



# FAILURE TO PROTECT:

HOW DISCRIMINATORY SEXUAL VIOLENCE LAWS  
AND PRACTICES ARE HURTING WOMEN, GIRLS,  
AND ADOLESCENTS IN THE AMERICAS

# ABOUT EQUALITY NOW

Founded in 1992, Equality Now is an international human rights organization that works to protect and promote the rights of all women and girls around the world. Its campaigns are centered on four program areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Trafficking, with a cross-cutting focus on the unique needs of adolescent girls. Equality Now combines grassroots activism with international, regional, and national legal advocacy to achieve legal and systemic change to benefit all women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights. Equality Now is a global organization with partners and supporters all around the world.

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Design: Peter Wilbourne

September 2021

## TRIGGER WARNING:

This report contains details from personal experiences of survivors of sexual violence as well as language from laws which refer to sexual violence, sometimes in explicit terms. We respect the lived reality and words of survivors, so we have not censored any language. However, we recognize that certain terms may be distressing for some readers. If you need support, please contact your local sexual violence center. You can also find resources and support information on [page 51](#).

# ACKNOWLEDGMENTS

This report is a publication of Equality Now. It was made possible due to the dedicated research, analysis, drafting and review by Antonia Kirkland, Bárbara Jiménez-Santiago, Bryna Subherwal, Divya Srinivasan, Emma Stoskopf-Ehrlich, Jacqui Hunt, Jorie Dugan, Romina Canessa and Tara Carey; with support provided by Claire Dupuy, Emma Thompson and Niki Kandirikirira.

We acknowledge and appreciate the valuable regional expertise provided by Catalina Martinez Coral (Regional Director for Latin America and the Caribbean at the Center for Reproductive Rights) and Rosa Celorio (Associate Dean for International and Comparative Legal Studies and Burnett Family Professorial Lecturer in International and Comparative Law and Policy) and the country-specific contributions from local experts: Laura Julieta Casas (Argentina), Alicia Wallace and Marion Bethel (Bahamas); Leigh-Ann Worrell (Barbados); Isabel Rocabado Rojas, Ivana Monica Leyva Jimenez, Jinky Irusta, Laura Verduguez Roque, María Del Carmen Arispe Fuentes, María Leonor Oviedo Bellott, Mónica Baya, Noemi Mercado Miranda, Patricia Brañez, Sharon Marie Arce Marañon (Bolivia), Amanda Dale (Canada), Rocío Rosero Garcés and Ariadna Reyes Ávila (Ecuador), Crissia Perez (El Salvador); Fabiola Ortiz, Giovanna Lemus and Viviana Patal (Guatemala); Jennifer Jones (Jamaica); Claudia Angelica Rangel Martinez and Julia Escalante (Mexico), Mirta Moragas Mereles and Sonia Von Lepel (Paraguay), Miriam Vázquez (Perú); Irisel Collazo (Puerto Rico), Diana González (Uruguay), Priscila Akemi Beltrame and Sandra Bazzo (Brazil).

We are extremely grateful to the survivors/activists who generously contributed their voices to the stories in this report, including Brisa, Doña Petita, Stephanie and Mandi.

We are thankful to the law firms of Akin Gump Strauss Hauer & Feld LLP and Hughes Hubbard & Reed LLP for their pro bono desk research of sexual violence laws in the Americas which formed the basis for this report.

Finally, we are grateful to Oak Foundation and Natreve for their financial contribution towards preparation of this report and generally for supporting our aims.





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# FOREWORD

This much needed and unique report, *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas*, from Equality Now has once again shown how discrimination and violence against women is embedded in the very structures of society, and maintained and reinforced by government laws and practices. The countries in the Americas region which this report examines in detail are, unfortunately, no exception.

Despite the fact there is an international obligation to prohibit all forms of violence and discrimination against women - which has evolved into a principle of customary international law, binding for all states – discriminatory laws are still in place, making it nearly impossible for women to enjoy all their human rights under conditions of equality, while also enabling and promoting a culture of violence and discrimination against them. This report shows how urgent it is to reform sexual violence laws to better protect women, girls, and adolescents not only from such violence, but also to make progress towards gender equality.

A great contribution of this report is that it makes visible the special vulnerability of girls and adolescents to sexual violence and the specific obstacles they face when pursuing justice. The report provides a clear analysis of gaps and loopholes in the law allowing for impunity for perpetrators of sexual violence against girls and adolescents, particularly by estupro or estupro-like provisions, through which aggressors are imposed with lesser penalties, while girls and adolescents are deprived of the additional and special protections they require. The report also masterfully addresses the importance of placing the absence of active and willing consent as the key element of rape in sexual violence laws; considering other elements - such as resistance, helplessness, inability to resist, among others – as central to the concept of rape as a manifestation of gender-based discrimination against women, girls, and adolescents.

In addition to the protection flaws and discriminatory provisions included in many laws across the region, the report also addresses the obstacles women and girls face to access justice in cases of sexual violence due to patriarchal norms and harmful gender stereotypes that normalize and tolerate such violence. Fortunately, we have seen encouraging developments in the realm of access to justice in the past few years at both the national and international levels; several States have repealed or amended their discriminatory estupro provisions and in a recent landmark ruling the Inter-American Court of Human Rights has established standards to protect girls from sexual violence and harassment in schools throughout the region. I hope these advances are the beginning of a movement throughout the region that ensures that when women and girls are not free from sexual violence, they have a right to adequate redress.

Through a rigorous analysis of a comprehensive array of State laws across the region, combined with survivors' stories provided by partner organizations on the ground, the report provides powerful data and a strong evidence basis for concrete improvements and action towards better protection of women and girls from sexual violence and better access to justice when their rights are violated. I have no doubt this report will be an important tool for advocates, lawmakers, international human rights organizations, and indeed all who are working to end sexual violence, particularly against adolescent girls. We must all take action until every discriminatory law and practice is reformed to uphold and promote equality and to prevent all forms of gender-based violence.



**Commissioner Margarete May Macaulay**

*Rapporteur on the Rights of Women  
Inter-American Commission of  
Human Rights*

# EXECUTIVE SUMMARY

**Being able to live a life free from violence, including sexual violence, is a fundamental human right. Despite this, sexual violence is wide-ranging and pervasive throughout the world, including in the Americas. It is rooted in discrimination, sex and gender inequality, and patriarchal norms, and is sometimes perpetuated by the law itself, particularly against adolescent girls.**

The Americas - which includes North America, Central America, South America, and the Caribbean - is extremely diverse in terms of culture, race, ethnicity, language, and economic development. However, what is common across the region is the high prevalence of sexual violence combined with lack of effective access to justice for survivors. Gaps in laws related to sexual violence, ineffective enforcement of laws, persistence of social stereotypes of women and men, and the societal tolerance of violence against women and girls, including among the judicial and law enforcement sectors, have all contributed to perpetrators of sexual violence often going unpunished. The problem has been further exacerbated during the COVID-19 pandemic as emergency measures and lockdowns have not only limited access to justice and services but have also resulted in an increase in gender-based violence.<sup>1</sup>

The rape and sexual violence laws of the 43 jurisdictions from 35 countries reviewed for this report deny access to justice for many survivors of sexual violence as they provide a number of opportunities for perpetrators to escape justice. This impunity contributes to the continued perpetuation of sexual violence.

## KEY FINDING 1:

### Gaps in laws reduce protections against Sexual Violence for Young and Adolescent Girls

Young and adolescent girls in the Americas are more vulnerable to violence and discrimination as a result of structural and systemic violence and discrimination, including in the law itself - most commonly through the use of provisions often known as '*estupro*'.

Seventeen<sup>2</sup> of the jurisdictions surveyed for this report have discriminatory *estupro* or *estupro*-like provisions in their laws, which provide for a lesser penalty for men, usually adults, who rape adolescents between certain ages, often between 14 and 16 years of age, by means of "seduction" or deceit. In most of these jurisdictions, the penalty for *estupro* is less than half the penalty for rape, with some jurisdictions only imposing a fine for the offense of *estupro*. Rapists are often charged with the lesser offense of *estupro*, as opposed to rape, contributing to impunity for rapists.

In addition to the jurisdictions which have *estupro/estupro*-like provisions, the laws in ten<sup>3</sup> jurisdictions are unclear as to whether they provide for lesser penalties in cases of non-consensual sexual intercourse with adolescents/minors or serve rather as age of consent provisions to indicate that a child below a certain age is unable to consent to sex under the law. This ambiguity in the law could potentially result in gaps in protection for non-consensual and exploitative sexual intercourse (rape) with minors, due to the lower penalties applicable as compared to the rape offense.

1 Seo, N. *Violence Against Women Increasing During Pandemic*, Voice of America, 22 August 2020, <https://www.voanews.com/covid-19-pandemic/violence-against-women-increasing-during-pandemic>; Equality Now, *COVID-19 Conversations: Virtual court hearings in Latin America*, 24 April 2020, [https://www.equalitynow.org/covid\\_19\\_lac\\_virtual\\_court\\_hearings](https://www.equalitynow.org/covid_19_lac_virtual_court_hearings)

2 Aguas Calientes (Mexico), Bolivia, Chile, Cuba, Ecuador, El Salvador, Estado de Mexico (Mexico), Honduras, Nuevo Leon (Mexico), Panama, Paraguay, Peru, San Luis Potosí (Mexico), Tlaxcala (Mexico), Uruguay, Venezuela, Virginia (U.S.). For more information, please see page 22 (Problems With National Laws, *Estupro* & Similar Provisions)

3 Belize, California (U.S.), Costa Rica, Dominica, Grenada, Maryland (U.S.), Nicaragua, St. Kitts and Nevis, Saint Vincent and the Grenadines and Suriname.



## KEY FINDING 2:

### Limited Definitions of Sexual Violence contribute to Impunity for Perpetrators

The rape laws in over half of the jurisdictions surveyed (23 out of 43 jurisdictions) require the use of additional violence, threat or the victim's physical helplessness, incapacity or inability to resist as key elements of rape, as opposed to being based on lack of consent to the sexual act. Requiring a victim to prove additional violence significantly limits the extent to which rapes can successfully be prosecuted. In addition, two jurisdictions<sup>4</sup> fail to define what constitutes rape, which inhibits successful prosecution of rape cases.

Even amongst jurisdictions which have consent-based definitions of rape, only six jurisdictions<sup>5</sup> include comprehensive definitions of consent that take into account the surrounding circumstances, including the role played by coercion, in their penal codes.

*Laws criminalizing rape should recognize and represent that the hallmark of a lawful sexual act is active and willing consent.*

<sup>4</sup> St. Kitts and Nevis and Haiti. Please see p. 34 (Ambiguity in the Definition) for more details.

<sup>5</sup> Argentina, Canada, Colombia, Guyana, Peru and Saint Lucia

## KEY FINDING 3:

### Additional Roadblocks to Accessing Justice

Legal systems in the Americas also have a number of other problematic provisions in law and practice which serve to deny justice to survivors including through:

- Failure to fully criminalize marital or intimate partner rape
- Short statutes of limitation which limit the time during which legal proceedings for rape cases may be initiated
- Ineffective implementation of sexual violence laws
- Laws which allow for release of the perpetrator in certain circumstances such as by marriage to the victim, reconciliation or forgiveness from the victim
- Laws which require initiating an investigation into certain crimes of sexual violence only upon a victim's claim or complaint (lack of *ex officio* prosecution)
- Procedural restrictions on minors' ability to report crimes of sexual violence

# RESEARCH FRAMEWORK

## METHODOLOGY

**This report analyzes the gaps and loopholes in the laws on sexual violence in the Americas, which allow for potential impunity for perpetrators of sexual violence crimes. In particular, research was conducted to examine the following issues:**

1. the existence and application of *estupro* and other similar provisions which discriminate against adolescents;
2. the legal definition of rape (particularly the existence of any requirement to show additional force or violence to prove rape);
3. other legal provisions which impede access to justice for sexual violence survivors such as statutes of limitation and laws permitting marital rape.

The laws analyzed are of 43 jurisdictions from 35 independent countries across the region, all of which are member States of the Organization of American States (OAS).<sup>6</sup> Links to relevant legislation are provided in the Annex to this report. Of the 43 jurisdictions covered, five are selected states or territories of the United States of America and five are selected states of Mexico, which have been included to provide examples of laws applicable in a federal legal structure where states/territories are able to implement their own laws on sexual violence.<sup>7</sup> While we have not covered every country, state or territory in the region, it is not unreasonable to expect that further investigation into the remaining jurisdictions particularly states in a federal system and territories, including in Mexico and the United States, will reveal similar findings to those documented here.



<sup>6</sup> These countries are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico (Federal and selected states), Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America (Federal and selected states and territories), Venezuela and Uruguay.

<sup>7</sup> The states/territories of the United States of America which are included in this report are: California, Maryland, New York, Puerto Rico and Virginia. The states of Mexico which are included in this report are Aguas Calientes, Estado de Mexico, Nuevo Leon, San Luis Potosí and Tlaxcala.

## Federal Laws in Mexico and the United States of America

This report refers to the laws of selected states in Mexico and the U.S. since the federal criminal laws in these countries apply in very limited circumstances. Despite the limited applicability of the federal laws, they do sometimes play an important role in setting a model legislation for federated states to follow. Since in both cases they include certain outdated and discriminatory provisions it is important that the federal laws be amended also to comply with international standards. For instance, the Federal Penal Code of Mexico contains an *estupro* provision, whereby sexual intercourse with a person between the ages of 15-18 with deceit is punished with a lower penalty of imprisonment of 3 months - 4 years (as compared to 8-20 years for rape).<sup>8</sup> Further, the definition of rape in the federal law is based on force, requiring physical or moral<sup>9</sup> violence (unless the victim is incapable of understanding the act or is unable to resist).<sup>10</sup>

The United States Federal Criminal Code also includes a marital exception to the statutory rape of a minor between the ages of 12-16, which means that the federal law condones and enables child marriage and child rape.<sup>11</sup> Furthermore, The Immigration and Nationality Act does not set a minimum age to petition for a foreign spouse or fiancé(e) or to be the beneficiary of a spousal or fiancé(e) visa.<sup>12</sup> This protection gap allows for American girls to be exploited for their citizenship and girls around the world to be coerced to the U.S. and raped all under the pretense of marriage.

The methodology consisted of desk research which drew from applicable national laws on sexual violence (in Spanish, Dutch, French and English), as well as existing reports and studies published by international human rights organizations, official documents, reports and submissions to international and regional human rights mechanisms, and other reputable sources.

Issues relating to implementation of laws related to sexual violence, practices and policies which may impede access to justice for survivors are important factors that have not been fully researched here and need to be explored further. However, case studies from our work or from the work of our partners, and interviews with local and regional experts have been used to illustrate the impact of discrimination in the laws on sexual violence as well as to provide a glimpse of the practical barriers to accessing justice which arise from weak or bad implementation of sexual violence laws. They show how much more needs to be done particularly to dismantle prejudicial stereotypes in order for justice to be achieved and for those coming forward not to be revictimized.

8 Article 262, Federal Penal Code of Mexico, [https://www.sspc.chiapas.gob.mx/leyes/federal/LEY\\_ORGANICA\\_DEL\\_PODER\\_JUDICIAL\\_DE\\_LA\\_FEDERACION.pdf](https://www.sspc.chiapas.gob.mx/leyes/federal/LEY_ORGANICA_DEL_PODER_JUDICIAL_DE_LA_FEDERACION.pdf)

9 Moral violence, in relation to the definition of rape, is not clearly defined under the law and while the Mexican Supreme Court has rendered decisions finding moral violence in some cases, it has not developed a standard definition

10 Article 265, Federal Penal Code of Mexico, [https://www.sspc.chiapas.gob.mx/leyes/federal/LEY\\_ORGANICA\\_DEL\\_PODER\\_JUDICIAL\\_DE\\_LA\\_FEDERACION.pdf](https://www.sspc.chiapas.gob.mx/leyes/federal/LEY_ORGANICA_DEL_PODER_JUDICIAL_DE_LA_FEDERACION.pdf).

11 18 United States Code Section 2243.

12 8 United States Code Section 1101.

13 See for example the section on "Violence" in Equality Now, *Words and Deeds: Holding Governments Accountable in the Beijing +25 Review Process*, 2020, [https://www.equalitynow.org/words\\_and\\_deeds\\_beijing25\\_report](https://www.equalitynow.org/words_and_deeds_beijing25_report); for examples of laws addressing violence against women and girls which are discriminatory.

Perpetrators of sexual violence are almost exclusively male and the vast majority of victims are women and girls. Many laws also contain explicit discrimination against women.<sup>13</sup>

This report is therefore written from these perspectives, that is on the analytical assumption that rape is a form of gender-based violence and that the criminal justice system relating to rape requires a gender-sensitive approach. However, we recognize that sexual violence against men and boys is largely unreported and unexplored, which, together with the prevailing patriarchal attitudes toward male rape, often undermine their right to effective access to justice. The same patriarchal structures and attitudes that perpetuate sexual violence against women and girls, and keep men and boys from reporting when it happens to them, also make trans people highly vulnerable to such violence. **All victims of sexual violence, regardless of sex or gender identity, have the right to receive equal justice and full protection of the law. Laws and the criminal justice system should provide accordingly.**

# APPLICABLE INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

International legal human rights frameworks guarantee the right of all women and girls to live a life free from violence, including sexual violence, and we have benchmarked our analysis against them. The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, ratified by all States in the Americas region except the United States, together with General Recommendations 19<sup>14</sup> and 35<sup>15</sup> of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) requires all States to “repeal all national penal provisions which constitute discrimination against women.”<sup>16</sup> This principle also applies to repealing any discriminatory definitions of rape and other forms of sexual violence, as well as to the laws related to the prosecution and punishment of sexual violence.

The **International Covenant on Civil and Political Rights**, ratified by all States in the Americas region except Cuba, St. Kitts and Nevis and Saint Lucia, read with General Comments 20<sup>17</sup>, 28<sup>18</sup> and 32<sup>19</sup> requires all States to repeal discriminatory laws as well as ensure effective access to justice for victims whose rights have been violated (including victims of sexual violence). Governments must also ensure their people are able to live a life free from sexual violence in order to meet the obligations set out in the **United Nations 2030 Agenda for Sustainable Development**, particularly Sustainable Development Goal (SDG) 5: Achieving Gender Equality, and SDG 16: Peace, Justice and Strong Institutions.<sup>20</sup>

In the Americas region, the two main instruments applicable for ending violence against women and girls are the **American Convention on Human Rights**<sup>21</sup> and the **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the Belém do Pará Convention)**.<sup>22</sup> The Belém do Pará Convention was the first regional treaty specifically aimed at eliminating violence against women and girls, and has been ratified by all of the OAS member States, except Canada, Cuba, and the United States. All States which have ratified the Belém do Pará Convention have the obligation to adopt policies to prevent, punish and eradicate violence against women, and to act with all due diligence to prevent, investigate and punish violence against women.<sup>23</sup> Further, States are required to ensure that all laws, practices, and policies relating to violence against women follow principles of equality and non-discrimination.<sup>24</sup>

The interpretation of the Belém do Pará Convention by the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), as well as jurisprudence emanating from the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, which are also charged with holding States accountable to the American Convention and the American Declaration on the Rights and Duties of Man, have also set standards for States to observe.

14 Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence against women*, 1992.

15 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 2017.

16 Article 2, Convention on the Elimination of all forms of Discrimination against Women.

17 Human Rights Committee, General Comment No. 20 available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fC-CPR%2fGEC%2f6621&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fC-CPR%2fGEC%2f6621&Lang=en)

18 Human Rights Committee, General Comment No. 28 available at [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_21\\_Rev-1\\_Add-10\\_6619\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_21_Rev-1_Add-10_6619_E.pdf)

19 Human Rights Committee, General Comment No. 32 available at <https://digitallibrary.un.org/record/606075?ln=en>

20 See in particular, Targets 5.1 “End all forms of discrimination against all women and girls everywhere”; 5.2 “Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation;” and 5.C “Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”; and Targets 16.1 “Significantly reduce all forms of violence and related death rates everywhere;” 16.2 “End abuse, exploitation, trafficking and all forms of violence against and torture of children;” 16.3 “Promote the rule of law at the national and international levels and ensure equal access to justice for all”.

