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Violence against women in the Family. Actions taken in Latin America

Acknowledgments:

I would like to thank the organizers, especially Nada Frangieh and the Family Policy Division of the Doha International Institute for Family Studies and Development, for the invitation to participate in this important colloquium.

Introduction:

Violence in the family has become increasingly visible during the past decades in Latin America and the Caribbean, largely as a result of the efforts of the women's movement since the 1980s. Important landmarks in government acknowledgement of, and commitment to, this issue was, firstly the adoption of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women "Convention of Belem do Pará", in 1994, and secondly, the adoption of national legislation in all countries of the Region.

The women movement is very active and during these years worked very hard to get these treaties ratified and to oblige governments to implement them. One of its strategic goals is to promote actions that increase the visibility of all types and forms of violence against women and work toward their elimination. Another important goal is the sensitization of the media by trying to change the image of women that they present.

In the academic field, violence against women has become a subject in all post-graduate courses on gender studies in the region. Most universities also include the issue of violence against women in seminars, courses, workshops and lectures on gender issues.

There have also been several multidisciplinary studies that approached violence from sociological, psychological, juridical and historical perspectives. In almost all countries, the complexities of the causes of violence, and its different forms, have been studied, as well as its links to the respective cultural background.

The National mechanisms for the advancement of women at the governmental level such as Ministers, Councils, Secretaries or Departments of Women's Affairs, in most Latin American and Caribbean countries have been generally sensitive and ready to address the problem of violence against women. In the majority of cases, they have called for programs for prevention of violence and assistance for victims, and have sought the help and legal advice of the non-governmental sectors.

The Convention of Belém do Pará

The adoption of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women in June of 1994 in Belém do Pará, constitutes one of the most significant landmarks in this process. This treaty has been already



ratified by almost all the countries in the region (32 over 34) and presents a political and legal framework for a coherent approach to tackle the problem of violence. It makes obligatory for states to implement public policies for the prevention of violence and assistance for women affected by it and opens new possibilities for regional activities and co-operation.

This Convention defines violence against women 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.”¹ It includes violence:

- a. “that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, 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
- c. That is perpetrated or condoned by the state or its agents regardless of where it occurs.”²

The inclusion of marital rape (article 2.a.) and sexual harassment in the workplace, educational institutions, health facilities or any other place (article 2.b.) are important steps forward. National Governments that were reluctant to include these issues in the local legislation are obliged now to do so by the Convention.

The Convention clearly states that discrimination against women is one of the principal causes of violence, and also includes, as a specific right, a woman's right to a life free from violence in both the public and private spheres. This right includes, among others:

- a. “The right of women to be free from all forms of discrimination³; and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”⁴

Further, in agreement with the Convention, the State is held responsible for the acts of violence that are perpetrated against women directly through its agents or indirectly through acts of particular individuals. This includes not only actions done (concrete acts of violence) but also omissions (not taking measures for the prevention of violence). Thus, the State is not only held responsible for concrete acts of violence but also for finding solutions to avoid action that produces violence.

The Convention has four important enforcement mechanisms:

- I. MESECVI;
- II. State periodical reports;
- III. Advisory opinions requested of the Inter-American Court of Human Rights; and
- IV. Individual or Ngo petitions.

The Mechanism to follow up on the Implementation of the Convention of Belém do Pará:

Five years after the entry into force of the Convention, the CIM carried out research⁵ that showed that the Convention's objectives were not being met. The CIM initiated actions to elaborate a draft Mechanism to Follow Up on the Implementation of the Convention of Belém do Pará. On October 26, 2004, the Statute of the Mechanism (MESECVI) was adopted.

By adopting the MESECVI, the States Parties expressed their political will to have a consensus-based and independent system to monitor the advances made in fulfilling the Convention and accepted that they would implement the system's recommendations.

The Mechanism consists of two organs: The Conference of States Parties, which is the political body, and the Committee of Experts (CEVI), which is the technical body comprised of specialists in the subject matter covered by the Convention. The Experts are appointed by the governments, and they perform their duties in their personal capacity. Actually, 28 countries are part of the mechanism.

¹ *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Article 2.*

² *Article 2.*

³ *Article 3.*

⁴ *Article 6.*

⁵ *VIOLENCE IN THE AMERICAS – A Regional Analysis, Including a Review of the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.*

The Secretariat of the Conference and the Committee is the Permanent Secretariat of the CIM, in Washington, where the headquarters of the MESECVI has been established. Additionally, the States Parties appoint Competent National Authorities (CNAs), who serve as links between the Secretariat and the governments.

