

# Hemispheric Report on Child Pregnancy in the States Party to the Belém do Pará Convention



Follow-Up Mechanism to  
the Belém do Pará  
Convention (MESECVI)



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The **Follow-up Mechanism to the Belém do Pará Convention** (MESECVI) is an independent, consensus-based peer evaluation system that looks at the progress made by States Party to the Convention in fulfilling its objectives. MESECVI is financed by voluntary contributions from the States Party to the Convention and other donors, and the Inter-American Commission of Women (CIM) of the OAS acts as its Secretariat.

*Hemispheric Report on Sexual Violence and Child Pregnancy in the States Party to the Belém do Pará Convention*

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# 1. Introduction: Sexual Violence against Girls<sup>1</sup> and Child Pregnancy: Importance in the Region.

1. The right of girls and adolescents to live free from violence and discrimination has been one of the more relevant topics in the last years in the Americas. High rates of sexual violence and its incidence in child and adolescent pregnancy, forced motherhood, and the absence of policies that address this serious situation in an effective way have been a comprehensive concern for the Follow-Up Mechanism to the Belém Do Pará Convention (MESECVI) and concretely to its Committee of Experts (CEVI).
2. Since its First Hemispheric Report, the Mechanism has expressed to the States Party<sup>2</sup> the importance of addressing the right of women to live free from violence and to be educated free from stereotypes to the full exercise of their sexual and reproductive rights; given the grave situation that impedes the full exercise of these rights, which directly affects women and girls in the region.
3. The severity of sexual violence against girls in early adolescence has become more visible in the few last years, given the broad publicity along the region of cases of pregnant girls who, after being victims of sexual violence, are forced to continue with their pregnancy for several motives. Among these reasons, legal prohibitions of pregnancy interruption, lack of information about these facts, the existence of laws that perpetuate gender stereotypes, and the absence of action protocols in the cases where legal abortion is permitted, are highlighted.
4. The manifestation of this kind of sexual and structural violence against girls and adolescents becomes more complex to the extent that these early pregnancies may to full development of the girls and their life projects, since they are obliged or forced to carry these pregnancies to term.
5. Sexual violence against girls and women is one of the clearest manifestations of the social mandates and traditions of a patriarchal culture that encourages men to believe that they have the right to control the body and sexuality of women<sup>3</sup>. The seriousness of this situation increases when the victims are girls, and when these girls get pregnant as a result of sexual violence. The

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1 The Committee will use the terms “girl” or “girls,” meaning all girls under the age of 18, in accordance with the concept used by the United Nations Convention on the Rights of the Child and the international corpus juris on the subject. For the purposes of this report, particular attention will be given to the situation of girls below the age of 14

2 All the States of the Organization of American States, except the US, Canada and Cuba

3 Connell, 2000; Dobash y Dobash, 1979; Gasman et al., 2006; Heise et al., 1999; Jewkes et al., 2002 (as cited by: Contreras, J. M.; Bott, S.; Guedes, A.; Dartnall, E. (2010) *Violencia sexual en Latinoamérica y el Caribe: análisis de datos secundarios. Iniciativa de Investigación sobre la Violencia Sexual*)

numbers for our region are a comprehensive expression of this reality; it has the highest index of child and adolescent pregnancy after Sub-Saharan Africa and South Asia<sup>4</sup>.

6. In its Declaration on Violence against Women, Girls, and Adolescents and their Sexual and Reproductive Rights<sup>5</sup>, the CEVI broadened the recommendations and declared that sexual and reproductive rights are based on other fundamental rights, such as the right to health, to be free from discrimination, to privacy; to personal integrity and to not be subjected to torture, cruel and inhuman treatment; the right to make decisions about reproduction free from discrimination, coercion, and violence and, therefore, to be free from sexual violence.
7. The Declaration points out that sexual violence has extremely serious consequences among women, girls and adolescents, and society - it affects their physical and reproductive health, increases the risk of maternal and child mortality, generates high risk pregnancies, and even problems associated with pregnancy such as unsafe abortions, premature births, and fetal suffering, among others. It also generates psychological consequences such as lack of autonomy, fear, depression, distress, post-traumatic stress, anxiety, and higher risk of suicide.
8. An extensive framework of rights has been built across the length and breadth of the Americas. The majority of the States of the region, besides being signatories to the Belém do Pará Convention, are also signatories to a robust international *corpus juris* that allows for progress on measures of all kinds – legislative as well as administrative and judicial – in order to guarantee these rights. The MESECVI has continuously issued recommendations by virtue of its status as the body charged with evaluating State public policies on the implementation of the Convention and their internationally-derived obligations.
9. On the other hand, the criminal dogma of the region recognizes that sexual abuse of girls under 14 years old is a criminal offense, since validity is denied to the issue of consent. For this reason, the CEVI considers that all pregnancy in girls younger than 14 years old should be considered non-consensual and, accordingly, a product of sexual violence, except in cases where sexual relations take place between peers. However, the absence of public policies aimed at consistently addressing the right of girls to exercise their sexual and reproductive rights free from violence has resulted in, among other consequences, high maternal mortality rates such as those reported during the Follow-Up Round, and serious effects on the lives of women and girls who did not have access to health or education services to attend their sexual and reproductive rights in a free and informed way.
10. It is worth noting that Millennium Development Goal No.5<sup>6</sup>, on the elimination of maternal mortality is furthest behind in terms of the evaluation of compliance with the objectives. According to the United Nations Population Fund, most vulnerable girls, and those with a higher risk of complications during or death from pregnancy and childbirth are 14 years old or younger. This group of younger adolescents is not usually taken into account in national health, education or development institutions, and often

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4 Ibid.

5 MESECVI (2014), Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights. Available at: <http://www.oas.org/es/mese cvi/docs/DeclaracionDerechos-ES.pdf>

6 See: <http://www.un.org/millenniumgoals/maternal.shtml>



falls outside their scope, in general because these girls are in forced marriages<sup>7</sup> and cannot attend school or access sexual and reproductive health services autonomously<sup>8</sup>.

11. The vulnerability of girls increases when they come from poor households, a condition that exposes them to greater risk of gender-based violence and, particularly, sexual abuse and violence, to the extent that these girls are assuming the roles of adults. Among other risk or facilitating factors, it is worth noting that they work in the street or under other precarious conditions, they move around or stay at home alone, they must attend to the adult males of the family, they are given to men or families and provided with food and housing in exchange for work, and live in crowded environments<sup>9</sup>.
12. Added to the seriousness of this situation is the fact that women and girls who are victims of violence rarely seek medical attention because of fear or stigma. They may have less access to health services, emergency contraception or to termination of forced pregnancy, which facilitates a larger pattern of violence that extends throughout life. Indeed, it has been determined that in addition the sexual violence that is implied by early pregnancy, gender-based violence is higher among women who had their first child at a younger age<sup>10</sup>.
13. In addition, the consequences of these pregnancies also have important effects on the product of rape. Children of pregnant girls are two to seven times more likely to have low birth weight; the effects on girls can disrupt their health and growth; the cycle of poverty is perpetuated; school dropout increases; there is a greater risk that children suffer physical abuse, neglect or malnourishment<sup>11</sup>, and, generally, the right of girls to live free from violence and their right to grow and to be educated free from stereotyped patterns is directly affected.<sup>12</sup>.
14. Faced with this regional reality, during its Twelfth Meeting the Committee of Experts of the Follow-Up Mechanism to the Belém Do Pará Convention (CEVI) approved carrying out a thematic report on child pregnancy and sexual and reproductive rights, covering sexual violence and forced motherhood. The objective of this report is to provide information on this problematic situation and its relation with violence, and to generate recommendations to the States Party to support them in improving the efficiency of the measures adopted to fulfill the right of the girls to live a life free from violence.
15. The CEVI recognizes that for this to be possible, an essential element to ensuring the efficiency of the recommendations made to the States is the evaluation of the efforts implemented in the

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7 See: Definition of forced marriage in paragraph 27

8 UNFPA (2013), *Motherhood in Childhood: Facing the challenge of adolescent pregnancy*, available at: <http://www.unfpa.org.mx/publicaciones/SP-SWOP2013.pdf>

9 Camacho, Gloria (2014). *La violencia de género contra las mujeres en el Ecuador: Análisis de los resultados de la Encuesta nacional sobre Relaciones familiares y violencia de género contra las mujeres*. Quito: National Council for Gender Equality, Ministry of the Interior, INEC.

10 "Facts about Gender-based Violence in Latin America and the Caribbean." International Planned Parenthood Federation, Western Hemisphere Region. 2014. <https://www.ippfwhr.org/sites/default/files/GBV-Fact-Sheet.pdf>

11 UNFPA, 2016. *State of the World Population 2016*. Available at: <https://www.unfpa.org/swop>

12 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention), 1994. Article 6: "The right of every woman to be free from violence includes, among others: a. The right of women to be free from all forms of discrimination; and b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination." Available at <http://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>

hemisphere in terms of public policies to protect the rights of girls and adolescents to live free from violence, as well as the results obtained<sup>13</sup>. With this purpose, the MESECVI has developed a System of progress indicators for measuring the implementation Belém do Pará Convention for use in its Multilateral Evaluation Rounds<sup>14</sup>, which offers a general overview of the status of the right of girls to live free from violence and the barriers that exist in most States to the achievement of this right.

16. Given that the System of Progress Indicators allows for the assessment of a significant group of public policies aimed at addressing this problem in the region, on the basis of the inter-American and universal standards of protection of the rights of girls and adolescents, the main source of information for this report has been the answers provided by States in the framework of the Evaluation Rounds and the analysis of the regulatory, doctrinal and jurisprudential body of law, by the MESECVI and other organs of the inter-American and international human rights protection system.
17. With a view to conducting a general assessment of the efforts of the States Party and better directing the recommendations of the Committee of Experts, in the framework of the 2013 and 2106 Evaluation Rounds, the MESECVI consulted with the States Party on a group of indicators on sexual violence against girls, specifically against girls between 10 and 14 years old. Among other conclusions, this assessment revealed the rates of pregnancy in girls and adolescents (10 to 14 years old), of pregnant women attending prenatal care, births that are attended by midwives versus medical personnel, term births, abortions and maternal mortality in girls and adolescents, the number and percentage of births at term in girls and adolescents, the number and percentage of abortions in girls and adolescents, the rate of maternal mortality in girls and adolescents. This report will highlight the State response to the grave situation that becomes evident in the analysis of these indicators.

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13 Belém do Pará Convention, 1994. Op. Cit. Article. 3: "Every woman has the right to be free from violence in both the public and private spheres." Article. 9: "With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."

14 MESECVI (2015), Practical Guide for the progress indicator system for measuring the implementation of the Belém do Pará Convention [http://www.oas.org/es/mesecevi/docs/Guia\\_Indicadores\\_BDP\\_ESP.pdf](http://www.oas.org/es/mesecevi/docs/Guia_Indicadores_BDP_ESP.pdf)

## 2. The Latin American and Caribbean Context

18. Taking into account that girls and adolescents in Latin America and the Caribbean constitute more than 20% of the population<sup>15</sup>, the rates of child and adolescent pregnancy in the countries of the region are among the highest in the world; evidence that the region is facing a challenge<sup>16</sup>.
19. In accordance with a WHO study, referenced by the Latin American Federation of Associations of Obstetrics and Gynecology (FLASOG), each year 2 million girls in the world under the age of 15 give birth. According to this study, Latin America and the Caribbean is the only region where births to girls under 15 are increasing, and are projected to continue increasing through 2030. According to this Organization, in Latin America, between 20% (one in every five women) and 9% of those interviewed declared having suffered sexual abuse during childhood (Garcia-Moreno et al., 2005). Likewise, the National Survey on Violence against Women in Mexico found that 17% of women reported sexual violence and half of them stated that this abuse occurred before they were 15 years old (National Institute of Public Health, 2003; Olaiz et al. 2006). Several studies in Latin America and the Caribbean have shown that between 7% and 36% of women report having suffered some form of sexual abuse during childhood<sup>17</sup> (Jewkes et al., 2002) and one of the most dramatic consequences of this violence is child pregnancy.
20. The Pan American Health Organization (PAHO) has also estimated that between 11 and 20 percent of pregnancies in girls and adolescents are the result of sexual violence<sup>18</sup>. In this respect, PAHO has highlighted that at 15 years old, the first sexual experiences of girls are not wanted, and in the case of 60% of the girls who had sexual relations before the age of 15, these were non-consensual relations with men that exceeded them in age by an average of 6 years<sup>19</sup>.
21. In the same sense, the United Nations Population Fund (UNFPA)<sup>20</sup>, has stated that pregnancy in

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15 Luis Távara Orozco. Lima, Perú, 2011. Factores relacionados con el embarazo y la maternidad en menores de 15 años en América Latina y el Caribe. <http://www.unal.edu.co/bioetica/documentos/2011/Maternidad.pdf> (only in Spanish)

PROFAMILIA-CENISMI (2011). Embarazo en adolescentes: ¿Una realidad en transición? Disponible en: [http://countryoffice.unfpa.org/dominicanrepublic/drive/embarazo\\_adolescentes\\_RD.pdf](http://countryoffice.unfpa.org/dominicanrepublic/drive/embarazo_adolescentes_RD.pdf) (only in Spanish)

16 UNICEF and CEPAL, 2007. Teenage Motherhood in Latin America and the Caribbean: Trends, problems and challenges. Available at: [https://www.unicef.org/lac/desafios\\_Nro4\\_eng\\_Final\(1\).pdf](https://www.unicef.org/lac/desafios_Nro4_eng_Final(1).pdf)

17 Contreras, J. M.; Bott, S.; Guedes, A.; Dartnall, E. (2010). Op. Cit.

18 Pan American Health Organization (PAHO), 2015. Information Bulletin: Adolescent Pregnancy

19 Ibid.

20 UNFPA, 2016. Fecundidad y maternidad adolescente en el Cono Sur: Apuntes para la construcción de una agenda común. Available at: <http://lac.unfpa.org/sites/lac.unfpa.org/files/pub-pdf/Fecundidad%20y%20Maternidad%20Adolescente%20en%20el%20Cono%20Sur-Ultima%20version.pdf> (only in Spanish)

“

When I was ten [I got pregnant] from my stepfather ...I didn't want to have it because it was a result of rape and I wasn't going to have it...I see that to be a mother, you have to have patience because they can take away my kid if I'm not treating her well ...my daughter was hospitalized because she had pneumonia.

”

K, 17 years old, Ecuador

Source: PPFA (2016) "Stolen Lives: A Multi-Country Study on the Health Effects of Forced Motherhood on Girls 9–14 Years Old"

girls and adolescents under 14 is closely linked to sexual violence. These pregnancies are generally unwanted and mostly affect vulnerable and unprotected groups. In addition, the younger the girl or adolescent when she begins her sexual life, the more likely it is to be forced or unwanted. Likewise, in the report *Girl Mothers [Niñas Madres]* the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM, in Spanish) points out that most child pregnancies are the result of sexual violence perpetrated by family members (incestuous sexual abuse), acquaintances, neighbours, or strangers, in contrast to what happens with pregnancies in adolescents aged 15 to 19 years old, which may occur as a result of early sexual initiation<sup>21</sup>.

22. This situation is made worse in early adolescence, as sexual violence against girls has multiple effects on the right to life, to physical and psychological integrity, to integral development and the rest of the group of human rights needed to wholly develop the personality.
23. The World Health Organization estimates that girls under 16 face a risk of maternal death that is four times higher than women between 20 and 30, and the rate of mortality of their infants is 50% higher<sup>22</sup>. In its report "Access to Maternal Health Services from a Human Rights Perspective," the Inter-American Commission of Human Rights (IACHR) also corroborates that "...attitudes such as indifference, mistreatment and discrimination perpetrated by health sector employees that affects women and girls victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address situations of violence, constitute barriers to access of health services<sup>23</sup>".
24. The IACHR has also pointed out the serious problem of discrimination and violence in the area of education. On March 12th 2002, the Commission published the report of a friendly settlement in the case of Monica Carabantes Galleguillos, which refers to the expulsion of a high school student from a private educational institution subsidized by the State of Chile, because she was pregnant. When the family challenged the expulsion before the judiciary, the actions of the institution were upheld through their review by the Supreme Court. The settlement included the adoption of laws regarding access to education by pregnant students, the recognition by the State of reported violations and the granting of a scholarship to the victim for higher-level studies<sup>24</sup>. Similarly, in the report, *Access to Justice for Women Victims of Sexual Violence: Education and Health*<sup>25</sup>, the IACHR underlines that unwanted pregnancies are one of the most devastating consequences of sexual violence on the exercise of the right to education.
25. Regarding sexual violence against girls in the region within the 10 to 14 age group, three additional elements emerge as serious violations of the rights of girls as established in international human

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21 Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) (2016), *Niñas Madres. Embarazo y maternidad infantil forzada en América Latina y el Caribe*. p. 7. Available at: <http://www.cladem.org/pdf/nin%CC%83as-madres-balance-regional> (only in Spanish)

22 WHO, 2015. Report of the Health World Organization: Adolescent pregnancies: a problem culturally complex. Available at: <http://www.who.int/bulletin/volumes/87/6/09-020609/es/>

23 IACHR (2010). *Access to Maternal Health Services from a Human Rights Perspective*, par. 38, <https://www.oas.org/en/iachr/women/docs/pdf/saludmaternaeng.pdf>

24 IACHR (2002). Report n° 33/02, Friendly Settlement 12.046, *Mónica Carabantes Galleguillos (Chile)*, March 12th 2002. Available at: [https://www.cidh.oas.org/casos/02\\_eng.htm](https://www.cidh.oas.org/casos/02_eng.htm)

25 IACHR *Access to Justice for Women Victims of Sexual Violence: Education and Health*. OEA/Ser.L/V/II Doc. 65 - December 28, 2011 <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>



rights protection treaties, which perpetuate the sexual and structural violence of which they are victims.

