

VIOLENCE AGAINST WOMEN IN LATIN AMERICA AND THE CARIBBEAN

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The Beijing Conference Action Platform, among other actions, requires that states «take integrated measures to prevent and eliminate violence against women» and «study the causes and consequences of violence against women and the effectiveness of prevention measures.»¹

Progress has been significant in this area. Suffice it to say that in 1992 the Inter-American Convention for Preventing, Penalising and Eradicating Violence against Women was only a draft and only one nation, Puerto Rico, had approved a law against violence. In other countries there were only proposals. By 1997, 21 countries had signed and ratified the Convention, two² countries had adhered to it, and only one country³ in the region had not yet completed the ratification process.

Various countries of the region now have legislative provisions on domestic violence. Others have bills that are being reviewed or discussed. (See Table 1)

Behind this progress are the efforts of thousands of women who have participated in drafting the bills, in negotiations, lobbying and advocating for approval, or monitoring.

This instrument is enormously valuable for working toward the elimination of violence and also for eradication of discrimination.

... «a. – the right of women to be free from all forms of discrimination, and b. – the right of women to be valued and educated free from stereotyped behaviour patterns and social and cultural practices based on concepts of inferiority or subordination».⁴

Secondly, **according to the Convention, the state is responsible for acts of violence perpetrated against women directly, through its agents, and indirectly, by private individuals.** This responsibility extends, not only to **actions** (ie, concrete acts of

violence), but also to **omissions** (ie, not taking measures to avoid occurrence of violence).

Another important innovation is that, in the event of acts or omissions violating this Convention, individuals and institutions may appear before the Inter-American Human Rights Commission, bringing petitions containing **claims or complaints**. The party States and the Inter-American Women's Commission may also appear before the Inter-American Court of Human Rights to request a **consultative opinion** on the interpretation of this Convention. Moreover, the party States must prepare **national reports** on the measures adopted to «prevent and eradicate violence, to assist women affected by violence.»⁵

Signature of this Convention is a very important achievement by the Inter-American Women's Commission of the OAS, given the male majority in the region's governments and the scant political commitment to eradicating violence in each of our countries. Efforts to disseminate the Convention have fallen primarily on non-governmental groups and organisations linked to the Women's Movement.

NATIONAL LAWS ON DOMESTIC VIOLENCE

Despite the conceptual clarity of the Belém do Pará Convention, which makes explicit reference to violence **against women**, few of the legal provisions approved following signature of the Convention⁶ refer to violence in this way. Most of the national laws speak of **family, domestic or intra-family violence**.

Table 2 shows the provisions approved in the different countries, in relation to family violence.⁷

The language of these laws is male with a few exceptions⁸ where it is neutral. The text of almost all these laws treats violence

1 Women's Action Platform, Beijing, Strategic Objectives D1 and D2.

2 Bahamas and Paraguay.

3 Mexico.

4 Belém do Pará Convention, art. 5.

5 Belém do Pará Convention, art. 10.

6 Ecuador and Venezuela.

7 Table prepared with collaboration of Rossana Borja, Cladem Documentation Center, Lima.

8 Among the exceptions, Dominican Republic and Venezuela.

TABLE 1.

