>23</sup> These recommendations have been compiled from CIM/OAS, IACHR/OAS, ECLAC, World Bank, PATH and ILO.

<sup>24</sup> Review of the implementation of the Beijing Declaration and Platform for Action and the Outcome of the Twenty-Third Special Session of the General Assembly in Latin America and Caribbean Countries, ECLAC, 2009, p. 19.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> MESECVI, op.cit., 2008.

- Work with young populations.<sup>28</sup>
- Increase the coverage of shelters and create housing programs for women victims of violence and their families.
- Design financial support programs and access to credit and /or employment for victims of VAW.
- Integrate health services for women victims of violence with sexual and reproductive health services.<sup>29</sup>
- Concentrate more effort on prevention and promoting cultural change, linked to changes in the conceptualization of gender identities, through the education system
- Strengthen women's understanding of their human rights, particularly their right to a life without violence.
- Design initiatives aimed at indigenous and afro-descendent women that address the problem from the perspective of their socio-cultural specificities.

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<sup>28</sup> Morrison *et al.*, op.cit., 2004.

<sup>29</sup> Ibid.

## ANNEX 1

### LEGISLATION ON MARITAL RAPE IN LATIN AMERICA<sup>30</sup>

<b>I. Countries that directly penalize marital rape</b>	
<b>Argentina</b>	<p><b>Law 26.845: “Law on the Integral Protection to Prevent, Punish and Eradicate Violence against Women in all areas where their interpersonal relationships are developed” (approved on March 11 and published on 14 April 2009) and Criminal Code.</b></p> <p>Relevant articles of the Law 26.845 are 3 and 5 and the relevant article of the criminal code is 119:</p> <ul style="list-style-type: none"> <li>• Art. 3 of Law 26.845 claim to guarantee protection of the rights of women according to the Convention of Belem do Pará.</li> <li>• Art.5 of Law 26.845 states explicitly that “sexual violence” is a form of violence against women, and entails any action involving violation, with or without genital penetration, of the right of a woman to voluntarily decide her sexual and reproductive life by means of threats, coercion, use of force or intimidation, including rape within marriage or in other relationship or relative ties, where coexistence is present or not, as well as forced prostitution, exploitation, slavery, harassment, sexual abuse and trafficking of women</li> <li>• Art. 119 of the Criminal Code refer to rape and relates to Art. 5 of Law 26.845, stating that rape can occur between married when violence or intimidations are present.</li> </ul>
<b>Chile</b>	<p><b>Penal Code</b></p> <p>Relevant articles of the Penal Code are 361 and 369:</p> <ul style="list-style-type: none"> <li>• Art. 361 defines as rape any carnal access (vaginal, anal or oral) that is inflicted with violence or threat, when the woman in question is deprived of her reason or senses for whatever motive or when the victim is mentally ill.</li> <li>• Art. 369 dictate that the husband or cohabitants can only be publicly prosecuted if there was the use of force or intimidation</li> </ul>
<b>Costa Rica</b>	<p><b>Law 8.589: “Punishment of Violence against Women” (2007)</b></p> <p>Relevant articles of Law 8.589 are 29, 30, 31 and 32:</p> <ul style="list-style-type: none"> <li>• Art. 29 states that rape occurs when a spouse or partner performs an act against the will of the victim. The prescribed punishment for such crimes is from twelve to eighteen years in prison</li> <li>• Art. 30 recognizes abusive sexual behavior as a possible manifestation of violence against women, when executed by a spouse or partner</li> <li>• Art. 31 criminalizes sexual exploitation between spouses and partners</li> <li>• Art. 32 establishes aggravating circumstances – namely, impregnating the victim, infecting her with a sexually transmitted disease, or causing her permanent psychological damage – for which more severe penalty is prescribed.</li> </ul>
<b>Dominican Republic</b>	<p><b>Penal Code (amended by Law 24-97, of 1997)</b></p> <p>Relevant articles of the Penal Code are 330, 331 and 332:</p> <ul style="list-style-type: none"> <li>• Art. 330 defines sexual aggression as any sexual act that is performed with an element of violence, threat, constraint, surprise or deceit</li> <li>• Art. 331 defines rape as any act of sexual intercourse, regardless of its nature, that is committed using violence, constraint, threat of surprise</li> <li>• Art. 332 establishes that a person that engages in sexual activity without the consent of the other person involved shall be subjected to the same penalties prescribed to rape in cases where: a) there is use of force, violence, intimidation or threat; b) the victim’s capacity to resist is impaired by any means; c) the victim suffers from mental illness or incapacity, permanent or temporary, and is not able to comprehend the nature of the act at the time of its performance; or d) the victim was compelled or induced by her partner, through physical or sociological violence, to unwillingly engage in sexual relations with a third party.</li> </ul>

<sup>30</sup> CIM. “Nota Informativa 1: Violación en el matrimonio en las Américas.” Washington, DC: Organización de los Estados Americanos, 2010. (por publicarse).