26. The first is forced child pregnancy, which occurs when a girl under 14 years old becomes pregnant and the termination of that pregnancy is denied, hampered, delayed or hindered <sup>26</sup>.
27. The second is forced or child marriage, which has been conceptualized by the international human rights system as those unions in which at least one party is under 18 years old<sup>27</sup>. In accordance with United Nations Fund for Children (UNICEF), seven hundred million women alive today were married before the age of 18, and 250 million of those were aged under 15<sup>28</sup>.
28. The third is impunity in these cases, which derives from deficiencies in legislation or deficiencies in care protocols, investigation or discrimination based on gender or age. The gender-based discrimination suffered by girls who are victims of sexual violence and unwanted pregnancies is often minimized, because as minors they are considered mere objects of protection. In this sense, “the lower credibility of children places them at a disadvantage when sexual violence is reported, since the world of children is associated with wild imagination, and so their accusations and statements are used to reduce the punishments imposed on their assailants.”<sup>29</sup>
29. Because of this, the CEVI analyzed the corpus juris that protects girls, and the responses provided by States to this situation, as well as the obstacles that persist in terms of providing an effective response and overcoming this problem.

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26 CLADEM, 2016. Op. Cit. p. 9

27 CEDAW (2014) General Recommendation number 31 from the Committee for the Elimination of Discrimination against Women and general observation number 18 from the Committee of the Children's Right on harmful practices adopted jointly., CEDAW/C/GC/31/CRC/C/GC/18, par. 20

28 United Nations Children's Fund (UNICEF), (2014), Ending Child Marriage: Progress and Prospects

29 Calla, P. cited in IACHR (2011). Access to Justice for Women Victims of Sexual Violence: Education and Health.:OEA/Ser.L/V/II Doc. 65 - December 28, 2011, par.52

### 3. Inter-American and Universal Corpus Juris on the Protection of the Rights of Girls in Relation to Sexual Violence, Child Pregnancy, Forced Motherhood and Child Marriage

#### 3.1. The Broad and Reinforced Interpretation of the Belém do Pará Convention

30. In addition to the Belem do Para Convention, other Conventions to which States in the region are Party are relevant to the analysis of the measures implemented to guarantee the right of girls to live free from violence and discrimination. Among these, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights (Protocol of San Salvador), the Inter-American Convention to Prevent and Punish Torture, the Convention on the Rights of the Child, and a group of declarations and analyses from organizations that interpret these international human rights treaties, and who have established the scope and content of the rights established in these normative bodies. These treaties, and the doctrine and jurisprudence derived from their interpretation, provide a framework for the interpretation of the obligations of States Party and for the analysis of the reality in Latin America and the Caribbean regarding sexual violence against girls, its causes and consequences.

31. This corpus juris of rights prescribed in general treaties on the protection of human rights should be interpreted based on the specific obligations contained in the Belém do Pará Convention. Likewise, they must be concatenated with the obligation to guarantee all women their rights to physical, mental and moral integrity; the right to personal freedom and security; and the right to simple and prompt petition before a competent court, for protection against acts that violate their rights<sup>30</sup>; as well as the obligation to adopt, by all means and without delay, policies to prevent, punish and eradicate violence against women<sup>31</sup>, with the understanding

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30 Belém do Pará Convention, 1994. Op. Cit. Article 4: "Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: a. The right to have her life respected; b. The right to have her physical, mental and moral integrity respected; c. The right to personal liberty and security; d. The right not to be subjected to torture; e. The right to have the inherent dignity of her person respected and her family protected; f. The right to equal protection before the law and of the law; g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights; h. The right to associate freely; i. The right of freedom to profess her religion and beliefs within the law; and j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making"

31 Belém do Pará Convention, 1994. Op. Cit. Article 7: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women; c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and h. adopt such legislative or other measures as may be necessary to give effect to this Convention"

that violations of these human rights occur in a context of historically unequal power relations between women and men<sup>32</sup>. Moreover, Article 9 of the Belém do Pará Convention establishes that States Party shall take special account of the situation of vulnerability to violence that women may suffer due to, among others, their status as minors

32. Under this international legal framework, the State has an obligation of due diligence that is even more intense in relation to girls because the obligation of special protection included in Articles 19 of the American Convention and VII of the American Declaration, as well as the obligation of enhanced due diligence from the Belém do Pará Convention<sup>33</sup>. In this regard, the IACHR has repeatedly held that Article 19 of the American Convention, which states that “Every child has the right to the protection measures that his status as a minor requires from his family, society and the State,” must be interpreted from both the American Convention and the Convention on the Rights of the Child, understanding that both are part of a very comprehensive corpus juris.<sup>34</sup>

33. The Inter-American Court of Human Rights has repeatedly stated that, “...Article 19 of the American Convention does not define what is meant by ‘child’.” However, the Court referred to the universal system, stating that “the Convention on [the] Rights of the Child considers as such (Article 1) every human being who has not attained 18 years of age, unless, under applicable law, the child has reached legal majority before that age’.”

34. From this perspective, the obligations established in the Belém do Pará Convention are reinforced by the obligations established under the Convention on the Rights of the Child, when States must confront public policies aimed at addressing violations of human rights, in particular the right of girls to live free from violence which is violated when they are victims of sexual violence and forced to continue a pregnancy.

### 3.2. The interpretation of the right to live free from violence in concatenation with other rights of girls

35. Articles 13 and 14 of the American Convention establish the obligation to guarantee respect for the physical, mental and moral integrity of all people, assure that all people can enjoy their right to freedom and personal safety and protect all people from arbitrary or abusive interference in their private lives, families, homes or correspondence, or from illegal attacks on their honour or reputation<sup>35</sup>.

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32 Belém do Pará Convention, 1994. Op. Cit. Preamble: “The States Party to this Convention (...) Concerned that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men

33 IACHR, 2011, op.cit, par. 58

34 Case “Children of the street” (Villagrán Morales and others) with respect to Guatemala State, on the detention, torture and execution of five people, three under 18 years, one of 18 and other of 20, who, because of their situation, were known as “Children of the Street”. Those actions would have been done by Police members a day after that one of them, during his day off, had a discussion with one of the boys.

35 American Convention on Human Rights. Article 5.1: “every person has the right to have his physical, mental, and moral integrity respected” 7.1: “Every person has the right to personal liberty and security” and 11.2: “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.” Available at: <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

36. The Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights (Protocol of San Salvador) establishes the obligation of States Party to guarantee everyone the right to health, understood as the enjoyment of the highest attainable level of physical, mental and social well-being, while also mandating the obligation to ensure the right to education<sup>36</sup>. These obligations, when analyzed in the light of public policies aimed at guaranteeing the right of girls to live free from violence, should be interpreted according to the theoretical framework of the Belém do Pará Convention.
37. In matters of justice, the jurisprudence of the inter-American human rights system has established that the State should take measures oriented to specifically protecting children and adolescents with greater care and responsibility according to the principle of the best interests of the child<sup>37</sup>. The IACHR has stated that to achieve this, and under the corpus juris on the rights of children and adolescents, States must guarantee the right of girls to be heard, creating mechanisms and favourable environments so that they can report sexual violence<sup>38</sup>.
38. Meanwhile, in its Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights<sup>39</sup>, the MESECVI recommended guaranteeing education in sexual and reproductive rights in the education system, ensuring effective enforcement of the laws that punish sexual violence against women, girls and adolescents. It also recommended the access to justice and redress of those who have been victims of such crimes; ensuring that victims of violence receive dignified treatment, taking all appropriate measures to promote their physical and psychological recovery and social reintegration in a favourable environment for health, welfare, self-esteem, dignity and autonomy of the person and taking into account their differences and needs.
39. Likewise, the Declaration raises the obligation of States to guarantee confidentiality for victims from the very act of reporting of the facts throughout the whole procedure of action in a constitutive situation of violence, ensuring the right to an agile and quick process, giving credibility to victims and protecting the privacy and dignity of those affected. Similarly, States must ensure that no abusive or humiliating behaviour takes place in institutional settings, and that health personnel do not re-victimize or deny access to health services to women who need them and ensure access to information on reproductive health, which is essential for women to exercise their reproductive autonomy and their rights to health and physical integrity; as well as ensuring proper education according to age about health and sexual and reproductive rights, including HIV/AIDS and STIs, in school curricula at all levels.
40. In the matter of education, according to the Convention on the Rights of the Child, States must adopt all appropriate legislative, administrative, social and educational measures to protect

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36 Protocol of San Salvador, 1988. Articles 13 and 14. Available at: <http://www.oas.org/juridico/english/treaties/a-52.html>

37 I.A Court H.R., Case Brothers Gómez Paquiyauri vs. Perú. Sentence of July 8, 2004. Serie C No. 110, par. 124, 163-164, and 171; A Court H.R., Case Bulacio vs. Argentina. Sentence of September 18, 2003. Serie C No. 100, par. 126 and 134; and A Court H.R., Case of the "Children of the Street" (Villagrán Morales and others) vs. Guatemala. Sentence of November 19, 1999. Serie C No. 63, par. 146 and 191. In the same sense, I.A Court H.R., Legal Condition and Children's Human Rights. Advisory Opinion OC-17/02 of August 28, 2002. Serie A No. 17, par. 56 and 60. (Original not consulted, cited by: Op. Cit. IACHR (2011), par. 53)

38 IACHR, 2011, Op. Cit., par. 55

39 MESECVI, 2014. Op. Cit

children from all forms of physical or mental abuse or harm, neglect, mistreatment or exploitation, including sexual abuse. These protection measures should include, as appropriate, effective procedures for the establishment of social programs with a view to providing the necessary support to children and their care-givers<sup>40</sup>.

41. The Convention establishes the obligation to develop preventive health care, guidance for parents and education and services in family planning<sup>41</sup> and the obligation to ensure that no child be subjected to torture or other cruel, inhuman or degrading treatment<sup>42</sup>, as well as the duty to ensure that no child is deprived of their liberty illegally or arbitrarily<sup>43</sup>.
42. Regarding the right to health and sexual and reproductive rights, the Convention on the Rights of the Child also establishes specific responsibilities for States, in the sense of establishing an obligation to adopt measures to reduce maternal morbidity and mortality and mortality in adolescent girls, particularly caused by pregnancy and unsafe abortion practices, and to provide support to parents of adolescents.
43. In the same sense, the Committee on the Rights of the Child has noted of these obligations that States must develop and implement programs that provide access to sexual and reproductive health services, including family planning, contraceptives and safe abortion practices and general and appropriate care and counseling in the field of obstetrics, and develop policies to continue their education. For example, in General Observation 15, the Committee highlights that in accordance with the evolution of children's capabilities, they should have access to confidential therapy and counselling, and that States should study the possibility of allowing children to submit themselves to particular treatments and medical interventions without the permission of a parent or legal guardian, such as HIV testing and sexual and reproductive health services, and include education and guidance on sexual health, contraception and safe abortion<sup>44</sup>.
44. In the same Observation, the Committee calls attention to the necessity for States to attend to the sexual and reproductive health needs of adolescents, including through family planning and safe abortion services, making sure that girls can make autonomous and well-founded decisions about their reproductive health and prohibiting discrimination in schools against pregnant adolescent girls<sup>45</sup>.
45. Finally, the Committee highlights that contraception, including emergency contraception, should be immediately available to sexually active adolescents and recommends that States guarantee access to safe abortion and post-abortion care services, regardless of whether or not abortion is legal<sup>46</sup>.

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40 Convention on the Rights of the Child, 1989, Article 19.2.2. "Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement" Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> ""

41 Ibid., Article 37a. "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"

42 Ibid., Article 24.2f. "To develop preventive health care, guidance for parents and family planning education and services."

43 Ibid., Article 37b "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"

44 Committee on the Rights of the Child. General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15 (17 April 2013) par. 31. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

45 Ibid., par. 56

46 Ibid., par. 70



## 4. Harmful Practices

46. The CEVI has stated that forced pregnancy perpetuates in girls sexual violence and expose them to new and repeated forms of violence and violation of their human rights, undermining in the same way their personal integrity, their status as girls and their future possibilities.
47. On the other hand, the CEDAW Committee and the Committee on the Rights of the Child, in a broad doctrinal framework, has catalogued forced pregnancy and child marriage as harmful practices that gravely affect the rights of girls. In their Joint General Recommendation 31, the Committees systematically highlight that harmful practices<sup>47</sup> are profoundly entrenched in social attitudes that consider women and girls to be inferior to men and boys on the basis of their stereotyped functions. They also highlight the gendered dimension of violence and indicate that sex- or gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the general existence of practices that often imply violence or coercion.
48. Likewise, Committees express concern that the practices are also used to justify violence against women as a form of “protection” or domination over women and children in the home or community, at school or in other educational settings and institutions, and in society in general.
49. The Committees draws the attention of States Party to the fact that sex or gender-based discrimination intersects with other factors that affect women and girls, particularly those who belong or are perceived to belong to disadvantaged groups and who are therefore at greater risk of becoming victims of harmful practices<sup>48</sup>.

### 4.1. Child Pregnancies and Obstacles to Care in the Health Sector as Torture

50. Many child pregnancies, besides being a product of sexual violence, bring an implicit double victimization related to the lack of existing protocols for health care for girls that are victims of sexual violence, and the obstacles linked to laws that establish absolute prohibitions on abortion, even in cases of sexual violence. The international bodies for protection and interpretation of the aforementioned treaties have also pointed out this concern. In its General Recommendation 24

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47 CEDAW Committee General Recommendation 31 and Committee on the Rights of the Child General Comment 18 on harmful practices, adopted jointly (2014), par. 6

48 Ibid.

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Juana got pregnant when she was still 10 years old. The girl told her mother that her stomach hurt, they went to the doctor and there they were told that she was 14 weeks pregnant. The mother reported this to the Attorney General's Office in Quintana Roo on March 23rd 2010. Since then, the child has been in the custody of the State's Comprehensive Family Development System (DIF). The law of the state allows abortion of the result of a rape up to three months' gestation (90 days). Even though doctors considered it to be a high-risk pregnancy, state laws prevented her from having an abortion. Neither the girl nor her mother was informed that they had the right to terminate the pregnancy because it was a case of rape. Her pregnancy was high risk and, according to state law, abortion is also allowed when the pregnancy puts the woman's life at risk. However, the Program for Care of Minors and Adolescents at Risk (PAMAR) confirmed that the Ministry of Health considered that "the child was in excellent health." The head of the State Health Ministry, Juan Carlos Azueta Cardenas, confirmed in his appearance before local deputies that in 2009, 881 adolescents became pregnant following acts of rape. The official explained that 16% of the pregnancies of minors are the result of rape. However, only 150 cases were reported to the Office of the Attorney General of the State's Special Prosecutor for Sexual Offenses.

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Juana, 11 years old, Mexico

Source: CLADEM (2016) Niñas Madres: Embarazo y maternidad infantil forzada en América Latina y el Caribe (own translation).

on Women and Health (1999), the CEDAW Committee recommended that States Party ensure “24 m) that measures are taken to prevent coercion in regard to fertility and reproduction, and that women are not forced to seek unsafe medical procedures such as illegal abortions because of lack of appropriate services regarding birth control”<sup>49</sup>; as well as “31 c) give priority to the prevention of unwanted pregnancy through family planning and sexual education and reduce maternal mortality rates by means of motherhood services with no risks and prenatal care. As far as possible, legislation criminalizing abortion should be amended in order to withdraw punitive measures imposed on women who have been subject of abortions”<sup>50</sup>.

51. In this regard, the CEVI has repeatedly stated its concern regarding the harmonization of those laws that do not allow therapeutic abortion, even in cases of pregnancy resulting from rape. Similarly, the CEVI has declared that the refusal to develop public policies and services on sexual and reproductive health for women is a human rights violation<sup>51</sup> that constitutes institutional violence by the State. In particular, the Committee emphasizes that access to pregnancy termination services should be confidential and that conscientious objection on the part of health personnel cannot for any reason result in the violation of women’s human rights<sup>52</sup>.
52. Meanwhile, the UN Special Rapporteur on Torture, in his 2013 Report<sup>53</sup>, studies in-depth torture related to health, determining that: “International and regional human rights organizations have begun to recognize that ill-treatment of women seeking reproductive health services can cause enormous and lasting physical and emotional suffering caused by gender. Examples of such violations include abuse and humiliation in institutional settings; involuntary sterilizations; denial of access to health authorized services such as abortion and post-abortion care; (...)”<sup>54</sup>.
53. The Rapporteur analyzes the obstacles that pregnant women and girls face because of sexual violence. The Report notes that for many victims of rape, access to a safe abortion procedure is virtually impossible because of a maze of administrative obstacles and official negligence and obstruction. In the historic decision of *K. N. L. H. v. Peru*, the Human Rights Committee considered the denial of a therapeutic abortion a violation of the right of the person not to be subjected to ill-treatment. In the case of *P. and S. v. Poland*, the European Court of Human Rights declared that “the stigma associated with abortion and sexual violence... caus [ed] great anguish and suffering, both physically and mentally”<sup>55</sup>.
54. The Committee against Torture has also repeatedly expressed concern that restrictions on access to abortion and absolute prohibitions thereto violate the prohibition of torture and ill-treatment. On numerous occasions, United Nations bodies have expressed concern over the denial or

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49 CEDAW Committee (1999). General Recommendation 24. Available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

50 Ibid.

51 MESECVI, 2012. Second Hemispheric Report on the Implementation of the Belém do Pará Convention. Recommendations 10 and 11, p. 98. Available at: <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>

52 Ibid.

53 UN. Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/22/53, 1 February 2013). Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

54 Ibid., par. 46

55 Ibid., par. 49

restriction of access to post-abortion care, often with unacceptable aims such as imposing a punishment or to obtain a confession. The Committee on Human Rights explicitly noted that violations of Article 7 of the International Covenant on Civil and Political Rights included forced abortion as well as denial of access to safe abortion to women who become pregnant following a rape and expressed concern about the obstacles imposed on abortion when it was legal<sup>56</sup>.

55. The subsequent Report<sup>57</sup> of the same Rapporteur, published on January 5th 2016, states that “Women are vulnerable to torture and ill-treatment when seeking medical treatment on the basis of actual or perceived non-conformity with socially determined gender roles.” Discrimination against women, girls and others based on sex, gender, actual or perceived sexual orientation or gender identity and sexual characteristics often underlies torture and ill-treatment committed against them in healthcare settings. This is especially true when those people attempt to receive treatments such as abortion, which may be contrary to the functions and expectations that society has assigned to their gender. International human rights law recognizes to an increasing degree that abuse and ill-treatment of women trying to obtain reproductive health services can cause enormous and lasting physical and emotional suffering on the basis of gender<sup>58</sup>.

