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women**

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**Good practices regarding legal reforms in the area of violence against  
women in Latin America and the Caribbean**

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Art. 1° defines violence against women as "any action or conduct, based on gender, that causes death, physical, sexual or psychological harm to a woman, in the public scope as well as in the private one".

Art. 2° establishes that the violence against women includes the physical, sexual and psychological violence.

Art. 7° describes the obligations of the States parties with respect to the protection of those rights, among others.

## **2. Legislation on domestic, family or intra-family violence.**

Presently thirty two out of the thirty four Member States of the Organization of American States, OAS, have ratified this Convention. Of these, twenty-five countries have partially observed their commitments in relation to the Convention promulgating laws on domestic, family or intra-family violence hiding once again violence against women behind the figure of the family unit. This constitutes a partial fulfillment of their commitment since the Convention includes diverse spheres and political demands in order to prevent, to sanction and to eradicate violence against women which go beyond the mere appro/3ppro/3ppro/3338 gm

violence against women, Recommendation 19° of the Committee for the Elimination of all forms of Discrimination against Women, the Inter-American Convention to prevent, sanction and to eradicate all forms of violence against women, among others, establish that violence against women includes sexual violence but without considering its definition. Regarding this lack of definitions in the international law, the countries within their national legislation must define which acts constitute sexual violence. In any case the definition that is finally adopted by each country on the elements and type of sexual violence, including the access of the victims to justice, must be all in agreement with the principles of the international law on human rights

#### **4. Amendments to the Penal Codes in relation to Sexual Violence.**

Several countries of our Region have modified their penal legislation to criminalize conducts against women, especially the ones concerning sexual violence. First it was Puerto Rico in 1979, which eliminated the provision which compelled giving evidence of the previous sexual conduct of the victim in case of rape<sup>7</sup>. Mexico incorporated amendments to the Penal Code in 1989, increasing sanctions for cases of rape. In the 90s, we add the cases of Peru (1991), Guatemala (1997), Colombia (1997), Dominican Republic (1997), Honduras (1997), Bolivia (1997), Ecuador (1998), El Salvador (1998) and Chile (1999). The normative framework in terms of sexual crimes improved, eliminating cultural concepts that operated to the detriment of the victim such as references to (i) the honour of the victim; (II) her previous conduct; (III) sanctions for these crimes were increased; and (IV) sexual crimes were typified, among them marital rape. These modifications in the criminal law have categorized sexual crimes not as crimes against the honor and moral conventions, but crimes against sexual integrity or sexual freedom. Despite of this, some countries maintain discriminatory terms referred to the honesty of the woman and persist on regulations that makes the aggressor to be exempted of sanction by marrying the victim or even considering marriage to a third party. (Brazil, Nicaragua, Panama, Guatemala). In 2006 Uruguay amended article 116° of its Penal Code which consecrated the exemption of sanctions<sup>8</sup>.

In the region violent sexual attacks have not been uniformly typified. In many countries, "... the sexual attack continues to be considered a crime against morality and not an aggression that violates the personal integrity of the victim. In some countries, the penalty in cases of marital rape is less than the one for violent sexual crimes<sup>9</sup>"

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<sup>7</sup> Ley 6, 1979.

<sup>8</sup> Mediante Ley N° 17.938 del 21/12/2005 se eliminó el artículo 116° del Código Penal Uruguayo que establecía la remisión de la pena al violador que se casara con la violada.

<sup>9</sup> Guerrero C, Elizabeth En Isis Internacional/UNIFEM. Violencia contra las mujeres en AL y el C. 1990-2000. Balance de una década.

Some countries have approved Protocols of attention to victims of sexual violence as part of an integral response regarding this violation of human rights. In the Region these countries are: Argentina, Brazil, Chile, Costa Rica, Guatemala, El Salvador, Nicaragua, Paraguay, Peru and Mexico<sup>10</sup>. The lack of concern in the rest of the countries gives an account of the relevance of the subject in the political agendas.

### **5. Trafficking of Latin-American women.**

In Latin America and the Caribbean, trafficking of women was originated during Colonization when the Spaniards treated women as booty prizes, in accordance with the military practices, originating the existence of sexual commerce and establishing places for it<sup>11</sup>. In our region we can categorize trafficking in two dimensions: (i) the internal traffic, within a country and (II) the external traffic where women are recruited in the region to cover the demands of the international market. The UN Special Rapporteur on the human rights of the victims of trafficking, especially women and children, Mrs Sigma Huda<sup>12</sup>, in her report of February 2006, condemned "the attitude of the countries of origin which close their eyes in front of this problem and that economic, political and cultural conditions prevailing in many places of the world affect women and children in a particular to the risk of becoming victims of trafficking..."<sup>13</sup>. The attitude of the countries of the region continues being the same.

Various data recollected by diverse Spanish institutions indicate that the majority of women come from Latin America, in 70%, and that 30% comes from East Europe. Unfortunately, the number of victims is increasing alarmingly essentially due to the conditions of economic and social poverty, marginalization, inequality, the lack of opportunities and the presence of violence against women. It is important also to recognize the work of many

EGM/GPLVAW/2008/EP.05

14 May 2008

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d. Re-victimization, prejudiced and discriminatory treatment to the victims of violence by government officials blaming them for the aggression they have suffered.

e. The lack of material and human resources for a suitable attention to the victims. For example the forensic examinations are done generally without considering the rights of the victims.

f. The ignorance of the women in relation to their rights. Violence against women continues to be internalized as a "natural and invisible" practice in our



## **7. Good Practices within the Inter-**



- (iii) They allowed that the Inter-American Commission of Human rights, ICHR to create "international jurisprudence" with respect to the human rights of women; and
- (iv) They demonstrated the effectiveness in the use of the international mechanisms of human rights as a guarantee to prevent, to sanction and to repair the violations of the human rights that occur at a national level.

Nevertheless it is important to indicate that at the moment the Peruvian State is failing to fulfill the signed agreement done in the year 2000, therefore we must remember that we must be vigilant on the "impunity tolerated by the State in the cases of violence against women, and its lack of giving the due diligence which is consecrated in the international treaties that have been subscribed"<sup>19</sup>