



FOLLOW-UP MECHANISM TO THE
CONVENTION OF BELÉM DO PARÁ (MESECVI)
COMITTEE OF EXPERTS (CEVI)
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**Declaration on Violence against Women, Girls and Adolescents
and their Sexual and Reproductive Rights**

The Committee of Experts (CEVI) of the Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará” (MESECVI),

Recognizing that the American Convention on Human Rights (1969) and the Additional Protocol to the American Convention on Economic, Social and Cultural Rights “Protocol of San Salvador” (1988), establish the obligation to respect and ensure human rights and fundamental freedoms, as well as the close relationship between economic, social and cultural rights, and civil and political rights;

Recognizing that gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedom on a basis of equality with men,¹ and that States, according to the Convention on the Elimination of all Forms of Discrimination against Women (1979) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), condemn all forms of violence against women, including those related to sexual and reproductive health and rights;

Reiterating that sexual violence against women and girls prevents the exercise of their rights as established in regional and international human rights instruments;

Ratifying that the American Convention on Human Rights, the Convention on the Elimination of all Forms of Discrimination against Women; the Protocol of San Salvador and the Convention of Belém do Pará, constitute the corpus juris that protect the human rights of women, girls, and adolescents. As

¹ CEDAW, General Recommendation 19. Paragraph 1.

such, the States agree to adopt, using all appropriate means and without undue delays, policies to prevent, punish, and eradicate violence against women, girls, and adolescents;

Recalling that the First Hemispheric Report on the Implementation of the Belém do Pará Convention (2008), after analyzing the reports submitted by the States Party, considered:

- That the violation of sexual and reproductive rights is a form of gender-based violence, that these rights can be grossly violated in legislation that does not recognize or protect them, and that those women who are victims of multiple forms of discrimination have the least effective access to sexual and reproductive health services;

Bearing in mind that the Second Hemispheric Report on the Implementation of the Belém do Pará Convention (2012) recommended that the States Party to the Convention:

- Adopt provisions to criminalize obstetric violence; legalize interruption of pregnancy on therapeutic grounds; as well as women's access to such procedures; legalize the interruption of pregnancy caused by rape; adopt provisions to penalize forced sterilization as a crime; adopt regulations on artificial insemination and punish those who perform it without the consent of the victim; adopt provisions to guarantee the free distribution of emergency contraceptives in public health services without distinctions based on social class or membership to an ethnic group; adopt provisions to offer emergency prophylactic treatment for HIV/AIDS and other sexually transmitted diseases in public health services, especially for cases of sexual violence and adopt protocols defining the treatment steps and the manner of providing care for users.

DECLARES

That sexual and reproductive rights are part of the catalogue of human rights that are protected and defended by the universal and inter-American human rights systems; and that sexual and reproductive rights are grounded in other essential human rights, including the right to health, the right to be free from discrimination, the right to privacy, the right not to be subjected to torture or ill-treatment,² the right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so and the right to make decisions concerning reproduction free of discrimination, coercion and violence and therefore to be free from sexual violence;

That sexual violence consists of “actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever;”³

That the principles of equality and non-discrimination are fundamental principles and rules of *jus cogens*, on which rests the legal framework for national and international public order;

² UN Committee against Torture (2011). Concluding observations to Paraguay. Examination of the Reports submitted by the States Parties pursuant to Article 19 of the Convention. Forty-seventh session held from October 31st to November 25th 2011. Paragraph No. 22

³ IACHR. Case of the Miguel Castro-Castro Prison vs. Peru. Merits, Reparations and Costs. Judgment of November 25th 2006. Series C No. 160, para. 306.

That gender stereotypes are incompatible with international human rights law and that, by ratifying the *Convention of Belém do Pará*, the States Party undertake to “modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs, and all other practices which are based on the idea of the inferiority of women, which legitimize or exacerbate violence against women;”

That the prevalence of gender-based discriminatory cultural stereotypes remains an obstacle to the exercise of the rights of women and girls, hinders their access to the administration of justice, and contradicts the due diligence obligations of States that should modify the social and cultural patterns of men and women and eliminate prejudices and customary practices based on the idea of the inferiority or superiority of either of the sexes;

That sexual violence against women, girls, and adolescents has harmful consequences, both for them and the whole of society. It affects their physical and reproductive health, increases the risk of maternal and infant and HIV-related morbidity and mortality, causes high-risk pregnancies and pregnancy-related issues, including abortions, premature births, fetal distress, and low birth weight, and has serious psychological impacts, such as physical effects, lack of willpower, fear, angst, depression, post-traumatic stress, anxiety, and a higher risk of suicide;

That sexual violence against women, girls, and adolescents also has social and economic consequences for them and the whole of society. It erodes physical safety in public spheres, limits the political voice of women, separates children from their families, leads to lost education, stigmatizes women, and incurs short and long-term costs associated with services related to violence against women, loss of jobs and productivity, and human pain and suffering;