56. The Report highlights that short and long-term physical and psychological consequences also appear when women undergo abortions in risky conditions and when they are forced to carry the pregnancy to term against their will (A/66/254). These restrictive policies have a disproportionate impact on marginalized and disadvantaged women and girls. The existence of very restrictive laws, which prohibit abortions even in cases of incest, rape, fetal impairment or when the life or health of the mother is at risk, violate the right of women not to be subjected to torture or ill-treatment (A/HRC/22/53 and CEDAW/C/OP.8/PHL/1). However, some States continue to restrict abortion with absolute prohibitions of the right of women to have abortions legally and safely. Restricting access to the voluntary termination of pregnancy causes unnecessary deaths of women (CAT/C/PER/CO/4)<sup>59</sup>.

57. In the aforementioned Declaration, the CEVI recommends that States provide comprehensive care for victims of sexual violence and guarantee women’s sexual and reproductive health, including their right to life, by eliminating unsafe abortion and issuing laws and public policies that allow for the legal termination of pregnancy in at least three cases: i) when the life and health of the woman are at risk; ii) when the fetus is non-viable; and iii) in cases of sexual violence, incest or forced insemination; as well as guaranteeing that women and adolescents have immediate access to affordable contraception, including emergency oral contraception, eliminating thereby the discriminatory effects on women of the denial of services, based on stereotypes that reduce the primary role of women to motherhood and hinder them from making decisions on their sexuality and reproduction<sup>60</sup>.

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56 Ibid., par. 50

57 UN. Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/31/57,,5 January 2016) Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx>

58 Ibid., par. 42

59 Ibid., par. 43

60 MESECVI, 2014. Op.Cit

58. In conclusion, both the international and inter-American human rights systems have an extensive framework of protection for human rights of girls and in turn, the relevant bodies in each system have pointed out the essence of the obligations derived from the human rights Covenants and Treaties with regard to the serious situation of child pregnancy among girls. These standards are the legal framework by which the CEVI analyzes the progress made by States in the region and their efforts to eradicate child pregnancy and forced motherhood in the face of sexual violence against girls aged 10 to 14, on the basis of the System of Progress Indicators.

## 4.2. Child and Forced Marriage

59. Child marriage, also called early marriage (or forced marriage for the purposes of this report), is any marriage in which at least one party is under 18 years old. In this regard, the CEDAW Committee, in its General Recommendation No. 31, and the Committee on the Rights of the Child, in its General Comment No. 18, note that the immense majority of child marriages, both *de jure* and *de facto*, affect girls, even though sometimes their spouses are also under 18. The Committees highlight that child marriage is frequently accompanied by early and frequent pregnancies and births, causing rates of maternal mortality and morbidity that are above average<sup>61</sup>.

60. In addition to the definition given by the CEDAW Committee, UNICEF outlines child marriage as formal or informal union before the age of 18, but also as a fundamental violation of human rights, especially among women<sup>62</sup>.

61. A study commissioned by the platform “Girls not Brides”<sup>63</sup> in January 2015 states that in Latin America and the Caribbean, unions at early ages are more common than marriages, with the understanding that unions at early ages or early *de facto* unions are defined as unions that follow informal family ties, which can occur with or without the consent of girls. The perception is that such unions involve less commitment on the part of the male partner, which increases gender inequality

62. This study notes that early unions and marriages are associated with social, cultural and economic factors, and identifies girls living in predominantly poor rural areas as a particularly vulnerable population and, in that context; girls belonging to indigenous communities are those at highest risk. Other factors such as the social stigma related to child or single motherhood and gender-based violence or economic violence may increase the risk of girls being involved in early unions in urban areas.

63. The “Girls not Brides” study concludes that the greatest consequences for girls involved in child marriages include sudden and early school dropout, early and unwanted pregnancy and the risks involved, economic dependency, and limited life opportunities.

64. According to UNICEF data from 2016, 23% of girls in Latin America and the Caribbean were united in early marriage, early *de facto* union or early union between the ages of 15 and 18, whereas 5% of girls under 15 were united in child marriage<sup>64</sup>.

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61 CEDAW (2014), General Recommendation 31 Op Cit. par. 20-22

62 UNICEF, 2016, Data on Child Marriage. Available at: <http://data.unicef.org/topic/child-protection/child-marriage/#>

63 Melania Trejo (2015) The Global Partnership to End Child Marriage. Exploratory research: child marriage in Latin America.

64 Op. Cit. Nota 62.



“ In April 2015, an 11-year old, mentally disabled girl from Uruguay who was receiving psychiatric medication got pregnant as a result of sexual abuse by a 41-year old man, who was an acquaintance of the family. As she stated that she “...wished to continue with the pregnancy and marry the man,” her medication was suspended in order to avoid harm to the fetus, she was admitted to a State home and on October 16th of the same year a cesarean section was performed in the Pereira Rossell Hospital. The doctors understood that it was necessary to “respect the girl’s wishes.” The Specialized Family Court held that it was not appropriate for it to pass judgement on the case, and ordered coordination between the girl’s mother, as her legal representative, and the doctors ”

Source: CLADEM (2016) Niñas Madres: Embarazo y maternidad infantil forzada en América Latina y el Caribe (own translation)

65. In article 16.2, the Convention on the Elimination of All Forms of Discrimination against Women establishes that “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”
66. The right to “free and full” consent is recognized by the Universal Declaration of Human Rights, and UNICEF adds that this consent cannot be free and full when one of the parties involved does not have the maturity to make an informed decision.
67. The Convention on the Rights of the Child establishes other rights directly related to child marriage, such as the right to freedom of expression, the right to protection from all type of abuses, and the right to be protected from traditional practices that are harmful to the health of children.
68. On this matter, the Committee on the Rights of the Child<sup>65</sup> expressed its concern by stating that early marriage and pregnancy are an important factor in health problems related to sexual and reproductive health, and stressed that the minimum age for marriage, particularly for women is still very low in some countries. The Committee further recommended providing access to information to children and adolescents about the harm that early marriage and pregnancy could cause them, and giving those who become pregnant access to health services that take into account their particular needs. It also urged States to provide measures to reduce morbidity and mortality in children and adolescents, particularly caused by early pregnancy and unsafe abortion practices.
69. Most of the States Party to the Belém do Pará Convention are also Party to the United Nations Convention on the Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages<sup>66</sup>. This Convention recalls that “No marriage shall be legally entered into without the full and free consent of both parties,” and urges States Party to “adopt the necessary legislative measures to determine the minimum age for marriage.” Both the Committee on the Rights of the Child and the CEDAW Committee have ruled on this obligation<sup>67</sup>, strongly recommending that States Party review and, when necessary, amend their laws and practices to increase the minimum age for marriage, with or without agreement of parents, at age 18 for both girls and boys.
70. Since 2013, the Human Rights Council and the United Nations Office of the High Commissioner for Human Rights (OHCHR) have intensified their efforts to prevent and eliminate child, early and forced marriage. As a consequence, on November 17th 2014, during its 69th session, the UN General Assembly adopted a Resolution on Child, Early and Forced Marriage, which recognizes that “child, early and forced marriage is a harmful practice that violates, abuses and impairs human rights and is linked to and perpetuates other harmful practices and human rights

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65 Committee on the Rights of the Child (2003), General Comment 4. Adolescent Health and Development in the Context of the Convention on the Rights of the Child (CRC/GC/2003/4 (2003). Available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC4.pdf>

66 UN, 1964, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

67 CEDAW Committee General Observation 21 (1994). Available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

violations and that such violations have a disproportionately negative impact on women and girls,” and urged governments to “promote and protect the human rights of all women and girls, including their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence, and to adopt and accelerate the implementation of laws, policies and programmes that protect and enable the enjoyment of all human rights and fundamental freedoms, including reproductive rights...”<sup>68</sup>

68 UN General Assembly (2014) Child, early and forced marriage (A/C.3/69/L.23/Rev.1), Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/69/L.23/Rev.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/69/L.23/Rev.1)



## 5. Data on Impunity

71. The CEVI understands that in order to close the impunity gap on acts of sexual violence against girls in the region, it is necessary to identify the problem and map its consequences, on the bases of the development of a normative framework that typifies this type of conduct, a system that comprehensively cares for girls who are victims of violence and guarantees their access to justice and adequate reparation, which is a general principle of the obligation of due diligence established in Article 7 of the Belém do Pará Convention<sup>69</sup>.
72. For the purposes of this report, the CEVI analyzed the fulfillment of at least three obligations derived from the Belém do Pará Convention that are essential requirements to assess the serious situation of pregnant girls aged 10 to 14. To this end, it took into account the statistical data provided by the States, existing legislation and care protocols from both the health and justice sectors. The intersection of these indicators gives us a regional overview that allows us to assess the situation, and shows limited action by States in the face of the seriousness of the figures provided and the actions implemented to eradicate violence against girls. The absence of reliable data also becomes an obstacle to the design and effective implementation of public policies aimed at eradicating the problem. The fact that the data is scarce, incomplete or nonexistent for many countries also means that these girls and the challenges they face are invisible to legislators (UNFPA, 2013).
73. For this reason, in its latest reports the CEVI has reiterated the need to strengthen the institutional capacities of States to collect information and statistics on violence against women and girls, in accordance with Article 8h of the Convention, which establishes the duty to “undertake, progressively, specific measures, including programs to ensure research and the gathering of statistics and other relevant information on the causes, consequences and frequency of violence

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69 Belém do Pará, 1994. Op. Cit. Article 7: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women; c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and h. adopt such legislative or other measures as may be necessary to give effect to this Convention”.

against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes”<sup>70</sup>.

74. The recommendations of the Second Hemispheric Report placed special emphasis on the need to establish normative obligations to prepare studies, carry out surveys on violence against women; disseminate information on the surveys, as well as on the rights of women and existing services, or include these issues as modules in general surveys or censuses<sup>71</sup>. Nevertheless, the countries of the region are far from being able to provide comprehensive qualitative and quantitative information on this phenomenon, which is still poorly regulated.

75. Likewise, the CEVI has repeatedly stressed that as part of the obligations of due diligence to prevent, punish and eradicate violence against women, States are also committed to developing and effectively implementing a framework of legal norms and policies to fully protect and promote the human rights of women. This process of harmonization of domestic legislation of the States Party involves at least two immediate obligations. First, the duty to establish and regulate in domestic law all forms of violence against women, including sexual violence, regulating internal rules according to the definition of violence against women established in the Belém do Pará Convention; and, secondly, the duty to eliminate all norms that directly or indirectly discriminate women and girls.

76. These duties also include the development of care and investigation protocols that ensure the best interests of girls, and guarantee the elimination of obstacles so that complaints are able to thrive, the confidentiality of the girls and adolescents involved, comprehensive medical and psychological care, as well as deployment of all necessary measures to ensure decent and specialized treatment that avoids any type of re-victimization of the girls who are victims of violence. Similarly, as the CEVI has recommended, these protocols should guarantee care for the legal termination of pregnancy that results from sexual violence.

77. Following is the presentation of an overview of the region, according to the information provided by the States Party in the framework of the Second Follow-Up Round.

## 5.1. Statistics in Latin America and the Caribbean

78. The Fourth World Conference on Women highlighted the need to not limit the collection of data to the situation of adult women, ensuring the availability of data on girls and in accordance with the different periods of the life cycle<sup>72</sup>. In this sense, the need became evident to generate statistics on health on the basis of current and reliable data on the mortality and morbidity of women and girls, the social and economic factors that affect their health, and provision of specialized health services and the use of these services.

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70 Belém do Pará, 1994. Op. Cit. Article 8h

71 MESECVI (2015), Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI, par. 43, <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeSeguimiento-EN.pdf>

72 September 1995, Beijing. IV World Conference on Women. Par. 104



79. In this sense, the CEVI has raised concerns about the absence of statistical information from the States Party that details their efforts to address this problem, make it visible, and ensure the rights of the girls who are victims of violence. The limited efforts of the States of the region reflect the urgent need to address this situation with the maximum of available resources,<sup>73</sup> to the extent that it is an obligation derived not only from the Belém do Pará Convention but from the group of international treaties that make up the corpus juris on the protection of the rights of girls.
80. The rates and percentages that exist in the region vary in terms, formulas, percentiles measured or specific groups on which information was requested. For this reason, the data is not comparable. However, from 2013 to 2016, in the framework of the Multilateral Evaluation Rounds, the CEVI has received valuable information that shows the trends in the region in terms of pregnancies in girls within the age range under study, which gives us an idea of the knowledge of the violation of their human rights. Nevertheless, these figures are no comparable with those of the justice sector, because almost no States provided information on criminal investigations of rape for those cases reported by the health sector, both for rape and pregnancy.
81. It is worth noting that most countries that provided information on the life cycle of girls defined adolescence according to the parameters of the WHO/PAHO, which is up to 19 years. However, 16 States Party<sup>74</sup> provided relevant information about the 10 to 14 age group, on issues related to child pregnancy or live births to girls from this age group, maternal mortality or rate/number of abortions among girls aged 10 to 14.
82. Maternal mortality in girls aged 10 to 14 is, for the CEVI, the gravest expression of the multiple violations of the human rights of girls, in that first they become pregnant as a result of sexual violence and then die as a result of a pregnancy that, through action or omission of the State, they forced to continue. The seriousness of this situation has obliged the CEVI to issue a profound call for attention to this grave violation, and the scant attention that it receives in the States Party to the Convention.
83. Following is the data on maternal mortality in girls, adolescents, and the female population in general. With a view to comparability, countries have been listed according to the indicator that they use.

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73 ETO (2013), Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, <https://www.ilsa.org/jessup/jessup17/Batch%202/Maastricht%20Principles%20on%20Extraterritorial%20Obligations%20of%20States%20in%20the%20Area%20of%20Economic,%20Social%20and%20Cultural%20Rights.pdf>

74 Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago and Venezuela

Table 1

| States Party to the Belém do Pará Convention | Child Maternal Mortality Rate per 100,000 by age group |                |                                    |
|--|--|----------------|------------------------------------|
|  | 10 to 14 years   | 15 to 19 years | Other ranges                       |
| Argentina                                    | 66.5 x 100,000   | 32.5 x 100,000 |                                    |
| Chile  | 36.1 x 100,000   |                |                                    |
| Colombia                                     |  |                | Total population<br>41,3 x 100.000 |
| El Salvador                                  |  |                | 10 to 49 years<br>42,0 X100.000    |
| Guatemala                                    |  |                | 10 to 19 years<br>80 x 100.000     |
| Honduras                                     |  |                | Total population<br>73 x 100.000   |
| Mexico                                       | 55.1 x 100,000   | 27 x 100,000   |                                    |
| Panama                                       |  | 59 x 100,000   |                                    |
| Dominican Republic                           |  |                | Total population<br>91,6 x 100.000 |
| Trinidad and Tobago                          |  |                | Total population<br>46,5 x 100.000 |

Source: Prepared using information provided to the MESECVI through the System of Progress Indicators for the Measurement of the Belém do Pará Convention (2013 and 2016)

Note:

- Uruguay and Venezuela did not report to this specific indicator
- Brazil, Costa Rica, Ecuador, Paraguay, Peru and the Dominican Republic reported absolute figures or other data
- The remaining countries did not respond to the indicators

84. Other indicators of maternal mortality were reported by the States Party. Paraguay reported that 21.3% of maternal deaths registered until September 2012 were in the 10 to 14 age group. The Dominican Republic reported that 16% of maternal deaths that occurred in 2012 were adolescents.
85. The CEVI calls attention to the seriousness of this situation, in that a girl who dies as the result of a pregnancy is a victim of the violation of her right to life, and the responsibility for this death should fall on both the perpetrator of the sexual violence and the health and justice institutions that did not take adequate measures to avoid her death.
86. The figures reported on child pregnancy also allow the CEVI to issue important calls for attention. As with the previous table, only those countries that use the same measurement instruments are listed. In this table, the information provided by the States Party to the Belém do Pará Convention is heterogeneous, in that it utilizes several forms of measurement or because data is reported for different age groups.
87. Following are some of the figures that give an idea of this reality and that, despite belonging to different age groups, are comparable:
88. Following is data reported by the States on adolescent pregnancy. El Salvador reported that in 2012 the percentage of pregnancies in children and adolescents was 24.1%. Grenada indicated that for the same here, there were 39 births to girls aged 12 to 16. In Honduras, 15% of pregnancies are among

Table 2

| States Party to the Belém do Pará Convention | Child Motherhood |                |                |
|--|------------------|----------------|----------------|
|  | Year             | 10 to 14 years | 15 to 19 years |
| Argentina                                    | 2014             | 1.8            | 6.5            |
| Chile  | 2004             | 3.6            | 14.5           |
| Colombia                                     | 2013             | 3.0            |                |
| Costa Rica                                   | 2011             | 2.5            |                |
| Ecuador                                      | 2013             | 2.5            | 72.9           |
| Guatemala                                    | 2011             | 3.2            |                |
| Mexico                                       | 2013             | 5.5            | 66.0           |
| Panama                                       |                  | 1.1            | 22.1           |
| Dominican Republic                           | 2012             |                | 90.0           |
| Venezuela*                                   | 2015             | 4.0            | 79.9           |

\*Provisional data citing SAS sources

Source: Prepared using information provided to the MESECVI through the System of Progress Indicators for the Measurement of the Belém do Pará Convention (2013 and 2016)

Note: The remaining countries did not respond to the indicators, do not have data or reported other data

girls and adolescents up to 19 years old. In Paraguay, 20% of pregnancies happen in adolescents, 2 of the daily births are to girls aged 10 to 14 up to September 2011. In Trinidad and Tobago, the rate of pregnancy among girls and adolescents aged 10 to 19 is 21.3 (2014) and pregnancies in girls younger than 12 were 0.3%, and 17.6% in girls aged 13 to 16.

89. Other data is also relevant, although not comparable, in that it allows for the identification of warning signs of trends in the region, in least in the field of data collection.