21 Articles 5 and 7 of the American Convention on Human Rights establish the obligation to guarantee respect for the physical, mental and moral integrity of all people and assure that all people can enjoy their right to freedom and personal safety. American Convention on Human Rights available at <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

22 The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “Convention of Belém do Pará” available at <https://www.oas.org/en/mesecvi/convention.asp>.

23 Article 7, Convention of Belém do Pará.

24 Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Declaration on Violence against Women, girls and adolescents and their sexual and reproductive rights*, MESECVI/CEVI/DEC.4/14

With regard to the definition of sexual violence, General Recommendation 35 of the CEDAW Committee provides that the definition of sexual crimes, including rape, should be based on lack of freely given consent, and take account of coercive circumstances.<sup>25</sup> The CEDAW Committee in the case of *Karen Tayag Vertido v. the Philippines* reflects standards developed by the International Criminal Court and the European Court of Human Rights, among others, suggesting that the State should remove the criterion of violence from the definition of rape and giving a recommendation on how the definition of rape should

be enacted.<sup>26</sup> The United Nations has also provided informative guidance on States' obligations to address sexual violence, through the work of the UN Working Group on Discrimination against Women and Girls and the UN Special Rapporteur on Violence against Women.<sup>27</sup> The UN Women Virtual Knowledge Centre to End Violence Against Women and Girls has also developed guidance on drafting effective legislation on violence against women and girls, including specifically on sexual violence (UN Women Guidelines).<sup>28</sup>

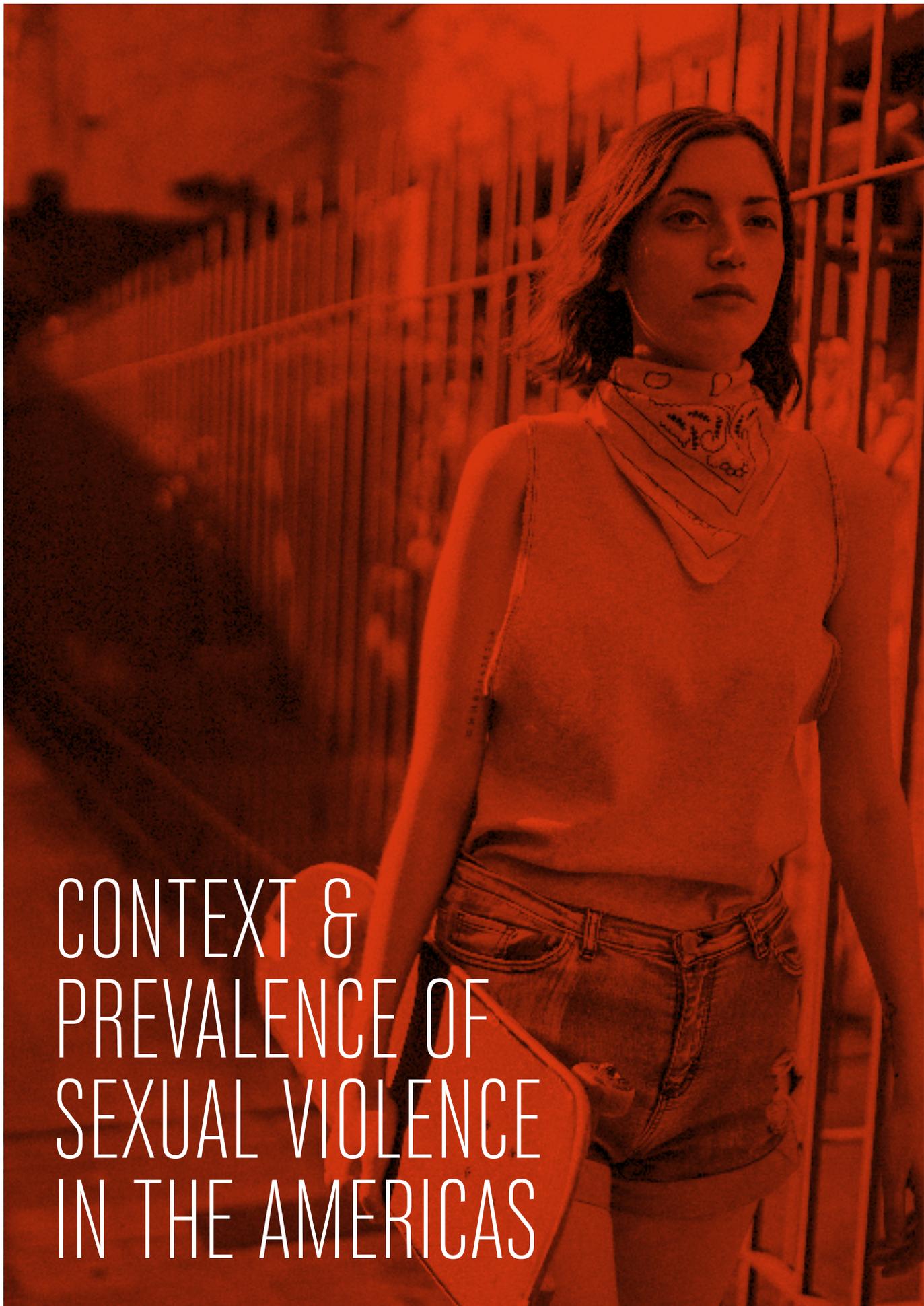


25 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 2017. [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf).

26 *Karen Tayag Vertido v. The Philippines*, CEDAW, Communication No.18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010), § 8.9(b)(ii). <https://juris.ohchr.org/Search/Details/1700>

27 Equality Now, *Rape as a grave and systematic human rights violation and gender-based violence against women*, UN Special Rapporteur on violence against women, its causes and consequences Expert Group Meeting, May 2020, [https://www.equalitynow.org/rape\\_human\\_rights\\_violation\\_gbv\\_sr\\_egm\\_2020](https://www.equalitynow.org/rape_human_rights_violation_gbv_sr_egm_2020).

28 United Nations Women, *Handbook for Legislation on Violence against Women*, 2012, <https://www.unwomen.org/en/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women>



CONTEXT &  
PREVALENCE OF  
SEXUAL VIOLENCE  
IN THE AMERICAS

# PREVALENCE OF SEXUAL VIOLENCE

Sexual violence is never acceptable. Yet, sexual violence against women and girls in the Americas is pervasive and widespread, with high rates being reported across the Americas region. Data released by the World Health Organization in 2021 comparing global and regional prevalence estimates of sexual violence demonstrate that prevalence of both combined intimate partner violence and non-partner sexual violence, as well as prevalence of non-partner sexual violence is higher in the Americas region as compared to global estimates.<sup>29</sup>

	Global	Americas region <sup>30</sup>
<b>Lifetime prevalence of physical and/or sexual intimate partner violence or non-partner violence</b>	<b>31%</b>	<b>33%</b>
<b>Lifetime prevalence of non-partner sexual violence</b>	<b>6%</b>	<b>11%</b>

Adolescent girls are particularly vulnerable to sexual violence. UNICEF estimates that globally around 15 million adolescent girls aged 15-19 have experienced “forced sex”.<sup>31</sup> Though reliable prevalence estimates of sexual violence against girls and adolescents are scarce in Latin America and the Caribbean (LAC), country-level surveys in a number of countries have indicated high rates of sexual violence against girls and adolescents, most often perpetrated by persons known to the victims, often trusted caregivers.<sup>32</sup> For instance, a study by the Pan American Health Organization (PAHO) of 12 selected countries from LAC analyzed the prevalence data of violence against women and girls aged 15-49.<sup>33</sup> It found that the prevalence of physical or sexual intimate partner violence over a 12 month period was highest among adolescents aged 15-19 in all countries except the Dominican Republic and Peru, where prevalence was highest among women aged 20-24. In the majority of countries, prevalence reported by women in younger age groups was almost twice as high as prevalence reported by older women.<sup>34</sup>

Similarly, in the United States, where almost 1 in 5 women have reported being raped at least once in their lifetime, the vast majority (78.7%) of women reported that their first rape occurred before they were aged 25 years. More than 40% were raped before the age of 18, indicating that a significant proportion of sexual violence in the United States is towards young women and adolescent girls.<sup>35</sup>

Further evidence of the prevalence of sexual violence is the increasing number of pregnancies in young and adolescent girls. LAC is the only region in the world with an upward trend in births among girls younger than 15 years; it also has the second highest rate of adolescent pregnancies in the world.<sup>36</sup>

29 World Health Organization, *Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women*. Geneva, 2021. <https://www.who.int/publications/i/item/9789240022256>

30 The countries included by WHO in the Americas region for intimate partner violence prevalence estimates are: Argentina, Belize, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Suriname, Venezuela. The countries included in the non-partner sexual violence estimates are: Argentina, Belize, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Paraguay, Peru, Suriname.

31 United Nations Children's Fund, *A Familiar Face: Violence in the lives of children and adolescents*, UNICEF, 2017, <https://data.unicef.org/resources/a-familiar-face/>

32 Contreras, J.M., et al. *Sexual Violence in Latin America and the Caribbean: A Desk Review*, Sexual Violence Research Initiative, 2010, [www.paho.org/hq/dmdocuments/2010/sexual\\_violence\\_LA\\_Caribbean\\_e.pdf](http://www.paho.org/hq/dmdocuments/2010/sexual_violence_LA_Caribbean_e.pdf), pp. 28-30

33 The twelve countries covered were Bolivia (Plurinational State of), Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Paraguay, and Peru.

34 Pan American Health Organization, Centers for Disease Control, *Violence Against Women in Latin America and Caribbean: A comparative analysis of population-based data from 12 countries*, 2012, <https://www.paho.org/hq/dmdocuments/2014/Violence1.24-WEB-25-febrero-2014.pdf>

35 Waechter, R., & Ma, V, Sexual Violence in America: Public Funding and Social Priority, *Am J Public Health*, 105(12), 2430–2437, 2015, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4638240/>.

36 Pan American Health Organization & United Nations Population Fund (UNFPA), *Adolescent Pregnancy in Latin America and the Caribbean*, August 2020, [https://lac.unfpa.org/sites/default/files/pub-pdf/final\\_dec\\_10\\_approved\\_policy\\_brief\\_design\\_ch\\_adolescent.pdf](https://lac.unfpa.org/sites/default/files/pub-pdf/final_dec_10_approved_policy_brief_design_ch_adolescent.pdf)

The COVID-19 pandemic has also exacerbated the incidence of sexual violence against women and girls worldwide, including in the Americas. Data show that since the outbreak of COVID-19, violence against women and girls has intensified.<sup>37</sup> Strict quarantine and lockdown measures implemented by governments has resulted in women and girls experiencing increased exposure to abusers in their homes. Access to and availability of shelters and services have also been severely limited due to these measures.<sup>38</sup> In Peru, for example, calls to the national hotline for victims of domestic and sexual violence more than doubled from March through June 2020.<sup>39</sup> In Colombia, an increase of 51% was recorded in reported cases of family violence, while the city of Rio de Janeiro in Brazil also reported an increase of 50% in complaints of gender-based violence during the quarantine.<sup>40</sup> Similar increases were seen across the region.

Finally, the context of poverty renders many women and girls particularly vulnerable to sexual exploitation. This is evident in the Caribbean for example, where there is a pervasive problem of so-called transactional sex between girls aged 12 to 15, sometimes younger, with much older men in their thirties and up into their sixties.

*“The girl becomes an income generating asset for the family and is viewed as a commodity. Many families turn a blind eye to this sexual exploitation, some even encourage it, while the wider community generally sees nothing wrong with the situation.”*

*Jennifer Jones, a sociologist in Jamaica and one of the authors of a recent study, “The Stress Test: The Impact of the Pandemic on Domestic and Community Violence”*



37 UN Women, *COVID-19 and Ending Violence Against Women and Girls*, 2020, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>.

38 UNICEF, *COVID-19 - GBV Risks to Adolescent Girls and Interventions to Protect and Empower them*, 2020, <https://www.unicef.org/media/68706/file/COVID-19-GBV-risks-to-adolescent-girls-and-interventions-to-protect-them-2020.pdf>. See also, *Mujeres en confinamiento - Violencia contra las mujeres: La Pandemia Invisible* (lalupa.press).

39 Godoy, M., *The Women Of Peru Are Suffering From A “Shadow Pandemic,”* NPR, 10 September 2020, <https://www.npr.org/sections/goatsandsoda/2020/09/10/910737751/the-women-of-peru-are-suffering-from-a-shadow-pandemic>.

40 UN Women, *Strategies for the Prevention of Violence against Women in the context of COVID-19 in Latin America and the Caribbean*, April 2020, <https://www2.unwomen.org/-/media/field%20office%20americas/documentos/publicaciones/2020/05/un%20women%20violence%20prevention%20brief%20ingles.pdf?la=en&vs=251>

## The Widespread Problem of Incest in the Americas

The particular vulnerability of children, including adolescents, combined with patriarchal household structures and the subordination of women and girls within the family, help perpetuate a culture of incest. Incest is widespread in the Americas, as it is in many parts of the world. In the United States, it is estimated that one in three girls are sexually abused before they turn 18, and that the majority of this abuse happens within the family.<sup>41</sup> Data from Bolivia estimate that in 2019, 80% of the cases of sexual abuse against children and adolescents were committed by adults in the family or adults that children and adolescents perceived as members of their family.<sup>42</sup>

*“Incest was the first form of institutional abuse, and it remains by far the most widespread.”<sup>43</sup>*

Despite its prevalence, incest is often concealed under a cloak of silence because of the shame and disgrace that can accompany its disclosure.<sup>44</sup> Further, there can be confusion generated by the affection and respect the victim feels towards their abuser; fear of not being believed, or of the abuser taking revenge.<sup>45</sup> Additionally, victims of incest are often unaware of their legal rights or even that what happened to them was a crime. As a result, the incidence of incest is often widely underreported.



41 Fontaine, M., *America Has an Incest Problem*. The Atlantic, 24 January 2013, <https://www.theatlantic.com/national/archive/2013/01/america-has-an-incest-problem/272459/>.

42 Data collected by Fundación Una Brisa de Esperanza. See also Zulema Alanes Bravo, *Sexual Violence against Girls and Adolescents: The Pending Idea of (In)justice*, Fides Agency, 10 December 2017.

43 Fontaine, M., *America Has an Incest Problem*, The Atlantic, 24 January 2013, <https://www.theatlantic.com/national/archive/2013/01/america-has-an-incest-problem/272459/>.

44 Jones, A., & Jemmott, E., *Child Sexual Abuse in the Eastern Caribbean: Issues for Barbados. The report of a study carried out across the Eastern Caribbean during the period October 2008 to June 2009*. Research Report. University of Huddersfield, Action for Children and UNICEF, (2019), <http://eprints.hud.ac.uk/id/eprint/9617/>.

45 See Maria López Vigil, *The Silence about Incest Needs to Be Broken*, Envío Digital No. 230 (Sept. 2000) available at: <https://www.envio.org.ni/articulo/1445>

# INADEQUATE LEGAL FRAMEWORKS & POLICIES TO ADDRESS SEXUAL VIOLENCE

As noted by MESECVI, all countries in the region have a law or public policy to protect against or punish violence against women.<sup>46</sup> However, despite many jurisdictions overhauling much of their legal framework in the twentieth century, traditional and religious norms continue to shape politics and policy on issues related to family and sexuality.<sup>47</sup> This results in policy that is based on concepts of morality and honor, as opposed to gender equality, principles of non-discrimination and universal human rights.

As this report shows, there are still serious failings in laws aimed at preventing and addressing sexual violence. The laws on sexual violence in many of the jurisdictions surveyed are badly worded, insufficient, inconsistent, and sometimes even promote violence. Laws in some countries use abstract or vague language with respect to what constitutes an act of sexual violence, often relying on outdated and stereotypical notions of violence and sexuality.<sup>48</sup> Some laws even employ language which is derogatory. For example, the rape laws of countries such as Barbados, Belize, Grenada and St. Kitts and Nevis, still refer to women and girls with mental or intellectual impairments as “idiots” or “imbeciles”.

Inadequate or discriminatory laws on sexual violence or weak definitions of rape can contribute to the continued pervasiveness of sexual violence as well as impunity for perpetrators. Recognizing the importance of strong laws in preventing and addressing sexual violence, international and regional human rights mechanisms have consistently highlighted the obligation of States to ensure that laws on sexual violence prohibit all forms of violence, are not discriminatory towards women and girls, and do not cause, promote or justify sexual violence or perpetuate impunity for these acts.<sup>49</sup>

In addition to protection gaps in the law itself, the persistence of patriarchal cultural norms and harmful gender stereotypes normalizes sexual violence and contributes to discriminatory and inadequate implementation of the law, as well as impedes the ability of women and girls to access justice in cases of sexual violence.

**“There are underlying rape myths that affect the police investigation process. For example, the belief that someone who is sexually active has a higher rate of false reporting, even though we know statistically this isn’t the case... [there is] a reproduction of rape myths throughout the legal system.”**

*Professor Amanda Dale, International human rights scholar and activist, Canada*

These patriarchal norms and stereotypes also contribute to low levels of reporting of crimes of sexual violence. It is estimated that only 5% of adult female victims of sexual violence in Latin America and the Caribbean report the incidence to the police,<sup>50</sup> while global estimates show that only 1% of adolescent girls seek help for incidents of sexual violence.<sup>51</sup> These low rates of reporting of sexual violence are caused by various factors including shame, fear of discrimination, fear of reprisals from the perpetrator or their family, lack of faith in law enforcement, and cultural norms and harmful gender stereotypes which blame the victim for the assault (often exacerbated when the victim is a young or adolescent girl).

The Caribbean has some of the highest reported rates of sexual violence in the world. Survivors who live on islands,

46 MESECVI, *Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Prevention of violence against women in the Americas: Paths to follow*, (2017), p. 39, available at <https://www.oas.org/en/mesecevi/docs/TercerInformeHemisferico-EN.pdf>

47 Boesten, J., Sexual Violence against Minors in Latin America. European Parliament. 2016, at p12. [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578023/EXPO\\_STU\(2016\)578023\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578023/EXPO_STU(2016)578023_EN.pdf)

48 Inter-American Commission of Human Rights, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, (2019), at para. 176, <https://www.oas.org/en/iachr/reports/pdfs/ViolenceWomenGirls.pdf>

49 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 2017. [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

50 Contreras, et al, *Sexual Violence in Latin America and the Caribbean*, at p. 9.

51 United Nations Children’s Fund, *A Familiar Face: Violence in the lives of children and adolescents*, UNICEF, 2017, <https://data.unicef.org/resources/a-familiar-face/>

including, for example, Barbados and Bermuda<sup>52</sup>, face unique challenges and seemingly insurmountable social barriers when it comes to accessing justice. That is because living on an island, survivors can feel they are never able to escape their perpetrators and fear the repercussions of speaking out within a community that is so small and closely connected. For example, due to the small size of Barbados' population there were concerns and pushback over creating a sexual offences registry. It is important to recognize how geography and population size can exacerbate the challenges faced by survivors of sexual violence.

***“Barbados is small enough that it can take just one phone call to stop you getting a job. This prevents a lot of people from disclosing because they worry about the harm it could do to their career.”***

*Leigh-Ann Worrell, an academic and Project Coordinator at the Institute for Gender and Development Studies, and Nita Barrow Unit, part of the University of the West Indies, Barbados.*

Overall, many of the jurisdictions in the region fail to prioritize ending violence against women and girls, whether directly through their policies or indirectly through administrative means such as budgetary allocations. Improving access to justice for survivors of sexual violence requires a survivor-centered, holistic approach that looks at all aspects of prevention, prosecution and support services to survivors. There should be a thorough review of all laws and policies, looking at the intersection with and impact on the equality of women and girls to ensure they are not discriminated against and that any obstacles to their full and equal participation in society are removed. All forms of sexual and gender-based violence against women and girls, including disappearances and femicide, must be unacceptable under the law. Legislation and policies addressing sexual violence also need to address the consequences of sexual violence through provision of support services, including the impact on girls continuing their education, effect on mental health, effect on physical health and the potential of contracting sexually transmitted diseases such as HIV/AIDS and other STDs and becoming pregnant.<sup>53</sup> All victims of rape should have access to emergency contraception without penalty and those made pregnant through rape should have access to safe and legal abortion.



52 Even though Bermuda is not one of the countries analyzed in this report, expert Laurie Shiell-Smith, Executive Director of Center Against Abuse, provided the context of the situation in Bermuda.