Information on the status of the convention in the region ⁹					
Signatory	Filing	Ref. Date	Ra/Ac/Ad	Institutiona Countries	
Argentina		10/6/94	4/9/96	7/5/96	RA
Bahamas		16/5/95	3/5/95	16/5/95	AD
Barbados		16/5/95	8/2/95	16/5/95	RA
Bolivia		14/9/94	26/10/94	5/12/94	RA
Brazil		9/6/94	16/11/95	27/11/95	RA
Chile		17/10/94	/	10/97	/
Costa Rica		9/6/94	5/7/95	12/7/95	RA
Dominica			30/6/95	6/6/95	RA
Ecuador		10/1/95	30/6/95	15/9/95	RA
Dominican Rep.		9/6/94	10/1/96	7/3/96	RA
El Salvador		14/8/95	13/11/95	26/1/95	RA
Guatemala		24/6/94	4/1/95	4/4/95	RA
Guyana		10/1/95	8/1/96	28/2/96	RA
Honduras		10/6/94	4/7/95	12/7/95	RA
Mexico		4/6/95	26/11/96	/	/
Nicaragua		9/6/94	6/10/95	12/12/95	RA
Panama		5/10/94	26/4/95	12/7/95	RA
Paraguay			29/9/95	18/10/95	AD
Peru		12/7/95	2/4/96	4/6/96	RA
St. Lucia		11/11/94	8/3/95	4/4/95	RA
St. Vincent		5/3/96	23/5/96	31/5/96	RA
St. Kitts		9/6/94	17/3/95	12/6/95	RA
Trinidad		3/11/95	4/1/96	8/5/96	RA
Uruguay		30/6/94	5/1/96	2/4/96	RA
Venezuela		9/6/94	16/1/95	3/2/95	RA

RA= Ratification / AC= Acceptance / AD= Adhesion

ce as a genderless phenomenon, of which all persons, be they men or women, can equally be victims.

It is dangerous to adopt neutral provisions in justice systems that are not neutral and in societies that are not neutral. In most of the national laws, the persons protected are **both male and female, adults or children**, since «*the responses or mechanisms they*

propose can be used indifferently by men or women, and their possibilities are extended to other members of the family group.»¹⁰

A significant advance is the fact that protection is given to both wives and concubines or live-in companions, that is to say, both to legally married persons and those living in common law unions. This is very important since in various countries common law marriages had not been recognised as generating rights. It is all the more so considering that these laws are incorporated in civil law, which has always been the most conservative branch of law.

Most of these laws have not made provisions for the creation of special funds or budget allocations to foster the programmes and/or measures necessary for prevention and eradication of violence. This makes the commitment to eradicate violence and support its victims merely symbolic. It is important to bear this in mind, since the majority of the laws (with the exception of Argentina¹¹, Chile, Panama and Nicaragua¹²) have as their objective the adoption of public policies against family violence.

The **public policies** included in these provisions raise the need to:

- protect and aid the victims of violence;
- promote specialised education and training programmes for public officials and authorities involved;
- undertake campaigns for prevention, awareness-building and education;
- foster studies on the subject.

It is difficult to imagine these policies being implemented in a reasonable term if specific funds are not allocated.

It is likewise essential to create or identify **the responsible agency** in charge of promoting the measures or policies proposed in the legal provisions. This is a problem in the Bolivian law, for example, which establishes eradication of violence as a national strategy but does not clarify which agency will implement it.

The **forms of violence** addressed by all of the laws are **physical and psychological**. **Sexual** violence is included in the laws of Puerto Rico, Panama (for minors), Ecuador, Bolivia, Costa Rica, Colombia, El Salvador and Guatemala.

Economic or property violence is included separately in Guatemala and Costa Rica¹³, while in Puerto Rico it is considered a form of psychological violence. The laws in other countries do not expressly take it into account, although it could be considered to be included in a broader interpretation of psychological violence.

⁹ Table prepared by CIM Delegation in Peru.

¹⁰ Legislative module, «*Bases para la Regulación Jurídica contra la Mujer en la Familia*» (Bases for Legal Regulation against Women in the Family) coordinated by Bermúdez, Violeta, for the Inter-American Parliamentary Group on Population and Development. Forthcoming.

¹¹ Argentina has covered this void with approval on 11/27/96 of a law creating the National Program for Prevention of Violence against Women.

¹² Op. cit. in xv, page 9.

¹³ This law defines property violence as «*all actions or omissions implying damage, loss, transformation, alienation, destruction, retention or removal of objects, work implements, personal documents, assets, properties, rights or economic resources geared to satisfying the needs of a protected person.*»

TABLE 2.