90. For example, Guatemala reported that in 2012, 24% of births corresponded to girls and adolescents aged 10 to 19, while 13.3% corresponded to girls aged 14. It also reported that in 2012, 9,450 abortions were registered among girls and adolescents, and 80 girls died in the same year from causes linked to maternity. For the same year, Mexico reported a rate of abortions among girls and adolescents of 24%<sup>75</sup>.

91. For the same year, Panama reported 244 pregnant girls younger than 15, which accounted for 1.1% of the total of 23% of pregnant girls and adolescents in the same period. In Peru, the percentage of mothers between 12 and 14 years of age at the national level was 12.5% in 2011 and 13.2% in 2012<sup>76</sup>. For the same year, Mexico<sup>77</sup> reported a total percentage of 19.4% births registered to girls and adolescents aged 10 to 19.

92. The situation is more dramatic in Chile, El Salvador, Paraguay and the Dominican Republic, where prohibition of and obstacles to abortion are absolute, including for girls that are victims of sexual violence and in a condition of evident risk to their lives.

75 Mexico's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

76 Peru's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>, citing INEI, with information from the Population and Housing Census, 2013

77 Mexico's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

93. Chile<sup>78</sup> reported that in 2011, hospital check-outs for pregnancy, birth and puerperium of women of all ages that ended in abortion were 30,860, which is close to 10% of the total number of hospital check-outs for pregnancy, birth and puerperium. Of these abortions, 3,387 corresponded to girls aged 10 to 19. Similarly, Chile highlighted that 1% of the population of women under pregnancy supervision were under the age of 15. It also reported that 10% of maternal deaths were among girls and adolescents.
94. In El Salvador, the 2008 FESPAL Report points out that, "...in the cases of women who had their first experience of sexual abuse before the age of 10, more than half of the perpetrators were 30 years of age or older, and for those women aged 10 to 14 at their first experience, 42% of the perpetrators were older than 30"<sup>79</sup>. The same report also states 8.4% of girls and adolescents had experience of pregnancy by age 15, whereas 43.3% had experience of pregnancy by age 19. In 2011, the Ministry of Health reported 84,752 prenatal registries, of which 31.4% were girls and adolescents, to which they also attributed 11% of maternal deaths. Similarly, in 2011 the Ministry of Health also reported as the main cause of death for girls and adolescents aged 15 to 19, the toxic effects of non-medicinal substances that they self-administered, many related to unwanted pregnancies or the conflicts resulting from an inadequate exercise of their sexual and reproductive health<sup>80</sup>.
95. The data in the case of Paraguay and the Dominican Republic are eloquent. In the Dominican Republic in 2012, the number and percentage of abortions in girls and adolescents is alarming. The main cause of maternal death for 24% of girls and adolescents aged 15 to 19 is abortion<sup>81</sup>, Paraguay reported that two of the deliveries that occur in the country every day (without mentioning the total), correspond to girls aged 10 to 14. Between 2009 and 2011, the numbers of live births to mothers between 10 and 14 years increased by 4%<sup>82</sup>.
96. For 2011, the Dominican Republic reported 22.1% of pregnancies in girls aged 15 to 19, with a percentage of maternal deaths of 16%. Girls aged 10 to 14 also represented 1.7% of abortions, a rate that held steady in 2012, when 5,987 abortions were registered among adolescents, which represents 27.8% of total reported abortions and includes 1.7% of abortions to girls aged younger than 15.<sup>83</sup>
97. During the Second Evaluation Round, other States also updated their information on this group of indicators. Argentina reported that the fertility rate for girls aged 10 to 14 was 175.1 per 100,000 in 2014. Similarly, for the same year, Argentina registered 2,600 live births to mothers aged 10 to 14, with a survival rate of 87.4%.<sup>84</sup>

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78 Chile's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

79 FESPAL-2008, El Salvador, C.A. Final Report. p. 246. Available at: <http://www.fesal.org.sv/2008/informe/final/espanol/default.htm>

80 Ministry of Health. Sexual and Reproductive health Policy. Available at: [http://www.paho.org/els/index.php?option=com\\_docman&task=doc\\_view&gid=1044&Itemid=324](http://www.paho.org/els/index.php?option=com_docman&task=doc_view&gid=1044&Itemid=324) (only in Spanish)

81 Dominican Republic's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

82 Paraguay's response to the Follow-Up Indicators, Second Evaluation Round, available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

83 CLADEM, 2106,. Op. Cit. p. 24

84 Argentina's response to the Indicators for the Third Multilateral Evaluation Round, citing Vital Statistics 2014, DEIS, Ministry of Health (2015)

98. Costa Rica reported that from 1983 to 2013, the annual average number of births to mothers younger than 15 was 460 until 2000, and that from then on, the average increased to 500 births to girls aged 10 to 14. It also reported that there are 2.5 births for each 1,000 girls aged 10 to 14 and that this rate has not varied over the last few years. Finally, it reported that there were no maternal deaths among that age group during that period.<sup>85</sup>
99. In the case of Mexico, in 2014, 11,012 births were reported among girls aged younger than 14. Pregnancies increased along with the age of the girls such that among older girls, there were more pregnancies. Among girls aged 10, 196 pregnancies were reported; among girls aged 11, that figure was 230; and there were 425 pregnancies reported among girls aged 12. Girls aged 13 accounted for 1,730 pregnancies, whereas among girls aged 14 the figure reached 8,422.<sup>86</sup>
100. Venezuela pointed out that in 2015, 111,324 live births were registered among girls aged 10 to 19, while 5,399 live births were registered among girls aged 10 to 14<sup>87</sup>. Honduras also indicated that during the same year, 33,035 deliveries were attended among girls aged 10 to 19 in the network of the Department of Health, which represent 21% of institutionalized births. Of these, 845 were to girls aged 10 to 14. Honduras also informed that in 2015, the network of the Department of Health registered 2,753 check-outs for abortion among girls aged 9 to 19<sup>88</sup>.
101. These figures bring to light an important reality that, in the judgement of the MESECVI results in grave violations of the human rights of girls, of which States are aware. Notwithstanding the gravity of this situation, the eloquence of this data has not translated into concrete actions to effectively address this reality, either through health care or through access to justice for this girls who are victims of sexual violence.
102. As we will see further on, neither care protocols nor actions in the justice sector clearly and convincingly address this phenomenon, which implies a violation of the rights of girls to live in a world free of violence and stereotypes and, concretely, the right to life of the girls that are obliged to carry forced pregnancies.

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85 Costa Rica's response to the Indicators for the Third Multilateral Evaluation Round, citing information provided by the Ministry of Health and National Statistics and Census Institute, INEC

86 Mexico's response to the Indicators for the Third Multilateral Evaluation Round, citing INEGI. Estadísticas de natalidad (consulte don May 6th 2016)

87 Venezuela's response to the Indicators for the Third Multilateral Evaluation Round, citing SIS. Datos Provisionales

88 Honduras' response to the Indicators for the Third Multilateral Evaluation Round





## 6. Regulation of Sexual Violence against Girls in Latin America and the Caribbean

103. Given the seriousness of the aforementioned figures, the CEVI investigated the legal status of the obligations of the States Party regarding the sexual and reproductive rights of girls and adolescents in the region. The CEVI analyzed a group of regulations concerning the protection of the right of girls to personal integrity in the face of sexual violence and actions by the States to address this serious violation of their human rights. In addition to criminal law relating to the protection of the right to the integrity of the girls and their sexual freedom, the CEVI reviewed the standards and protocols developed both in the criminal and health fields to address complaints and demands for care from the high percentage of girls in the region who suffer pregnancies resulting from sexual violence.

### 6.1. Criminal Regulation

104. The region has gradually advanced in the reform of criminal codes that addresses the need to adapt the protected legal interests to the international and inter-American human rights systems. It stands as a regional advancement that crimes such as those conceived to protect the reputation and honor of families, modesty or morality have disappeared in order to accommodate a set of offenses that recognize as protected legal interests, the sexual integrity of people and especially the sexual integrity of women and girls, thereby allowing a more precise understanding of the offense and the protected legal interests.

105. Thus, it should be understood that the legal interests at stake in these types of crimes are constituted by violations of the dignity, privacy, sexual freedom and in the case of girls, also the physical and psychological development of their personalities<sup>89</sup>. Nevertheless, the region still possesses a significant number of regulations that must be harmonized with international standards, to the extent that they do not protect the sexual freedom of women and girls and often deepen the gender stereotypes that have given rise to violence and discrimination.

106. The CEVI is aware that the use of criminal law against acts of violence towards girls has proved insufficient to guarantee their rights to live free from violence and to grow up free from stereotyped patterns. However, since its First Evaluation Round, the CEVI has held the need for legislation

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89 Zulita Fellini and Virginia Sansone, 1999-2000. Anuario de Derecho Penal, La mujer en el derecho penal argentino. p. 18. Available at: [https://www.unifr.ch/ddp1/derechopenal/anuario/an\\_1999\\_10.pdf](https://www.unifr.ch/ddp1/derechopenal/anuario/an_1999_10.pdf) (in Spanish only)

to criminalize an important number of violent behaviours towards women and girls, invisible and widely naturalized in most of the States Party, including those related to sexual violence against the group of girls aged 10 to 14<sup>90</sup>.

107. On the other hand, the CEVI recognizes the importance of this legislation but at the same time, broadly highlights the gaps between, on the one hand, the set of toughened criminal regulations when victims of sexual violence are girls, and especially when they are girls aged 10 to 14 and, on the other hand, the mechanisms for the effective enforcement of these laws. The severity of punishments and the richness of existing regulations stands in stark contrast to the absence of official data, protocols, and rules for protection that attend to women victims of this violence in a comprehensive way.

108. Therefore, the CEVI considers relevant for the purposes of this report, a contrast between these regulations and, not only the Belém do Pará Convention, but also care protocols developed to address this serious violation of human rights.

109. All the States of the region criminalize sexual violence against girls. Similarly, sexual relations with girls under 18 are punishable by the Criminal Codes of the States Party to the Convention. This behavior is framed by different criminal typologies that are generally referred to as: unlawful sexual relations with minors, sexual abuse of minors, carnal knowledge of minors, carnal knowledge of or access to minors, rape, rape of minors, special cases of rape and sexual coercion. Only Bolivia and Venezuela include in the definition of the criminal offense the concept of girl<sup>91</sup>In Venezuela, in those cases where the victim, an ancillary jurisdiction is established in favour of the special jurisdiction of violence against women<sup>92</sup>.

### 6.1.1 Regulation of Sexual Violence against Girls

110. In cases of rape, specific criminal typologies are established when the victim of the crime is a girl – with a presumption that it is always rape when the girl is under the age of 14. Age limits for establishing the age of the victim are heterogeneous in the region however, at least 20 States<sup>93</sup> criminalize sexual relations with minors under the age of 14, establishing a progression of the punishment if the rape occurred between the ages of 14 and 12 or if the victim is under the age of 12. The remaining States<sup>94</sup> establish different progressions between ages 18 and 15, except Saint Vincent and the Grenadines, Panama and Suriname, which do not establish any punishment

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90 MESECVI, 2008. First Hemispheric Report on the Implementation of the Belém do Pará Convention, Recommendation 33 “Develop and implement policies regarding prevention of and response to sexual violence where armed conflict exists and guarantee access to justice and reparations for women and girl victims of violence during and after the armed conflict.” Available at: <http://www.oas.org/en/mesecvi/docs/InformeHemisferico2008-EN.pdf>

91 Bolivia Criminal Code, Article 308 Bis (Violación de niña, niño o adolescente) and Venezuela Criminal Code, Article 374.

92 “Ley orgánica sobre el derecho de las mujeres a una vida libre de violencia de Venezuela, Article 67 “The specialized courts on violence against women are competent to hear the facts of violence in which the victim is a woman, in order to determine if there is any commission of crimes under this Act, including femicide and induction or aid to suicide, in accordance with the special procedure provided for in this Law. The provisions of the Criminal Code and Criminal Procedural Organic Code will be applied insofar as they do not conflict with those provided for herein.”

93 Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Granada, Guatemala, Honduras, Nicaragua, Paraguay, Saint Lucia, Trinidad and Tobago and Venezuela

94 El Salvador, Guyana, Haiti, Jamaica, Mexico, Panama, Peru, Dominican Republic, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Uruguay

or aggravating circumstance in the case rape when the victim is a girl under the age of 18. In Panama, it is worth noting that the legislation establishes as an aggravating circumstance carnal access with violence if the victim becomes pregnant as a result, although it does not make a distinction about the age of the victim.<sup>95</sup>

111. It is of special concern that at least 10<sup>96</sup> States in the region provide for mitigating circumstances for this criminal offense that perpetuates gender stereotypes against girls. Among these circumstances, we find the existence of reasonable causes for believing that the girl was older than 14 or 16, evidence of which must be provided by the aggressor. This is common in the legislation of Caribbean countries such as Antigua and Barbuda, Bahamas, Barbados, Granada, St. Vincent and the Grenadines, St. Lucia, and Trinidad and Tobago. St. Lucia<sup>97</sup>, also excuses criminal liability in cases where the aggressor can demonstrate the consent of the victim in cases of girls aged 12 to 16 – a consent that the CEVI does not recognize. Similarly, of special concern is the exoneration of criminal liability when the victim is the wife of the accused, a law that clearly contravenes the recommendations made by CEVI with respect to the need to criminalize sexual violence within marriage<sup>98</sup>. Moreover, said mitigating circumstance does not include a distinction regarding the age of the victim. Such is the case of the criminal legislation of Barbados, Dominica, and Trinidad and Tobago<sup>99</sup>.

112. Lastly, the penalties for this type of criminal offenses vary widely in the region, where the lowest minimum sentences are 2 years of imprisonment for cases of rape of girls over 12<sup>100</sup>, which contrasts with the life sentence imposed by some States in the Caribbean<sup>101</sup> and sentences of up to 30 years of imprisonment in Mexico for “those having sexual intercourse” with girls under the age of 15. The rest of the region applies sentences that range from 3 to 20 years of imprisonment<sup>102</sup>.

### 6.1.2. Regulation of Sexual Abuse against Girls

113. The other type of criminal offense that stands out in the region is sexual abuse, which has different names to classify the same type of harmful behavior but involves the physical, psychological and sexual integrity of girls. In the same sense of the previous criminal offense, sexual abuse has

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95 Panama Criminal Code, Article 174 “Whoever, through violence or intimidation, has carnal access to a person of one sex or another, using his or her genitals, shall be punished with imprisonment for 5 to 10 years. The penalty will be 8 to 12 years in prison, in any of the following circumstances: 3) if the victim becomes pregnant.”

96 Antigua and Barbuda, Bahamas, Barbados, Bolivia, Dominica, Granada, Panama, St. Vincent and the Grenadines, Saint Lucia, Trinidad and Tobago

97 Saint Lucia Criminal Code, Article 127 (2) (a). “It is a defense under this section (sexual relationship with a person between 12 and 16 years) if the person accused shows that the other person consented.”

98 Barbados, Dominica, Trinidad and Tobago

99 Law on Sexual Crimes, Barbados, Article 4(1) “If a person has sex with another person who is not their spouse and is under the age of 14, that person is guilty of a crime even if the other person consented to the sexual relationship and although at the time of the sexual relationship the person believed that The other is over 14 years of age, under sentence of imprisonment in perpetuity” and Law on Sexual Crimes, Dominica, Article 7 (1) “Any person who has sex with another person who: (A) is not the spouse of the first person mentioned; Is guilty of a crime and can be sentenced to imprisonment for twenty-five years” and Law on Sexual Crimes of Trinidad and Tobago. Article 6(1) “If a man has sex with a woman who is not his wife and who is under fourteen years of age, he is guilty of an offense, regardless of whether the woman has consented or not and although at the time of sexual intercourse, he believes that he had Fourteen years of age or older, and is liable for life imprisonment”

100 Antigua and Barbuda

101 Antigua and Barbuda, Bahamas, Barbados, Belize, Guyana, St. Kitts and Nevis, St. Vincent and the Grenadines, Saint Lucia, Trinidad and Tobago

102 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Surinam, Uruguay and Venezuela.

“...One night my uncle came to where I was sleeping, his wife was not at home and my three cousins sleep next to me, he told me to take off my clothes, and I told him no, he told me angrily that if I didn't take them off, he would take them off, I took off my clothes, he covered my mouth with his hand, he got on top of me and pulled down his pants, I saw that he took something out that he had between his legs, but I don't know what it's called, he told me to open my legs, I didn't want to so I tried to keep them closed, but he opened them by force, he stuck his thing in my 'chunche' (vagina) it hurt and burned a lot ...my chunche hurt, I started crying, I couldn't sleep, when I shut my eyes I could see what my uncle did to me, I didn't want to, I felt bad...”

Irene, 12 years old, Nicaragua

Source: PPFA (2016) "Stolen Lives: A Multi-Country Study on the Health Effects of Forced Motherhood on Girls 9–14 Years Old"

different names in the region: attempted unlawful sexual relations with minors, corruption of minors, sexual action different from carnal access, sexual acts, acts for sexual purposes, unwanted sexual behaviour, lustful acts, libidinous acts, non-consensual libidinous acts, indecent assault against minors, and attempted indecent assault.

114. Only the criminal definitions of Bolivia and Venezuela make a distinction, qualifying the criminal offense in the cases of girls, and, in the case of Venezuela, there is an ancillary jurisdiction in favour of the special jurisdiction for violence against women. Similarly, the same concerns arise with respect to the exoneration of criminal liability linked to the age of the accused<sup>103</sup> or if the victim is married to the aggressor<sup>104</sup>.

115. The sentences for this type of criminal offense are also diverse, with average minimum sentences of 6 months<sup>105</sup> and maximum sentences of 15 years to life imprisonment<sup>106</sup>, where the average sentence in most States Party ranges between 5 and 14 years of imprisonment.

### 6.1.3 Regulation of Incest or Incestuous Sexual Abuse

116. At least 16 States<sup>107</sup> of the region have developed specific types of incest or incestuous sexual abuse, while the rest have established aggravating circumstances of the sentences for rape or sexual abuse when the aggressor is a forebear, sibling, close relative, man of the family and, lastly, tutor, legal guardian or third party responsible for custody.