53 See Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM), *Investigación sobre la interrelación y los vínculos entre la violencia sexual y la muerte de niñas y adolescentes en la región de América Latina y el Caribe* (2010 - 2019), pending publication in 2021.

## BRISA'S STORY BOLIVIA

*A survivor of incest, who was failed and revictimized by the State and still awaits a fair trial at the national level, is now as a lawyer working to end sexual violence while her own case is pending before the Inter-American Court of Human Rights (IACtHR)*

I was 15 years old the first time my 27-year-old cousin Eduardo molested me. I was petrified, totally numb. I couldn't react. I didn't understand what was going on. After that he raped me daily for eight months and brainwashed me into not telling anyone. He knew exactly how to control and manipulate me into staying silent, threatening to rape my little sisters and telling me it would destroy my parents if they knew what was happening.

I developed eating disorders and passed the days crying alone in my room. I tried to commit suicide. My parents knew something was wrong, but never suspected sexual violence. They took me to a special psychology center and that is where I disclosed what had been happening.

My parents and siblings were devastated. My parents were dismayed that they hadn't realized what was happening right in front of them and grieved that they hadn't been able to protect their daughter. After I broke the silence, a whole new world of self-blame opened up, which there shouldn't have been. My parents did the best they could. None of this was our fault, but the guilt persisted.

My parents became diehard champions of getting justice for me. Because I was one of the first adolescents to take a rape case to trial in Bolivia, we faced a lot of resistance. In Bolivia, victims of sexual violence are often blamed, and it is assumed that they had done something to deserve it. My parents begged dozens of lawyers to represent me and were repeatedly told, "I won't shame my name defending a rape victim." People said my case was a lost cause.

The judges didn't want to take my case either, which was shuffled from court to court over 20 times. That gave us great insight into how rape victims were and still are seen in Bolivia – as totally worthless.

When I eventually approached the prosecutor for help, she blamed me for the rape and humiliated me. She made me tell my story over and over again and subjected me to a grueling interrogation. She said she wouldn't stop until she discovered the lies, and that once she found them,

she would put me in jail. After hours of questioning, she told me, "You are a very selfish person. Don't you think about your family? Don't you feel bad that the man you are accusing could go to jail for seven years?"

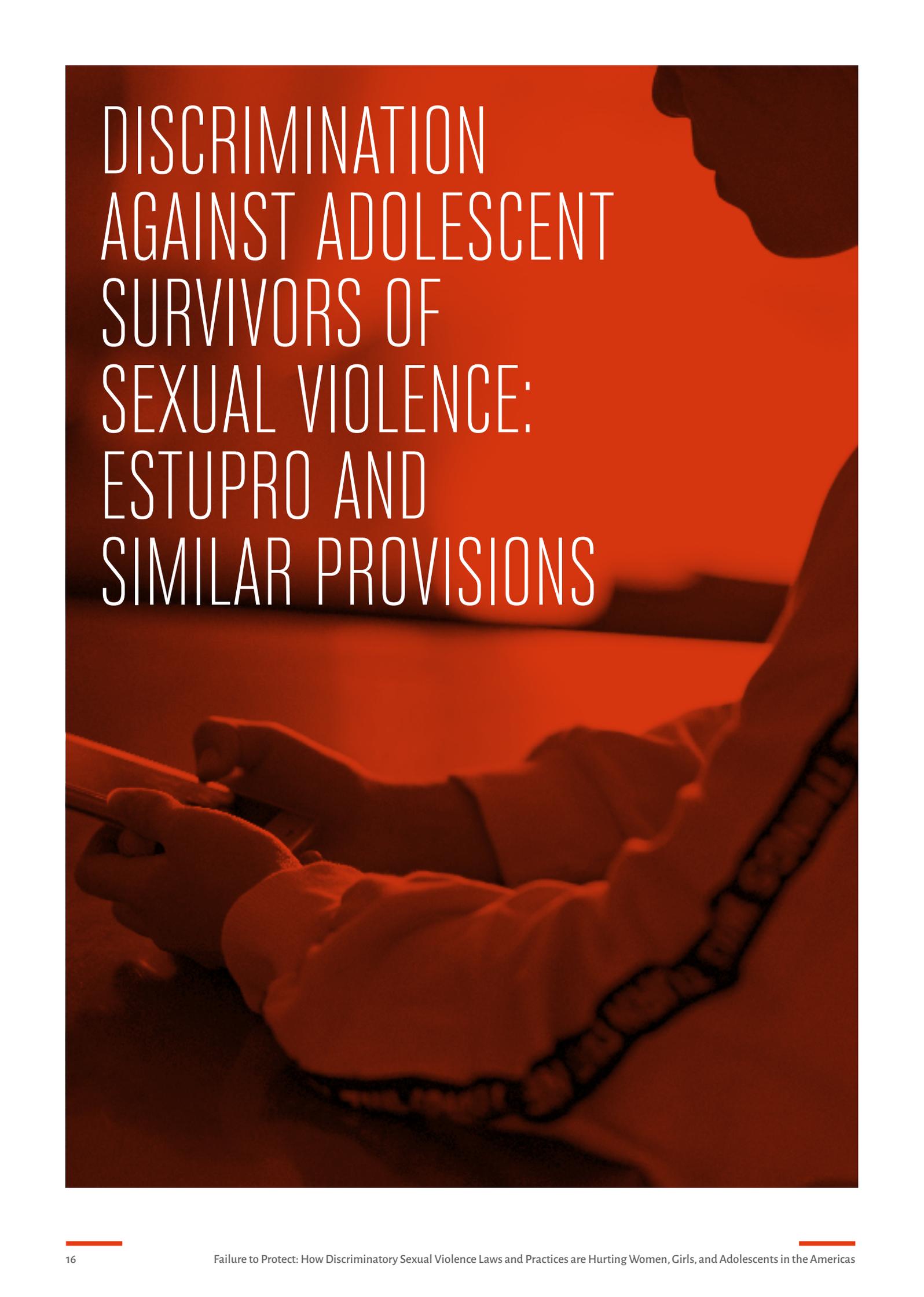
My forensic exam was a nightmare. A male doctor accompanied by five male medical residents conducted my exam. They made fun of me as I stripped naked. They ordered me to lie on the exam table and then forced my legs open as the doctor probed in my vagina. This horrific exam occurred in a room with open windows. I was exposed to onlookers in the hall.

During the next few months, I went to various psychologists and attended so many meetings with lawyers and prosecutors that I lost count. My parents cried almost every evening, and spent countless hours doing legal research and gathering evidence. They did the work that the prosecutors and lawyers failed to do.

After years of this horror, I decided to become a lawyer to take my own case, as nobody else would help. I have dedicated my life to advocating for survivors of sexual violence and reforming the legal system so that it holds perpetrators accountable rather than revictimizing survivors.

I'm working to shape a society where sexual violence doesn't happen anymore; where girls are safe and don't have to fear their fathers, brothers, uncles, grandfathers, cousins, teachers, doctors, priests, pastors, or neighbors. It has to stop.

*\*Though Brisa wanted to bring rape charges against her cousin, the judge in her case used his discretion to reduce the charge of rape to one of estupro. Having failed to obtain justice before the national courts, Brisa has taken her case all the way to the Inter-American Court on Human Rights, where it is still pending. But, at the time of this report and almost two decades after she first reported the abuse, Brisa's abuser has still not been brought to justice.*



# DISCRIMINATION AGAINST ADOLESCENT SURVIVORS OF SEXUAL VIOLENCE: ESTUPRO AND SIMILAR PROVISIONS

# THE DISCRIMINATORY PROVISION OF ESTUPRO

Despite the increased vulnerability of adolescent girls to sexual violence, rather than providing additional protection to address their special needs, the response of the criminal justice system has been sorely lacking in many cases across the region. One of the main ways by which adolescent survivors of sexual violence are discriminated against in the Americas is through the use of provisions commonly known as ‘*estupro*’.<sup>54</sup> These discriminatory provisions provide for a lesser penalty for men, usually adults, who rape adolescents who are above the legal age of consent but under a certain age (usually 14 to 18).

The concept of *estupro* dates back centuries, with cases recorded as far back as the 1600s.<sup>55</sup> It is grounded in cultural and legal traditions and stereotypes in which women and girls were expected to be chaste, and sex outside of marriage was an extreme taboo for the female sex. *Estupro* and similar crimes evolved to punish men who had sex with women or girls who were not their wives through deception, by “seducing” them or promising them marriage.<sup>56</sup> Until relatively recently, a number of *estupro* provisions were still based on outdated concepts of morality and made reference to being an “honest woman,” presumably referring to a woman’s virginity.<sup>57</sup> While some of these provisions were repealed or amended, a few countries still use language based on morality in their *estupro* offenses, such as requiring the victim to be a “maiden” (Uruguay), be “sexually inexperienced” (Chile) or be “honest” (Venezuela).

Irrespective of whether *estupro* provisions contain explicit references to concepts of chastity and morality or not, they remain flawed because they create a hierarchy of sexual violence, as evidenced by the lower penalties applicable. The penalties prescribed under *estupro* provisions are generally very low in any case, and are not commensurate with the severity of the crime. The difference in punishment for *estupro* against adolescent girls compared to rape is notable in many jurisdictions.

In countries with *estupro* or *estupro*-like provisions in their rape laws, the lesser offense of *estupro* is often used to circumvent application of the rape offense, either through the exercise of prosecutorial discretion to charge the accused with *estupro* as opposed to rape or through the use of judicial discretion to reduce charges of rape to that of *estupro*. This misuse of the *estupro* provision by criminal justice system officials denies justice to adolescent victims of rape, and through it prosecutors and judges perpetuate the myth that it is adolescent girls who are treacherously seductive and manipulative, preying on helpless adult men. These harmful myths and gender stereotypes

have far-reaching impacts. They create an enabling environment for further discrimination against adolescent girls in particular, and women in general. *Estupro* provisions also ignore the unequal power dynamics between adolescents and adults which make adolescents especially vulnerable to coercion and victimization.

In some jurisdictions, the offense of *estupro* is often (though not exclusively) used when the extremely onerous elements of the rape offense are not met. For example, both Bolivia and Paraguay have rape definitions which require the use of additional

physical violence or intimidation. Thus, experts from these jurisdictions have noted that in cases of sexual violence where there is no evidence of additional physical force being used, the *estupro* provision is often applied, as the alternative would be complete impunity for the perpetrator.

Accordingly, repeal of discriminatory *estupro* provisions must be accompanied by a complete overhaul of sexual violence laws including adopting consent-based definitions of rape (as discussed further in the next chapter), to ensure that adolescent girls are protected from sexual violence in all circumstances. While existing *estupro* provisions remain in the statute books, prosecutors and judges should ensure that acts of sexual violence against adolescent girls which meet the threshold of the rape definition should always be prosecuted/charged as rape and not *estupro*.

54 Although some jurisdictions use the term *estupro* in the law, not all jurisdictions refer to this as such. In this report, when using the term *estupro* we are referring both to explicit *estupro* provisions and also to provisions that may be called something different but whose effect is similar. Additionally, it is important to note that the term for “rape” in Portuguese is “*estupro*”, which is different from the term *estupro* as described and used in this report.

55 Tortorici, Z., *Sexual Violence, Predatory Masculinity, and Medical Testimony in New Spain*. *Osiris*, 30(1), 272–294, 2015, [www.jstor.org/stable/10.1086/683023](http://www.jstor.org/stable/10.1086/683023)

56 Walker, G., *Sexual violence and rape in Europe, 1500–1750*. In: Fisher, Kate and Toulalan, Sarah eds. *The Routledge History of Sex and the Body, 1500 to the Present*, Routledge Histories, London and New York: Routledge, 2013, pp. 429–443.

57 Until 2009, Guatemala had two *estupro* provisions, both of which required that the victim be an “honest woman.” The penalty for *estupro* ranged from 6 months to 2 years. In Ecuador, until the penal code was reformed in 2005, the *estupro* provision required that the victim be an “honest person.”

## PAOLA'S STORY ECUADOR

*As told by her mother, Doña Petita, who faced the femicide of her daughter after the school's vice principal exploited his unequal power dynamic with her daughter*

My daughter Paola was a very active and affectionate girl growing up. She was very close to her family and if any of them ever needed help she was always there for them. Paola and I would talk everyday together but I didn't realize that there was so much she wasn't able to tell me.

I was washing clothes when I first got the news. I remember the telephone rang and my niece ran and answered it for me. When she returned I could tell that she was really scared and didn't want to speak. But I asked her to tell me what was wrong. "You have to go to the school right now," she exclaimed. I was confused, it was the middle of the day. That's when she told me that Paola had swallowed poison and was fighting to live.

When I arrived at the school all of the kids were crying. I rushed in to find Paola in the school's pavilion, all alone except for the Vice Principal. At that moment I didn't know that he had been raping and abusing her for months. He simply said, "Doña Petita, you have to take your daughter away right now." That's when Paola sat up and said "I'm sorry Mommy, forgive me." I never thought that the man standing there was the one who had done this to her, who had caused her so much harm.

I was at the clinic with all my family when the doctor came out and said that she hadn't made it. It was so painful, we couldn't believe that my daughter had died. But it was not until a journalist came into the room 20 minutes later and told me that Paola had been pregnant that I learned she had been sexually abused and raped. It felt like the world collapsed on top of me.

I later found out that it was the Vice Principal who had been standing over her when she was dying, who had impregnated her. Paola was a girl and he was a man in his 60s but people blamed my daughter, saying that she must have seduced him. They didn't understand that he was an old man manipulating her and not the other way around. She was the victim.

We didn't get any support. Not from the school, nor the authorities. No one. No one even tried to hold him accountable because he was the Vice Principal and a very powerful man in the community. He had access to a lot of lawyers and resources and I was just a mother working to keep food on the table. But I didn't give up.

It was such a struggle to get justice for Paola and something I would never wish any other mother to have to go through. I was sent from one lawyer and official to the next, I was running around all the time. I was mother and father to my children and I also was taking care of my mother, but during this time I had to leave my other daughter in charge even though she was so little because looking for justice took so much time and energy. I almost gave up, it was terrible.

The case was finally brought to trial but the Vice Principal was never arrested because he fled. After pursuing three different courses of legal action, the cases were all dismissed and he ended up going free. Justice was never done for my daughter here in Ecuador.

But after 18 years, I was finally able to get justice for Paola at the Inter-American Court of Human Rights. I want to thank the lawyers at El Centro Ecuatoriano para la Promoción y Acción de la Mujer (CEPAM) because without them the case would not have gone forward. They were able to keep this fight going for 18 years. After the positive decision, I feel more calm and less desperate. I used to cry all the time but now I feel some relief. I feel glad that it is finally clear that she was the victim and that he was a monster who abused my daughter.

I hope this victory helps other mothers and daughters who are fighting for justice and that it prevents the type of abuse that happened to my Paola from occurring again.



**Estupro or Estupro-like Provisions (17):**  
 Aguas Calientes (Mexico), Bolivia, Chile, Cuba, Ecuador, El Salvador, Estado de Mexico (Mexico), Honduras, Nuevo Leon (Mexico), Paraguay, Panama, Peru, San Luis Potosí (Mexico), Tlaxcala (Mexico), Uruguay, Venezuela, Virginia (U.S.)

**Ambiguous Provisions (10):**  
 Belize, California (U.S.), Costa Rica, Dominica, Grenada, Maryland (U.S.), Nicaragua, St. Kitts and Nevis, Saint Vincent and the Grenadines and Suriname

**No Estupro provisions (16):**  
 Antigua & Barbuda, Argentina, Bahamas, Barbados, Brazil, Canada, Colombia, Dominican Republic, Guatemala, Guyana, Haiti, Jamaica, Saint Lucia, Trinidad and Tobago, New York (U.S.), Puerto Rico (U.S.)

# INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

All of the jurisdictions in the region, with the exception of the United States, have ratified the UN Convention on the Rights of the Child (CRC). The CRC mandates States to protect children from all forms of violence, including sexual abuse and exploitation as well as to establish systems to identify, report and investigate violence, abuse and exploitation, and to involve the judiciary where appropriate.<sup>58</sup> In a recent report the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, established with respect to *estupro* provisions that “the existence of a less severe offence involving teenage girls contributes to the impunity of rapists, as evidence suggests that rapists tend to be charged with the lesser offence instead of rape, if they ever face prosecution”. She recommended they be abolished.<sup>59</sup>

Additionally, the Inter-American Court of Human Rights has signaled that States, in accordance with Article 19 of the American Convention, must take greater care and responsibility, and should take special measures or precautions with the needs and rights of the child, as is required under the best interests of the child principle. In that sense, the State must pay special attention to the needs and rights of children, owing to their special situation of vulnerability.<sup>60</sup> The Inter-American Commission also notes that States are required to give adequate consideration to “the particular risks faced by girls and adolescents, as well as their additional protection needs due to the combined factors of their age and their status as women”, which results in a “reinforced duty of care” with respect to adolescent girls.<sup>61</sup> It has urged States to conduct a review and analysis of their legal frameworks, in order to remove provisions that may, because of their wording or implementation, be used to obstruct access to justice for girls who are victims of sex crimes.<sup>62</sup>

## Jurisprudence of the Inter-American Court of Human Rights on *Estupro*

Ecuador’s *estupro* provision provides a penalty of 1-3 years’ imprisonment (far lower than the penalty for rape which is imprisonment for 19-22 years) for perpetrators who resort to deceit to engage in sexual intercourse with persons between the ages of 14 and 18.<sup>63</sup> The earlier version of the law (prior to its amendment in 2005) referred to the use of seduction or deceit to engage in sexual intercourse with “an honest woman”. In a ground-breaking decision in *Guzmán Albarraçín and others v. Ecuador*,<sup>64</sup> the Inter-American Court of Human Rights addressed the issues of *estupro* and sexual violence in schools for the first time.

Paola Guzmán, the victim at the center of the case study narrated above, was raped by her school’s vice-principal, Bolívar Espín, for a period of two years, starting when she was fourteen. Despite the family’s efforts for accountability at the national level, Ecuadorian courts dismissed the criminal case, with the Superior Court of Justice finding that no crime of sexual harassment was committed because the vice principal “did not pursue Paola Guzmán. Rather, she was the one who sought favors from him as an educator”, this being the “reason for the seduction”.

In its decision, the Inter-American Court referred to Article 24 of the American Convention, which “also prohibits discrimination derived from any inequality resulting from domestic laws or their application.” The Inter-American Court found that Ecuador’s earlier *estupro* provision was based on prejudicial gender stereotypes and focused on the presumed conduct of an adolescent in this situation based on such stereotypes, that is one of provocation, instead of on the actions of the perpetrator. Accordingly, the discriminatory *estupro* law violated Ecuador’s obligation under Article 24 of the American Convention to ensure equal protection of the law. The Inter-American Court also found that the application of the law by domestic courts violated the American Convention as the decision of the Superior Court of Justice reflected a biased analysis based on gendered preconceptions, by implying

58 Convention on the Rights of the Child, Article 19.

59 See Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para. 84-85(e).

60 Inter-American Court of Human Rights, Judgment in the Case of *Rosendo Cantú et al v Mexico* at para. 201.

61 Inter-American Commission on Human Rights, *Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe* at para. 212.

62 Ibid, para 242

63 Article 167, Penal Code of Ecuador, [https://www.derechoecuador.com/uploads/content/2018/03/file\\_1521478528\\_1521478536.pdf](https://www.derechoecuador.com/uploads/content/2018/03/file_1521478528_1521478536.pdf)

64 Inter-American Court of Human Rights, *Judgment in the Case of Guzmán Albarraçín y otras vs. Ecuador*, 24 June 2020

that the victim engaged in acts of “seduction”. This view of girls as “provocative” allowed the harassment to take place and absolved Bolívar Espín of any responsibility for it, notwithstanding his position of power over Paola Guzmán.

Though this ruling was based on the unamended version of Ecuador’s *estupro* provision, many of the elements of the Court’s analysis on gender stereotypes can still be applied to *estupro* provisions currently prevailing in many countries in the region as highlighted in the table below. Although

Ecuador and other countries have eliminated some of the elements of *estupro*, such as requirements for the victim to be honest or chaste, concepts such as obtaining sex by deception are still codified differently to rape, with significantly lower penalties. Eliminating just a part of *estupro* in its criminal law only serves to underline how Ecuador has not taken the opportunity to learn from the case of Bolívar Espín and provide adolescent girls the full protection they need from sexual predators.