Country	Law Nº	Date	Name
Argentina	24417	12/28/94	Law for Protection Against Family Violence
Bolivia	1674	12/15/95	Law Against Family or Domestic Violence
Brazil	Bill		Under discussion since November 1992
Colombia	294	7/16/96	Provisions for Preventing, Correcting and Penalising Intra-Family Violence
Costa Rica	7586	3/25/96	Law Against Domestic Violence
Chile	19,325	8/27/94	Law on Intra-Family Violence
Dominican Republic	24/97	1997	Law for Amendment of the Penal Code, the Code of Criminal Procedure and the Code for Protection of Girls, Boys and Adolescents
Ecuador	Official Registry No. 839	11/14/95	Law Against Violence toward Women and the Family
El Salvador	Dec. 902	3/97	Law Against Intra-Family Violence
Guatemala	Decree No. 97/96	10/24/96	Law for Preventing, Penalising and Eradicating Intra-Family Violence
Honduras	Law 10/97		Law on Family Violence (not yet published)
Mexico	Law No.	6/26/96	Law on Assistance and Prevention of Intra-Family Violence
Nicaragua	230	10/9/96	Law for Amendment and Additions to the Penal Code
Panama	27	6/16/95	Crimes of Intra-Family Violence and Mistreatment of Minors
Paraguay	Bill	24/12/93	Under discussion
Peru	26260	12/24/93	Law on Government and Social Policies against Family Violence
Puerto Rico	54	8/15/89	Law for Prevention and Intervention in Domestic Violence
Uruguay	Art. 18, Law No. 16,707 (Citizens' Security)	7/12/95	Includes Domestic Violence as a criminal act. Added to Penal Code as article 321 bis

LACK OF COHERENCE

VIOLENCE AGAINST WOMEN was considered a violation of human rights in the Vienna Action Plan and Declaration. This was reiterated in the Inter-American Convention of Belém do Pará. To be consistent with this posture, laws should clearly establish two things: first, a serious commitment to eradicating violence **against women**, and second, that violence against women constitutes a **crime**. Thus, cases of violence against women should be heard

by **criminal court judges**. Yet this has not been the case. Under most of the laws analysed, civil or family courts, criminal courts, and juvenile courts (if children are involved) have jurisdiction in these matters.

While there has been a trend in recent years to participation of criminal court justices, this does not mean that all the laws consider family violence a crime. In the Dominican Republic, Nicaragua, Peru¹⁴ and Uruguay, family violence is directly included in the Penal Code. However, in the other countries, criminal court judges have jurisdiction, in most cases, only when crimes in the traditional conception are included. These are cases of serious injury, death threats or attempted homicide, among others. But these crimes have always been included in penal codes. The fact that a criminal court judge has jurisdiction in these cases does not mean that domestic violence *per se* is considered a crime.

Moreover, in most of the laws on violence against women, it is not very clear whether criminal or civil court judges have jurisdiction. In several cases the victim can choose between appearing before the Family Court or the Criminal Court. This would appear to be a prerogative or a freedom, yet it can have perverse consequences. It is the woman who must decide whether her husband will go to jail. Experience shows that a great deal of pressure is exerted by the husband's family, the children, and the neighbours, and there are also job consequences. Thus an abused woman may go from being the victim to being the culprit, insofar as she becomes responsible for sending her husband to prison, causing him to be fired from his job, leaving her children with no support, etc.

The same is not so in the case of children. There, urgent measures are taken and Juvenile Courts are given jurisdiction. A report prepared in Chile by SERNAM¹⁵ that analyses application of the anti-violence law, shows that judges take action more rapidly when the victims of violence are children.

Another clear indicator that violence against women is not considered a crime is that the majority of laws propose reconciliation proceedings as an initial measure. These mechanisms (conciliation, mediation) may be appropriate in cases of divorce, division of property or custody of children, but they are not very appropriate for resolving cases of violence. Much less appropriate is the requirement to hold a «mediation» hearing, as in the Argentine law. The mere idea of mediation indicates a lack of awareness of violence as a **crime**.