117. In general, the types of criminal offenses are aimed at penalizing the aggressor (family man or close male relative), with the exception of female incest as set forth in the criminal legislation of Belize, Granada and Jamaica<sup>108</sup>, where women are also liable for having sexual intercourse with any male member of the family, which also allows for the accusation of a girl who is victim of sexual violence to be accused of this crime. In the case of Saint Lucia, women may also be liable, although they may also be exonerated from criminal liability when they prove that the incest was performed under threat<sup>109</sup>. In none of these cases does the legislation specify the existence of exoneration of criminal liability if the victims are girls under the age of 14.

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103 Amendment to the Criminal Code of Antigua and Barbuda, Article 3 "In the case of a delinquent whose age does not exceed sixteen years, the Court may, instead of sentencing him to any prison sentence, order him to be whipped as prescribed in the Corporal Punishment Act." Criminal Code of Saint Lucia, Article 127 (2)(a) i. Exculpates the minor of 21 years, when he has no criminal record

104 Criminal Code of Saint Lucia. Article 126 (2) "If a marriage is declared invalid by a court of competent jurisdiction, invalidity does not make a person guilty of a crime in this section because that person has sex with a person he or she believes is his or her spouse, and has a cause Reasonable for belief."

105 Argentina Criminal Code. Artículo 119. "Any person who sexually abuses a person of either sex will be repressed with imprisonment or imprisonment from six months to four years when he or she is under the age of thirteen or when violence, threat, coercive or intimidating abuse of a relationship of dependence, authority, Or of power, or taking advantage of the fact that the victim for any reason could not freely consent to the action"

106 Criminal Code of Saint Lucia. Article 126 (1) "The person who has sex with another person under 12 years of age, whether or not the other person has consented to and even if the first person considers that the other person is 12 years of age or more, is responsible for an offense under lifetime sentence."

107 Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Dominica, Granada, Guyana, Haiti, Jamaica, Mexico, Dominican Republic, St. Kitts and Nevis, Saint Lucia, Trinidad and Tobago, Uruguay.

108 Criminal Code of Belize, Article 63 "Incest of women aged 16 or over. Any woman over the age of sixteen who allows her grandfather, father, brother or son to have carnal knowledge of her (knowing that they are her grandfather, father, brother or son, as the case may be) is subject to a penalty of prison of seven years." Criminal Code of Grenada. Article 183B "Incest by woman. (1) If a woman of 16 years or more consensually consents to a man who knows how to be a father, grandfather, son, brother, uncle or nephew so that he may have carnal knowledge of her, he commits the crime of incest and will be punished with a five-year prison sentence." Law on Sexual Crimes, Jamaica, Article 7 (2) "The crime of incest is committed by a woman who voluntarily has sex with another person knowing that the other person is her grandfather, father, brother, son, uncle, nephew or grandson."

109 Criminal Code of Saint Lucia 157 (3) "No defendant will be convicted by a court if the accused was under restraint, coercion or fear of the person with whom the accused had sex at the time of sexual intercourse."

118. The sentences for this type of criminal offenses, as with the previous cases, range between 8 and 14 years of imprisonment, although there are maximum sentences of life imprisonment in Antigua and Barbuda, Barbados, Belize, Haiti, Jamaica, Peru, St. Kitts and Nevis and Trinidad and Tobago. In general, in Caribbean States the penalties are mitigated if the victim is older than 14. Lastly, no information was found regarding the regulation of these offenses in Brazil, Saint Vincent and the Grenadines, or Suriname.<sup>110</sup> Lastly, no information was found regarding the regulation of these offenses in Brazil, Saint Vincent and the Grenadines, or Suriname.

## 6.2. Legislation on Obstetric Violence

119. Specific legislation that includes penalties for obstetric violence, particularly in the case of pregnancy girls and adolescents, has been underlines as a recommendation by the CEVI<sup>111</sup>. Nevertheless, the legal concept of obstetric violence still is heterogeneous and largely invisible in the region, in spite of the fact that 4 of the 32 States Party of the region have legislated on this issue.

120. In Venezuela, the Organic Law on Women's Right to a Life Free of Violence (Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia)<sup>112</sup> d) defines obstetric violence as: "the appropriation by health personnel of women's bodies and reproductive processes, that is expressed as dehumanizing treatment and abuse of medicalization and pathologization of natural processes, which leads to the loss of autonomy and the capacity of women to make free decisions regarding their bodies and sexuality, with negative impact on their quality of life." In Argentina, the Comprehensive Law against Violence (Ley Integral contra la Violencia) (26.485)<sup>113</sup> defines obstetric violence as a type of violence; however, it does not disclose the measures adopted for its implementation within the national legal framework or the Criminal Code or the General Health Law (Ley General de Salud).

121. In the case of Ecuador, the Organic Law on Health (Ley Orgánica de Salud)<sup>114</sup> handles this issue from a multicultural perspective, recognizing the traditional practices (alternative medicine) of the indigenous and Afro-Ecuadorean peoples, and clarifying that these will apply only as long as the life and physical and mental integrity of persons is not compromised. In Brazil, Article 322<sup>115</sup>- of the Criminal Code establishes the crime of arbitrary violence. Uruguay highlights that its Law on the Defense of the Right to Sexual and Reproductive Health (Ley la Defensa del Derecho a la Salud Sexual y Reproductiva) (2008)<sup>116</sup> promotes giving birth in a humane manner and guarantees intimacy and privacy, respecting women's biological and psychological clock and cultural customs, and

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110 Antigua and Barbuda, Barbados, Dominica, Saint Kitts and Nevis, and Trinidad and Tobago.

111 MESECVI, 2012. Op. Cit. Recommendation 9 "Adopt provisions to criminalize obstetric violence. Define by all appropriate means the elements that constitute a natural process before, during and after childbirth, without arbitrary or excessive medication and guaranteeing the free and voluntary consent of women to procedures related to their sexual and reproductive health. Adopt an intercultural perspective for including indigenous and afro-descendant people in health services and respecting their customs and cultural norms"

112 Ley Orgánica sobre el Derecho de las Mujeres a una vida libre de violencia, Venezuela. Available at: [http://oig.cepal.org/sites/default/files/2014\\_ven\\_feminicidio\\_ley\\_organica\\_sobre\\_derecho\\_de\\_mujeres\\_a\\_una\\_vida\\_libre\\_de\\_violencia\\_25\\_11\\_14-1.pdf](http://oig.cepal.org/sites/default/files/2014_ven_feminicidio_ley_organica_sobre_derecho_de_mujeres_a_una_vida_libre_de_violencia_25_11_14-1.pdf) (only in Spanish)

113 Ley integral para prevenir, sancionar y erradicar la violencia contra las Mujeres en los ámbitos en que desarrollen sus relaciones interpersonales. Argentina. Available at: [http://www.cnm.gov.ar/legNac/Ley\\_26485\\_decreto\\_1011.pdf](http://www.cnm.gov.ar/legNac/Ley_26485_decreto_1011.pdf) (only in Spanish)

114 Ley orgánica del sistema nacional de salud, Ecuador. Available at: <http://www.desarrollosocial.gob.ec/wp-content/uploads/downloads/2013/10/ley-sis-nac-salud.pdf> (only in Spanish)

115 Brazil Criminal Code, Article 322. Available at : [http://www.planalto.gov.br/ccivil\\_03/Decreto-Lei/Del2848.htm](http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm) (only in Portuguese)

116 Law 18.426, Defensa del derecho a la salud sexual y reproductiva, Uruguay. Article 3 (b). Available at: <http://docs.uruguay.justia.com/nacionales/leyes/ley-18426-dec-1-2008.pdf> (only in Spanish)



“ I couldn't give birth normally, because I had been violated repeatedly and I didn't want anybody to even touch me, it scared me, they did a caesarian ... I didn't let them [examine] me because I just cried, my vagina hurt, it felt awful when the doctor did the exam. The doctor said, “Then, Miss, go to another hospital,” because I wouldn't let her examine me. ”

S., 14 years old, Ecuador

Source: PPFA (2016) “Stolen Lives: A Multi-Country Study on the Health Effects of Forced Motherhood on Girls 9–14 Years Old”

preventing invasive practices or the administration of unjustified medication. It is not explained if there are penalties for non-compliance.

122. The varying legislation of the region that reflect the criminal offense of obstetric violence refers to the protection of the integrity of pregnant women, but not the integrity of women or girls who are forced to continue with a pregnancy that is the result of sexual violence. In the legislation reviewed, we did not find any criminal offense that would reflect this type of violence.

### 6.3. Legislation on Institutional Violence

123. The Second Hemispheric Report<sup>117</sup> defines institutional violence as a violence perpetrated by a public servant to discriminate or delay, obstruct or prevent women from enjoying or exercising their fundamental rights and freedoms, and violence that seeks to obstruct or in fact obstructs women's access to and enjoyment of public policies intended to prevent, care, investigate, punish and eradicate the manifestations, types and modalities of violence set forth in the law.

124. The absolute criminalization of abortion not only constitutes a violation of women's right to decide, but also undermines their rights to autonomy, privacy, security and confidentiality. It also particularly affects low-income women or those who live under other vulnerable conditions.

125. Although an important number of States do not have specific provisions on the issue, the cases of violence perpetrated the State against women may be brought to trial pursuant to the Criminal Code, given that it does not make any distinction among the perpetrators.

126. The Second Follow-Up Report<sup>118</sup> affirms that forcing a woman to continue with a pregnancy, especially when such pregnancy is the result of a rape or when the life or health of the woman is at risk, represents a form of institutional violence and may constitute a form of torture, violating Article 4 of the Belém do Pará Convention.

127. In this sense, the CEVI Declaration<sup>119</sup> 1. sets forth that the denial of public policies and sexual and reproductive health services to women through discriminatory regulations, practices and stereotypes constitutes a systematic violation of their human rights and subjects them to institutional violence by the State, causing physical and psychological suffering.

128. This Committee understands that forced pregnancy in girls under the age of 14 constitutes in any case an act of violence. Therefore, States Party that prohibit the termination of pregnancy in these cases would be engaged in institutional violence against the victims.

129. The same thing happens with medical personnel from public health centers that violate the confidentiality of patients or refuse to perform a legal termination of pregnancy, hampering women and girls' rights.

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117. MESECVI, 2012. Op. Cit.p. 34

118. MESECVI, 2015. Op Cit. par. 111

119. MESECVI, 2014. Op. Cit

## 6.4. Legislation Allowing the Termination of Child Pregnancy on Therapeutic Grounds

130. The termination of pregnancy on therapeutic grounds takes place when a woman's life or health is at risk, with an understanding of health, according to the definition of WHO/PAHO, as: "a state of physical, mental and social wellbeing and not merely the absence of disease." In general, all the countries of the region allow the termination of pregnancy when women's life is at risk<sup>120</sup>. Nonetheless, several cases have been brought to the inter-American jurisdiction for the violation of women's right to life, where the States has refused to terminate a pregnancy despite being required to do so.
131. The Second Hemispheric Report explains that the States Party in general have provisions that allow the legal termination of pregnancy on therapeutic grounds. However, the Report also establishes that, at a regional level, there is no consensus with regard to the definition of these grounds. It clarifies that some States Party allows this practice only to save the life of the mother. Other States establish said procedure to protect the life of the mother and prevent a serious or permanent harm to her physical health. Some States contemplate such procedures also to protect the mother's mental health<sup>121</sup>.
132. Despite the impact that sexual violence has on girls in terms of their physical, mental and social integrity and wellbeing, five States of the region do not establish any type of exception to the absolute prohibition of abortion, not even in the cases of girls aged 10 to 14 who are victims of sexual violence. Chile, Dominican Republic, El Salvador, Honduras, and Nicaragua have restricted abortion in all cases.<sup>122</sup> In Jamaica, although termination of pregnancy is not statutorily permitted, in practice, therapeutic grounds are considered as an exception, as are a pregnancy resulting from rape, or substantial abnormality of the fetus<sup>123</sup>.

## 6.5. Legislation Allowing the Legal Termination of Child Pregnancy as a Result of Rape

133. In Argentina, after the judgment of the Supreme Court in the FAL s/Medida Autosatisfactiva case of March 13th 2012<sup>124</sup>, discussions of access to abortion for women who were victims of sexual violence were eliminated, which also applies to girls. Currently, women may have access to the legal termination of pregnancy if they are victims of sexual violence, regardless of whether they have a disability. Moreover, protocols were issued for the implementation of non-punishable abortion.
134. In Bolivia, abortion following rape is admitted, under the modified Criminal Code Article No. 226:<sup>125</sup> "Whenever the pregnancy is the result of rape, abduction not followed by marriage, statutory rape or incest, or whenever the life of the mother is in serious danger." It is a concern that marriage be

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120 Except for countries that have a total ban on termination of pregnancy: Chile, El Salvador, Honduras, Nicaragua and the Dominican Republic

121 MESECVI, 2015. Op. Cit. par. 105

122 Although in Dominican Republic there was an attempt for flexibilizing the restrictive legislation to establish the abortion on therapeutic grounds. Dominican Republic. In December 2015, the Constitutional Court overrode due to procedural defect of the reforms of the Criminal Code, where abortion was legalized if it was performed by specialized physicians, allowing the interruption of pregnancy in the case of rape, incest, or embryo malformations, performed it.

123 Jamaica. Second Evaluation Report. Available at: <http://www.oas.org/en/mesecevi/nationalreports.asp>

124 Supreme Court of Argentina. Caso F., A. L. s/ Medida autosatisfactiva. Available at: <http://www.sajj.gob.ar/corte-suprema-justicia-nacion-federalciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-0002-1ots-eupmocsollaf> (only in Spanish)

125 Bolivia Criminal Code. Available at: [http://www.oas.org/juridico/spanish/gapeco\\_sp\\_docs\\_bol1.pdf](http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf) (only in Spanish)

used as a mechanism for avoiding criminal liability of the aggressor, which also gives rise to a forced marriage for the girl who is the victim of violence.

135. In Brazil, the Criminal Code includes an exception to the criminalization of the abortion<sup>126</sup> in cases in which there are no other means to save the life of the pregnant woman, or when it is the result of statutory rape. Law No. 12.845 of August 1st 2012<sup>127</sup>, establishes that in addition to the duty of public health centres to provide comprehensive and free care for victims of sexual violence, which includes administering emergency oral contraceptives, antiretrovirals and post-exposure prophylaxis for STIs.
136. Ecuador reported that in the termination of a pregnancy due to rape, the determining factor of idiocy or dementia of women is maintained<sup>128</sup>.
137. In the case of Uruguay, the Committee noted with satisfaction in the Second Follow-Up Report the adoption of Law No. 18987, which regulates the Voluntary Termination of Pregnancy, establishing that “The State guarantees the right to conscious and responsible procreation, recognizes the social value of maternity, protects human life, and promotes the full exercise of sexual and reproductive rights of the entire population.” In Article 2, the law decriminalizes abortions performed during the first twelve weeks of pregnancy, as long as they fulfill the requirements set forth by the Law.<sup>129</sup>
138. The Federal Criminal Code of Mexico does not criminalize the termination of pregnancy when it is the result of a rape, as established in Article 333. In the 32 Federal Entities, abortion due to rape is not punishable.

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126 Brazil Criminal Code. Article 128. Available at: [http://www.oas.org/juridico/mla/pt/bra/pt\\_bra-int-text-cp.pdf](http://www.oas.org/juridico/mla/pt/bra/pt_bra-int-text-cp.pdf) (only in Portuguese)

127 Law 12.845, 1 August 2013. On the compulsory and comprehensive care of persons in situations of sexual violence. Brazil. Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/l12845.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12845.htm) (only in Portuguese)

128 Ecuador Criminal Code. Article 447. Available at: <https://www.hsph.harvard.edu/population/abortion/Ecuador.abo.htm> (only in Spanish)

129 Law No. 18987: Article 2. Voluntary interruption of pregnancy. The voluntary interruption of pregnancy shall not be penalized and, consequently, articles 325 and 325 bis of the Criminal Code shall not apply when the woman fulfills all the requirements set forth in the following articles and is performed during the first twelve weeks of pregnancy. Within the term established in the foregoing article of this law, the woman must seek medical advice before Comprehensive National Health System to expound the circumstances derived from the conditions in which the conception took place, economic, social or family or age group hardships that her opinion will make impossible to continue with the pregnancy. Available at: <http://www.parlamento.gub.uy/leyes/TextoLey.asp?Ley=18987&Anchor=> (only in Spanish)

## 7. Care Protocols for Girls and Adolescents Who Are Victims of Rape

### 7.1. General context

139. A general look at the legislation of the region recounts that, though almost all the States penalize sexual violence against girls and adolescents, there is a total disconnect between the high numbers presented and the criminal regulations, and and the existing protocols to deal with these cases. Th CEVI verifies that, despite the wide proliferation of protocols of different types to deal with these cases of violence against women,<sup>130</sup> there is a significant regional gap regarding special protocols for comprehensive care and protocols within police, judicial and forensic bodies, with a gender perspective and with the best interests of the girl as the main element to be considered.

140. Recommendation 27 of the Second Hemispheric Report highlights the obligation of the States to adopt and implement care protocols for victims of violence against women in police stations or entities that receive complaints, prosecution offices and health centers. Said protocols must be translated into indigenous languages, as appropriate<sup>131</sup>.

141. Over the course of the last Follow-Up Round, the CEVI noted an important proliferation and progress regarding protocols<sup>132</sup>.According to the Report, most of the States that provided information with respect to this recommendation reported that they prepared different protocols to investigate and judge offenses from a gender perspective, and assist women who are victims of different types of violence, thus standardizing the procedures and services rendered to the victims<sup>133</sup>. From the information received by the Committee from the Second Follow-Up Round, which concluded in 2014, to the Third Evaluation Round, which is in in the process of compiling the the responses from the States Party to the Progress Indicators for Measuring the Implementation of the Belem do Para Convention,<sup>134</sup> the conclusion is that the trend in the region – although it varies widely – is to guarantee at least the existence of protocols in the health sector in a broader

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130 Mainly Latin America. The CEVI requested information from the States Parties to the Convention of Belém do Pará in the Anglophone Caribbean and received information only on Trinidad and Tobago, and did not have access to information on other protocols through public information available on the Internet

131 MESECVI (2012), Op. Cit. Recommendation 27 “Adopt and implement protocols for dealing with victims of violence against women in police stations or entities receiving complaints, prosecution offices and health services. When appropriate, said protocols shall be translated into indigenous languages.”