## PROBLEMS WITH NATIONAL LAWS

### Estupro & Similar Provisions

The following seventeen jurisdictions (out of the 43 jurisdictions studied) have *estupro* or *estupro*-like provisions, which: (i) cover offenses that should be classified as rape; (ii) specifically apply to adolescents of specific age groups below the age of 18; (iii) prescribe lower penalties than the generally applicable penalty for rape; and thereby create a hierarchy of punishment for rape that particularly discriminates against adolescent girls and affords considerable impunity to offenders. It is not known in all cases whether these laws are in practice used in this way.

**Table: Countries with *estupro* or *estupro*-like provisions in their laws**

S. No	Jurisdiction	Details of Provision	Penalty (Term of imprisonment unless otherwise specified)
1.	<b>Aguas Calientes (Mexico)</b>	Copulation with a person between the ages of 14-18, having obtained their consent through seduction or deceit, is considered as <i>estupro</i> .	<i>Estupro</i> : 1-6 years <i>Rape of an adult</i> : 10-16 years <i>Rape of victim between 12-18</i> : 12-18 years
2.	<b>Bolivia</b>	Having carnal access to a person between the ages of 14-18, through seduction or deceit, is considered as <i>estupro</i> .	<i>Estupro</i> : 3-6 years <i>Rape</i> : 15-20 years
3.	<b>Chile</b>	<i>Estupro</i> is defined as gaining carnal knowledge of a minor over the age of 14, in a number of circumstances, including if the perpetrator deceives the victim by taking advantage of her inexperience or sexual ignorance.	<i>Estupro</i> : minor imprisonment in maximum degree (3 years and 1 day to 5 years) to major imprisonment in minimum degree (5 years and 1 day to 10 years) <i>Rape</i> : major imprisonment in minimum (5 years and 1 day to 10 years) to medium degree (10 years and 1 day to 15 years)
4.	<b>Cuba</b>	<i>Estupro</i> is defined as a sexual relationship with a single woman between the ages of 14-16, using abuse of authority, deceit or promise of marriage, whether or not the woman is abducted from her home.	<i>Estupro</i> : 3-9 months (but criminal action extinguishes on marriage with the victim) <i>Rape</i> : 4-10 years

5.	<b>Ecuador</b>	Any person over eighteen years old who resorts to deception in order to have sexual relations with a person between the ages of 14-18 commits <i>estupro</i> .	<i>Estupro</i> : 1-3 years <i>Rape</i> : 19-22 years
6.	<b>El Salvador</b>	Having vaginal or anal intercourse with a person between the ages of 15-18 using deception is considered as <i>estupro</i> , which could potentially be punished with lower penalties than rape.  El Salvador also has an <i>estupro</i> provision of “taking advantage by using undue influence” against minors between 14-18 which actually carries a higher penalty than rape, reflecting the principle of breach of trust by a duty bearer as well as the act of rape.	<i>Estupro</i> (by deception): 4-10 years <i>Rape</i> : 6-10 years <i>Estupro</i> (by undue influence): 6-12 years
7.	<b>Estado de Mexico (Mexico)</b>	Intercourse with a person between the ages of 15-18, having obtained consent through any type of seduction, is punishable as <i>estupro</i> .	<i>Estupro</i> : 1-5 years <i>Rape</i> : 10-20 years
8.	<b>Honduras</b>	A person who uses deception to perform acts of a sexual nature with a person between the ages of 14-18 commits <i>estupro</i> .	<i>Estupro</i> (sexual content): 6 months - 1 year, <i>Estupro</i> (if there is carnal access by any means): 1-3 years <i>Rape</i> : 9-13 years
9.	<b>Nuevo Leon (Mexico)</b>	<i>Estupro</i> is defined as coupling through seduction or deceit, with a minor over the age of 13.	<i>Estupro</i> : 1-5 years <i>Rape</i> : 9-15 years
10.	<b>Panama</b>	Obtaining sexual access to a person between the ages of 15-18, by exploiting a position of advantage, is considered as <i>estupro</i> even if consent is given.  The applicable penalty for <i>estupro</i> can be increased by one-third or one-half in certain circumstances, including when consent was obtained through a promise to marry the victim, by deception.	<i>Estupro</i> : 2-4 years <i>Rape</i> : 5-10 years
11.	<b>Paraguay</b>	A man who, by way of persuasion, has extra-marital sexual intercourse with a woman between the ages of 14-16 commits <i>estupro</i> .	<i>Estupro</i> : Fine (no prison sentence) <i>Rape</i> : up to 10 years <i>Rape</i> (where the victim is less than 18): 4-15 years
12.	<b>Peru</b>	Obtaining carnal knowledge of a person or committing analogous acts of penetration of a person between 14-18 years of age, through the use of deceit, is prohibited. However, the extent to which this provision is used in practice is unclear, with a legal expert noting that it is not utilized at least in the capital region.	<i>Rape through deception</i> : 6-9 years <i>Rape</i> : 14-20 years

13.	<b>San Luis Potosí (Mexico)</b>	<i>Estupro</i> is defined as intercourse with a person between the ages of 14-18, having obtained their consent through seduction or deceit.	<i>Estupro</i> : 1-5 years <i>Rape</i> : 8-16 years
14.	<b>Tlaxcala (Mexico)</b>	<i>Estupro</i> is defined as intercourse or introduction of a body part or object into the vagina, anus or mouth of a person between the ages of 14-18, having obtained their consent through seduction or deceit.	<i>Estupro</i> : 6 months - 4 years <i>Rape</i> : 20-25 years
15.	<b>Uruguay</b>	A person who has sexual intercourse with a “maiden” between the ages of 15 and 20 through promise or stipulation of marriage is guilty of <i>estupro</i> . This provision relies on outdated stereotypes of virginity and sexuality which particularly harm adolescent girls, and it is unclear how “maidenhood” can be proved. However, legal experts in Uruguay have stated that this provision is not currently used in practice.	<i>Estupro</i> : 6 months - 3 years <i>Rape</i> : 2-12 years
16.	<b>Venezuela</b>	A carnal act carried out on a woman between the ages of 16-21 with her consent is punishable when there is seduction with a marriage promise and the woman is known to be “honest”.	<i>Carnal Act against 16-21 year-old victim</i> : 6 months - 1 year <i>Rape</i> : 10-15 years
17.	<b>Virginia (U.S.)</b>	Carnal knowledge of a child between the ages of 13-15 without the use of force is classified as a separate offense, with penalties lower than rape, but higher than the offense of statutory rape <sup>65</sup> of a child of the same age.	<i>Carnal Knowledge of Child between 13 and 15</i> : 2-10 years <i>Statutory rape of a child between 13 and 15 if perpetrator is more than 3 years older</i> : 1-5 years <i>Rape</i> : 5 years - life imprisonment

As seen in the table, in most jurisdictions, the maximum sentence for *estupro* or similar provisions is less than half of that for rape, with Paraguay even imposing only a fine (without any prison sentence) for *estupro*. This results in impunity for adults who rape adolescent girls, and also creates a permissive environment which does nothing to deter would-be rapists. Further, in Paraguay, the law has a separate offense of homosexual acts against minors, which has a lower penalty than rape but higher penalty than those applicable for *estupro*.

In Cuba, the law currently provides that any criminal action in respect of *estupro* is extinguished in the event of marriage between the offender and the victim. In Aguas Calientes (Mexico), forgiveness from the victim can extinguish criminal liability for the offense of *estupro*. Such provisions promote impunity for rape, deny justice to the victim and risk the continuing abuse of the victim at the hands of her rapist after marriage. Even where these provisions are used in the context of what appears to be a consensual relationship to avoid a charge of statutory rape, as it applies only to sexual intercourse with adolescent girls it is effectively promoting and enabling child marriage without considering the possibilities of whether the girl is in a position to give true consent, whether there is exploitation of a power differential or the longer-term impact on the girl of early marriage.

<sup>65</sup> Statutory rape refers to what would be considered consensual sex, except for the fact that it involved a minor whose age means the law deems her or him incapable of being able to consent. The age of consent varies from country to country.

## Lack of Clarity in the Law

In addition to the jurisdictions which have *estupro/estupro*-like provisions, the laws in ten jurisdictions provide for a lower penalty in cases of what could be sexual abuse of adolescents/minors, which would then result in gaps in protection. These jurisdictions are: Belize, California (U.S.), Costa Rica, Dominica, Grenada, Maryland (U.S.), Nicaragua, St. Kitts and Nevis, Saint Vincent and the Grenadines and Suriname. In these jurisdictions, the laws are unclear as to whether these provisions operate only to set an age below which the law considers a minor unable to give consent, even in the context of apparent consensual intercourse with their peers, or whether they are also intended to address non-consensual sexual intercourse with adolescents/minors. Another example is Paraguay's *estupro* law (see previous *estupro* chart), which applies a moral approach, seemingly to prioritize the sanctity of marriage over the protection of adolescent girls from sexual abuse. However, this law makes no reference to whether it applies to consensual or non-consensual sexual intercourse. The lack of clarity in the law means that consensual intercourse could be punished when it should not be and non-consensual intercourse might be punished under the *estupro* law with only a fine.

Due to the lack of clarity and considering that the penalties applicable to these provisions are significantly lower than the penalty for rape, the ambiguity in the law leaves open the possibility that perpetrators who commit rape against adolescent girls will be charged under these lesser offenses. While it is not clear whether this is taking place in practice, to ensure comprehensive protection for adolescent girls in all cases of sexual violence, the law should be amended to clearly state the situations in which these provisions may apply and do so in a way that protects adolescents from exploitation.

## Other Gaps in Provisions on Rape of Minors: Consensual Sex between Adolescents

In accordance with the standards set by the UN Committee on the Rights of the Child, States should not criminalize adolescents of similar ages for consensual, non-coercive and non-exploitative sexual activity with each other, while at the same time ensuring that all forms of sexual exploitation of children are prohibited.<sup>66</sup> This approach looks at the evolving capacities of children, while protecting them from sexual abuse.

The laws surveyed fall short of this standard in many cases, using a prism of morality and gender stereotypes rather than truly understanding the nature of sexual violence and taking a victim-centered and child-centered approach. In some jurisdictions (including for example Barbados<sup>67</sup>, El Salvador<sup>68</sup> and Suriname<sup>69</sup>), the law criminalizes all forms of sexual intercourse with children below the designated age of consent, without providing for close-in-age exceptions (commonly known as “Romeo & Juliet” clauses), thereby punishing consensual sex between adolescents.

In other examples, the “close-in-age” defense may work as a loophole which results in impunity for rape in certain cases. For instance, in some jurisdictions, the close-in-age defense allows for a significant age difference between a much older perpetrator and a young victim, thereby failing to take into account any power imbalance arising out of the age disparity. In other laws, lack of clarity and safeguards in the legal provisions, such as those found in Jamaica,<sup>70</sup> and Saint Vincent and the Grenadines<sup>71</sup>, can result in impunity for perpetrators of sexual abuse and exploitation, particularly if the perpetrator is below a certain age or if he can show that he believed the victim to be older (“mistake-in-age” defense).

66 See Committee on the Rights of the Child, General comment No. 13 (2011) *The right of the child to freedom from all forms of violence*, 2011, [https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

67 See The Laws of Barbados, 1 L.R.O 2002, Chapter 154, section 5. Consensual sexual intercourse with persons between the ages of 14-16 is punishable unless the accused person is not more than 24 years old, has not been previously charged with the same or similar offence; **and** honestly believed that the other person is 16 years old or more and had reasonable cause for that belief.

68 See Articles 159, 164, 167, Penal Code of El Salvador. Corruption of a person under the age of 18 years through carnal acts, even if consensual; as well as intercourse with a person between the ages of 15-18 by taking advantage of undue influence over the victim arising from any relationship are punishable offenses; without any close-in-age exceptions.

69 See Article 298, Criminal Code for Suriname. Sexual intercourse with persons between the ages of 12-16 is a punishable offence, without any close-in-age exception

70 See Part IV § 10. Sexual Intercourse with Person Under 16. (3) It is a defence for a person of twenty-three years of age or under who is charged for the first time with an offence under subsection (1) or (2), to show that he or she had reasonable cause to believe that the other person was of or over the age of sixteen years.

71 See Cap. 171 § 125. Intercourse with a girl under 15. (2) A man is not guilty of an offence under this section if he is under the age of nineteen years and has not previously been charged with a like offence and, at the time of the intercourse, he believed the girl to be of or over the age of fifteen and had reasonable cause for that belief.

## JENNIFER JONES'S STORY <sup>72</sup> JAMAICA

*A sociologist presents the exploitation of poverty in the sexual exploitation of adolescent girls*

The most startling findings of our research, “The Stress Test: The Impact of the Pandemic on Domestic and Community Violence”, is the large scale of so-called consensual sex between girls aged 12 to 15, sometimes younger, with much older men in their thirties and up into their sixties. In these situations girls are generally paid very little. But you find men portraying it as if they are helping the family, giving money to a girl in exchange for sex because he feels sorry for her. Utter rubbish.

Poverty is a big factor. Girls might engage in transactional sex because they are hungry or their family has needs. The girl becomes an income generating asset for the family and is viewed as a commodity. Many families turn a blind eye to this sexual exploitation, some even encourage it, while the wider community generally sees nothing wrong with the situation.

Child sexual abuse is widespread, and in very poor communities it is generally accepted that a girl who is 12 or 13 and physically developed is ready for sex. There is no understanding about the emotional side of whether she is ready, and a huge lack of knowledge about the emotional and psychological damage that early sexualisation can cause. There is also no concept that a minor is not legally capable of giving consent. Even though we have a law against sex with minors, the police turn a blind eye in most cases.

*There is a lot of victim blaming and a ridiculous focus on virginity – once you have lost it, you are viewed as damaged goods. Even when very young girls are sexually abused, just four or five years old, families will often try to hide things because of the stigma that is placed on the child.*

There is a lot of victim blaming and a ridiculous focus on virginity – once you have lost it, you are viewed as damaged goods. Even when very young girls are sexually abused, just four or five years old, families will often try to hide things because of the stigma that is placed on the child.

If a rape case involves an adolescent girl, it is generally not treated as seriously by the police and courts as it would be if the victim was a woman or very young. Legally it is called “sexual assault”, not “rape”, which is very weak in my view. Judges generally give lesser sentences to offenders in cases when the victim is in her teens, and on occasion this has led to a big public outcry.

We need to educate the public and the police – especially the older, more senior ones - about the harmful impact of sexual abuse and early sexual behaviour on girls as it’s not widely understood how it can cause low self-esteem, depression and suicide ideation. Young police are trained with good values but then they enter into a police force that does not reflect those values. Everyone recognises the police needs reform.

When rape is mentioned, people clam up and this is a big obstacle. There is a problem with individuals being turned upon if they report on others, and fear of retaliation from perpetrators and their families. It takes a lot of bravery on the part of the person who speaks out.

<sup>72</sup> Jennifer Jones is a sociologist in Jamaica and one of the authors of a recent study, *The Stress Test: The Impact of the Pandemic on Domestic and Community Violence*, which examined the impact of the novel coronavirus pandemic on lower-income communities in Jamaica. The study was conducted by the Caribbean Policy Research Institute (CAPRI), with the support of the UK’s Foreign, Commonwealth and Development Office and the Violence Prevention Alliance (VPA).



# LIMITED DEFINITIONS OF SEXUAL VIOLENCE

# DEFINING RAPE

**A number of countries across the Americas have definitions of rape which are based on force or the threat of force, as opposed to lack of consent to the sexual act. Force-based definitions of rape are problematic for a number of reasons:**

- All acts of non-consensual sexual intercourse are inherently violent in nature, and laws which require proof of additional violence or physical force risk leaving certain types of rape unpunished and fail to effectively protect women and girls from sexual violence.
- Force-based definitions of rape contribute to rape myths and the perception that it is the responsibility of victims to protect themselves. The reasoning is that if a victim does not fight back she must be a willing participant in the sexual act. Rape victims who may freeze, remain passive, for example out of fear of further harm, or who respond by shutting down when they are attacked have not physically resisted and therefore cannot benefit from the protection of the law despite the violence done to them.<sup>73</sup> Additionally, challenges also exist in being able to demonstrate evidence of psychological violence or intimidation to force the victim to engage in the sexual act, particularly in the absence of witnesses or within an intimate partner relationship where there has been coercive control or domestic violence. Thus, the legal framing of the rape definition based on demonstration of force further significantly limits the extent to which crimes of rape can successfully be prosecuted and leaves room for significant impunity.
- For a variety of reasons, including fear of retaliation, loss of family support or social stigma, victims do not always immediately report sexual violence. This is particularly true in the case of young and adolescent girls, who may not realize that the acts done to them constitute a crime or who may find it difficult to report or raise the issue at the time particularly when the perpetrator is a relative or other trusted person. As a result, victims who report much later often find it difficult or close to impossible to procure physical or medical evidence, such as bodily injuries, to prove that additional physical violence was used during the rape (as they no longer exist at the time of reporting).
- There are a number of circumstances in which men can and do use coercion or exploit their position of power, maturity or undue advantage to rape, including and particularly young or other vulnerable women. Examples include cases of incest, and other unequal power relationships such as teacher-pupil, coach-athlete, counsellor-patient, prison warder-prisoner to name but a few.

For these reasons, laws criminalizing rape should recognize and represent that the hallmark of a lawful sexual act is active and willing consent to a welcome act, while at the same time recognizing a broad range of coercive circumstances which negate consent.<sup>74</sup> Failing to do so results in victims often falling through the cracks and never obtaining justice.

<sup>73</sup> See, Haskell et al., *The Impact of Trauma on Adult Sexual Assault Victims*, (2019) for more information. [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf)

<sup>74</sup> UN Women, *Legislation should define consent as unequivocal and voluntary agreement*, UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, 2011, <https://www.endvawnow.org/en/articles/469-consent.html>

# INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

The Inter-American system, including the Inter-American Court, has interpreted sexual violence as any act of a sexual nature committed without the person's consent.<sup>75</sup> The Inter-American Court has also found that rape only need involve coercive elements and that physical resistance is not necessary.<sup>76</sup> The *Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights* issued by MESECVI also specifically declares that 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.<sup>77</sup>

In line with this, the CEDAW Committee in its General Recommendation 35 provides that the definition of sexual crimes, including marital and acquaintance/date rape should be based on lack of freely given consent, and take account of coercive circumstances.<sup>78</sup> Further, the CEDAW Committee in the case of *Karen Tayag Vertido v. the Philippines*, reflects standards developed by the International Criminal Court and the European Court of Human Rights, among others, suggesting that the State should remove the criterion of violence from the definition of rape and should instead enact a definition of rape, which:

- requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting;
- requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.<sup>79</sup>

The UN Women Guidelines state that laws should provide a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority such as in a correctional facility, a religious or school setting or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship, and provide for a broad range of coercive circumstances around consent such as intimidation or fraud.<sup>80</sup> In addition, the UN Special Rapporteur on Violence against Women highlighted circumstances when consent is not possible or should not be required. This includes when the victim is permanently or temporarily incapacitated because of the use of alcohol or drugs<sup>81</sup>.

Thus, the jurisprudence of international and regional human rights mechanisms make it clear that additional force or violence should not be an element of any legal definition of rape, as rape itself is a violent act. Rather, as noted in the UN Women Guidelines, additional violence during the commission of rape should be considered as an aggravating factor during sentencing. In addition, the UN Special Rapporteur on Violence against Women recommends the following be listed as aggravating circumstances: the perpetrator is a current or former spouse or intimate partner, or a family member; the perpetrator abuses power or authority over the victim; the victim was or was made vulnerable; the victim was a child, or the act was committed in the presence of a child; the act resulted in physical and/or psychological harm for the victim; the act was committed by two or more people; and the act was committed repeatedly, with the use of violence, or with the use or threat of use of a weapon.<sup>82</sup>

75 Inter-American Court of Human Rights, *Sentence in the Caso J. vs. Peru*, 27 November 2013, Inter-American Court of Human Rights, *Caso del Penal Miguel Castro Castro vs. Perú* at para. 306

76 Inter-American Court of Human Rights, *Sentence in the Case of Fernández Ortega et al v. Mexico*, 30 August 2010, [https://www.corteidh.or.cr/docs/casos/articulos/serie\\_c\\_215\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/serie_c_215_ing.pdf), at para. 115

77 Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (CEVI), *Declaration on Violence against Women, Girls and Adolescents and their sexual and reproductive rights*, MESECVI/CEVI/DEC.4/14

78 Committee on the Elimination of Discrimination against Women, CEDAW/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.