<b>Honduras</b>	<p><b>Penal Code and Law on Domestic Violence (1997)</b></p> <p>Relevant article of the penal code is 141 and relevant article of the Law is 5:</p> <ul style="list-style-type: none"> <li>• Art. 141 of the Penal Code defines rape when one person carnal accessed to the other person throughout violence or threat. However indicates special cases of the rapes, but in these cases not indicates the marital rape.</li> <li>• Art. 5 of the Law on Domestic Violence indicate that one form of domestic violence is sexual violence, when the woman does not consent to sexual relations. Said violence can be committed by the victim's current or former spouse, partner or boyfriend, and cohabitation is not required, according to Article 1.</li> </ul>
<b>Mexico</b>	<p><b>Federal Penal Code of México (1935)</b></p> <p>Relevant articles of the Penal Code are 265 and 265 bis:</p> <ul style="list-style-type: none"> <li>• Art. 265 defines as committing rape anyone who employs physical or moral violence in order to have sexual relations with another person</li> <li>• Art. 265 bis further states that if the victim in question is one's spouse or concubine, the same penalty – between eight to fourteen years of prison – shall be applied.</li> </ul>
<b>Peru</b>	<p><b>Penal Code (1991), (amended by Law 28.963 of 2007)</b></p> <p>Relevant article of the Penal Code is 170:</p> <ul style="list-style-type: none"> <li>• Art. 170 condemns rape when the perpetrator, using violence or serious threat, forces carnal access on the victim vaginally, anally or orally, or commits similar acts by introducing objects or body parts in the vagina or anus. Paragraph 2 of the article stipulates a freedom deprivation of not less than 12 years and not more than 18 years if rape is committed by the spouse or common-law partner.</li> </ul>
<b>Venezuela</b>	<p><b>Law No. 38.668: "Organic Law on the Right of Women to a Life free from Violence" (2007)</b></p> <p>Relevant articles of the Law are 15 and 43:</p> <ul style="list-style-type: none"> <li>• Art. 15 defines sexual violence as any conduct that threatens or infringes on a woman's right to willingly and freely make decisions regarding her sexuality, which is not limited to the sexual act itself, but rather also extends to every form of sexual contact or access, be it genital or not – as one of the possible forms of violence against women. Additionally, Article 15(7) recognizes violent carnal access as a specific form of sexual violence that happens when a woman is, by means of violence or threats, by her husband, partner or concubine, constrained into performing a carnal act</li> <li>• Art. 43 determines the penalty for those who force a woman to engage in sexual activities unwillingly and establishes that, in cases where the offense is committed by a former or current spouse, concubine or partner of the victim, the penalty applied to the offender should be one fourth to one third higher.</li> </ul>
<b>Countries that penalize marital rape with conditions</b>	
<b>Brazil</b>	<p><b>Penal Code and Maria da Penha Law No. 11.340</b></p> <p>Relevant articles of the Penal Code are 213 and 226, and of the Law are 5 and 7:</p> <ul style="list-style-type: none"> <li>• Art. 213 of the penal code defines rape when any person who has carnal conjunction with another person using violence or threat</li> <li>• Art. 226 of the penal code states that the penalty will be incremented if the aggressor is a husband or cohabitant</li> <li>• Art. 5 of the Maria Da Penha law defines domestic violence and indicates that the aggressor can be the husband and cohabitant</li> <li>• Art. 7 of the Maria Da Penha law indicates that domestic violence includes sexual violence and marital rape.</li> </ul>
<b>Colombia</b>	<p><b>Penal Code and Law of sensitization, prevention and penalty of violence and discrimination against woman</b></p> <p>Relevant articles of the penal code are 205 and 211 and of the Law are 2 and 3:</p> <ul style="list-style-type: none"> <li>• Art. 205 of the penal code defines rape as carnal access with violence</li> </ul>