132 MESECVI (2015), Op. Cit, par. 258.

133 Ibid.

134 MESECVI (2013). Practical Guide to the System of Progress Indicators for Measuring the Implementation of the Belém do Pará.

manner than those aimed at reporting or investigation for the guarantee of the right to justice for women and girls who are victims of sexual violence.

142. The most common themes in the protocols of the region are those aimed at dealing in a general manner with cases of violence against women, especially in the health sector. These include protocols for accessing sexual and reproductive health services, specific protocols for responding to situations of sexual violence, protocols for emergency prophylactic treatment for HIV/AIDS and other sexually transmitted infections in public health services for cases of sexual violence.
143. However, in general terms, the regional overview is not very encouraging regarding effective protection of the rights of girls who are victims of sexual violence, given that the mechanisms for realizing the rights and guarantees of girls and adolescents are rare or almost non-existent, despite the broad legal framework to protect girls and adolescents in the inter-American, constitutional and criminal levels of the region. To the same extent, the existence of tools such as protocols in the justice or the health sectors are mostly far from complying with the standards embodied in the broad and profuse international doctrine on the human rights of women and girls.
144. We present below some the initiatives that allow for an appreciation of the efforts of States in this area, and for which the original source of information was the System of Progress Indicators for Measuring the Implementation of the Convention, used during the Evaluation Rounds, as well as information that is publicly available online.
145. Of the 32 States Party to the Belem do Para Convention, only thirteen – Argentina, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Trinidad and Tobago, Uruguay and Venezuela – provided information or have relevant information publicly available on protocols for care and response to sexual and reproductive rights, sexual violence and legal termination of pregnancy.
146. Among the countries analyzed, eight<sup>135</sup> States included specific reference to girls and adolescents in their protocols on access to sexual and reproductive health services, although they did not differentiate the specific situation of girls under 14.
147. In terms of care protocols for complaints of sexual violence, the States analyzed have specific provisions for the care of girls, except for Ecuador and the Dominican Republic. Nevertheless, only Argentina, Colombia, Mexico and Panama specifically attend to situations of girls under 14.
148. We find ourselves in the same situation with respect to protocols for the legal termination of pregnancy, where only seven of the thirteen<sup>136</sup> States analyzed have such care protocols. Of these, only Argentina, Colombia and Panama refer to the legal termination of pregnancy in the case of girls, although only Colombia refers specifically to the legal termination of pregnancy as a result of sexual violence in girls younger than 14.

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135 Colombia, Ecuador, Mexico, Panama, Paraguay, Peru, Dominican Republic and Uruguay

136 Argentina, Colombia, Guatemala, Mexico, Panama Peru, Uruguay



149. Other States, such as Paraguay<sup>137</sup> and the Dominican Republic<sup>138</sup>, have sought to lessen the impact of early pregnancy on the life projects and integral development of girls that are victims of sexual violence, however these norms are insufficient to guarantee their access to justice and the restitution of the rights that have been violated.
150. In terms of care protocols that deal specifically with access to emergency kits, no State provided precise information on the number of emergency kits that were administered to girls that were victims of sexual violence. In addition to not providing certainty on the real use of these prophylaxis mechanisms, this also points to the non-existence of administrative records – in entities that receive complaints, courts, prosecutors’ offices and health services – that would provide reliable data on the magnitude of violence against girls while respecting the right to privacy of the victims, as well as their access to and use of services.<sup>139</sup>

## 7.2. Regional Overview

151. Notwithstanding the above, some States did report on the existence of some care protocols for girls that are victims of sexual violence, and the CEVI considers it important to bring these to light.
152. In Argentina, the Protocol for the Comprehensive Care of Persons with the Right to Legal Termination of Pregnancy (2015)<sup>140</sup> establishes that health personnel is responsible for guaranteeing the right to terminate a pregnancy when it places the life or health of the person at risk, or when it is the result of a rape. The Protocol recognizes that girls who are 14 years old or more are considered by Argentinian legislation to be fully capable of discernment. It also underlines the importance of the principle of “progressive autonomy” and the degree of development of each girl or adolescent if they are required to have a legal termination of pregnancy. The protocol specifically indicates that in the case of girls under the age of 14, consent must be also signed by the legal representative. Similarly, the Protocol for Care in Situations of Sexual Violence<sup>141</sup> establishes that the prosecutor may act of their own accord when the interests of the girl may be opposite to or incompatible with those of her parents or guardians.
153. Colombia presented information on its Model of Integrated Health Care for Victims of Sexual Violence<sup>142</sup> which contains provisions for the termination of pregnancy in girls under 14, Similarly,

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137 Law 4084/2010 is intended to protect the admission and permanence, as well as to provide academic facilities, to students who are in a state of pregnancy and maternity in public educational institutions under official, private and subsidized management. Resolution S.G. No. 146 of the Ministry of Public Health and Social Welfare, establishes the obligation to provide access to quality health services and care without discrimination, with effective compliance with the duty of confidentiality and guarantee of full validity of professional secrecy in care

138 Normas nacionales para la atención integral de adolescentes. MISP-RD. 2010. p. 62. Available at: [http://www.unicef.org/republicadominicana/Plan\\_Estrategico\\_Salud\\_Integral\\_Adolescentes\\_2010-15.pdf](http://www.unicef.org/republicadominicana/Plan_Estrategico_Salud_Integral_Adolescentes_2010-15.pdf) (only in Spanish)

139 MESECVI (2012). Recommendation 39 “Keep records in entities receiving complaints, courts and prosecution offices and health centers, in order to have reliable data for understanding the scope of violence against women; protecting the privacy of the victims as well as estimating access and use of services by women affected by violence.”

140 Protocolo para la Atención Integral de las Personas con Derecho a la Interrupción Legal del Embarazo. National Program for Sexual Health and Responsible Procreation, Ministry of Health, 2015. Available at: <http://despenalizacion.org.ar/pdf/publicaciones/ProtocoloANP2015.pdf> (only in Spanish)

141 Ministry of Health of Argentina, 2011. Protocolo para la Atención en Situaciones de Violencia Sexual, p. 24. Available at: [http://www.msal.gov.ar/saludsexual/met\\_anticonceptivos.php](http://www.msal.gov.ar/saludsexual/met_anticonceptivos.php) (only in Spanish)

142 District Health Department, 2008. Disponible en: <http://www.comunidad.org.bo/assets/archivos/herramienta/8a6536113070bf1e1f506fa1e2dba3f1.pdf> (only in Spanish). Sobre interrupción de embarazo y prevención del aborto inseguro en Colombia: Protocolo para el Sector Salud. Ministry of Health <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/PP/SM-Protocolo-IVE-ajustado-.pdf> (only in Spanish)

the Protocol on the Termination of Pregnancy and the Prevention of Unsafe Abortion in Colombia<sup>143</sup> highlights the right of girls aged 14 over their own bodies, and contextualizes the severity of maternal death and the spread of sexual transmitted infections in this age group.

154. Colombia also reported on the Protocol for Surveillance and Risk Analysis of Public Health and Gender Violence<sup>144</sup> and the Surveillance Protocol on Public Health and Maternal Death<sup>145</sup>, which presents accurate and precise data on violence against girls under 14 years, considers them a predominantly vulnerable population, and analyzes the high probability of this group having high-risk pregnancies. Also relevant is the Model for Adapting the Health Service Response to the Needs of Girls and Young Adolescents in Colombia<sup>146</sup>, which presents complete information for the juvenile and adolescent population, though very little for girls under 14. In addition, the Protocol for Psycho-Legal Counselling of Women, Girls and Boys that are Victims of Sexual Violence in the Context of the Internal Armed Conflict<sup>147</sup> presents complete information on girls and boys that are victims of sexual violence, considering psychological, biological, preventive and intervention issues with a view to comprehensively addressing the specific problem of child pregnancy. In the case of Ecuador, the Protocol for Care in Situations of Sexual Violence and the Norms and Protocols for Comprehensive Care of Gender-Based, Intrafamily and Sexual Violence<sup>148</sup> over the life cycle include definitions of sexual violence, forced marriage or co-habitation – including child and adolescent marriage and the denial of the right to contraceptives and access to protection against sexually transmitted infections. It also contains a specific chapter on assessment and psycho-social response, and referral to relevant services (including justice) in cases of girls and adolescents that are victims of sexual violence<sup>149</sup>.
155. Guatemala reported on the Protocol for Care of Surviving Victims of Sexual Violence<sup>150</sup>, which establishes mandatory reporting to the legally competent authorities, without requiring the consent of the victim. If the person is a minor (girl, boy or adolescent), the Office of the Public Prosecutor/Attorney General and, through them the Court of Children and Adolescents must be notified for the protection of the girl, particularly if there is reason to suspect that the aggressor is the father, guardian or other close person. If a pregnancy is confirmed, it must be referred to prenatal care and preventive follow-up to reduce the risk of vertical transmission. No procedure for the voluntary termination of pregnancy is established. Guatemala also

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143 Protocolo para el Sector Salud. Ministry of Health. Available at: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/PP/SM-Protocolo-IVeajustado-.pdf> (only in Spanish)

144 Ministry of Health: National Institute of Health. Lineamientos 2016 para la Prevención, Vigilancia y Control en Salud Pública, December 2015. Colombia. Available at: <http://www.ins.gov.co/lineas-de-accion/Subdireccion-Vigilancia/Lineamientos%20y%20Documentos/01%20Lineamientos%202016.pdf> (only in Spanish)

145 Ministry of Health: National Institute of Health. Protocolo de Vigilancia en Salud Pública Morbilidad Materna Extrema. Colombia. 2016. Available at: <http://www.ins.gov.co/lineas-de-accion/Subdireccion-Vigilancia/sivigila/Protocolos%20SIVIGILA/PRO%20Morbilidad%20Materna%20Extrema.pdf> (only in Spanish)

146 Ministry of Social Protection/UNFPA Colombia. 2008. Servicios de Salud Amigables para adolescentes y jóvenes: Un modelo para adecuar las respuestas de los servicios de salud a las necesidades de adolescentes y jóvenes de Colombia. Available at: [http://www.colombiaaprende.edu.co/html/productos/1685/articulos-300861\\_destacado.pdf](http://www.colombiaaprende.edu.co/html/productos/1685/articulos-300861_destacado.pdf) (only in Spanish)

147 Ombudsperson's Office. Protocolo para la Orientación Psico-jurídica de Mujeres, Niñas y Niños Víctimas de Violencia Sexual en el Marco del Conflicto Armado. Ley de Justicia y Paz. 2010. Available at: [http://www.defensoria.gov.co/public/pdf/04/orientacion\\_mujeres.pdf](http://www.defensoria.gov.co/public/pdf/04/orientacion_mujeres.pdf) (only in Spanish)

148 Ministry of Public Health, Ecuador. 2009. Protocolo para la Atención en Situaciones de Violencia Sexual y las Normas y Protocolos de Atención Integral de la Violencia de Género, Intrafamiliar y Sexual. Available at: <https://instituciones.msp.gob.ec/dps/pichincha/images/stories/normas%20y%20protocolos%20de%20atencion.pdf> (only in Spanish)

149 Op. Cit. p. 71.

150 Guía de atención en situaciones de violencia sexual. 2009. Available at: <http://mspas.gob.gt/decap/files/descargas/bibliotecaVirtual/Programa%20Nacional%20de%20Salud%20Reproductiva/COMPONENTE%20SALUD%20Y%20EDUCACION/Protocolo%20victimas%20violencia%20sex%202.pdf> (only in Spanish)

reported on a Protocol for access to an emergency kit<sup>151</sup> and legal advice from the Office of the Public Prosecutor/Attorney General when the victims are girls.

156. In Mexico, Regulation NOM-046-SSA2-2005 on Family, Sexual and Violence against Women established criteria for prevention and care of cases of sexual violence, emergency oral contraception, prophylaxis against sexually transmitted infections including HIV / AIDS and medical abortion services, in accordance with local laws in each State for cases of pregnancy resulting from rape. Nevertheless, the Procedures Manual for the Legal Termination of Pregnancy in medical centres does not present information on care of adolescent women or girls under 14<sup>152</sup>. The Guide to Medical Care of Raped Persons<sup>153</sup> and the Universal Catalogue of Health Services in the National Commission for Social Protection in Health<sup>154</sup> establish treatment schemes for people who have suffered sexual violence, prophylaxis against sexually transmitted infections, and pregnancy tests. Finally, the Protocol for Care of Users and Victims of Violence in the Centre of Justice for Women<sup>155</sup> contains a special chapter on the care of girls, which establishes that a girl that has suffered violence should be treated as a person with rights who accordingly has a voice and vote in the decisions that may affect her life.
157. Panama reported on the Guide for Child and Adolescent Reproductive Health Care, published by the Ministry of Health (2006)<sup>156</sup>, which describes pregnancy in girls under 14, as well as the Technical and Administrative Regulations of the National Program for Comprehensive Health of Adolescents (2006)<sup>157</sup>, aimed at people aged 10 to 19. The Norms establish that girls have the right to be cared for by spontaneous demand, when referred to by health officials of the same or another institution or by pregnancy. In cases where a girl requests the termination of her pregnancy, the norms establish that: counseling must be provided, the legal and medical implications and therapeutic indications for pregnancy termination explained, and work conducted with the child to find alternatives to abortion. In cases of rape or incest in a girl or adolescent, if detected in the first 72 hours, emergency oral contraception should be provided, and requests for abortion in cases of rape or incest are handled by the Courts and must be reported and processed before 8 weeks' gestation - after which the pregnancy must be continued<sup>158</sup>.

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151 Integral Care Model for women survivors of violence, applied to support centers, comprehensive for women survivors of violence, account of two areas, 1.- Empowerment strategy, which has initial attention, legal counseling, psychological support, social support, Medical care, support and self-help groups, temporary shelters for women; 2.- Intervention strategy that has support networks for self-care, safety prevention and awareness raising, training and communication, research and social auditing, lobbying and negotiation.

152 Manual de Procedimientos para la Interrupción Legal del Embarazo, Available at: [http://www.salud.df.gob.mx/ssdf/transparencia\\_portal/art14frac1/manualile.pdf](http://www.salud.df.gob.mx/ssdf/transparencia_portal/art14frac1/manualile.pdf) (only in Spanish)

153 National Centre for Gender Equity and Reproductive Health. Department of Health. Mexico 2011. Available at: <http://bvs.insp.mx/articulos/9/personasvioladas.pdf> (only in Spanish)

154 National Commission for National Protection. Department of Health. CAUSES 2016. Available at: [http://www.repssver.gob.mx/uploads/file/Gestores%20del%20Seguro%20Popular/2016/001\\_CAUSES\\_2016.pdf](http://www.repssver.gob.mx/uploads/file/Gestores%20del%20Seguro%20Popular/2016/001_CAUSES_2016.pdf) (only in Spanish)

155 Executive Secretariat of the National System of Public Security, National Centre on Participation in Crime and Citizen Security. Protocolo para la Atención de las usuarias y víctimas en los Centros de Justicia para las Mujeres de Mexico. p 221. The protocol establishes clear guidelines for action regarding the methods of investigation, attention and receipt of the complaint. Among the actions proposed in the protocol are the use of technology, the necessary actions to avoid revictimizations and a comprehensive care model that guarantees the adequate treatment of girls who have been victims of violence.

156 Ministry of Health / Department of Social Security, General Directorate of Public Health GUÍAS DE ATENCIÓN DE SALUD REPRODUCTIVA INFANTO JUVENIL. Available at: [http://www.minsa.gob.pa/sites/default/files/programas/norma\\_infanto\\_juvenil\\_documento\\_final\\_5\\_octubre\\_2006\\_2\\_.pdf](http://www.minsa.gob.pa/sites/default/files/programas/norma_infanto_juvenil_documento_final_5_octubre_2006_2_.pdf) (only in Spanish)

157 Ministry of Health / Department of Social Security, General Directorate of Public Health Care, UNFPA/PAHO/WHO Panama 2006. NORMAS TÉCNICAS Y ADMINISTRATIVAS DEL PROGRAMA NACIONAL DE SALUD INTEGRAL DE LOS Y LAS ADOLESCENTES. Available at: [http://www.minsa.gob.pa/sites/default/files/programas/norma\\_adolescentes\\_final\\_19\\_oct\\_2006\\_negro\\_azul.pdf](http://www.minsa.gob.pa/sites/default/files/programas/norma_adolescentes_final_19_oct_2006_negro_azul.pdf) (only in Spanish)

158 Op. Cit. p. 76

158. Peru reported on the National Guide to Comprehensive Sexual and Reproductive Healthcare, which specifically provides health services for girls and adolescents and protocols on termination of pregnancy in cases of sexual violence, such as the Technical Guide for Comprehensive Care of People Affected by Gender-Based Violence<sup>159</sup>. The Guide, which considers adolescents to be the population aged 10 to 19 years, establishes methods of coordination for joint action with the Ombudsperson for minors or other authorities, establishing a duty to respect the decisions of girls and adolescents and the obligation to administer emergency contraception within the first 72 hours after the violent incident.
159. Uruguay reported on the Technical Guide for Voluntary Termination of Pregnancy (2012). This does not refer to age, although the informed consent form provides a space for the “legal representative.” The guideline for intervention by health providers in situations of sexual violence does have specifications for girls and adolescents, and although there is no reference to pregnancy termination, it does reference emergency oral contraception. The roadmap for the prevention and care of situations of child abuse and sexual abuse in the health sector, sets the path to be followed in cases of sexual abuse or mistreatment and includes pregnancy as an indicator of abuse and risk factor. It contemplates measures for the prevention of pregnancy (emergency oral contraception) and for early detection of pregnancy.
160. Finally, Honduras and Trinidad and Tobago pointed out during the Third Evaluation Round that they had care protocols for victims of sexual violence, however neither the Protocol for Comprehensive Medical Care of Victims/Survivors of Sexual Violence in Primary Care from Honduras nor the Protocol from Trinidad and Tobago were not found to be publicly available. Costa Rica reported that it has an Institutional Protocol for Comprehensive Care of Victims of Sexual Violence in the First 72 Hours after the Event (Young People and Adults)<sup>160</sup> that foresees care and prophylaxis for girls but does not establish special or differentiated treatment. Lastly, Venezuela has an Official Regulation for Comprehensive Sexual and Reproductive Healthcare<sup>161</sup>, which recognizes the problem of sexual abuse of girls younger than 18 and calls attention to the specific treatment of girls, but does not address specific measures for immediate differentiated care of girls younger than 14.