79 Committee on the Elimination of Discrimination against Women, *Karen Tayag Vertido v. the Philippines*, OHCHR, 16 July 2010, <https://juris.ohchr.org/Search/Details/1700>

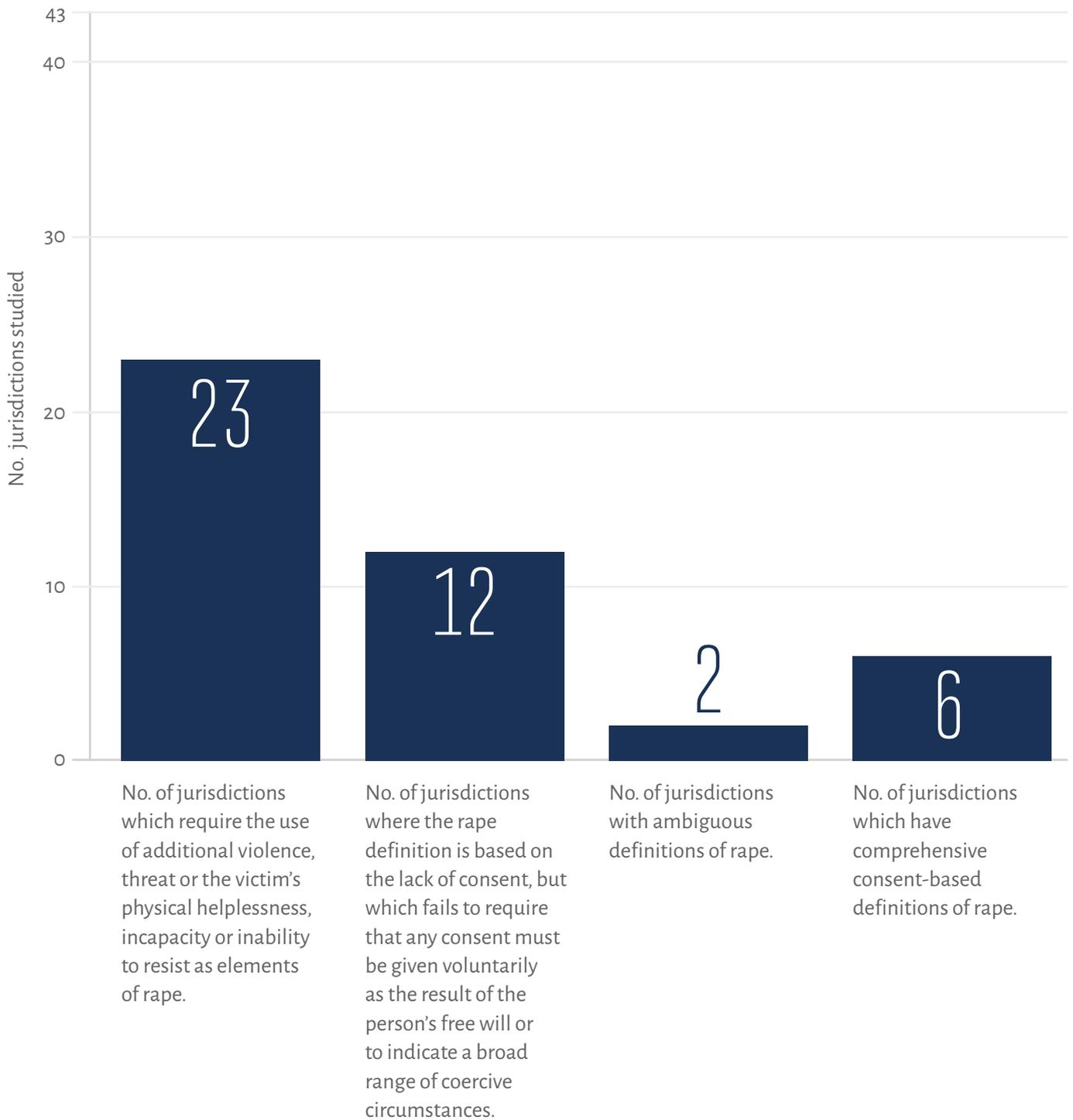
80 UN Women, *Legislation should define consent as unequivocal and voluntary agreement*, UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, 2011, <https://www.endvawnow.org/en/articles/469-consent.html>

81 Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, A framework for legislation on Rape (Model Rape Law), 15 June 2021, A/HRC/47/26/Add.1, para 18.

82 Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para.90(b)

# PROBLEMS WITH NATIONAL LAWS

As shown in the graph below, only 6 of the 43 jurisdictions studied have comprehensive consent-based definitions of rape, which also take into account coercive circumstances. These countries are Argentina, Canada, Colombia, Guyana, Peru<sup>83</sup> and Saint Lucia.



83 However, the law fails to define “free consent” and activists have noted that in practice courts still look for evidence of force to determine that the sexual intercourse was non-consensual. For more details, please see Promsex, Submission on the Criminalization and Prosecution of Rape in Peru to the United Nations Special Rapporteur on Violence against Women, its causes and consequences, 20 May 2020, <https://www.ohchr.org/Documents/Issues/Women/SR/RapeReport/CSOs/077-peru.pdf>

## Requirement for Violence, Threat or Helplessness

Contrary to the international and regional standards indicated, the laws in 23 jurisdictions require the use of additional violence, threat or using the victim's physical helplessness, incapacity or inability to resist as elements of rape.

S. No	Country	Elements of additional violence required to prove rape
1.	<b>Aguas Calientes (Mexico)</b>	Physical, moral* or psychological force, incapacity of the victim to understand the act, or inability to resist
2.	<b>Brazil</b>	Violence or serious threat, unless the victim is particularly vulnerable due to age and/or does not have the necessary discernment for the act due to illness or mental deficiency; or if the victim cannot offer resistance for any other reason
3.	<b>Bolivia</b>	Intimidation, physical or psychological violence, taking advantage of a severe mental disease or insufficient intelligence of the victim, or any other disabling cause which prevents the victim from resisting
4.	<b>Chile</b>	Force, intimidation, incapacity of the victim or taking advantage of the victim's inability to resist
5.	<b>Cuba</b>	Force, intimidation, if the victim is in a state of mental derangement, is deprived of reason, is unable to resist or lacks the power to understand the scope of the action or to direct their conduct
6.	<b>Dominican Republic</b>	Violence, constraint, threat or surprise
7.	<b>Ecuador</b>	Violence, threat or intimidation, or when the victim is deprived of reason or sense, or the victim cannot resist due to illness or disability
8.	<b>El Salvador</b>	Violence
9.	<b>Estado de Mexico (Mexico)</b>	Physical or moral* violence, if the victim is deprived of reason or sense or if the victim is unable to resist due to disease or any other cause
10.	<b>Guatemala</b>	Physical or psychological violence; or if the victim has a volitional or cognitive disability
11.	<b>Maryland (U.S.)***</b>	Force or threat of force, without consent; or if the victim is substantially cognitively impaired, mentally incapacitated or physically helpless
12.	<b>New York (U.S.)</b>	Forcible compulsion (i.e. use of physical force or threat which causes fear of death, physical injury or kidnapping), or the victim is incapable of consenting due to being physically helpless (i.e. unconscious or for any other reason physically unable to communicate unwillingness).
13.	<b>Nicaragua</b>	Force, violence, intimidation or any other means that deprives the victim of will, reason or their senses
14.	<b>Nuevo Leon (Mexico)**</b>	Physical or moral* violence; or if the victim is unable to resist
15.	<b>Panama**</b>	Violence or intimidation; or if the victim is deprived of reason or meaning or who suffers from illness or disability or who, for any other reason, cannot resist the act; or if the perpetrator abuses his position, with a person who is detained or entrusted to the perpetrator in custody.
16.	<b>Paraguay</b>	Force or threat of present danger to life or physical integrity or coercion. Performing sexual acts (including intercourse) with a person who is unconscious, unable to resist, or under the guardianship of the perpetrator is made punishable under a separate offense.

17.	<b>Puerto Rico (U.S.)</b>	Physical force, violence, intimidation or threat of serious and immediate bodily harm; or the victim is unable to understand the nature of the act due to illness or mental disability; or the victim's capability to consent has been substantially annulled or diminished by intoxicating substances without their knowledge or without their consent; if there is deception; and if the perpetrator takes advantage of the position of trust and superiority
18.	<b>San Luis De Potosi (Mexico)</b>	Physical or moral* violence, incapacity of the victim to understand the act, or inability to resist
19.	<b>Suriname</b>	Violence or threat of violence, or if the victim is unconscious or incapacitated.
20.	<b>Tlaxcala (Mexico)**</b>	Physical or moral* violence; if the victim cannot understand the meaning of the event, is unable to resist or if the victim is in the care or custody of the perpetrator.
21.	<b>Uruguay</b>	Violence or threats. Violence is presumed in certain circumstances including if the victim is deprived of discernment or free will (for congenital or acquired causes, permanent or temporary), or if the victim has been detained or arrested and the perpetrator was entrusted with the victim's guard or custody.
22.	<b>Venezuela</b>	Violence or threats; and/or where the victim is particularly vulnerable due to age or circumstance; or if the victim is detained; or is unable to resist due to physical or mental illness, or use of fraudulent means, or narcotic or intoxicating substances given by the perpetrator.
23.	<b>Virginia (U.S.)***</b>	Against a person's will, by force, threat or intimidation, or through the use of the victim's mental incapacity or physical helplessness (i.e. unconsciousness or physical inability to communicate unwillingness which the accused knew or should have known)

\*It is unclear what the term moral force or violence refers to. See footnote 6.

\*\* The laws in these jurisdictions [Nuevo Leon (Mexico), Panama & Tlaxcala (Mexico)] criminalize intercourse through non-penile penetration without the consent of the victim with the same penalty applicable as for rape (penile penetration). The requirement to show additional violence only applies in cases where there is penile penetration (rape).

\*\*\* Though the wording of the laws of Maryland (U.S.) and Virginia (U.S.) could be seen to be ambiguous as to whether use of additional force or threat is a necessary requirement for proving rape, some known jurisprudence from Virginia indicates that such proof of additional force or threat is in fact required by the law.

While the rape laws in all 23 jurisdictions highlighted in the table above require some form of force, threat or helplessness of the victim, the exact requirements of the rape definition vary across jurisdictions. Some of the key points to note are:

- The laws in 2 out of the 23 jurisdictions (Dominican Republic and El Salvador) fail to include situations of incapacity of the victim (due to illness, disability, unconsciousness, intoxication etc.) within the definition of rape. This means both that the law strains to protect the most vulnerable and that perpetrators face a greater chance of impunity by targeting the most vulnerable.
- Certain jurisdictions, such as New York (U.S.) & Maryland (U.S.), do prohibit non-consensual sexual intercourse or contact without the use of force, though as a lesser offense, with a lesser penalty. The laws of Brazil, Chile, Uruguay and Virginia (U.S.) also prohibit certain forms of non-consensual sex in lesser offenses, such as through the use of deceit, psychological pressure, abuse of power or if the victim is in detention. Such an approach suggests that lawmakers believe that a victim is less harmed if no physical force is used or that the victim to some extent permitted the crime by not fighting back or that the victim to some extent welcomed the act. None of these beliefs reflects the reality of rape and the reaction of a victim cannot be captured in a single, stereotypical response.
- A few jurisdictions such as Nuevo Leon (Mexico) and Tlaxcala (Mexico) do define the offense of unwanted sexual intercourse through non-penile penetration as based on lack of consent, without requiring use of additional physical or moral violence. However, the crime of rape (penile penetration) still requires use of additional force. These different approaches might reflect a discriminatory stereotypical belief that if a woman doesn't actively struggle she must want and consent to sex with a man.
- Some of these jurisdictions do not limit the definition of rape to physical violence alone, but also define rape by reference to psychological violence [Aguas Calientes (Mexico), Bolivia and Guatemala], intimidation [Bolivia, Chile, Cuba, Ecuador, Nicaragua, Panama, Puerto Rico (U.S.) and Virginia (U.S.)] or coercion [Paraguay]. Thus, even when physical violence is not present, many jurisdictions are still able to bring a rape prosecution under the law. This is positive. However, in reality stereotypes and myths often hinder these types of prosecutions so it remains critical to clarify the law fully and ensure proper implementation.<sup>84</sup>
- Panama, Tlaxcala (Mexico), Puerto Rico (EEUU), Uruguay and Venezuela specifically recognize that sexual intercourse through abuse of positions of power by perpetrators with a person who is detained or entrusted to their custody amounts to rape, due to the coercive circumstances involved. This is welcome as it reflects the importance of true genuine and voluntary consent. Though the law in Paraguay also criminalizes sexual intercourse with persons in detention as a separate offense, the applicable penalties are low compared to the penalty for rape, which implies that the law views it as a less serious crime.

*“The ones that are most unprotected [by sexual violence laws] are the women who are unable to consent due to alcohol or if they were drugged by some kind of narcotics or pill and then sexually abused. Many of them lose their memories or remember only fractions of moments... they take time to fill in the mental gaps and understand what happened to them. Often they take between 15 and 22 days to be able to make the report, [when] they no longer have the clothes and the physical evidence is no longer available... This type of situation is not addressed by the justice system because it focuses on the use of force to sexually coerce a woman.”*

*Sonia Von Lepel, women and children rights' lawyer, Paraguay*

84 See Equality Now's factsheet on "Consent-based Rape Definitions" for further information.

## No Requirement for Consent to be Voluntary and Genuine

As established through the international human rights standards delineated above, consent to sexual intercourse should be voluntary and genuine and laws should make provision for a broad and non-exhaustive range of coercive circumstances in which consent is immaterial. Contrary to the international and regional standards indicated, 12 jurisdictions do not include the lack of voluntary and genuine consent on the part of the victim as a constitutive element for sexual violence crimes. Though the rape definitions in these laws are based on lack of consent, they still do not either (i) provide that consent must be voluntary, genuine and willing, and that it must be assessed in the context of surrounding circumstances; or (ii) enumerate a wide range of coercive circumstances where consent is immaterial, such as abuse of trust and authority and situations of dependence, as required by CEDAW and the UN Women Guidelines. This leaves the law more difficult to prosecute, particularly in the context of criminal justice systems that are still permeated with prejudicial stereotypical views of how the behavior of sexual violence complainants should be interpreted. These jurisdictions are: Antigua & Barbuda, Bahamas, Barbados, Belize, California (U.S.), Costa Rica, Dominica, Grenada, Honduras<sup>85</sup>, Jamaica, Saint Vincent and the Grenadines, and Trinidad and Tobago.

### Good Practice Canada's Definition of Consent

The Canadian Criminal Code provides a clear definition of consent and sets forth a number of circumstances in which a perpetrator's belief that the victim consented is not a defense. Canada defines sexual assault based on the absence of consent and the Criminal Code expressly states that "consent must be present at the time the sexual activity in question takes place."<sup>86</sup> Furthermore, the definition of consent provides for situations where no consent can be obtained, including if the agreement is given by any person other than the victim, the victim is unconscious or incapable of consenting, abuse of a position of trust, power or authority and the like. It also explicitly recognizes that a victim can withdraw consent to a sexual activity even after giving such consent previously. A new law in Canada<sup>87</sup> also requires judges to provide written reasons for their decisions in sexual assault cases. This will help identify if and where there are still problems in the implementation of the sexual offenses law.

### Ambiguity in the Definition

As noted by the IACHR, "there continue to be rules with legislative loopholes ...or abstract or ambiguous terms regarding what would constitute acts of sexual violence or rape."<sup>88</sup> One of the jurisdictions surveyed - St. Kitts and Nevis - does not define what constitutes the act of rape in its laws at all. Additionally in Haiti, where currently applicable law does not define rape, the former President in June 2020 enacted a decree which defines rape as acts of sexual penetration without consent, "with violence, constraint, threats, or surprise". The decree is expected to come into force in two years unless a newly elected president changes the decree or parliament is reconstituted and rejects it and/or tables alternative legislation.<sup>89</sup>

Ambiguous definitions of rape make these laws hard to apply, leaving the determination of whether a case constitutes rape up to individual interpretation of what rape is. Without a clear, recognized legal definition of rape, women and girls (and society) may not recognize acts that constitute rape as a crime or that it is wrong. It also means that they cannot depend on the law to receive justice for sexual violence. The lack of a clear definition also risks that law enforcement professionals will continue to be guided by rape myths and harmful gender stereotypes while implementing the law, including failure to believe women and girls and victim-blaming.

85 Honduras defines rape as non-consensual, but does not fully describe what this means except in the context of force, mental capacity or age. It has a separate provision on exploitation of a position of power with respect to adolescents, but with much lower penalties (Article 254).

86 Canada, Criminal Code C-46 § 273.1. Meaning of consent.

87 Department of Justice Canada. *New law on continuing education for judges will enhance sexual assault survivors' confidence in the criminal justice system*. May 2021, available at <https://www.canada.ca/en/departement-justice/news/2021/05/new-law-on-continuing-education-for-judges-will-enhance-sexual-assault-survivors-confidence-in-the-criminal-justice-system.html>.

88 Inter-American Commission on Human Rights, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OAS/ Ser.L/V/II., 14 November 2019

89 *The Road to Gender Justice in Haiti: Progress on Haiti's Penal Code*, MADRE, available at <https://www.madre.org/press-publications/madre-article/road-gender-justice-haiti-progress-haiti%E2%80%99s-penal-code#:~:text=In%20June%202020%2C%20Haiti%E2%80%99s%20president%20enacted%20a%20penal,Parliament%20will%20affirm%20these%20reforms%20through%20d>.

## VIVIANA'S STORY GUATEMALA

*An indigenous lawyer offers her perspective on the multiple forms of discrimination and the legal barriers faced by indigenous survivors of sexual violence*

I'm a Maya Kaqchikel woman from the western part of Guatemala, where the majority of the indigenous populations of various ethnicities live, and I am the Legal Director for the Women's Justice Initiative (WJI). I've been working on gender-based violence for about 10 years in the legal field, managing cases, accompanying victim-survivors of sexual violence.

I have seen that indigenous women face multiple forms of discrimination and structural barriers when they experience sexual violence. First, they are unfamiliar with and mistrust the western judicial system; they're afraid of it, and that makes it much less likely they will report when something happens to them. Second, it's harder for them to express their emotions, their version of events, because they don't speak Spanish, and the interpreters aren't familiar with the different dialects of the indigenous language - they're from different areas of the country than the victims and they don't understand the victims well. Third, is the distance and delays in the process; everything is quite geographically centralized, so even if they do decide to go forward with a judicial process, in practical terms it's very hard for them to travel to give testimony and observe the hearings.

Added to that is the fact that those who work in the judicial system are not sensitized to sexual violence and gender discrimination. There are specialized courts, but the staff of those courts are the same people as in the "normal" courts, just with a couple of trainings - they aren't staff with a real gender specialization. This leads to revictimization, making survivors relive their trauma over and over again.

Finally, there's the social pressure. If the victim is over 18, it's the victim's decision whether or not to press charges, whether or not to take part in the process, whether or not to observe the trial. And that, in the cultural context of victim-blaming, where the community sees the aggressor

and even his whole family as being affected by cases, often leads victims not to report.