That sexual freedom and its development constitute a legal asset that is protected by international human rights law and, therefore, States must guarantee and protect those rights;

That States have the obligation to guarantee education on sexual and reproductive rights in the education system;

That States have enacted numerous laws that punish sexual violence against women, girls, and adolescents, such as prohibiting rape, sexual abuse, sexual harassment, commercial sexual exploitation of boys, girls and adolescents, pimping, the production, sale, advertisement, possession, and distribution of child pornography, and the exploitation or trafficking of persons, among others;

That some forms of sexual violence against women are still insufficiently documented and punished throughout the entire region, such as: incest, sexual servitude, forced prostitution, display of the body without the victim's consent, forced pregnancy, forced insemination, forced sterilization, female genital mutilation and female circumcision, femicide/feminicide as a result of sexual violence, sexual violence against women in armed conflicts and post-conflict situations, trafficking of women and girls, sexual harassment and violence in the workplace and schools, or violence in institutional contexts or penitentiary establishments, internet and social network violence, among others;

That there are still laws that perpetuate the exercise of violence against women, girls, and adolescents, that re-victimize them by violating their sexual and reproductive rights, and that violate the prohibition of torture and mistreatment, such as: maintaining restrictions on access to safe

abortions and absolute prohibitions of abortions, or the denial of access to post-abortion care that contravenes the prohibition of torture and ill-treatment;

That the Inter-American System, the *Convention of Belém do Pará* and the *Protocol of San Salvador* expressly enshrine the duty of States to adequately protect women and the duty to guarantee that women access health services free from discrimination, and that the *Protocol of San Salvador* specifically establishes the duty of States to allocate the necessary resources and take into account the degree of their development, with a view to progressively achieving the full effectiveness of the right to health;

That the negation of public policy and sexual and reproductive health services exclusively to women, through norms, practices, and discriminatory stereotypes, constitutes a systematic violation of their human rights and subjects them to institutional violence by the State, causing physical and psychological suffering;

That sexual health⁴ constitutes “a state of physical, emotional, mental, and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction, or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, free of coercion, discrimination, and violence;”

That reproductive health⁵ is defined as “a general state of physical, mental, and social well-being – and not merely the absence of disease or infirmity – in all matters relating to the reproductive system and to its functions and processes. Reproductive health, therefore, implies that people are able to have a responsible, satisfying, and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Implicit in this is the right to be informed of, and have access to, safe, effective, affordable, and acceptable methods of fertility regulation, and the right to access health care services to support a safe and healthy pregnancy and childbirth, and to provide parents with the best chance of having a healthy infant;”

That access to health services in general, and services for the interruption of pregnancy in particular, must be confidential and that the conscientious objection of health personnel under no circumstances may result in the violation of women’s human rights;

That indigenous groups have the right to preserve their own customs and institutions, as long as they are not incompatible with the fundamental rights defined by the national legal system or with internationally-recognized human rights, such as the right of women, girls and adolescents to live free of violence;

That States have an obligation to adjust their structures, processes and procedures in order to harmonize them with the *Convention of Belém do Pará*, and to guarantee due diligence to protect women, girls and adolescents from all forms of gender-based violence, including prevention, investigation and punishment of acts of violence, and response to the victims of State, non-State and individual actors;

That access to justice is the front line of defense of human rights for victims of gender-based violence and, therefore, access to justice services must be simple and efficient, with the necessary guarantees

⁴ World Health Organization (WHO), Definition of Sexual Health 5 (2006).

⁵ Programme of Action, International Conference on Population and Development, Cairo 1994.

to protect women when they report acts of violence and with judicial and any other type of measure to guarantee the reparation due to women, girls and adolescent victims of violence;

That processes for investigation can obstruct the victim's access to justice when they evaluate the victim's conduct instead of considering the context of coercion in which the acts occurred, as well as indirect evidence. The consent of the victim cannot be inferred by reason of any words or conduct in a coercive situation, nor from her silence or lack of resistance. The credibility of her testimony or that of a witness may not be diminished due to sexual behavior prior or subsequent to the incident;⁶

That the secondary re-victimization causes negative psychological, social, legal, and economic consequences that also negatively impact the victim's relationship with her community, as well as the ability of professionals and institutions to respond to her needs.