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159 Adopted through Ministerial Resolution 141-2007/MINSA

160 Available at: <https://www.poder-judicial.go.cr/violenciaintrafamiliar/index.php/de-su-interes%3Fdownload%3D385:protocoloantirretrovirales%26start%3D10+&cd=2&hl=es&ct=clnk&gl=us> (only in Spanish)

161 Ministry of the People's Power for Health-MPPS. Published in collaboration with and with the support of: PAHO/WHO, UNICEF, UNFPA. Norma Oficial para la Atención Integral en Salud Sexual y Reproductiva. 2013 Available at: [http://www1.paho.org/ven/images/stories/VEN/10-11-13-NormaS\\_C.pdf?ua=1](http://www1.paho.org/ven/images/stories/VEN/10-11-13-NormaS_C.pdf?ua=1) (only in Spanish)

## 8. Legislation on Child and Forced Marriage among Girls in Latin America and the Caribbean

161. The legal framework on this issue in the region are broad and heterogeneous. Until relatively recently, most States in the region foresaw civil regulations that legalized marriage between persons younger than 18. In recent years, progress has been made on reforms that aim to raise the legal age for marriage. However, and as a general rule, most countries still have not implemented the recommendations issued by the Committee on the Rights of the Child<sup>162</sup> or the CEDAW Committee<sup>163</sup> which establish 18 as the minimum legal age for marriage and, when this age is established, it is still common to find it flexible in the case of child pregnancy.

162. Thus, we find that most States in the region that are Party to the Belem do Para Convention, CEDAW, and the Convention on the Rights of the Child establish a minimum age for marriage around 14 years old for girls and 16 years old for boys and, in every case, when at least one of the parties is a minor, parental or judicial consent is required.

163. In September 2016, the World Bank<sup>164</sup> published a compendium of the legal framework on child marriage that allows us to compare the legislation of selected countries in Latin America and the Caribbean.

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162 General Comment 31 of the CEDAW Committee and Committee on the Rights of the Child

163 Ibid.

164 E.Calimoutou, Y.Liu, B.Mbu, Compendium of International and National Legal Frameworks on Child Marriage, September 2016@World Bank. License: Creative Commons Attribution 3.0 IGO (CC BY 3.0 IGO)

Table 3

| Age for marriage and exceptions – Latin America and the Caribbean |   |  |  |  |   |  |   |  |
|---|---|--|--|--|---|--|---|--|
| Country   | Date and title of the law stating the minimum age | Minimum age for boys   | Minimum age for girls  | Age for boys to marry before the minimum age | Age for girls to marry before the minimum age | Competent authority to allow the boy and girl to marry | Condition(s) to allow the boy and girl to marry                                       |  |
| Bolivia   | Family Code (1988)                                | 16   | 14   | No specific age                              | No specific age                               | Judge  | Serious and justified reasons   |  |
| Brazil  | Civil Code (2002)                                 | 18   | 18   | 16   | 16  | Judge  | Pregnancy or to avoid criminal sentence in case of statutory rape                     |  |
| Dominican Republic  | Civil Code (1949)                                 | 18   | 15   | No specific age                              | No specific age                               | Government   | Important causes  |  |
| El Salvador   | Civil Code (1859)                                 | 18   | 18   | Under 18                                     | Under 18                                      | --   | 1- if they have reached puberty<br>2-have a child together or if the girl is pregnant |  |
| Guatemala   | Civil Code (1963)                                 | 18   | 18   | 16   | 14  | Judge of the First instance                            | Consent of the parents jointly or the consent of the guardians                        |  |
| Haiti   | Civil Code (1963)                                 | 18   | 15   | No specific age                              | No specific age                               | President of Haiti                                     | Serious reasons   |  |
| Panama  | Family Law (1994)                                 | 18 (without the prior express consent of a parent or guardian)<br>-----<br>16 (with the prior express consent of a parent or guardian) | 18 (without the prior express consent of a parent or guardian)<br>-----<br>14 (with the prior express consent of a parent or guardian) |  |   | --   | Judge of the First instance   | Consent of the parents jointly or the consent of the guardians |
| Peru  | Civil Code (1984)                                 | 18   | 18   | 16   | 16  | Judges   | Parental and judicial consent   |  |

Source: E. Calimoutou, Y.Liu, B. Mbu (2016). Compendium of International and National Legal Frameworks on Child Marriage. World Bank.



164. Among the countries with age limits below the recommendation are Bolivia, where the Article 44 of the 1988 Family Code establishes limits of 16 for boys and 14 for girls, and even allows for marriage at younger ages with judicial consent.
165. In Brasil, the 2002 Civil Code establishes a limit of 16 with the consent of the parents or legal guardians, but also contemplates exceptions that would allow marriage at a younger age in order to avoid a criminal sentence or in the case of pregnancy (Article 1517).
166. In the Dominican Republic, the 1949 Civil Code establishes a prohibition of marriage for men younger than 18, but places the limit at 15 for girls (Article 144).
167. In El Salvador, the 1859 Family Code stipulates the invalidity of marriage when the parties are younger than 18, although again it establishes an exception in cases of having reached puberty, expecting a child or the girl being pregnant.
168. In Haiti, the 1963 Civil Code (Article 133) establishes the age limit for men at 18, but for women at 15.
169. Panama places the age limit at 16 for boys and 14 for girls, as long as parental consent exists (Family Code, May 3rd 1994)
170. Peru establishes that adolescents may not enter into marriage, although it creates an exception for girls and boys older than 16 that express their desire to marry, with parental consent and judicial authorization (Civil Code, 1984, Article 241)
171. Nicaragua determines in its Civil code that the minimum age for marriage is 18, but allows exceptions for girls and boys who wish to marry as of 16, with the consent of whoever exercises paternal authority.
172. A number of recent initiatives exist in Mexico, such as the General Law on the Rights of Children and Adolescents (December 2014)<sup>165</sup>, 1. which establishes that “Federal laws and those of the federated entities, in the sphere of their respective competencies, shall establish 18 years as the minimum age for marriage.” The Committee hopes that this regulation will gradually be incorporated into each of the federated entities of the State.
173. In Guatemala, a recent reform of the 1936 Civil Code (Decree 8-2015, 2015) stipulates that the minimum age for marriage is 18. Although it allows for exceptions over age 16, it expressly prohibits marriage below that age. The previous version of the civil code provided that girls older than 14 could marry with authorization.
174. The parliament of Costa Rica recently adopted a Law on Improper Relations that establishes 18 as the minimum age for marriage, while penalizing any that has sexual relations with a person younger than 18, when the age difference is greater than 7 years<sup>166</sup>.

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165 [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5374143&fecha=04/12/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5374143&fecha=04/12/2014)

166 At the date of publication of this report, the Law was pending publication for its entry into force



## 9. Access to Justice and Due Diligence for Girls that are Victims of Sexual Violence

175. The enactment of the multiple international human rights instruments that protect women's right to live free from violence reflect a consensus and recognition by States of the discriminatory treatment traditionally received by women in their societies<sup>167</sup>. Such instruments are specific evidence of States' obligation to establish the judicial and administrative mechanisms necessary to ensure effective access to restitution, reparation or other means of compensation for the harm done to women's mental and/or physical integrity.<sup>168</sup>
176. Access to appropriate and effective judicial recourse is the first line of defence for all rights. In this order, levels of access to justice and gender justice are standards of measurement of the strengthening and construction of democracies in the continent<sup>169</sup>, given that from their collective dimension, access to justice represents a tool of stability for the sustainability of democratic systems and contributes to lessening the effects of social inequality<sup>170</sup>.
177. The obligations that the CEVI has highlighted on due diligence in access to justice based on the Convention are: 1. Establish the channels, actions and services necessary to guarantee the care of girls that are victims and abstain from any violent or discriminatory practice (Articles 7 and 8 of the Convention); 2. Guarantee the accessibility of all the channels, actions and services free from any type of discrimination (Article 6 of the Convention); 3. Guarantee the quality of policies, actions and services directed at girls (Articles 7 and 8 of the Convention); 4. The obligation of adaptability in the development of policies and institutions and the provision of those services that are best suited to the needs of women, girls and adolescents – attending to their specific needs (Article 9 of the Convention).
178. In this sense, the CEVI has pointed out the need for information on State efforts to guarantee due diligence through public policies aimed at guaranteeing access to justice for women victims of violence, in order to evaluate and monitor the actions implemented with this objective in mind.

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167 IACHR . Access to Justice for Women Victims of Violence in the Americas, par. 1. Available at: <http://www.cidh.org/women/Access07/tocaccess.htm>

168 See Article 7 g) of the Belém do Pará Convention

169 Arroyo Vargas, Roxana. Acceso a la justicia de las mujeres...el laberinto androcéntrico del derecho. Issue 53, Inter-American Human Rights Institute. XX Aniversario of the Women's Rights Program. January-June 2011. p. 45

170 Legal Defense Institute (IDL) of Peru and the Due Process Legal Fund (DPLF). Obstáculos para el Acceso a la Justicia en las Américas: Intervención ante el Comité Jurídico Interamericano. 2009

To this effect, the CEVI requested information on statistics from the justice sector on women and girls that access entities responsible for receiving complaints, the number of cases attended and the number of judicial decisions issued through the administration of justice in cases of violence and sexual violence against girls. Second, the CEVI also requested information<sup>171</sup> on the percentage of protection order issued, training processes for justice personnel, free legal assistance and finally, the application of the Belem do Para Convention in sentences, and on resolutions and edicts that contain gender stereotypes or prejudices in cases of violence against women and girls.

## 9.1. Information and Statistics in the Justice Sector

179. The MESECVI issued two Hemispheric Reports on the Implementation of the Belem do Para Convention, in 2008 and 2012<sup>172</sup>. Similarly, it has carried out two follow-up rounds of the recommendations issued in these reports, in 2011 and 2014<sup>173</sup>.

180. In these reports, the Committee has also issued specific recommendations on access to justice for women and girls and has called attention to those that are in situations of particular vulnerability, such as indigenous or afrodescendent women, and especially on the available bodies and procedures, the advantages and obstacles they offer, and the national and customary regulations used to administer justice<sup>174</sup>.

181. To measure access to justice or, by reverse interpretation, the rate of impunity in these cases, the CEVI found it relevant to have information on the cases, complaints, and processes brought before the justice administration system. The statistical information that is presented in this report brings to light a number of State efforts, but also the significant gaps between the regulatory framework and the policies implemented to guarantee the right of girls to live free of violence.

182. This information, in addition to allowing us to measure confidence in the justice sector, also allows us to highlight the degree of effectiveness of access to justice for girls that are victims of sexual violence, as well as the capacity of public bodies charged with attending to the best interests of girls and adolescents to actively respond to these situations.

183. Despite the importance of this information, the during the 2013 and 2016 Evaluation Rounds of the MESECVI, the CEVI confirmed the existence of a common pattern in the absence of

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171 See Access to Justice indicators in the System of progress indicators for measuring the implementation Belém do Pará Convention. Available at: <http://www.oas.org/en/mese cvi/indicators.asp>

These progress indicators enable us to: Analyze the process over time and clarify the gap in meeting the objectives and recommendations made to the States; Identify the need for new sources of information; Simplify procedures while at the same time gaining in depth analysis and progress in defining an agenda of compliance goals around the actions necessary to ensure a life free of violence for women

172 MESECVI, 2008, op.cit. MESECVI, 2012, op.cit.

173 MESECVI, 2012, op.cit.

174 MESECVI, 2008, op.cit. Recommendation 27, 33 and 34 and MESECVI, 2012, op.cit. Recommendations 3, 8-11, 14, 15, 19, 22-26, 29, 30, 35-42. 175 NO EXISTE EN VERSION PDF

information and statistics in the justice sector. Of the 32 States Party to the Convention, only 13<sup>175</sup> reported on the existence of care protocols for cases of sexual violence, 11 reported information on legal processes for crimes against women<sup>176</sup>, and only two<sup>177</sup> provided the relevant information, disaggregating the cases by sexual violence against girls.

184. The contrast between the figures on sexual violence reported by the health sector, and the figures from the justice sector give an account of the absence of management of this information by the State, as part of their obligations under Article 8h<sup>178</sup> of the convention. For this reason, the CEVI called the attention of States to the importance of collecting this information and of keeping these figures visible and up-to-date as key tools in the work of eradicating impunity in cases of violence against women, and particularly against girls.

185. The CEVI consulted on the number of girls that access the justice administration system, the time lag in processing complaints, the type of complaints that are lodged or the violent crimes of which they are victims, as well as the number of protection judgements and definitive sentences in these cases, and the time that their resolution takes.

186. The results obtained in the Evaluation Rounds give a general account of the very low capacity of States to answer these questions, which is evidence of at least two situations of relevance to the CEVI. The absence of this information in most States Party or worse, the lack of systematization of this information, is equivalent to a failure to use these figures as relevant indicators in the evaluation of this situation.

187. The absence of information also gives an account of the broad disconnect between the health and justice sectors. As shown in the chapter on the regional overview, at least 17 of the States<sup>179</sup> Party to the Convention<sup>180</sup> have data on the different manifestations<sup>181</sup> of sexual violence against girls, including pregnancy and childbirth in girls under 14, abortions in girls under 14, the deaths of girls under 14 for causes linked to pregnancy, childbirth or puerperium, or live births to girls aged 10 to 14.

188. Few States provided information on this indicator – the percentage of legal processes (criminal, civil or administrative) on violence against girls and adolescents, adult women or older women, in relation to the total number of complaints of violence against women. Only two States provided information on violence against girls. Nevertheless, the figures provided clearly give an account of the situation.

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175 Argentina, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, Dominican Republic, Trinidad and Tobago, Uruguay and Venezuela.

176 Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Paraguay, Peru, Dominican Republic and Venezuela.

177 Peru and Venezuela.

178 Belém do Pará Convention, 1994. Op. Cit. Article 8: "The States Parties agree to undertake progressively specific measures, including programs (h) to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes"

179 Argentina, Chile, Colombia, El Salvador, Mexico, Paraguay and Dominican Republic

180 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago and Venezuela

181 Pregnancy in girls aged 10 to 14, live births in girls aged 10 to 14 years, abortions in girls aged 10 to 14 years, maternal mortality in girls aged 10 to 14 years, among others.



189. Guatemala reported that in 2012, of 42,422 complaints of violence against women, only 1.19% ended in a sentence. This was also observed in the response from Costa Rica, which reported that in 2013, of 2,194 complaints of violence against women lodged, only 704 sentences were issued.<sup>182</sup>
190. Ecuador reported in general terms that in 2010, 2011 and 2012, the number of legal processes initiated on violence was, respectively, 2.10%, 0.71% and 0.41%. Peru reported in a more detailed manner that in 2012, 141,111 complaints were lodged with the Office of the Public Prosecutor/Attorney General, and that 54,599 cases of violence were referred to the justice sector. In the same year, the National Police received 122,689 complaints of family violence, of which 110,161 (90%) were against a woman victim, and of which 6,427 were younger than 18. In 2011, 110,621 complaints were lodged, of which 100,289 (91%) were against a woman victim and of which 6,464 were under 18. The Office of the Public Prosecutor/Attorney General reported that in the same year, complaints of family violence made up 22.1% of the total complaints lodged with provincial offices, while the following year (2012) it was 23.5%. Peru was the only State that clearly disaggregated the crimes by age group of women, although it did not provide information on the number of sentences issued following these complaints.
191. In 2012, Colombia reported a total of 327,403 cases of sexual violence, but only 3.12% of the cases that were processed by judicial bodies ended in a sentence and only 2.67% of these were convictions. Chile reported a total of 2,279 cases of sexual crimes against girls in 2012, but provided no information on judicial decisions.
192. The Dominican Republic reported that in 2012, 1,469 criminal processes were initiated in courts of instruction on the basis of complaints of intra-family violence, violence against women and sexual crimes against women<sup>183</sup>. In addition, according to the Office of the Attorney General, for the same year 3,080 cases of sexual crimes were registered. Venezuela reported that in 2015, the Office of the Public Prosecutor/Attorney General had registered 47 cases of different forms of violence against girls aged 12 to 17 – only two of these referred to sexual violence while three referred to abuse or harassment. This data, which is noteworthy for the reduced number of cases that it suggests, contrasts with the 5,300 pregnant girls between the ages of 10 and 14 that were noted in the same report.
193. As shown, despite the existence of a broad catalogue of crimes links with this issue in almost all of the States that are Party to the Convention, none provided data on sexual violence against girls, complaints lodged, or decisions issues on the protection of girls.
194. Nor was information provided on the broad number of entities charged with receiving complaints of crimes against girls<sup>184</sup> and none of the States reported on cases of reparation for girls that are victims of violence, which hinders an evaluation of the level of receipt and response by States to the complaints lodged on violence against girls, in particular in relation to the treatment and application of the crime of sexual violence.