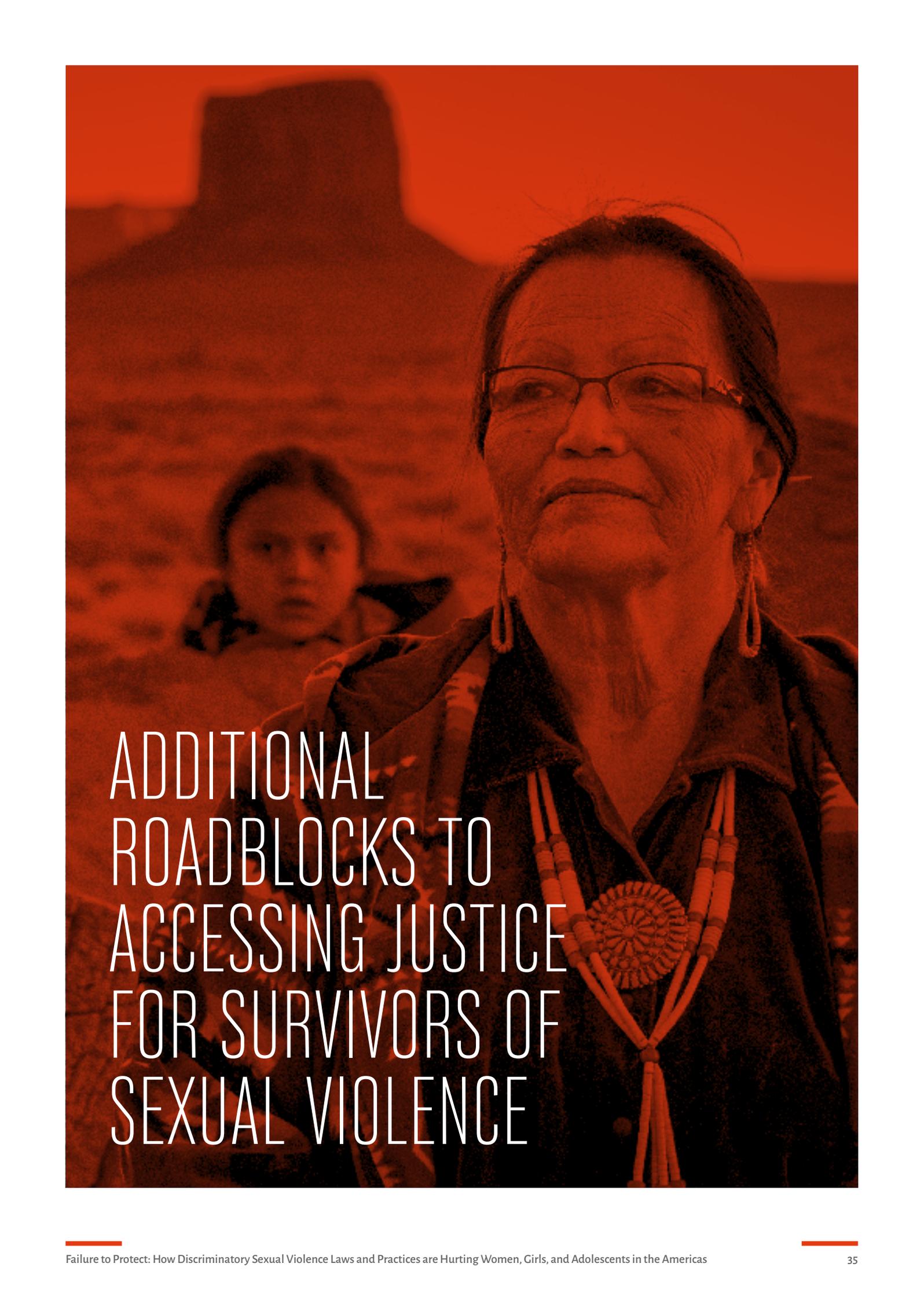
For all of this to change, the judicial system has to change. The geographic reach of the courts and judicial spaces have to be widened, so they're not so centralized. There needs to be an awareness-raising process for justice workers; a couple of trainings is not enough. The law also needs to change: we need a better definition of the crime of rape; the laws don't square with today's reality, they're very archaic. And I would like it if rape were prosecuted more often as a public crime, rather than leaving it to the discretion of the victim whether or not to cooperate with the investigation and prosecution, because community pressure has far too much influence on that. I have seen that those victims who decide to report, press charges, and confront what happened begin to be able to put it behind them better than those who don't report - they have a better healing process.

*The law also needs to change: we need a better definition of the crime of rape; the laws don't square with today's reality, they're very archaic. And I would like it if rape were prosecuted more often as a public crime, rather than leaving it to the discretion of the victim whether or not to cooperate with the investigation and prosecution, because community pressure has far too much influence on that.*

In addition to changing the system and the law, we have to change attitudes. WJI works with community leaders and explains to the community that sexual violence is not allowed, and should be reported. There's a shared community reflection: What would happen if it was you? When we hear from a victim, whether it's a girl, a boy, or an adult, the community learns about those incidents. Sometimes it's not the victim who reports but a community leader or another participant. In our indigenous

communities we're very conservative, and it's a real challenge to work on gender issues, and an even bigger challenge to work on the issue of sexual violence, that's why I think that we indigenous women are really doing our part for the fall of the patriarchy.

One of the most satisfying things I have seen in my work is when a woman says "it's finally over, I feel good, it was worth it" and she cries with emotion. I feel like that satisfaction comes not from vengeance but from justice, which we share with the victims.



ADDITIONAL  
ROADBLOCKS TO  
ACCESSING JUSTICE  
FOR SURVIVORS OF  
SEXUAL VIOLENCE

# FAILURE TO CRIMINALIZE MARITAL RAPE

In its General Recommendation 35, the CEDAW Committee recommends that States ensure that “the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.”<sup>90</sup> The UN Special Rapporteur on Violence against Women recommends urgent review of criminal laws or the adoption of new criminal provisions to prohibit marital rape,<sup>91</sup> as do the UN Women Guidelines. The IACHR has also stated that all non-consensual sexual relations are a form of sexual violence, and recommends that States criminalize sexual violence in marriages as well as in all interpersonal relationships.<sup>92</sup> Also, as recommended by MESECVI, explicit prohibition of rape within marriage and intimate partner relationships, as well as revision of the rules of criminal procedure, should be made in order to remove obstacles that could prevent women from seeking justice in these cases.<sup>93</sup>

Despite this, in some countries, the law explicitly permits marital rape. Seven jurisdictions explicitly permit marital rape (except in certain limited circumstances, such as if the parties are divorced, separated or a protection order has been issued). These jurisdictions are Antigua & Barbuda, Bahamas, Belize, Dominica<sup>94</sup>, Jamaica, Saint Lucia and Maryland (U.S.). In addition, in 10 jurisdictions [Antigua & Barbuda, Belize, California (U.S.), Canada, Maryland (U.S.), New York (U.S.)<sup>95</sup>, Saint Lucia, Trinidad and Tobago, and Virginia (U.S.)] such permission includes rape of children married to the perpetrator. This is enabled through an exception to the statutory rape law which deems that children under a certain age can never consent to sex

unless by virtue of marriage. In Antigua & Barbuda, the marriage exemption provision with respect to underage children is also contained in the rape law itself. Such provisions legitimize rape in marriage, including of children, and provide for different standards of protection to minors from statutory rape based on their marital status. They also serve to legitimize child marriage.

A number of other jurisdictions also do not explicitly include marital rape within the scope of the rape provision nor indicate that it is an aggravating circumstance, including, New York (U.S.), St. Kitts and Nevis, and Saint Vincent and the Grenadines. The current law in Haiti does not explicitly include marital rape either, though the Penal Code Decree issued by the former President in 2020 proposes to explicitly include rape committed by a spouse or intimate partner within the scope of the rape provision.<sup>96</sup>

In some jurisdictions such as Grenada, although spouses are able to be convicted of rape, the law provides for a lesser punishment than rape by a non-spouse.<sup>97</sup> Lesser punishments for rape within marriage or intimate relationships perpetuate the myth that rape within a relationship is not as serious because it is the woman’s duty to submit to her husband or that the status of marriage implicitly confers consent. In fact, rape by a spouse or intimate partner should be considered as an aggravating circumstance carrying a higher penalty due to the breach of trust involved, as it is in certain jurisdictions in Latin America including Bolivia, Colombia, Costa Rica, Tlaxcala (Mexico), Uruguay and others.

90 CEDAW General Recommendation 35 at para. 29.e.

91 See Report of Dubravka Simonović - Special Rapporteur on violence against women, its causes and consequences, on her mission to the Bahamas, 25 May 2018, A/HRC/38/47/Add.2, para. 73.h; Report of Dubravka Simonović - Special Rapporteur on violence against women, its causes and consequences, *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26

92 Inter-American Commission on Human Rights, *Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe* at para. 102.

93 See Second Hemispheric Report on the implementation of the Belém do Pará Convention, OAS, 2012 <https://www.oas.org/en/mesecevi/docs/mesecevi-segundoinformehemisferico-en.pdf>

94 In Dominica, sexual intercourse with a spouse without her consent by force, fear or the use of a drug or object with intent to stupefy or overpower her is considered rape.

95 In New York, the minimum age of marriage has been increased to 18 without any exceptions as at July 2021, so this provision on the marital exception to statutory rape will have only limited applicability to incidents which took place before the change in the law.

96 Article 296, Penal Code Decree 2020.

97 For example, in Grenada while the rape provision allows for a spouse to be convicted of rape, the provision provides for lesser punishment in cases of marital rape. Punishment for marital rape is for a term not to exceed 14 years, while punishment for rape in other situations is for a term not to exceed 30 years (Grenada Criminal Code, Cap 72A § 177).

# PROBLEMATIC STATUTES OF LIMITATIONS

Some jurisdictions impose time limits within which a rape complaint needs to be filed. Short limitation periods during which rape cases may be brought forward impede access to justice for survivors, particularly given the various factors which cause delays in reporting. For example, the limitation period prescribed by the law in Venezuela for raising complaints of rape and sexual abuse is only one year from the date of the incident or the date on which the representative of the victim learned of the incident<sup>98</sup>. Stigma, shame, intimidation, trauma and even, as discussed under Defining Rape above, lack of recognition of the abuse, keep victims from coming forward and these short statutes of limitations place an overwhelming burden on victims and consequently allow perpetrators to evade punishment. This is particularly true for child victims, who may not disclose the fact of their abuse until a number of years have passed, as they may need time to understand the unlawfulness of the actions to which they have been subjected or they may find it difficult to raise a complaint before they reach the age of majority, particularly when the perpetrator is a family member.<sup>99</sup> Overall, if there were no statute of limitations for rape, it would help to send the signal that rape is a serious issue which should never escape punishment.

Some jurisdictions, such as Chile, Ecuador, El Salvador, Paraguay and Puerto Rico (U.S.), have recognized the specific issues faced by minors and provided for an unlimited period for prosecuting sexual offenses committed against minors. Other jurisdictions, including Bolivia, Brazil, Colombia, Estado de Mexico (Mexico) Uruguay and Venezuela, extend the statute of limitations in cases of sexual offenses against minors, so that the limitation period does not begin to run until after the victim reaches the age of majority, though even this extended period is insufficient in many cases. For example, in Bolivia, the limitation period for rape is 8 years and for minors, it starts to run 4 years after the age of majority. Thus, child victims of rape in Bolivia have until the age of 30 to file a case.

The law in Belize provides for a shorter limitation period of only one year for the crime of unlawful carnal intercourse with a person between the ages of 14-16 years. This very short period leaves exploited victims potentially unable to access justice for sexual violence.<sup>100</sup>

Except as described above with respect to minors, a number of jurisdictions surveyed, including Bolivia, Ecuador, Guatemala, Nicaragua, Paraguay, and Peru calculate statutes of limitations based on the sentence possible for the offense. Given that lack of recognition of sexual violence as a serious crime already means that penalties for rape and sexual assault can be very low, limiting a time period for reporting a case of sexual violence based on these very short ranges of punishment is doubly discriminatory. Brazil also calculates the time limit based on the possible sentence, but since Brazil considers sexual violence a serious crime with a commensurate sentence, the effects of the limitation are less severe.

Activists and legal experts have thus recommended that laws should not impose any limitation period within which the rape complaint needs to be filed, for both adult and child victims.<sup>101</sup> Additionally, **the Inter-American Court** in *Fernández Ortega et al. v. Mexico*<sup>102</sup> and *Linda Loaiza López Soto v. Venezuela*<sup>103</sup> has held that rape is a form of torture in certain circumstances. Since crimes against humanity such as torture should not have any statute of limitations,<sup>104</sup> and since international jurisprudence has drawn clear parallels between rape and torture, no limitation period should be imposed for rape. In accordance with this best practice, some jurisdictions such as California (U.S.), Canada, Chile, Jamaica<sup>105</sup>, New York (U.S.), Saint Lucia and Tlaxcala (Mexico) have provisions explicitly stating that there is no limitation period for bringing cases of rape and other sexual offenses, for both adult and child rape victims.

98 From the text of Venezuela's law the statute of limitations for ex officio offenses is unclear.

99 Please see, *Queremos ser la voz de las voces*, where several young women discuss their stories of being victims of sexual violence at a young age and the reasons they waited years before disclosing the abuse [https://www.canalcidh.org/brisa-esp?fbclid=IwAR3koLdf1-5mRD\\_IimQPFaxU3xWhgBCe1PLsQby-AAsj1ZxxV1YexX1PAoo](https://www.canalcidh.org/brisa-esp?fbclid=IwAR3koLdf1-5mRD_IimQPFaxU3xWhgBCe1PLsQby-AAsj1ZxxV1YexX1PAoo).

100 See also above on page 24, (Lack of Clarity in the Law).

101 See UN Special Rapporteur on violence against women, its causes and consequences & Equality Now, *Rape as a Grave and Systematic Human Rights Violation and Gender-based Violence against Women: Expert Group Meeting Report 2020*, [https://www.equalitynow.org/rape\\_human\\_rights\\_violation\\_gbv\\_sr\\_egm\\_2020](https://www.equalitynow.org/rape_human_rights_violation_gbv_sr_egm_2020).

102 IACHR, *Fernández Ortega et al. v. Mexico*, Judgment of August 30, 2010, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_215\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf)

103 IACHR, Report No. 33/16, Case 12,797. Merits. *Linda Loaiza López Soto and relatives*. Venezuela. July 29, 2016., para 209

104 See, for example, CAT, Concluding Observations on Turkey, UN Doc. CAT/C/CR/30/5, 2003, §7(c); CAT, Concluding Observations on Chile, UN Doc. CAT/C/CR/32/5, 2004, §7(f).

105 Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para. 102

## STEPHANIE'S STORY ECUADOR

*A survivor who has faced guilt, shame, and the possibility of being blamed and disbelieved is now legally barred from bringing a case against her abuser because of the statute of limitations*

When I was little, I played a lot with my girl cousins, we were mischievous and full of energy. I started doing gymnastics when I was five.

The first incident happened when I was eight or nine, in the context of the coach recommending that I start attending every day. I was supposed to do a backward jump, and he touched my butt. At first, I thought it was just a mistake, but when I did the exercise again, it happened again. When I started going every day, the assaults became more frequent and more intense; it got as far as penetration with fingers. He manipulated me emotionally with a mix of mistreatment and rewards. One minute he would be shouting at us and insulting us and hitting us, and the next there would be special treatment, as if to make up for it.

At that time, I didn't know it was sexual violence, nor that it happened to other girls too; I only realized later. One time my aunt mentioned that one of the other girls I trained with had told her that the coach had groped her, but my aunt thought the girl was lying. I realized then that I wasn't alone, but also that I wasn't going to be able to tell anyone, because they wouldn't believe me, or they would blame me.

At age 22 I started to have a lot of emotional crises - depression, attacks of rage etc., and I didn't know what was happening to me, so I started going to therapy, and then later I started attending a support group for survivors. It's a whole mix of emotions: sadness, denial as a survival mechanism, rage, fear, guilt, shame, and with time, acceptance.

In 2017 I met another survivor of the same perpetrator;

both our cases were blocked by the statute of limitations. The statute of limitations was struck down later through a public consultation, but not retroactively. Together we decided to start the We Will be the Last Ones campaign (Seremos las Últimas) with the objective of finding other survivors. From there, of all the survivors we found, only one case is actually going through the criminal justice process. For the others, we are going to bring constitutional cases.

If I had had the opportunity to start a legal case, I would have. But the fact of not being able to has forced me to find a different way to pick up the pieces and start living again, which has been very healing for me. I've been able to let go of the idea that the criminal justice system holds the kind of justice I need for me. Nevertheless, it's still essential to have a way to hold these perpetrators accountable and show the world that girls who go through what I did are the victims, not the guilty ones.

For those who are able to bring a legal case, the criminal justice process plays an important part in their healing, and I want all survivors to have that option.

I think people blame victims because sexual violence is like a mirror to society. It's better to think that a girl is lying, because if not, that means acknowledging that someone in your circle is capable of something like that and can hurt someone else. Sexual violence implicates not only the perpetrator but the whole community. Everything has to change in order for it not to be that way.

*I think people blame victims because sexual violence is like a mirror to society. It's better to think that a girl is lying, because if not, that means acknowledging that someone in your circle is capable of something like that and can hurt someone else.*

# FAILURE TO EFFECTIVELY IMPLEMENT LAWS ON SEXUAL VIOLENCE

In addition to having strong and non-discriminatory laws on sexual violence, States are required to “[e]nsure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate *ex officio* prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties.”<sup>106</sup> Investigations and prosecutions should be carried out in a timely way. Delays in procedure can diminish the evidence available for a successful prosecution and frequently cause attrition in cases, including and especially because of the additional trauma criminal justice procedures and common practices can inflict on victims. In this regard, the CEDAW Committee has stated that six components — justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems — are necessary to ensure access to justice.<sup>107</sup> However, governments across the region fail to effectively enforce laws against sexual violence. The lack of implementation of these laws has contributed to the continued pervasiveness of sexual violence, and to perpetrators often going unpunished.

Survivors of sexual violence across the region face severe obstacles in accessing justice. These obstacles include social stigma associated with rape, lack of awareness of rights, discriminatory or burdensome procedural and evidentiary requirements and practices, inaccessibility of courts and judicial mechanisms,<sup>108</sup> the lack of capacity and awareness on the part of judicial institutions and officials to address issues of sexual violence, and the lack of access to specialized and sustained support services for survivors.<sup>109</sup> In relation to evidentiary requirements, the UN Special Rapporteur on Violence against Women has recognized that a few States (including Canada,

Colombia, Ecuador and Mexico) have passed legislation preventing the use of victims’ sexual history to undermine the credibility of their claims and encouraged the rest of the States to introduce rape shield provisions that would support this.<sup>110</sup> The IACHR has also noted failures in the provision of health care services with a gender perspective and a differential approach to victims of sexual violence, which has resulted in limited, partial and inadequate responses of healthcare professionals to the physical and psychological needs of survivors.<sup>111</sup>

The persistence of social stereotypes of women and the societal tolerance of violence against women and girls, including among the judicial and law enforcement sectors, have also hampered effective implementation of laws against sexual violence.<sup>112</sup> The barriers to accessing justice are further exacerbated when a woman or girl is part of a disadvantaged or marginalized group, including those based on race, ethnicity, disability, sexual orientation or gender identity, or age.<sup>113</sup> For instance, in the Case of *Rosendo Cantú et al v. Mexico*, the Inter-American Court of Human Rights found that survivors of sexual violence from marginalized communities, such as indigenous women, often face multiple forms of discrimination while accessing justice for rape on the basis of their sex as well as their ethnicity, and are also revictimized throughout the criminal justice process.<sup>114</sup>

***It is impossible to talk about the protections for victims of sexual violence without addressing that indigenous women experience a disproportionate rate of rape and there is an absence of remedy.***

*Professor Amanda Dale, International human rights scholar and activist, Canada*

106 CEDAW General Recommendation No. 35, para 44.

107 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33 on Women's Access to Justice*, 2015, CEDAW/C/GC/33

108 Per CEDAW General Comment 33, accessibility refers to judicial mechanisms that are physically, culturally, economically, and socially accessible.

109 See also *Gonzalez and others v. Mexico* ([https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)) and *Cutierrez Hernandez and others v. Guatemala* ([https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_339\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_339_esp.pdf)), Inter-American Court of Human Rights, for a detailed discussions on the barriers to accessing justice faced by survivors of sexual violence.

110 Report of Dubravka Simonović - Special Rapporteur on violence against women, its causes and consequences, on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para 99 and 100.

111 Inter-American Commission on Human Rights, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OAS/Ser.LJ/V/II., 14 November 2019

112 Celorio, R. *Having Strong Gender Violence Laws Isn't Enough*, *Americas Quarterly*, 21 October 2020 [https://americasquarterly.org/article/having-strong-gender-violence-laws-isnt-enough/?fbclid=IwAR2Axy5VD\\_YTqXOb5KNawkWy34K78otx64somgw7gF9qOmpjLPkFwoHrSpM](https://americasquarterly.org/article/having-strong-gender-violence-laws-isnt-enough/?fbclid=IwAR2Axy5VD_YTqXOb5KNawkWy34K78otx64somgw7gF9qOmpjLPkFwoHrSpM).