For each multilateral evaluation round, the CEVI adopts a questionnaire addressing the provisions of the Convention to be analyzed and sends it to the CNAs. On the bases of the responses to the questionnaires made by the CNAs and the information gathered, the CEVI issues a hemispheric report and country reports and makes recommendations on which it must follow up. Once the final report is approved by the Conference of States Parties, it is published and submitted to the General Assembly of the OAS and the CIM's Assembly of Delegates.

The subjects chosen as important and urgent during the first round were:

1. Legal Framework, National Plans and Social Measures adopted to prevent, sanction and eradicate violence against women.
2. Access to Justice.
3. Budget.
4. Statistics.

The first on the legal framework was selected as a priority because it is not yet translated into the national rules of all our countries with the clarity it should have been, the mandate to consider violence against women as a violation of human rights. Many of the laws passed in our countries were drafted between 1989 and 1996. Some of them were passed before ratification of the Convention, and accordingly, their focus is far more limited.

Moreover, more than 20 years after our Convention was ratified, just a few countries have a legal framework that considers violence in all spheres: the family sphere, the community sphere and the state sphere. Most countries have laws against violence that protect women from violence in the family scope –which in certain cases in only family violence not particularly focused to women– and even this protection is only partial since there are few countries that punish rape within marriage. Contrary to the legislation on family violence, the legislation protecting women from violence in the social, labor or state sphere is very scarce.

The second subject, access to justice, reflects a concern shared by thousands of women throughout the region who face justice systems not responding to their problems or reproducing stereotypes that result in impunity in most cases of violence, in particular in cases of sexual violence. The objective of this section is to find out the advances and challenges faced by States in establishing and following up on procedures that allow women access to mechanisms of justice in cases where they have experienced violence. The questions focus on the existence of expeditious proceedings, gender-related training of officials responsible for receiving complaints, the existence of support systems for victims, and measures for evaluating and following up on the processes of empowering victims, and femicide/femicide.

It is necessary to improve the legislation and the procedures that are almost a labyrinth for abused women. Measures should be urgently adopted to ensure that women who have been subjected to violence have effective access to judicial remedies, especially to protective measures.

Regarding the budget subject, we had considered that the formal commitment of the States should translate into specific and genuine budget items for adequate implementation of national plans and for providing sustainability to the process to eradicate violence. We are not dealing here with wealth or poverty. We are dealing with priorities. The objective of the section on national budgets is to obtain information about budgetary support for the plans, programs, and services adopted by the various States in order to prevent, punish, and eradicate violence against women. In order to accomplish this, the questions focused on the existence of appropriations in the national budget for support services; the training of teachers and service providers; sensitization programs on violence against women; and cooperation among official bodies and nongovernmental organizations.



The fourth subject is part of a worldwide need: to have statistics and data adjusted to reality, to be able to intervene in a relevant manner in its transformation. Based on that obligation, this section of the questionnaire concentrated on the progress made by States with respect to information and statistics, particularly in five areas: the compilation of judicial proceedings and complaints of violence against women; assistance to women victims of violence; death of women due to violence; other data with respect to the situation of women; and training programs. It also included questions on the dissemination of statistical data, training of officials responsible for developing and applying instruments to gather statistics, and the existence of citizens' observatories.

Finally, the Hemispheric Report includes general and specific recommendations for the States. General recommendations are related to the absences evidenced in governmental reports and the need of having more information, both concerning access to justice and legislation on violence taking place in the community or by the State. Specific recommendations are useful guidelines to follow up or better apply Articles 7 and 8 of the Convention, with a view to the 4th subjects of the questionnaire, to the extent in which detailed tasks concerning the State are developed for adequate application of the Convention. Among specific recommendations, one is "to eliminate any regulation on violence against women that is gender neutral. In this sense, rules that refer to domestic violence need to be specific in order to prevent, punish, and eradicate aggression inflicted upon women." ⁶ ; Typify rape and other forms of sexual abuse within marriage as crimes, especially in States where these crimes have not yet been included in their penal codes; Typify violence in the family or domestic violence against women as crimes in States where this has not yet been done. In States where these crimes already exist, review the laws regarding intrafamily or domestic violence in order to adapt them to the Convention of Belém do Pará.