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182 Costa Rica's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

183 Dominican Republic's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

184 Costa Rica and Panama's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>



## 9.2. Protection Measures

195. Protective measures are based on the existence of a risk of harm, and therefore, they tend to ensure immediate and effective protection to the victim who is in imminent danger<sup>185</sup>, at the same time that they “seek to improve opportunities for groups that historically and systematically have been disadvantaged”<sup>186</sup>. Recently, the Inter-American Court of Human Rights, in a resolution on interim measures in favour of the life and integrity of a Salvadoran woman who was denied the termination of a pregnancy, considered that protective measures: “are not only of a prudential nature, in the sense of preserving a legal status, but fundamentally foster, in terms of protecting human rights, to the extent that they seek to avoid irreparable harm to persons.”
196. “In this sense, these measures have as their object and aim the preservation of the rights in possible risk until the dispute is resolved. Their object and aim are to ensure the integrity and effectiveness of the substantive decision, and thus to avoid infringing the rights in litigation, which could render innocuous or detract from the usefulness of the final decision”<sup>187</sup>. The Inter-American Court of Human Rights has recognized in its jurisprudence that deficient State response to provide protective measures is not only the result of negligence but rather of patterns of discrimination and machismo rooted in public agencies<sup>188</sup>.
197. The CEDAW Committee has pointed out in this regard that the adoption of protective measures can be considered as “part of a necessary strategy of the States Party to achieve substantive or de facto equality of women and men in the enjoyment of their human rights and fundamental freedoms.”<sup>189</sup>.
198. The CEVI did not receive information that could account for immediate and effective measures that are being adopted to avoid the high rates of sexual violence against girls under the age of 14, or temporary measures to protect girls who are victims of sexual violence, in cases of pregnancies that result from rape. In this regard, assessing the levels of special protection in fulfillment of the duty of due diligence by the justice system to avoid irreparable harm would contribute significantly to the review of compliance with the obligations of States Party. Nevertheless, the CEVI has no choice but to indicate its concern over the lack of information on the measures that are being implemented or that should be implemented and have not been developed.

## 9.3. Measures for Procedural Auto-composition, Mediation and other Mechanisms for Avoiding Criminal Liability to the Detriment of Girls

199. With regard to the explicit prohibition in State legislation of the use of conciliation, mediation, suspension of trial, application of the criterion of opportunity, commutation of the sentence or others aimed at extra-judicial resolution of cases of violence against women, concern arises

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185 IACHR (2011), Access to justice for women victims of sexual violence in Mesoamerica., OEA/Ser.L./V/II. Doc. 63, p. 63.

186 Cook Rebecca and Cusack Simone, “Estereotipos de Género: Perspectivas Legales Transnacionales”, Profamilia, Bogotá, 2010

187 I.A. Court H.R. Provisional Measures with Regard to El Salvador: Matter of B. 29 May 2013

188 Abramovich, Víctor, “Responsabilidad Estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” en la Corte Interamericana de Derechos Humanos” in Anuario de Derechos Humanos de la Universidad de Chile, p. 176.

189 CEDAW Committee General Recommendation 25, par. 18.

over the information from the region regarding the existence of rules and legislation that allow marriage to girls, on the one hand, and for marriage with girls as a mechanism to evade criminal responsibility for sexual violence, abduction or rape<sup>190</sup>. These mechanisms have the same objective as those mentioned above, that of extra-judicial resolution of violent crimes against girls.

## 9.4. Training of Justice Personnel

200. States in general tended to report extensively on workshops and training courses on gender mainstreaming, and normative analysis of violence against women in the judicial sphere, but in general, no State detailed how these efforts were extended to staff charged with receiving complaints, investigating and judging on the rights of girls and their best interests, especially in cases of sexual violence.

201. Few States reported specifically that these courses are permanent and part of a structural policy. Such is the case of Peru, which in 2012 signed a Cooperation Agreement between the Academy of the Magistracy and the Office of the Ombudsperson of the People for carrying out a Diploma on Gender Violence. It also notes the training of operators from different sectors organized by the PNCVFS since 2001, and in particular, 6 courses conducted in 2012 for officials of the Office of the Public Prosecutor/Attorney General of Venezuela<sup>191</sup> which has a permanent training program in the judicial school, the Office of the Public Prosecutor/Attorney General and the Office of the Ombudsperson<sup>192</sup>.

202. 1. The Dominican Republic highlights the agreement between the Judicial School of the Office of the Public Prosecutor/Attorney General and the Ministry of Women, who have programs for operators with from a gender perspective. It also reported on collaboration in training plans with INTEC University and the Board of Assistance to Women, as well as the Dissemination and Training Program on Gender and Violence of the National Judicial School, through which 292 officials of the judiciary were trained. In addition, from January to September 2012, 193 operators of the judicial branch were trained through a virtual course. In addition, it mentioned the Capacity-Building Project of the National Police for the prevention of violence, which has managed to train 659 police officers.

## 9.5. Free Legal Services

203. With regard to the existence of free and comprehensive legal services for the protection of girls, no response was received from most of the States. Only the information sent by Guatemala, which indicates the different services that exist within the justice sector, such as free assistance to obtain protective measures and security for victims of violence, in addition to the Units of the

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190 See Brazil Civil Code on the capacity for marriage, Article 1.517. The man and the woman at the age of sixteen may marry, requiring authorization from both parents or their legal representatives, while not reaching the civilian majority. Single paragraph. If there is disagreement between the parents, the provisions of the sole paragraph of art. 1.631. Art. Until the wedding celebration, parents, guardians or conservators may revoke the authorization. Art. The denial of consent, when unfair,

191 Peru's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

192 Venezuela's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

Office of the Attorney General focused on the protection of women, children and adolescents and older persons. Mention should also be made of the Office of the Ombudsperson for Indigenous Women, which provides legal assistance<sup>193</sup>. No State provided information on protective measures and rescue and transfer mechanisms for girls that are victims of sexual violence or the existence of transfer funds, rescue mechanisms, change of identity, secure referral networks, etc.

204. Argentina reported on Law 26485, which states that monitoring in these cases corresponds to the National Council of Women, who must guarantee access to justice with free legal sponsorship and summary procedures, ensuring comprehensive assistance for the victims and measures to confront the socio-cultural patterns that promote gender-based aggression. Argentina also reported on the implementation, by several provinces, of itinerant justice systems, to bring justice to rural and indigenous women living in communities far from urban centres. However, no information was received on systems of specific care for girls

205. Bolivia indicated that as of Law 348<sup>194</sup>, free sponsorship coverage went from 20% of municipalities in 2009, to 50% in 2012<sup>195</sup>. Peru reported that the MIMP Emergency Centres for Women are specialized public services that provide free legal sponsorship. In 2012 these centres covered 73.8% of provinces throughout the country. Peru also referred to the Urgent Care Service (UAA) whose purpose is to intervene in cases of family and sexual violence; Line 100 and the Free Legal Guidance Line ALEGRA.<sup>196</sup>

206. Paraguay reported figures provided by civil organizations that support women in their criminal proceedings<sup>197</sup>. It is important to recognize that Argentina and Chile were the countries that presented more information about their programs and services for comprehensive access to justice<sup>198</sup>. However, neither detailed special services for girls that are victims of sexual violence.

207. Among the countries that absolutely prohibit abortion and report high rates of pregnant girls under age 14, Chile provided information on the existence of free services and programs for access to justice and presented figures on the women that have been users of these services. Chile responded that free legal assistance provided by the Ministry of Justice reaches 332 of 346 communes throughout the country (or 95% of the total population). Likewise, hotlines have registered a 65.78% rate of care of women among the total cases attended<sup>199</sup>. However, it refers only to women without identifying the situation of girls under 14.

208. The Dominican Republic notes that the Violence Prevention Program of the Ministry of Women has 52 offices, as well as the existence of the Directorate of Legal Representatives of the Victim at the Attorney General's Office. More specifically, it reported that, in 2012, 4,514 cases were

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193 Guatemala's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

194 Bolivia's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

195 Bolivia's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

196 Peru's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

197 Paraguay's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

198 Argentina's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

199 Chile's response to the Second Follow-Up Round. Available at: <http://www.oas.org/en/mesecvi/nationalreports.asp>

dealt with, with a total of 163 judgments by the legal services staff of the Ministry of Women. Venezuela reported that it has the following bodies: 3 prosecutors' offices throughout the national territory, 2 prosecutors' offices for the intermediate and trial phase and 64 prosecutors' offices in the investigation phase at the national Level, in addition to a Service for a Comprehensive Approach to Victims of Gender-Based Violent Crime, a Psychological Care Service for Victims of Sexual Violence and Physical Aggression, and 34 Victim Care Units at the national level<sup>200</sup>.

## 9.6. Belem do Para as an Instrument for the Justice Administration System

209. With regard to the incorporation of the Convention into judicial decisions on cases of violence against girls, Paraguay alone reports on the application of the Convention in sentences. None of the other countries refers to this matter, which impedes clarity on the level of incorporation of the Convention into regional jurisprudence. In the case of Paraguay, it was reported that of 510 judgments and resolutions analyzed, 27 resolutions cite CEDAW and 83 the Bélem do Pará Convention.

210. Of the responses sent by the countries of the South American region, the lack of clarity on the part of the States to correctly answer the questions arising from the progress indicators is worrying. It is necessary to identify the concerns of the institutions responding to the indicators, as the lack of information hinders a robust analysis of the level of compliance in terms of access to justice. While solid responses do stand out, it is of concern to the Follow-up Mechanism that there is a lack of information from Caribbean States to report on the indicators of the last Follow-up Round.

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<sup>200</sup> Venezuela's response to the indicators from the Third Evaluation Round.

## 10. Conclusions

211. Of the analysis done, a significant gap is evident in the situation of girls that are victims of sexual violence, on the one hand, and the standards that protect them on the other. In that sense, the severity of the sentences imposed for the crime of rape against girls contrasts with the care and response mechanisms provided in these situations. Of the States analyzed, none reported precise information on judgments applied in relation to crimes of sexual violence against girls aged 10 to 14. No information was obtained on the number of girls who received emergency kits for prophylactic treatments and specialized care for complaints of sexual violence.
212. Only five countries in the region, Argentina, Colombia, Guatemala, Mexico and Panama, reported on care protocols in the justice sector specialized for this age group, but none of the States, not even those with protocols, reported on training and specialized personnel to attend to girls in this age group, much less with regard to cases of sexual violence and pregnancy in girls with special needs derived not only from their condition as girls, but from other factors of discrimination such as ethnicity or race, disabilities, their indigenous status or their status as migrants or in conflict with the law, among others.
213. Similarly, there is a contrast with the lack of information on convictions imposed by the application of criminal law, although all States reported having legislation that penalizes sexual violence and many aggravated or qualified these crimes when the victims were girls under 14.
214. Of particular concern is that in most of the Caribbean states, criminal laws on sexual violence against girls even now are based on gender stereotypes that place the responsibility for sexual violence on girls, such as those that determine mitigating or extenuating circumstances of responsibility for the aggressor when the former proves that the girl looked older than 14.
215. To this effect, it is of particular concern that an exemption from liability exists in cases of sexual violence because the assailant is married to the victim, standards that continue to exist and that have been widely noted for entrenching violence within couple relationships and that moreover, can also place girls that are victims of sexual violence at risk of forced marriage.
216. Overall, criminal legislation accounts for a large framework of sanctions to protect girls under 14 years from sexual violence, but nothing is said about the damage that is caused when, because of gender stereotypes, a girl that is entitled to a legal abortion, becomes a victim of health personnel who, under the guise of bureaucratic obstacles or conscientious objection, discourage these opportunities for girls and their parents to access the legal termination of a pregnancy resulting from rape.

217. The same questioning exists in the implementation of health protocols, which leave a wide margin of action or leave it to the discretion of medical personnel in charge of meeting the necessary guidelines for termination of pregnancy in these cases.
218. In general, from the regulations reviewed - criminal law as well as protocols and guidelines - a wide gap appears because of the lack of training processes, comprehensive care and dissemination of information on the rights of girls in the health and medical field, as well as in the justice sector.
219. In the same vein, the lack of information in most States shows a weak capacity to analyze the problem from all perspectives and guarantee progressive eradication of violence. The absence of data, underreporting, lack of information on context situations that girls face, the types of abuse and ages at which they occur, are part of the problem in the region. For most of the States that submitted relevant figures, these are not consistent with the actions implemented by the same States to address the seriousness of the problem.
220. For example, in States that have absolute prohibition of pregnancy termination, the CEVI did not find relevant information that would determine if there are other protective guidelines that allow full care for the girls that are victims of violence. Thus, in the case of States such as Chile, El Salvador, Honduras, Nicaragua, and the Dominican Republic that reported figures, these were not connected to the measures or public policies implemented for the eradication the problem. On the contrary, it could not be determined that there is relevant care for girls that are victims of sexual violence, according to the information provided by States.
221. It is noteworthy that the States were consulted on education measures for girls and adolescents on their sexual and reproductive right and on training processes for specialized personnel. No relevant information was reported on these issues, for which reason the topic is not highlighted as relevant within this Report.
222. The Committee also draws attention to the fact that health sector protocols incorporate measures for the care of pregnant girls under 14, as though the fact that the girls are pregnant is not associated with the commission of a crime of sexual violence against the pregnant girl, in which case health personnel are under special obligations regarding the reporting of the case and its treatment. This situation, as has been pointed out, is explained by an undue normalization of child pregnancy in most of the countries of the region
223. Within this framework, the CEVI wishes to reiterate the set of recommendations it has developed with regard to this matter, and at the same time strengthen some of the existing ones. It also draws attention to the need to implement immediate measures to eradicate this scourge.



# 11. Recommendations

Thus, the CEVI recommends

## 11.1. Public policy in the area of legislation

224. Eliminate unsafe abortion, ensuring normatively that all pregnancies in girls are considered high risk and allowing legal termination of pregnancy, a process that should be accompanied by the necessary measures to ensure the overall health of girls, as well as their sexual and reproductive health and their rights to life, personal integrity, intimacy, non-discrimination and to live free from violence;
225. Adopt legislation guaranteeing emergency prophylactic treatment for HIV and other sexually transmitted infections in public health services, especially in cases of sexual violence against girls;
226. Override all criminal laws and protocols that deepen gender stereotypes and in particular stereotypes about the responsible victim or the priority of the life of the product of forced pregnancy against the best interests of girls;
227. Strengthen the secular character of States in the regulations and in the measures to be adopted in on issues related to sexual violence against girls and child pregnancy in the region;
228. Strongly recommend that States Party review and, where necessary, reform laws and practices to increase the minimum age for marriage, with or without the agreement of the parents, to 18 years for both girls and boys and as a matter of priority those civil and criminal rules that exempt the criminal responsibility of the aggressor through marriage.

## 11.2. Public policy in the area of education

229. Establish public policies aimed at preventing sexual violence against girls with an inter-sectional approach, taking into account the diversity of race, ethnicity, sexual orientation and conditions of poverty, due to the various risk factors for sexual abuse and violence that could be generated against girls, in schools and health centers;
230. Guarantee education on sexual and reproductive rights for all girls, boys and adolescents according to their age, including HIV/AIDS and STIs in school curricula at all educational levels,

to ensure that they are empowered in the knowledge and management of their sexual and reproductive rights;

231. Guarantee that States produce information and statistics that account for the analysis of the context of sexual violence against girls, with the aim that these studies are taken into account in the evaluation and implementation of public policies in favour of the right of girls to live free from violence, discrimination and stereotyped patterns;

232. Train State agents in both the justice and medical sectors on the comprehensive care that girls who are victims of sexual violence should receive, with a gender and human rights perspective

### **11.3. Public policy in the area of health**

233. Reduce the high rates of maternal mortality and morbidity in the region, with the respective differential approaches;

234. Adopt and implement care protocols for girls that are victims of sexual violence in health services and in indigenous languages and sign language where appropriate;

235. Implement comprehensive care protocols to guarantee the life and health of girls who decide to terminate their pregnancy;

236. Ensure that all protocols ensure access to sexual and reproductive health services, regardless of their age, including confidentiality (including regarding the parents when they are the potential abusers) and counseling;

237. Adopt care protocols that determine the steps for treatment and how to care for girls using emergency contraception and emergency prophylaxis treatments for HIV and other STIs in public health services, especially in cases of sexual violence;

238. Ensure that all girls who are victims of sexual violence have access to emergency contraception and guarantee free distribution of emergency oral contraception in public health services without distinction as to social class or ethnicity, or age, and ensure its full compliance, removing obstacles that prevent it;

239. Guarantee that abusive and humiliating behaviours are not reproduced in institutional environments, and that health personnel do not re-victimize or deny access to health services to girls who need them, and ensure access to reproductive health information, which is essential for them to exercise their reproductive autonomy, and their rights to health and physical integrity;

240. Provide the necessary budgets for child protection agencies to ensure comprehensive and specialized protection for pregnant girls and / or victims of sexual violence;

241. Reiterate the recommendation of the Beijing Platform for Action and in accordance with Article 8h of the Belem do Para Convention, to disaggregate information and data on children by sex and age, to conduct research on the situation of girls and to integrate, where appropriate results in the formulation of policies, programs and decisions for the advancement of girls.

#### 11.4. Public policy in the area of access to justice

242. Strengthen mechanisms for effective interaction between the health and justice sectors in cases of sexual violence against girls;
243. Carry out appropriate measures to identify obstacles in the criminal sphere to punishment and to providing reparation to victims of crimes of sexual violence against girls and take those measures that are within the reach of both the judicial branch and the investigative bodies to eradicate these obstacles and guarantee the right to justice of the victims and their families;
244. Guarantee effective compliance with laws that punish violence against girls, as well as access to justice and reparation for those who have been victims of such offenses;
245. Guarantee comprehensive care and protection of the best interests of girls in the context of judicial processes and ensure transparent information on the number of cases and the situation of the aggressors;
246. Adopt and implement care protocols for girls that are victims of sexual violence within the police and/or entities charged with receiving complaints and prosecutor's offices, in indigenous languages and sign language when appropriate;
247. Guarantee that adequate and appropriate means exist within the justice system so that girls suffering from obstetric violence can easily report these situations;
248. Investigate and punish situations of obstetric violence against girls that occur within the health systems in the region;
249. Investigate cases of maternal mortality of girls to verify the reasons that led to these deaths and punish those responsible;
250. Ensure that girls who are victims of violence are treated properly by taking all necessary measures to promote their physical and psychological recovery and social reintegration, in a favourable environment for health, well-being, self-esteem, dignity and autonomy of the person and taking into account their different specificities and needs;
251. Guarantee the confidentiality of girls that are victims from the act of reporting the facts and during the whole procedure of action before a constitutive situation of violence, through a fast and agile process, giving them credibility and protecting the privacy and dignity of the persons concerned;
252. Provide the necessary budgets to judicial agencies to eliminate obstacles that avoid the punishment of aggressors and deepen impunity, giving a message of social acceptance of these facts.

#### 11.5. Public policy in the area of communication

253. Manage cases of child pregnancy known to the media by raising reflection on the problem, avoiding sensationalism and stigmatization of the victim.