113 See UN Women, et al *Practitioner's Toolkit on Women's Access to Justice Programming*.

114 Inter-American Court of Human Rights, *Judgment in the Case of Rosendo Cantú et al v. Mexico*, 31 August 2010, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_216\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf).

In recent times, there has also been a general deprioritization by governments in several countries in the LAC region to combat violence against women despite the increasing incidence of femicide and sexual violence. For instance, the Mexican Government has reduced funding to address gender inequality and gender-based violence, with only 2% of the 2021 budget being classified to promote equality.<sup>115</sup> The reduction in funding has put many women's rights services including indigenous and Afro-Mexican Women's Houses (CAMIs) at risk of closure, and some have already halted their services. Similarly, women's shelters are also being defunded in Guatemala.<sup>116</sup>

As noted by MESECVI, "without clear and sufficient budgetary appropriations, the plans, programs and services that treat or serve to combat violence against women cannot be operated efficiently" as required by the Belém do Pará Convention.<sup>117</sup> However, often States do not allocate the necessary budgetary resources which are required to effectively implement laws and policies against sexual violence.<sup>118</sup> The political climate in these countries therefore compounds the difficulties in obtaining justice for victims of various human rights abuses, including gender-based violence. This has been further exacerbated during the COVID-19 pandemic as emergency measures and lockdowns have not only limited access to justice and services but have also resulted in an increase in gender-based violence.<sup>119</sup>

115 Only 2% of the Public Budget is labelled with a gender perspective in 2021, 8 March 2021, Yancuic, <http://yancuic.com/2021/03/08/solo-2-del-presupuesto-publico-esta-etiquetado-con-perspectiva-de-genero-en-2021/> See also, CEVI-ComunicadoMexico-2020-Presupuesto-EN.pdf (oas.org).

116 Shelters for women who suffer violence run out of money (Congress takes away 97% of their funds), 13 November 2019, Nómada [Refugios para mujeres que sufren violencia se quedan sin dinero \(Congreso les quita el 97% de sus fondos\) - Nómada, Guatemala. \(nomada.gt\)](https://nomada.gt/refugios-para-mujeres-que-sufren-violencia-se-quedan-sin-dinero-congreso-les-quita-el-97-de-sus-fondos/)

117 Inter-American Commission of Women & Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Second Hemispheric Report on the implementation of the Belém do Pará Convention*, OAS, 2012 <https://www.oas.org/en/mesecevi/docs/mesecevi-segundoinformehemisferico-en.pdf>, at p. 84).

118 UNDP & UN Women, *From Commitment to Action: Policies to End Violence Against Women in Latin America and the Caribbean*, 2017, <http://www.latinamerica.undp.org/content/dam/rblac/docs/Research%20and%20Publications/Empoderamiento%20de%20la%20Mujer/UNDP-RBLAC-ReportVCMEnglish.pdf>.

119 Seo, N. Violence Against Women Increasing During Pandemic, Voice of America, 22 August 2020, <https://www.voanews.com/covid-19-pandemic/violence-against-women-increasing-during-pandemic>; Equality Now, COVID-19 Conversations: Virtual court hearings in Latin America, 24 April 2020, [https://www.equalitynow.org/covid\\_19\\_lac\\_virtual\\_court\\_hearings](https://www.equalitynow.org/covid_19_lac_virtual_court_hearings).

## MANDI'S STORY CANADA

*A survivor's experience demonstrates that having strong laws is not enough and the failure to effectively implement good laws on sexual violence stifles the ability of survivors to access justice.*

In 2015, I reported a sexual assault to the Toronto police.

The detective investigating my case told me I had implied consent because I went willingly to the house of my attacker. But implied consent is not a legal defense to sexual assault in Canada. Two weeks later he sent an email to inform me that the man had been arrested. After that, I didn't hear from anyone for months.

The Ontario courts have a Victim Witnesses Assistant program. But they do little more than call to let you know the court dates. Sometimes they even forget to do that. You are discouraged from sharing any information with the Victim Witness worker because they are required to disclose any information to the Crown<sup>120</sup>, who is required to pass it onto the lawyer representing the accused.

The trial was scheduled to be three days but ended up taking months. I spent four days being questioned in court, the dates were spread out and there were constant delays. It was really hard to plan things and manage my own wellbeing. I would arrange my support, and organize time off work and my studies. Then I'd get a call out of the blue telling me the court date was cancelled.

Before the trial, I had a naïve belief that because the rape shield provision existed, they would respect this within the courtroom. In Canada, there are laws to protect your private records and prevent questions about your sexual history during cross-examination. But the defense lawyer can apply to retrieve information.

The defense lawyer applied to access my therapy records and requested permission from the court to cross-examine me on my sexual preferences. The court rejected both requests but that didn't stop his lawyer grilling me. She would ask stupid, really gross and irrelevant questions.

Again and again, I had to repeat mundane details about the assault and what I did after I reported to the police. It felt like a never ending ordeal and it was such a traumatic experience.

*The laws are only as good as the judge and lawyers that understand them. There is a problem of a lack of understanding about how rape myths enter the court.*

She said that having sex with me was like having sex with a dead fish. She read my phone number out in open court.

Meanwhile, my attacker was cross examined for just one hour.

The laws are only as good as the judge and lawyers that understand them.

There is a problem of a lack of understanding about how rape myths enter the court. If you are a victim and the rape shield provisions are being violated, if the judge doesn't say anything and the lawyers aren't interjecting, where do you go? You have no recourse.

I waived my right to anonymity because I didn't feel I could be silent about what was happening in the courtroom. The media wrote really cruel things about me and I was framed as this powerful feminist. I encountered a lot of rape myths. I'd had a sexual relationship with my attacker and we were casually dating. The assumption was yes once means yes to all.

It took six months to get the verdict and he was convicted. But the judge wrote a decision that was really incoherent, poorly written, and easy to appeal. I was really mad at him. He should have stuck to the law and relied on the facts of the case. Instead he wrote 165 pages citing feminist text, none of which the lawyers had brought in.

The defense lawyers lodged an appeal arguing the judge had a feminist bias. The conviction was overturned and they ordered a retrial. I was really angry and frustrated. After everything that had happened, to be told I had to go through an appeal and possibly another trial. I said no.

<sup>120</sup> In this case, a government lawyer for the prosecution

# OTHER EMERGING ISSUES

In addition to the protection gaps in the law highlighted in detail in this report, activists and experts across the region have highlighted some other issues which raise troubling implications for access to justice for survivors of sexual violence. Further investigation and research on these issues is required to determine their extent and impact.

## Procedural Restrictions on Minors to Report Crimes of Sexual Violence

As noted by the CEDAW Committee, girls “often lack the social or legal capacity to make significant decisions about their lives in areas relating to education, health and sexual and reproductive rights.”<sup>121</sup> When girls lack legal capacity they are often unable to exercise their legal rights which can affect their ability to obtain justice for acts of sexual violence perpetrated against them. For instance, not all jurisdictions in the Americas region allow minors to report cases of sexual violence without the presence of an adult. In Bolivia, for example, the filing of a sexual violence complaint by a minor alone is nearly impossible and requires either parental authorization or the assistance of a service organization or ombudsman. This is problematic as often the perpetrators themselves are family or community members and other family members thus may not be willing to assist the survivor in reporting the incident. This contributes to a general lack of reporting of sexual violence against minors which in turn adds to the culture of impunity in such cases.

Children and adolescents have a right to access justice in all situations involving a violation of their rights and steps should be taken to ensure they are able to exercise their legal rights.<sup>122</sup>

## Need for Public Prosecution of Sexual Violence Offenses

The Inter-American Court of Human Rights has stressed the obligation of State authorities to initiate a “genuine, impartial and effective investigation *ex officio* as soon as they are made aware of acts that constitute violence against women, including sexual violence”.<sup>123</sup> The CEDAW Committee has also highlighted the importance of *ex officio* or public prosecution by the State in cases of sexual violence.<sup>124</sup> This has been reflected also by the Special Rapporteur on Violence against Women.<sup>125</sup> However, in some jurisdictions, the law requires an official complaint by the victim or his/her legal representative for any investigation or prosecution to take place.

For example, in Argentina, Cuba<sup>126</sup> and Venezuela, the law states that prosecution for offenses of rape and sexual abuse can generally only take place based on an accusation by the aggrieved party or his/her legal representative. Such a provision is particularly problematic where those targeted are young and those exploiting them have considerable power and control. For example, the recent findings of an ongoing research project documenting the high prevalence of child marriage and unofficial unions, particularly among the indigenous population in the north of Argentina, indicated that there are 231,000 girls under the age 18 married or living with men largely between 10-15 years older than them. This includes girls under the age of 16 who are unable under law to consent to sex, let alone to marriage.<sup>127</sup> In Venezuela *ex officio* prosecution of rape offenses is only provided in certain exceptional circumstances, such as if the act of sexual violence also caused the death of the victim or was accompanied by another offense which is prosecutable *ex officio*, that is if

121 CEDAW General Comment 33 at para. 24.

122 UN Human Rights Council, *Access to justice for children* (A/HRC/25/35), 16 December 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G1318980.pdf?OpenElement>.

123 Inter-American Court of Human Rights, *Veliz Franco et al. v. Guatemala*, Judgment of May 19, 2014, (Preliminary objections, merits, reparations and costs), Series C No. 277.

124 Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, § 44.

125 Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, *on Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para. 94(a) <https://undocs.org/A/HRC/47/26>

126 See *Id.*, para 91.

127 Fundación para Estudio e Investigación de la Mujer: *Previnendo el matrimonio y las uniones infantiles: una forma de Violencia Contra las Mujeres y Niñas en Argentina*, 2020. [https://drive.google.com/file/d/1\\_zw7cj1h4u8rVqioQoBluHBpsEoyUjPU/view](https://drive.google.com/file/d/1_zw7cj1h4u8rVqioQoBluHBpsEoyUjPU/view)

the act was committed in a public place or was committed by abuse of parental power, guardianship authority or public functions. This privatization of rape prosecutions promotes impunity - it allows local law enforcement authorities to discourage women from filing such claims and to postpone initiation of investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. This lack of serious attention by the legal system and the transfer of the burden onto the survivor for seeing a prosecution through also risks stronger exposure of victims of sexual violence to pressure from perpetrators and their families, their own families, community members, law enforcement, lawyers and doctors involved in the case not to file a complaint, or to withdraw the claim.

In some jurisdictions, prosecution of specific aspects of sexual violence crimes requires a complaint by the victim or legal representative. For instance, prosecution of the offense of *estupro* in Ecuador<sup>128</sup> and certain Mexican jurisdictions (Estado de México, Aguas Calientes, San Luis de Potosí, Tlaxcala), and the offense of statutory rape in Estado de México, Nuevo Leon and San Luis de Potosí, require a complaint by the victim or legal representative. This means that the prosecutor alone cannot decide to bring such cases. This again transfers the burden onto survivors, who often have little legal knowledge and no resources, to understand whether they have been exploited and abused, to move the case forward, and again, particularly since the victims of such crimes are likely to be minors, risks increasing their vulnerability to outside pressure to stop the case and potentially to additional abuse.

## Reconciliation/Settlement

The UN Special Rapporteur on Violence against Women has recommended that States eliminate all mitigating circumstances that are not in accordance with human rights standards.<sup>129</sup> The UN Women Guidelines state that in sexual violence cases mediation shall be prohibited at all stages of the process. Under the Guidelines, financial settlement or marriage as settlement should also be prohibited in cases of sexual assault.

128 Unlike criminal matters, *estupro* is treated as a private matter and a claim of *estupro* must be made directly to a judge, not to a prosecutor's office, and that judge decides the case. In fact, the prosecutor's office or Ministry of Justice does not get involved or usher the case through the legal proceeding. Furthermore, the burden falls solely on the survivor and/or the survivor's representatives to bring and sustain the claim. If the survivor does not or is unable to navigate this legal process on her own, the judge will drop her case.

129 Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, 19 April 2021, A/HRC/47/26 para. 90(c). <https://undocs.org/A/HRC/47/26>

130 Article 393, Venezuela Penal Code, <https://www.ilo.org/dyn/natlex/docs/SERIAL/65706/53561/F1608563985/VEN65706.pdf>

131 Asociación Civil Mujeres en Línea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*. December 2020, pp. 1-4, <https://www.ohchr.org/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf>

132 Articles 356, 357, Penal Code of the Dominican Republic

MESECVI has noted with concern that a number of State Parties to the Belém do Pará Convention have reported that “methods were available for conciliation or mediation between the victim of violence and her aggressor, or even a pardon for the aggressor if he agrees to marry the victim”. Some examples of countries are:

- **Venezuela:** Article 393 of the Venezuelan Penal Code provides that for offenses of rape, including rape of a minor, the rapist will be exempt from penalty if he marries the victim before conviction.<sup>130</sup> This provision was declared unconstitutional and partially annulled by the Supreme Court of Justice of Venezuela, which held that the forgiveness of the victim through the celebration of marriage should not be allowed as a form of cessation of the crime of gender violence. However, the judgment of the Supreme Court is yet to be complied with by the Venezuelan government, and the practice continues to apply.<sup>131</sup>
- **Dominican Republic:** The Penal Code of the Dominican Republic currently provides that in the event the “seducer” marries the minor victim (the aggrieved person) he may only be prosecuted through complaint of the persons who have the right to demand the annulment of the marriage, and be only convicted after this annulment has been pronounced.<sup>132</sup> The legislature is currently discussing changes to the penal code which would remove this provision.
- **Cuba:** The offense of *estupro* in Cuba states that the marriage of the offender to the victim will stop any legal proceedings.

A considerable number of States also do not have express provisions prohibiting out-of-court settlements.<sup>133</sup> Other jurisdictions also allow for stopping legal proceedings for certain sexual offenses based on forgiveness from the victim. In Aguas Calientes (Mexico), forgiveness from the victim can extinguish criminal liability for the offense of *estupro*. The law even goes further to provide that “tacit forgiveness” on part of the victim may be implied in certain circumstances, such as if the victim does not participate in the criminal proceedings without just cause, refuses to collaborate in such proceedings, or refuses to present evidence that is necessary and in their possession. Such an approach favors the perpetrator and fails to recognize the harm done to and vulnerability of the victim, including to further abuse.

Such general exemption and forgiveness provisions are born out of a strong, patriarchal, social context which assign men and women stereotypical roles of the entitled and the chaste, the honorable and the shameful. They lead to preferment of the perpetrator rather than the victim and influence the way the laws are implemented as well as the way they are written.

Given the unequal relationship between the victim and the aggressor in cases of sexual violence, mediation or conciliation in such cases increases physical and emotional risks for the victim. It is in the nature of such offenses, influenced by the context, that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance. Victims are often pressured into “forgiving” the perpetrator by the perpetrator, their families or other community members. Such provisions also challenge the victim’s access to justice and contribute to impunity for crimes of sexual violence.<sup>134</sup> As such, MESECVI has recommended that States explicitly prohibit conciliation, mediation and other methods aimed at securing out-of-court settlements in cases involving violence against women.

133 Inter-American Commission of Women & Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Second Hemispheric Report on the implementation of the Belém do Pará Convention*, OAS, 2012 <https://www.oas.org/en/mesecvi/docs/mesecvi-segundoinformehemisferico-en.pdf>.

134 Inter-American Commission on Human Rights, *Access to Justice for Women victims of sexual violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63 9 December 2011, <https://www.refworld.org/pdfid/51ff78e84.pdf>



# RECOMMENDATIONS

# GOVERNMENTS SHOULD:

1

## Improve protections in the law

- Ensure that the definition of rape is clear and not based on a requirement to prove force, but covers all forms of sexual penetration with a body part or object committed without the victim's voluntary, genuine, and willing consent, and in a wide range of coercive circumstances.
- Ensure that the law recognizes there are circumstances where it is not possible to give voluntary, genuine and willing consent and that it must look more broadly at the issue of exploitation, including sexual violence in the context of family or other relationship where there is particular dependency and inequality of power relationships.
- Eliminate *estupro* or similar provisions that treat rape of adolescents as a lesser offense.<sup>135</sup>
- Remove all provisions that exempt a charge of rape in the context of marriage or an intimate relationship.
- Eliminate statutes of limitation for cases of rape and sexual assault, in cases of both adult and minor victims.
- Ensure that any close-in-age provisions include “romeo and juliet” clauses to allow without punishment for consensual, non-exploitative sexual activity between peers, and are well-drafted to avoid gaps in protection, for example by reducing the difference in age provision, particularly for younger adolescents.
- Ensure that sentences for sexual violence crimes (rape, sexual assault, marital rape, incest, statutory rape, rape of a minor) are commensurate with the gravity of the acts involved and include as an aggravating circumstance rape in the context of family or similar relationship.
- Actively and integrally include civil society, women and girls, and survivors of sexual violence in policy planning and budgetary processes and include them in the designing of laws, policies and budget which affect them.
- Ratify and implement the *Belém do Pará Convention*, CEDAW, the CRC, and other regional and international instruments for the greater protection of women and girls and the right to be free from sexual violence.

2

## Improve access to justice under the law

- Permit minors to file complaints of sexual violence on their own authority, without requiring parental permission or approval from any other person/body.
- Classify all sexual offenses including rape, marital rape, *estupro*, incest, and rape of a minor, as public offenses which would allow the public prosecutorial system to bring charges *ex officio* without the victim's participation.
- Explicitly prohibit the use of mediation, conciliation or other forms of out-of-court settlements in cases of sexual violence.
- Review and amend as necessary the whole eco-system of laws affecting women and girls to ensure they are non-discriminatory and complementary to each other, including laws on child marriage, rape in marriage/intimate partnerships, access to sexual and reproductive healthcare, including access to abortion for survivors who become pregnant due to rape.

<sup>135</sup> Provided that rape itself is prosecutable for all victims, including adolescent girls, i.e. based on a definition of consent assessed in the context of any coercive circumstances

### 3

#### Improve implementation, practice and accountability

- Ensure that programs preventing and addressing sexual violence take a survivor-centered, holistic approach with a special focus on the needs of girls and adolescents, that such programs are implemented effectively throughout the country (including in rural areas), and that survivors are provided with support services irrespective of whether they file a criminal complaint.
- Ensure that all forms of sexual violence offenses are treated as matters of public interest, which have to be investigated and prosecuted as a priority.
- Effectively implement laws on sexual violence, including by budgeting sufficient resources for programs to prevent and address sexual violence.
- Train justice system officials, including police, prosecutors and judges, to specifically deal with cases of sexual violence in a victim-centered and trauma-informed way and implement investigation and prosecution protocols to guide implementation of sexual violence legislation and processing of such cases in the judicial system. Ensure that such protocols also specifically address the needs of marginalized communities.
- Collect data, including statistical data, to monitor the efficacy of sexual violence legislation and improve measures to address sexual violence.
- Collect administrative data on sexual violence crimes, disaggregated based on the victim's and perpetrator's sex, age, race, ethnic origin, nationality, immigration status, caste, disability, sexual orientation and gender identity.
- Collect disaggregated statistical data on whether the sexual violence was committed in the context of marriage, an intimate partner relationship, any other relationship between the perpetrator(s) and the victim, including in the context of prostitution.
- Collect disaggregated statistical data on whether the sexual violence was linked to other forms of violence against women and girls, including but not limited to femicide, disappearance, forced pregnancy and the like.
- Collect disaggregated statistical data on reports of sexual violence registered with the police, as well as rates of prosecutions, convictions, and penalties in such cases.

### 4

#### Challenge negative stereotypes and improve public understanding of sexual violence

- Implement age-appropriate sex and relationship education programs in schools, and public information and awareness campaigns aimed at promoting equality and ending violence against women and girls.
- Develop and fund awareness-raising campaigns to inform the public, particularly women and girls, to understand their rights, improve knowledge of laws related to sexual violence, available remedies and methods to preserve evidence prior to reporting.