	<ul style="list-style-type: none"> <li>• Art. 211 of the penal code states that the crime is aggravated if it occurs between spouses or cohabitants</li> <li>• Art. 2 of the Law defines violence against women as any action or omission causing death, harm or physical pain, sexual, psychological, economic or patrimonial due to the nature of being a woman, as well as threats related to such action, coercion or arbitrary deprivation of liberty, whether it is in the public or private sphere.</li> <li>• Art. 3 of the Law defines sexual harm and pain as consequences derived from obliging someone to have sexualized, physical or verbal contact, or to participate in other forms of sexual interaction by means of force, intimidation, coercion, blackmail, bribe, manipulation, threat or any other mechanism that extinguishes or limits personal will. Similarly, sexual harm or pain, the action of the aggressor forcing the attacked to perform any of these actions with third parties</li> </ul>
<b>Ecuador</b>	<p><b>Penal Code and Law against Violence against Women and the Family (1995)</b></p> <p>Relevant articles of the Penal Code are 31 and 512; the relevant articles of the law are 2, 3, 4 and 6:</p> <ul style="list-style-type: none"> <li>• Art. 512 of the Ecuadorian penal code defines rape when any person obtains carnal access to another person (vaginal, anal or oral), when the victim is under 14 years of age, when the victim has a mental illness and if the carnal access is without the consent of the victims</li> <li>• Art. 31 of the Ecuadorian penal code asserts that an aggravating circumstance is considered if the victim is a spouse, cohabitant, relative up to the fourth degree of consanguinity, or the ascendant or descendent of the offender</li> <li>• Art. 2 of the law defines intra-family violence as any action or omission of an action consisting of physical, psychological or sexual ill-treatment, committed by a member of the family against the spouse or any other members of the nuclear family.</li> <li>• Art. 3 of the law includes as members of the nuclear family the spouse’s ascendants, descendents, siblings and their respective parents up to the second degree of consanguinity. This law is applied to ex-partners, cohabitants, ex-cohabitants, with people whom the person maintains or has maintained a consensual relationship.</li> <li>• Art. 4 of the law defines intra-family violence as any action causing harm, pain or physical suffering to a person, regardless of how the pain was caused or the time it took for the person to recover. C) Defines sexual violence as any ill-treatment imposing the exercise of someone’s sexuality on someone else, and forcing the person to engage in sexual intercourse and any other sexual practice with the aggressor, by using physical force, threats or any other coercive method.</li> <li>• Art. 6 of the law states that any international instruments, such as norms related to the prevention and sanction of violence against women, ratified by Ecuador are legally binding.</li> </ul>
<b>Guatemala</b>	<p><b>Penal Code (amended by Decree No. 9-2009 “Law against Sexual Violence, Exploitation and Trafficking in Persons) (2009)</b></p> <p>Relevant articles of the Penal Code are 173, 173 bis and 174:</p> <ul style="list-style-type: none"> <li>• Art. 173 defines rape acts where there is the use of physical or psychological violence to gain carnal access to a person; the penalty prescribed for such an offence is eight to twelve years of imprisonment</li> <li>• Art. 173 bis recognizes sexual aggression as acts with sexual or erotic ends, performed on a person by means of physical or sociological violence, that do not amount to rape, for which the penalty prescribed is of five to eight years</li> <li>• Art. 174 specifically, Article 174(5º) – established as an aggravating circumstance if the offender is a spouse, former spouse, partner or former partner of the victim and, as such, the penalty prescribed in such cases should be two thirds higher than those applied to rape in general.</li> </ul>
<b>Panama</b>	<p><b>Penal Code</b></p> <p>Relevant articles are 90 and 171:</p> <ul style="list-style-type: none"> <li>• Art. 90 assert that it is an aggravating circumstance, according to the nature, motives and effects of the crime, if the victim is a close relative of the offender. The article elaborates further to consider “close relatives” as spouses, partners, or cohabitants.</li> </ul>

- Art. 171 define rape as carnal access to another person with violence or threat. It also indicates that the definition of rape is applicable for either sex; the offender can face imprisonment from 5 to 10 years. If the act was committed by a “close relative”, the perpetrator will be jailed from 8 to 12 years