We know that laws are not magical solutions to problems. Yet they do have a very significant symbolic value. The message sent via laws on violence is that violence is illegal. However, in many of the region's countries there are penal code provisions that put this in doubt. For example, complaints in connection with sexual crimes are considered **private actions** that can be brought only by the victims or their representatives. Moreover, under many codes, there are provisions allowing for the possibility that the

¹⁴ Peru has just approved a reform of its Penal Code to incorporate domestic violence as a crime.

¹⁵ National Women's Service.

author of serious sex crimes, like rape, abuse, abduction, etc., may be freed upon offering to marry the victim. Another serious problem is the lack of penalty for rape within marriage in most of the countries.

In the few countries where rape is penalised, the penalty for rape by a husband or live-in companion is much less than for a stranger.¹⁶ If we apply basic constitutional and human rights principles to this situation, along with the right to equality before the law, it should be clear that we are dealing with a provision that violates human rights and is even unconstitutional, since rape of the woman to whom the assailant is married or with whom he lives is given lesser punishment than rape of a woman with whom there is no type of bond. Single women are more protected against rape than married women. Marriage would thus seem to be an attenuating factor, rather than an aggravating factor, as is the case with other crimes. **We can say it more crudely: marriage in our countries gives men the prerogative of raping another human being and of receiving a reduced penalty for doing so.**

Violence must be combatted in all spheres, not only in the domestic sphere, but also at the job and institutional level. This means legislating against sexual harassment. Legislation in this area is advancing slowly¹⁷ and has met with many more stumbling blocks. In the labour context, for example, one obstacle has been that the ILO, which is the international organisation that sets norms for advancement, does not have a convention on the subject. The economic interests of companies, who fear numerous suits if sexual harassment legislation is passed, are also an obstacle.

LACK OF STATISTICS

No government can design appropriate policies to solve a problem if it does not know the true dimensions of the problem.

In no country of the region are there databases capable of indicating the extent and the seriousness of violence against women. The scant statistics available refer to complaints brought by the persons affected, but there is no doubt that complaints are filed only in a very small percentage of cases.

There is also no accounting of histories of violent acts or of the follow-up provided in each case.

PROPOSALS

If governments accept as valid what they themselves signed in Vienna in 1993 and ratified in Copenhagen and Beijing, ie, that violence against women is a violation of human rights, they must take the same steps necessary to prevent and penalise it as for other violations.

First, it should be kept in mind that violence has its roots in discrimination against and subordination of women. Taking isolated measures to deal with the effects of violence, without tackling its root causes, will always be a partial policy.

Secondly, the human right to live a life without violence requires that governments:

1. Adopt the necessary laws, with imperative rather than voluntary compliance, containing comprehensive plans for prevention, penalisation and eradication of violence;
2. Seek funds to execute prevention plans and campaigns;
3. Effectively penalise those responsible for violence;
4. Organise and train government personnel to ensure the operation of justice.

We know that laws are not a panacea or a solution in and of themselves. Massive campaigns must be undertaken over many years in order to change the mentality that, until not long ago (and in many cases even now), believes violence against women is natural.

The reform of penal codes for cases of sexual violence, the elimination of marriage to the victim as grounds for decriminalisation of rape, and the criminalisation of rape within marriage are tasks that are pending. Also on our agenda is legislation against sexual harassment, not only on the job, but in all institutional spaces where hierarchies exist.

The changes must be comprehensive and they must be carried out by authoritative agencies with sufficient budgets to do so. This is a long-term endeavor, since dealing with violence against women is part of a more ambitious goal, that of transforming a hierarchical, violent and discriminatory society into a society that respects the autonomy and dignity of all persons, be they men or women.

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¹⁶ Colombian law punishes rape in marriage with imprisonment of 6 months to 2 years, which is a much lighter punishment than for rape outside the marriage.

¹⁷ Cost Rica, Puerto Rico and Argentina have laws or decrees of this type.