# ANNEX

S. No	Jurisdiction	Applicable Laws on Sexual Violence	Link to the Law
1.	<b>Antigua and Barbuda</b>	Sexual Offences Act, 1995, <i>see especially</i> Articles 3-11.	<a href="http://laws.gov.ag/wp-content/uploads/2018/08/a1995-9.pdf">http://laws.gov.ag/wp-content/uploads/2018/08/a1995-9.pdf</a>
2.	<b>Argentina</b>	Penal Code of Argentina, <i>see especially</i> Articles 119-125.	<a href="http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/textact.htm">http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/textact.htm</a>
3.	<b>Bahamas</b>	Sexual Offences and Domestic Violence Act, 1991, <i>see especially</i> Chapter 99.	<a href="http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf">http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf</a>
4.	<b>Barbados</b>	Laws of Barbados, Chapter 54: Sexual Offences, <i>see especially</i> Sections 3-8.	<a href="http://104.238.85.55/en/ShowPdf/154.pdf">http://104.238.85.55/en/ShowPdf/154.pdf</a>
5.	<b>Belize</b>	Laws of Belize, Vol. III, Title IX, Chapter 101: Criminal Code, <i>see especially</i> Sections 46-47, 71-73	<a href="http://www.belizelaw.org/web/lawadmin/index2.html">http://www.belizelaw.org/web/lawadmin/index2.html</a>
6.	<b>Bolivia</b>	Penal Code of Bolivia, <i>see especially</i> Articles 308-312 ( <i>Rape and Estupro</i> )	<a href="https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf">https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf</a>
		Code of Criminal Procedure of Bolivia, <i>see especially</i> Articles 29-30 ( <i>Statute of Limitations</i> )	<a href="http://www.silep.gob.bo/norma/4311/ley_actualizada">http://www.silep.gob.bo/norma/4311/ley_actualizada</a>
7.	<b>Brazil</b>	Penal Code of Brazil, <i>see especially</i> Articles 213-217 ( <i>Rape and Estupro</i> ) and Articles 103, 109, 111 ( <i>Statute of Limitations</i> )	<a href="http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm">http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm</a>
8.	<b>Canada</b>	Criminal Code, R.S.C. 1985 c. C-46, <i>see especially</i> Sections 271-278 ( <i>Rape</i> ), 151-153 ( <i>Sexual Offences</i> ).	<a href="https://laws-lois.justice.gc.ca/eng/acts/c-46/section-271.html">https://laws-lois.justice.gc.ca/eng/acts/c-46/section-271.html</a>
9.	<b>Chile</b>	Penal Code of Chile, <i>see especially</i> Book 2, Title VII, Articles 361-375 ( <i>Rape and Estupro</i> ) and Book 1, Title V, Article 94 bis ( <i>Statute of Limitations</i> )	<a href="https://www.bcn.cl/leychile/navegar?idNorma=1984">https://www.bcn.cl/leychile/navegar?idNorma=1984</a>
10.	<b>Colombia</b>	Penal Code of Colombia, <i>see especially</i> Articles 205-212 ( <i>Rape</i> ), Article 83 ( <i>Statute of Limitations</i> )	<a href="http://www.secretariasenado.gov.co/senado/basedoc/ley_0599_2000.html">http://www.secretariasenado.gov.co/senado/basedoc/ley_0599_2000.html</a>
11.	<b>Costa Rica</b>	Penal Code of Costa Rica, <i>see especially</i> Articles 156-162 ( <i>Rape</i> ), Articles 32, 84 ( <i>Statute of Limitations</i> )	<a href="http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&amp;nValor2=5027">http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&amp;nValor2=5027</a>
12.	<b>Cuba</b>	Penal Code of Cuba, <i>see especially</i> Articles 353-361	<a href="https://www.parlamentocubano.gob.cu/index.php/documento/codigo-penal/">https://www.parlamentocubano.gob.cu/index.php/documento/codigo-penal/</a>
13.	<b>Dominica</b>	Sexual Offences Act, 1998 & the Sexual Offences (Amendment) Act, 2016, <i>see especially</i> sections 3-10.	<a href="http://www.dominica.gov.dm/laws/1998/act1-1998.pdf">http://www.dominica.gov.dm/laws/1998/act1-1998.pdf</a> ; <a href="http://www.dominica.gov.dm/laws/2016/Sexual%20Offences%20(Amendment)%20Act%202016.pdf">http://www.dominica.gov.dm/laws/2016/Sexual%20Offences%20(Amendment)%20Act%202016.pdf</a> (2016 amendment)

14.	<b>Dominican Republic</b>	Penal Code of the Dominican Republic, <i>see especially</i> Articles 330-333 ( <i>Rape and Sexual Assault</i> )	<a href="https://poderjudicial.gob.do/documentos/PDF/codigos/Codigo_Penal.pdf">https://poderjudicial.gob.do/documentos/PDF/codigos/Codigo_Penal.pdf</a>
		The Code for the Protection of Children and Adolescents, <i>see especially</i> Article 396	<a href="https://www.poderjudicial.gob.do/documentos/PDF/codigos/Codigo_NNA.pdf">https://www.poderjudicial.gob.do/documentos/PDF/codigos/Codigo_NNA.pdf</a>
		Code of Criminal Procedure, <i>see especially</i> Article 45 ( <i>Statute of Limitations</i> )	<a href="https://www.oas.org/juridico/pdfs/mesicic4_reptom_codpp.pdf">https://www.oas.org/juridico/pdfs/mesicic4_reptom_codpp.pdf</a>
15.	<b>Ecuador</b>	Codigo Organico Integral Penal de Ecuador, <i>see especially</i> Articles 166-171 ( <i>Rape and Estupro</i> ), Article 75 ( <i>Statute of Limitations</i> )	<a href="https://www.derechoecuador.com/uploads/content/2018/03/file_1521478528_1521478536.pdf">https://www.derechoecuador.com/uploads/content/2018/03/file_1521478528_1521478536.pdf</a>
16.	<b>El Salvador</b>	Penal Code of El Salvador, <i>see especially</i> Articles 158-168 ( <i>Rape and Estupro</i> ), Article 99 ( <i>Statute of Limitations</i> )	<a href="https://www.asamblea.gob.sv/sites/default/files/documents/decretos/CoAB56F8-AF37-4F25-AD90-08AE401CoBA7.pdf">https://www.asamblea.gob.sv/sites/default/files/documents/decretos/CoAB56F8-AF37-4F25-AD90-08AE401CoBA7.pdf</a>
17.	<b>Grenada</b>	Laws of Grenada, Chapter 72A - Criminal Code; Criminal Code (Amendment) Act, 2012, <i>see especially</i> sections 177-183, Article 107 ( <i>Statute of Limitations</i> )	<a href="https://laws.gov.gd/index.php?option=com_edocman&amp;task=document.viewdoc&amp;id=191&amp;Itemid=196">https://laws.gov.gd/index.php?option=com_edocman&amp;task=document.viewdoc&amp;id=191&amp;Itemid=196</a> ; <a href="https://www.gov.gd/egov/docs/legislations/criminal-code-amendment-act-2012.pdf">https://www.gov.gd/egov/docs/legislations/criminal-code-amendment-act-2012.pdf</a> (2012 amendment)
18.	<b>Guatemala</b>	Penal Code of Guatemala, <i>see especially</i> Articles 173-178 ( <i>Rape and Estupro</i> )	<a href="http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/pdfs/Compilaciones/Compilacion%20de%20Leyes%20Penales_CENADOJ%202aEd.pdf">http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/pdfs/Compilaciones/Compilacion%20de%20Leyes%20Penales_CENADOJ%202aEd.pdf</a>
19.	<b>Guyana</b>	Sexual Offences Act, 2010, <i>see especially</i> sections 3-19 ( <i>Rape and Sexual Activity with Minors</i> )	<a href="https://mola.gov.gy/sites/default/files/Cap%20803%20%20Sexual%20Offences%20Act.pdf">https://mola.gov.gy/sites/default/files/Cap%20803%20%20Sexual%20Offences%20Act.pdf</a>
		Criminal Law (Offences) Act, <i>see especially</i> Section 45 ( <i>Indecent Assault on a female</i> )	<a href="https://mola.gov.gy/sites/default/files/Cap%20801%20Criminal%20Law%20%208Offences%29%20Act.pdf">https://mola.gov.gy/sites/default/files/Cap%20801%20Criminal%20Law%20%208Offences%29%20Act.pdf</a>
20.	<b>Haiti</b>	Penal Code of Haiti, <i>see especially</i> Articles 278-280 ( <i>Rape</i> ). A new Penal Code is expected to come into force in June 2022 unless a newly elected president changes the prior decree enacting it or parliament is reconstituted and rejects it and/or tables alternative legislation.	<a href="http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic4_hti_penal.pdf">http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic4_hti_penal.pdf</a>
		Code of Criminal Instruction, <i>see especially</i> Article 466 ( <i>Statute of Limitations</i> )	<a href="https://www.oas.org/juridico/mla/fr/hti/fr_hti_mla_instruction.html#_Toc37075920">https://www.oas.org/juridico/mla/fr/hti/fr_hti_mla_instruction.html#_Toc37075920</a>
21.	<b>Honduras</b>	Penal Code of Honduras, 2019, <i>see especially</i> Articles 249-255 ( <i>Rape and Estupro</i> ), Articles 110-116 ( <i>Statute of Limitations</i> )	<a href="https://criterio.hn/wp-content/uploads/2019/05/C%C3%B3digo-Penal-1.pdf">https://criterio.hn/wp-content/uploads/2019/05/C%C3%B3digo-Penal-1.pdf</a>

22.	<b>Jamaica</b>	Sexual Offences Act, 2009, <i>see especially sections 3-10</i>	<a href="https://moj.gov.jm/laws/sexual-offences-act">https://moj.gov.jm/laws/sexual-offences-act</a>
23.	<b>Mexico: Aguas Calientes</b>	Penal Code for the state of Aguas Calientes, <i>see especially Articles 118-124 (Rape and Estupro), Article s 80, 81, 83 (Forgiveness and Acts punishable by complaint)</i>	<a href="https://eservicios2.aguascalientes.gob.mx/NormatecaAdministrador/archivos/EDO-4-11.pdf">https://eservicios2.aguascalientes.gob.mx/NormatecaAdministrador/archivos/EDO-4-11.pdf</a>
24.	<b>Mexico: Estado de Mexico</b>	Penal Code for the state of Mexico, <i>see especially Articles 271-273 (Rape and Estupro), Articles 96-97 (Statute of Limitations)</i>	<a href="https://www.google.com/url?q=http://www.piedomex.gob.mx/DocumentosGenerales/transparencia/MarcoJurNor/08_Codigo_Penal_Estado_Mexico.pdf&amp;sa=D&amp;source=editors&amp;ust=1622112751716000&amp;usg=AOv-Vaw2vO9LoWRFFDINUcPy6zra">https://www.google.com/url?q=http://www.piedomex.gob.mx/DocumentosGenerales/transparencia/MarcoJurNor/08_Codigo_Penal_Estado_Mexico.pdf&amp;sa=D&amp;source=editors&amp;ust=1622112751716000&amp;usg=AOv-Vaw2vO9LoWRFFDINUcPy6zra</a>
25.	<b>Mexico: Nuevo Leon</b>	Penal Code for the state of Nuevo Leon, <i>see especially Articles 262-271 (Rape and Estupro)</i>	<a href="http://www.hcnl.gob.mx/trabajo_legislativo/leyes/pdf/CODIGO%20PENAL%20PARA%20EL%20ESTADO%20DE%20%20NUEVO%20LEON.pdf">http://www.hcnl.gob.mx/trabajo_legislativo/leyes/pdf/CODIGO%20PENAL%20PARA%20EL%20ESTADO%20DE%20%20NUEVO%20LEON.pdf</a>
26.	<b>Mexico: San Luis Potosí</b>	Penal Code for the state of San Luis Potosí, <i>see especially Articles 171 - 179 (Rape and Estupro),</i>	<a href="http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/codigos/CPESLP/CPESLP.pdf">http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/codigos/CPESLP/CPESLP.pdf</a>
27.	<b>Mexico: Tlaxcala</b>	Penal Code of the state of Tlaxcala, <i>see especially Articles 285-293 (Rape and Estupro), Article 116 (Statute of Limitations)</i>	<a href="http://tsjtlaxcala.gob.mx/transparencia/Fracciones_a63/l/leyes/20191224_CODIGOPENAL_Tlaxcala.pdf">http://tsjtlaxcala.gob.mx/transparencia/Fracciones_a63/l/leyes/20191224_CODIGOPENAL_Tlaxcala.pdf</a>
28.	<b>Nicaragua</b>	Penal Code of Nicaragua (as amended in 2017); <i>see especially Articles 167-173 (Rape and Estupro), Article 131 (Statute of Limitations)</i>	<a href="https://www.poderjudicial.gob.ni/pjupload/noticia_reciente/CP_641.pdf">https://www.poderjudicial.gob.ni/pjupload/noticia_reciente/CP_641.pdf</a> ; <a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=7373673F-C384AD42062581520061E484&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=7373673F-C384AD42062581520061E484&amp;action=openDocument</a> (2017 amendment)
29.	<b>Panama</b>	Penal Code of the Republic of Panama, <i>see especially Articles 174-177 (Rape and Estupro)</i>	<a href="https://www.gacetaoficial.gob.pa/pdfTemp/26519/GacetaNo_26519_20100426.pdf">https://www.gacetaoficial.gob.pa/pdfTemp/26519/GacetaNo_26519_20100426.pdf</a>
30.	<b>Paraguay</b>	Penal Code of the Republic of Paraguay (including 2008 amendment), <i>see especially Articles 128-137 (Rape and Estupro), Article 102 (Statute of Limitations)</i>	<a href="https://www.pj.gov.py/ebook/libros_files/Coleccion_de_Derecho_Penal_Tom01.pdf">https://www.pj.gov.py/ebook/libros_files/Coleccion_de_Derecho_Penal_Tom01.pdf</a> ; <a href="https://www.pj.gov.py/images/contenido/ddpi/leyes/ley-3440-2008-que-modifica-el-codigo-penal.pdf">https://www.pj.gov.py/images/contenido/ddpi/leyes/ley-3440-2008-que-modifica-el-codigo-penal.pdf</a> (2008 amendment)
31.	<b>Peru</b>	Penal Code of Peru, <i>see especially Articles 170-178 (Rape and Estupro);</i>	<a href="http://www2.congreso.gob.pe/sicr/cendocbib/con5_uibd.nsf/001C-D7E618605745052583280052F800/\$FILE/COD-PENAL_actualizado_16-09-2018.pdf">http://www2.congreso.gob.pe/sicr/cendocbib/con5_uibd.nsf/001C-D7E618605745052583280052F800/\$FILE/COD-PENAL_actualizado_16-09-2018.pdf</a>
		Criminal Procedure Code, <i>see especially Articles 80-82 (Statute of Limitations)</i>	
32.	<b>St. Kitts and Nevis</b>	Offences against the Person Act, <i>see especially sections 46-47 (Rape)</i>	<a href="https://aglcskn.info/documents/Act17TOC/Ch%2004.21%20Offences%20Against%20the%20Person%20Act.pdf">https://aglcskn.info/documents/Act17TOC/Ch%2004.21%20Offences%20Against%20the%20Person%20Act.pdf</a>
		Criminal Law (Amendment) Act, <i>see especially sections 2-7 (Defilement)</i>	<a href="https://aglcskn.info/documents/Act17TOC/Ch%2004.05%20Criminal%20Law%20Amendment%20Act.pdf">https://aglcskn.info/documents/Act17TOC/Ch%2004.05%20Criminal%20Law%20Amendment%20Act.pdf</a>
33.	<b>Saint Lucia</b>	Criminal Code, Chapter 3.01, Laws of Saint Lucia, <i>see especially sections 123-130 (Rape); section 671 (Statute of Limitations)</i>	<a href="http://www.govt.lc/media.govt.lc/www/resources/legislation/Criminal%20Code.pdf">http://www.govt.lc/media.govt.lc/www/resources/legislation/Criminal%20Code.pdf</a>

34.	<b>Saint Vincent and the Grenadines</b>	Criminal Code, Chapter 171 of the Laws of Saint Vincent and the Grenadines, <i>see especially sections 123-140</i>	<a href="http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_svg_annex8.pdf">http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_svg_annex8.pdf</a>
35.	<b>Suriname</b>	Criminal Code for Suriname, <i>see especially Articles 295-303</i>	<a href="https://www.dna.sr/wetgeving/surinaamse-wetten/geldende-teksten-tm-2005/wetboek-van-strafrecht/">https://www.dna.sr/wetgeving/surinaamse-wetten/geldende-teksten-tm-2005/wetboek-van-strafrecht/</a>
36.	<b>Trinidad and Tobago</b>	Sexual Offences Act, 1986, <i>see especially sections 4-12, 28</i>	<a href="http://rgd.legallaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf">http://rgd.legallaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf</a>
		Children Act, 2012, <i>see especially sections 18, 20, 26</i>	<a href="http://laws.gov.tt/ttdll-web2/revision/download/92039?type=act">http://laws.gov.tt/ttdll-web2/revision/download/92039?type=act</a>
37.	<b>United States: California</b>	California Penal Code, Part 1, Title 9, Chapter 1, <i>see especially sections 261-289 (Rape and Sexual Assault), sections 799-801 (Statute of Limitations)</i>	<a href="https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&amp;division=&amp;title=9.&amp;part=1.&amp;chapter=1.&amp;article=">https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&amp;division=&amp;title=9.&amp;part=1.&amp;chapter=1.&amp;article=</a>
38.	<b>United States: Maryland</b>	Title 3, Subtitle 3 (Sexual Crimes) of the Maryland Code, Criminal Law, <i>see especially sections 3-301-3-318</i>	<a href="https://mgaleg.maryland.gov/2021RS/Statute_Web/gcr/gcr.pdf">https://mgaleg.maryland.gov/2021RS/Statute_Web/gcr/gcr.pdf</a>
39.	<b>United States: New York</b>	New York Penal Law, <i>see especially Article 130 - Sex Offenses</i>	<a href="https://www.nysenate.gov/legislation/laws/PEN/P3THA130">https://www.nysenate.gov/legislation/laws/PEN/P3THA130</a>
40.	<b>United States: Puerto Rico</b>	Penal Code of Puerto Rico, 2012 - Title 33, Subtitle 7, Part I, Chapter 33 of the Laws of the Commonwealth of Puerto Rico, <i>see especially Articles 130-133 (33 L.P.R.A §§ 5191-5194) [Rape] and Articles 87-89(33 L.P.R.A §§ 5132-5134) [Statute of Limitations]</i>	<a href="https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/146-2012/146-2012.pdf">https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/146-2012/146-2012.pdf</a>
41.	<b>United States: Virginia</b>	Code of Virginia, Title 18.2, Chapter 4, Article 7, "Criminal Sexual Assault, <i>see especially sections 18.2-61 - 18.2.-67 (Rape and Sexual Assault), section 19.2-8 (Statute of Limitations)</i>	<a href="https://law.lis.virginia.gov/vacodefull/title18.2/chapter4/article7/">https://law.lis.virginia.gov/vacodefull/title18.2/chapter4/article7/</a>
42.	<b>Venezuela</b>	Penal Code of Venezuela, <i>see especially Articles 374-386</i>	<a href="https://www.ilo.org/dyn/natlex/docs/SERIAL/65706/53561/F1608563985/VEN65706.pdf">https://www.ilo.org/dyn/natlex/docs/SERIAL/65706/53561/F1608563985/VEN65706.pdf</a>
		Organic Law on the Right of Women to Live a Life free from Violence, 2014	<a href="https://vlexvenezuela.com/vid/ley-organica-derecho-mujeres-740020129">https://vlexvenezuela.com/vid/ley-organica-derecho-mujeres-740020129</a>
43.	<b>Uruguay</b>	Penal Code of Uruguay, <i>see especially Articles 272 - 279 (Rape and Estupro); Article 119 (Statute of Limitations)</i>	<a href="https://www.impo.com.uy/bases/codigo-penal/9155-1933">https://www.impo.com.uy/bases/codigo-penal/9155-1933</a>

## Sexual and Gender Based Violence Resources and Support Information

- <https://cladem.org/practicas-prometedoras/>
- <https://juntasdenorteamerica.com/>
- <https://gnws.org/womens-helplines/the-gnws-womens-helplines-project/>
- <https://www.rainn.org/national-resources-sexual-assault-survivors-and-their-loved-ones>
- <https://www.domesticshelters.org/resources/national-global-organizations/international-organizations>

# CONTACT

## **EQUALITY NOW**

Email: [info@equalitynow.org](mailto:info@equalitynow.org)

Website: [equalitynow.org](http://equalitynow.org)

[WWW.EQUALITYNOW.ORG/ESVAMERICAS](http://WWW.EQUALITYNOW.ORG/ESVAMERICAS)