The Committee should follow up these recommendations. This is the first challenge. With the aim of assisting in this follow-up, a document with indicators was prepared, which facilitates monitoring the four items of the questionnaire delivered to States. We understand that this document will also be useful for National Authorities that are part of the Mechanism and that are responsible for following up the issue in their respective country. ⁷

National laws

- The States have taken actions in their national legislation to regulate violence within the scope of the family, domestic unit, or interpersonal relationships. Most States have legislation in effect punishing this form of violence, especially after they ratify the Convention. This legislation includes the punishing of violence against women within the scope of the family in the criminal codes or special laws, or special protection orders for its victims, the creation of special courts for this type of complaint, or a combination of all three.
- Most States have action plans or strategies to address violence against women. Nevertheless, many of these plans don't have a specific budget item to cover the activities.
- The majority of States have legislative committees on women's issues that prepare and sustain legislative initiatives regarding women, including initiatives on the prevention and punishment of violence against women.

Resuming, all the countries of the region now have a law on violence in the family. Some countries such as Brazil, Colombia, Ecuador, Paraguay, Peru and Venezuela have introduced norms related to family violence in their constitutions. All laws include physical and psychological violence. Sexual violence is included in the laws of Bahamas, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, México, Panamá (for children), Paraguay, Puerto Rico and Venezuela.⁸

Physical violence is more easily recognized as a criminal offence by the police and the judiciary than psychological violence. Psychological violence is generally conceived as certain conduct that causes victims suffering and induces sometimes fear for their safety or the safety of somebody closed to them.

Economic violence is so widespread and pervasive in the region that some organizations analyze this category in a separate way. Economic violence is defined as the restriction, control or deprivation of money – which in many countries is managed by men - or the obstruction to access and management of shared properties; the obsessive control of personal or family expenditures. This kind of violence is incorporated into the laws of Guatemala, Costa Rica and Peru, while in Puerto Rico it is conceptualized as a form of psychological violence.

Legal mechanisms are not sufficient to stop violence. Massive and sustainable campaigns over a period of years are needed to

⁶ HEMISPHERIC REPORT. (Adopted at the Second Conference of States Parties, held in Caracas, Venezuela, July 9 - 10, 2008).

⁷ OEA/Ser.L/II.7.10. MESECVI/CEVI/doc.16 / 08 rev. 118 July 2008.

⁷ OEA/Ser.L/II. 7,10. MESECVI/CEVI/doc.86 / 08 rev. 3.18 agosto 2008

⁸ Ibid.

transform a mentality that considers violence against women as “natural”. The quality of the services provided for victims of violence must be carefully supervised.

Training of law enforcement officers

The passage of domestic violence laws revealed that an improved legal framework was only the first step towards making the criminal justice system more responsive to the needs of battered women.

For several years, women's organizations have been engaged in training police personnel responsible for receiving reports in cases of violence and medical and paramedical personnel who work in the public health services. Police have received training in Argentina, Bolivia, Brazil, Chile, Ecuador, El Salvador, Honduras, Jamaica, México. Peru and Puerto Rico and generally the experiences have had different impacts in all the countries.

Support Services

The most common social measure is the creation of shelters, women’s police stations and hotlines. Self-help groups; community networks; and public prosecutor’s offices specializing in family issues with the special task of receiving domestic violence complaints %; have also emerged.

Media

One best practice that must be highlighted in the region is the maintenance of an ongoing exchange of information through electronic media. Advances in information technology helped NGOs in setting up chains of solidarity and call attention to violations of the human rights of women and girls in relation to domestic violence, trafficking in women, sexual harassment in the workplace and other forms of aggression on regional and international levels.

in almost all countries in the region with the purpose of promoting a new approach to this problem.

Future challenges:

- Improving the legislative framework, with laws that specifically address violence against women and more comprehensive, in order to cover all areas of women’s life: domestic, community sphere and state sphere
- Moving from the “victim” paradigm to a Human Rights Approach that understand violence as a symptom of discrimination; and install the human right to live free of violence.
- To make the laws meaningful for women’s daily life, with national plans of action, adequately funded and budgeted.
- To have statistics an accurate data to measure the pandemic.

Conclusion

- Domestic violence has become more visible in the public debate and there is more awareness of the need to establish and/or strengthen government institutions dealing with women victims of violence.
- Violence against women has been recognized as a human rights violation in the region and led to legislative progress through reform of discriminatory laws and the passage of new specific laws on domestic violence. However, the reform of discriminatory laws needs to be completed in most countries.
- The process of evaluation of the application of these laws is only beginning. Most of the countries passed their laws in the early to mid-1990s. The promulgation of specific laws against domestic violence in the various countries of the region has been an enormous achievement with positive results on the situation of women and on the proceedings of the administration of justice. It was only after laws were promulgated within their countries that thousands of legal officials recognized domestic violence as a social and criminal problem.

