**Presentation**

**Expert Group Meeting**

**Rape as grave and systematic human right violation and gender-based violence against women**

**Panel 1: International and regional standards to address rape and perspectives on challenges to states upholding them**

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In the Multilateral Evaluation Rounds, and particularly in the second and third, the Committee of Experts (CEVI) of the MESECVI has analysed the situation of the State Parties regarding issues such as violence against women and rape, access to justice, legal and political framework of States Parties, as well as availability of data about these issues. The information that follows has been taken from this work, that is accessible in our webpage. Additionally, it draws on particular information produced by CEVI. The most relevant information source in this case is the Hemispheric Report on Sexual Violence and Child Pregnancy in the States Party to the Belém do Pará Convention, from 2017. We have sent our responses to the questionnaire circulated about the situation of rape in the Americas and we will also send this document.

All the States Parties to the Belem do Pará Convention have a legislative framework for physical, psychological, and sexual violence against women. Exceptionally, they punish violent acts without distinguishing the sex of the victim, such as in the case of Haiti and Jamaica. However, despite the general recognition of rape as a crime, 15 of them do not consider sexual violence or rape as a crime when this is perpetrated inside marriage[[1]](#footnote-1). Except for Uruguay, most Latin American States criminalize rape in marriage or de facto unions; while most Caribbean States either do not criminalize rape or define it as an aggravating circumstance when perpetrated by the intimate partner. With respect to rape against girls 14 or younger, all States of the region criminalise sexual acts with girls of this age, but only 13 States have some kind of care protocol in cases of sexual violence, and of them: 9 have provisions of emergency contraception, 7 have specialised care for girls that are victims of sexual violence, and 7 allow legal interruption of pregnancy in these cases[[2]](#footnote-2).

The region has advanced in the reform of criminal codes in order to adapt the protected interests to the international and inter-American systems. The crimes that once were conceived to protect the reputation and honour of families, modesty and morality, now have disappeared so that they now accommodate a different set of offenses. These offenses recognize as protected legal interests, the sexual integrity of people and especially the sexual integrity of women and girls[[3]](#footnote-3). However, the region still has a significant number of regulations that must be harmonised[[4]](#footnote-4). Additionally, the Committee of Experts of MESECVI recognise as a major problem the gap between the existent laws and the mechanisms for the effective enforcement of these laws, especially when the acts are committed against girls between 10 and 14.

Most States have specific criminal typologies when the victim of the crime is a girl, with differing consideration though regarding the exact age: at least 20 States criminalize sexual relations with minors under the age of 14, establishing a progression of the punishment if the rape occurred between the ages of 14 and 12 or if the victim is under the age of 12. Exceptionally, some States do not make distinction according to the age of the victim[[5]](#footnote-5). Additionally, at least 10 States of the region establish mitigating circumstances in cases of sexual violence against girls, which perpetuate gender stereotypes against them[[6]](#footnote-6). Among these circumstances, we find the existence of reasonable causes for believing that the girl was older than 14 or 16, evidence of which must be provided by the aggressor. This is common in the legislation of Caribbean countries. St. Lucia also excuses criminal liability in cases where the aggressor can demonstrate the consent of the victim in cases of girls aged 12 to 16 – a consent that the CEVI does not recognize. Similarly, of special concern is the exoneration of criminal liability when the victim is the wife of the accused, a law that clearly contravenes the recommendations made by CEVI with respect to the need to criminalize sexual violence within marriage. Moreover, the aforementioned mitigating circumstance does not include a distinction regarding the age of the victim.

The penalties for sexual violence against girls vary widely in the region, ranging from 2 years of imprisonment to life sentence in some States in the Caribbean[[7]](#footnote-7). The States establish a specific criminal type or aggravating circumstances when the aggressor is a male member of the family or tutor[[8]](#footnote-8).

The information related to rape as a war crime or crime against humanity was analysed in our Second Hemispheric Report[[9]](#footnote-9). Of the States that provided information, 15 punish violence perpetrated by the States or its agents, and 15 do not punish it. Colombia incorporated a new legislation in 2014, where it stipulates that sexual violence may constitute a crime against humanity, and included forms of torture that may have disproportionated impact on women, such as forced nudity. In that report “the Committee reiterates the importance of criminalizing… sexual violence perpetrated by State agents as a war crime and a crime against humanity, and to ensure its punishment”[[10]](#footnote-10). This in line with the systematic jurisprudence of the Inter-American Court of Human Rights.

The Committee of Experts of MESECVI has expressed its concern regarding the lack of available records and statistics on violence against women in general, so that the magnitude of the problem, its victims, its aggressors, and its extent[[11]](#footnote-11) is sufficiently known. Additionally, it observes a lack of information about the sentences or treatment according to the type of violence or other intervening variables[[12]](#footnote-12). In fact, the indicators that are part of the module of access to justice are the ones with the highest percentage of no response on the part of the States of the region, therefore there is an important advancement in this area that needs to be done.

1. MESECVI. 2014. Second Follow-up Report on the Recommendations of the Committee of Experts of the MESECVI: <https://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeSeguimiento-EN.pdf> [↑](#footnote-ref-1)
2. <https://www.oas.org/en/mesecvi/docs/Infografia1-ProtocolosEmbarazoInfantil-EN.pdf> [↑](#footnote-ref-2)
3. MESECVI. 2017. Hemispheric Report on Sexual Violence and Child Pregnancy in the States Party to the Belém do Pará Convention: <http://www.oas.org/es/mesecvi/docs/mesecvi-embarazoinfantil-en.pdf> [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. MESECVI. 2014. Op. Cit. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. MESECVI. 2017 Third Hemispheric Report on the Implementation of the Belém do Pará Convention:

    <https://www.oas.org/es/mesecvi/docs/TercerInformeHemisferico-EN.pdf> [↑](#footnote-ref-12)