RECOMMENDS

Punishing all forms and expressions of sexual violence against women, girls, and adolescents, as agreed by the States Party in Art. 7 of the *Convention of Belém do Pará*, "...to adopt, using all appropriate means and without undue delays, policies to prevent, punish, and eradicate violence against women," including conduct that negatively affects their integrity and sexual autonomy, even when there is not physical contact, whether or not it occurs in public or private, and even as part of intimate partner relationships;

Guaranteeing effective compliance with laws that punish the exercise of sexual violence against women, girls, and adolescents, as well as access to justice and reparation for those who have been victims of such crimes;

Ensuring that victims of violence are treated with dignity, taking all relevant measures to promote their physical and psychological recovery and social reintegration, in an environment favourable to their health, well-being, self-esteem, dignity, and autonomy, bearing in mind their different specificities and needs;

Guaranteeing the confidentiality of victims from the time the incident is reported and throughout the entire process in a violence-related situation, ensuring a streamlined and speedy process, thereby granting credibility to the victims and protecting the privacy and dignity of the affected persons;

Practicing forensic inquiries while bearing in mind the fundamental rights of the physical and moral inviolability and integrity of women, girls, and adolescents who are victims of violence, observing the standards of reasonableness and proportionality, always with the prior informed consent of the victims;

Reducing the number of interventions with women, girls, and adolescents who are victims of sexual violence during the process to a single statement or complaint, where possible, and only questioning the victims on the reported incident in order to obtain the minimum and essential information for the investigation, in order to prevent re-victimization;

⁶ Rules of Procedure and Evidence, International Criminal Court U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70.

Conducting prompt and exhaustive investigations, bearing in mind the context of coercion as a fundamental element for determining the existence of violence, by using technical evidence and explicitly prohibiting evidence based on the victim's behaviour to infer consent, such as lack of resistance, sexual history, retraction during the trial; or discrediting testimony on the basis of alleged Parental Alienation Syndrome (PAS), such that the results of investigations combat the impunity of offenders;

Prohibiting conciliation or agreement mechanisms between the offender and victims of sexual violence against women, as well as causes that would exempt or exclude liability in these cases, which would send a message of permissiveness to society, reinforce the imbalance in power, and worsen the physical and emotional risk of women who are not on an equal footing to negotiate;

Guaranteeing States' commitment to due diligence, avoiding the use of discriminatory practices and the replication of gender stereotypes that assign certain conduct and attitudes to women, girls, and adolescents, particularly as regards the availability, accessibility, acceptability, and quality of information, access to justice, and those assets and integral services that ensure the exercise of their sexual and reproductive rights;

Promoting the modification and transformation of culturally determined customary practices, attitudes and behaviours that undergird violence against women, girls and adolescences in the home, the media, and educational and other state institutions, to foster changes in perception and social conduct, and so enable the effective observance of their sexual and reproductive rights;

Establishing violence prevention mechanisms through public policies aimed at implementing regular or commemorative activities at all levels of the education system to promote the sexual and reproductive rights recognized by international human rights instruments;

Eliminating laws from the legal system that perpetuate the exercise of violence against women, girls, and adolescents; guaranteeing that abusive and humiliating behaviours are not replicated in institutional settings and that health practitioners do not re-victimize or deny access to health services to women that need them; and ensuring access to reproductive health information, which is vital for women to exercise their reproductive autonomy and rights to health and physical integrity;

Implementing mechanisms for the prevention of violence against women through the development of extension programs to inform and raise awareness among the general population about the causes and consequences of gender-based violence and encouraging individual commitment to its eradication, with special emphasis on the population with school-aged children, with which educational institutions have spontaneous or regulated connections, through support associations for public and/or private education;

Ensuring that women, girls, and adolescents who are victims of violence have free and voluntary access to medical procedures, free from threats, coercion or incentives, and with clear and detailed information about the possible risks, benefits and existing alternatives;

Ensuring sexual and reproductive health care, free from discrimination, for lesbian, transgender and intersex women in health services;

Designing and implementing public policy and comprehensive services for victims of sexual violence that include direct, immediate and specialized care, as well as operational and administrative standards oriented towards constant prevention, outreach, awareness, and training;

Providing comprehensive care to victims of sexual violence, including medical and psychological care, counseling, and legal and social assistance that addresses their issues and provides follow-up subsequent to the crisis;

Guaranteeing the sexual and reproductive health of women and their right to life, eliminating unsafe abortion and establishing laws and policies that enable the termination of pregnancy, at the very least in the following cases: i) risk to the life or health of the woman; ii) inability of the fetus to survive; and iii) sexual violence, incest and forced insemination; as well as guaranteeing that women and adolescents have immediate access to affordable contraceptives, including emergency oral contraceptives, thereby eliminating the discriminatory effects on women of denying them services on the basis of stereotypes that reduce the primary role of women to motherhood and prevent them from making decisions about their sexuality and reproduction.

Allocating budget lines in the national budget that are specifically destined to preventing, punishing and eradicating violence against women, girls and adolescents in each of the areas suggested by this Declaration;

Guaranteeing age-appropriate education on sexual and reproductive health and rights, including HIV/AIDS and STIs, in school curricula at all levels;

Fostering the participation of women, civil society organizations and other social actors in confronting sexual violence against women.