Analysis of the legal machinery shows that specific laws have proved themselves more functional and effective regarding the treatment of domestic violence cases than mere reforms to the Civil and Penal Codes. A specific domestic violence law gives



States	Family Sphere		Community Sphere				State Sphere	
	Domestic or intrafamily violence	Rape within marriage	Forced prostitution	Policies against femicide	Trafficking	Sexual harassment	Sexual and reproductive rights (SRR) violations	Violence against women deprived of their freedom
Chile	Yes	Yes, except when there is no force or intimidation	Yes, but not in accordance with international treaties	SERNAM is in charge of that, but hasn't yet set up a strategy	Yes	Yes	Actions from the Ministry of Health in SRR. On the other hand, lack of legal protection of SRR	Sexual violence as torture for imprisoned women during the dictatorship
Colombia	Yes	Yes	Not mentioned	Not mentioned	Yes	Not mentioned	No	Not mentioned
Costa Rica	Yes	Yes	Not mentioned	Not mentioned	Yes	Yes	Not mentioned	State does not report. Expert will request info in next report.
Dominica	Yes	No	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Ecuador	Yes	No, but it is an aggravating factor if the rape perpetrator is the spouse or mate	Yes, but not in accordance with international treaties	No	Yes, but not in accordance with international treaties	Yes	Organic Bill of Health covers sexual and reproductive health	Not mentioned
El Salvador	Yes	No, but it is covered within the generic type of rape	Yes	Not mentioned	Yes	Not mentioned	Not mentioned	Not mentioned
Guatemala	Yes	No	Not mentioned	Yes, but they are not enough	Yes	No	There's a National Program on Reproductive Health	Not mentioned
Guyana	Yes	No	Not mentioned	No	Yes	Not mentioned	Not mentioned	Not mentioned
Haiti	It is not clear	No	Not mentioned	Not mentioned	Yes	Not mentioned	Not mentioned	Not mentioned
Honduras	Yes	No, but it is covered within the generic type of rape	Not mentioned	Yes, but they are not enough				
	Yes	Yes	Not mentioned	Not mentioned				
Jamaica	Yes	Not mentioned	Not mentioned	Not mentioned	Yes	No, but there is a draft bill	Not mentioned	Not mentioned
Mexico	Yes	Yes	Not mentioned	Yes, but they are not enough	No	In 14 States of the Federa-		
tion	The National Survey on Sexual and Reproductive Health	Not mentioned						



States	Family Sphere		Community Sphere				State Sphere	
	Domestic or intrafamily violence	Rape within marriage	Forced prostitution	Policies against femicide	Trafficking	Sexual harassment	Sexual and reproductive rights (SRR) violations	Violence against women deprived of their freedom
Nicaragua	Yes	No	Not mentioned	No	Yes	Not mentioned	Not mentioned	Not mentioned
Panama	Yes	No, but it is covered within the generic type of rape	Not mentioned	No	Yes	No	Not mentioned	Not mentioned
Paraguay	Yes	No, but it is covered within the generic type of sexual coercion	Not mentioned	No	Yes	Yes	National Plan of Sexual and Reproductive Health, but its effects cannot be evaluated	State does not inform on claims of violence against women deprived of freedom
Peru	Yes	Yes	Yes	No	Yes	Yes	Not mentioned	Not mentioned
Dominican Republic	Yes	Yes	Not mentioned	Not mentioned	Yes	Not mentioned	Not mentioned	Not mentioned
Saint Lucia	Yes	Yes	No	No	No	Yes	Not mentioned	Not mentioned
Suriname	Only some forms	No	No	Not mentioned	Yes	No	Not mentioned	Not mentioned
Trinidad and Tobago	Yes	Yes	No	Not mentioned	No	Not mentioned	Not mentioned	Not mentioned
Uruguay	Yes	No, but it is covered within the generic type of rape	No	No	No	Yes, only work-related	No specific norms or policies	Not mentioned
Venezuela	Yes	Yes	Yes	Yes	Yes	Yes	The Official Guideline for the Care of Sexual and Reproductive Health	Not mentioned

Source: Responses from the states to the questionnaire sent by the CEVI Reports of the Experts.