

HIV and violence against women en Central America:

A human rights-based comparative analysis of the legal framework





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in Central America:
A human rights-based comparative analysis
of the legal framework**

Inter-American Commission of Women (CIM)
Organization of American States

February 2012

The Organization of American States (OAS) brings together the nations of the Western hemisphere to promote democracy, strengthen human rights, foster peace, security and cooperation and advance common interests. The origins of the Organization date back to 1890 when nations of the region formed the Pan American Union to forge closer hemispheric relations. This union later evolved into the OAS and in 1948, 21 nations signed its governing charter. Since then, the OAS has expanded to include the nations of the English-speaking Caribbean and Canada, and today all of the independent nations of North, Central and South America and the Caribbean make up its 35 member states.

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HIV and violence against women in Central America: A comparative analysis of the legal framework from a human rights perspective

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Inter-American Commission of Women.

HIV and violence against women in Central America: A comparative analysis of the legal framework from a human rights perspective / Inter-American Commission of Women.
p. ; cm. (OAS Official Records Series ; OEA/Ser.L)

ISBN 978-0-8270-5727-2

1. Women--Crimes against--Central America. 2. Women--Violence against--Central America. 3. Women's rights--Central America. 4. AIDS (Disease) in women--Central America. 5. HIV-positive women--Central America. I. Title. II. Ramírez Martínez, Alina. III. Series. OAS Official Records Series ; OEA/Ser.L.

OEA/Ser.L/II.6.8

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Cover page photo: <http://www.flickr.com/photos/pconnect/5841995315/sizes/o/in/photostream/>

Design and layout: Sughey Abreu • Graphic Design / Illustration

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Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIM	Inter-American Commission of Women
CONASIDA Honduras	Honduran National AIDS Commission
CONASIDA El Salvador	Salvadorian National Commission against AIDS
CONAPROVI	National Coordination for the Prevention of Family Violence and Violence Against Women (Guatemala)
ENCOVI.	National survey on living conditions (Guatemala)
FESAL	National Family Health Survey (El Salvador)
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
INAMU	National Institute for Women (Panama)
INE	National Institute for Statistics (Guatemala)
OAS	Organization of American States
OPVG	Panamanian Observatory on Gender-based Violence
PAHO	Pan-American Health Organization
PEM	Multisectoral Strategic Plan on HIV and AIDS (Panama)

PENSIDA	National Strategic Plan to Respond to HIV and AIDS (Honduras)
PLANОВI	National Plan for the Prevention and Eradication of Family Violence and Violence against Women
PNS	National Programme to Prevent and Control Sexually Transmitted infections, the Human Immunodeficiency Virus and the Acquired Immuno-Deficiency Syndrome (Guatemala)
STI	Sexually Transmitted Infection
UNAIDS	Joint United Nations Programme on HIV/ AIDS
UNDP	United Nations Development Programme
VAW	Violence against women
WHO	World Health Organization

1. Introduction



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For violence against women (VAW) to be recognised as a human rights issue, the traditional human rights movement has had to go through a process of transformation, and incorporate aspects such as state protection and state accountability for acts committed by non-state actors and within the private realm. The results of this transformation can be seen in a number of government commitments to the numerous national and international initiatives – particularly during the 1990s – which acknowledge VAW as a human rights, development and public health issue.

The inclusion of human rights in relation to VAW within the body of the law coincided with the appearance of the HIV epidemic and a growing governmental concern for the enormous human, social and economic costs of this new epidemic.

An analysis of the multiple causes and consequences of this epidemic places social inequality at the root of the negative impact of HIV on the lives of the significant proportion of the world's population forgotten by the processes of development. Women are considered to be one of the population groups most vulnerable to the risk of HIV,¹ due to the disadvantages they face because of gender and its intersections with other factors of inequality, such as ethnicity, race, socio-economic status, age, occupation, sexual orientation, physical capacity, etc.

Research links this epidemiological trend to women's subordination because of their gender, which is the main barrier to the full enjoyment of their rights, and which limits their capacity to prevent HIV and/or to reduce its devastating consequences.

So, VAW in the private and the public realms, and the rapid growth of the HIV epidemic among women, share a common root cause: gender-based subordination and discrimination.

1. Vulnerability is defined as the combination of factors which enhance or determine the risk of acquiring an infection and which are outside the control of the individual concerned. It refers specifically to factors over which the person has little or no control in relation to the risk of contracting HIV or another STI. Epidemiology has shown that certain groups have been particularly affected due to their social, economic and political position. Interventions to reduce vulnerability address these factors of social inequity and inequality. Source: UNESCO (2004) Strategy for HIV/AIDS Prevention, Education UNAIDS, 1990, Cited in Bianco, M. (1999) 'La movilización comunitaria como pieza clave para la prevención sostenida a nivel comunitario'

The law should promote respect for and guarantee the protection of human rights of all members of society. On this basis, it is of interest to understand how the different States use the law to address the multiple links between HIV and VAW, in order to eliminate human rights violations against women surviving in these contexts.

This document analyses the legal frameworks of Guatemala, Honduras, El Salvador and Panama with regard to VAW and HIV. It aims to provide a basis for policy and programme design that integrates HIV and VAW from a human rights perspective in Central America.

The document is organised into chapters. Chapter 1 provides a context analysis for the four countries selected, describing briefly the situation in each country with regard to key socio-demographic indicators, the HIV epidemic, and the situation with regard to VAW.

Chapter 2 uses a human rights perspective to analyse the legal framework pertaining to HIV and VAW in each of the four countries. It takes as its starting point the international commitments ratified by the States selected, and follows by examining the constitution of each country. The key legal provisions of each country with regard to VAW and HIV are also explored, and the structural factors that affect the application of these legal provisions are analysed.

Chapters 3 and 4 summarise the key findings of the legal analysis, and propose a number of recommendations on the issue.

Finally, it is important to note that this document forms part of the regional initiative led by the Inter-American Commission of Women (CIM) of the Organization of American States (OAS), the goal of which is to contribute to the development of regional policies which take an integrated approach to the issue of VAW and the rapid spread of HIV among women, both problems which require urgent and inescapable action.

2. Methodological considerations



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This qualitative documentary study does not claim to be an exhaustive review of all current legislation covering VAW and HIV in Guatemala, Honduras, El Salvador and Panama. It is rather an analysis of the impact and scope of the legal frameworks of the countries in question with regard to the protection of human rights of women survivors of violence and women living with HIV, and indeed of women generally.

The study draws on the situation analyses carried out in 2008 under the CIM Project “Human rights, HIV and violence against women in Central America: Integrated responses”² which identified legal instruments relating to VAW and HIV in each of the selected countries and examined their impact in practice.

These valuable resources were supplemented with an online search for information contained in legislation databases and technical documents produced by international organisations, governments, research centres and NGOs working on both issues. The aim was to obtain up-to-date information on current legislation in the four study countries, and to draw on reflections and studies carried out in different sectors and by different authors in relation to this issue. In order to maintain a sharp focus on the aims of this document, and to overcome methodological limitations regarding the investigative rigour required for a study of all legal mechanisms (laws, decrees, norms, protocols, resolutions, etc.), this study was restricted to the analysis of the following legal instruments from the countries involved:

- International instruments on VAW and HIV ratified by the States in question.

2. These documents are available at:

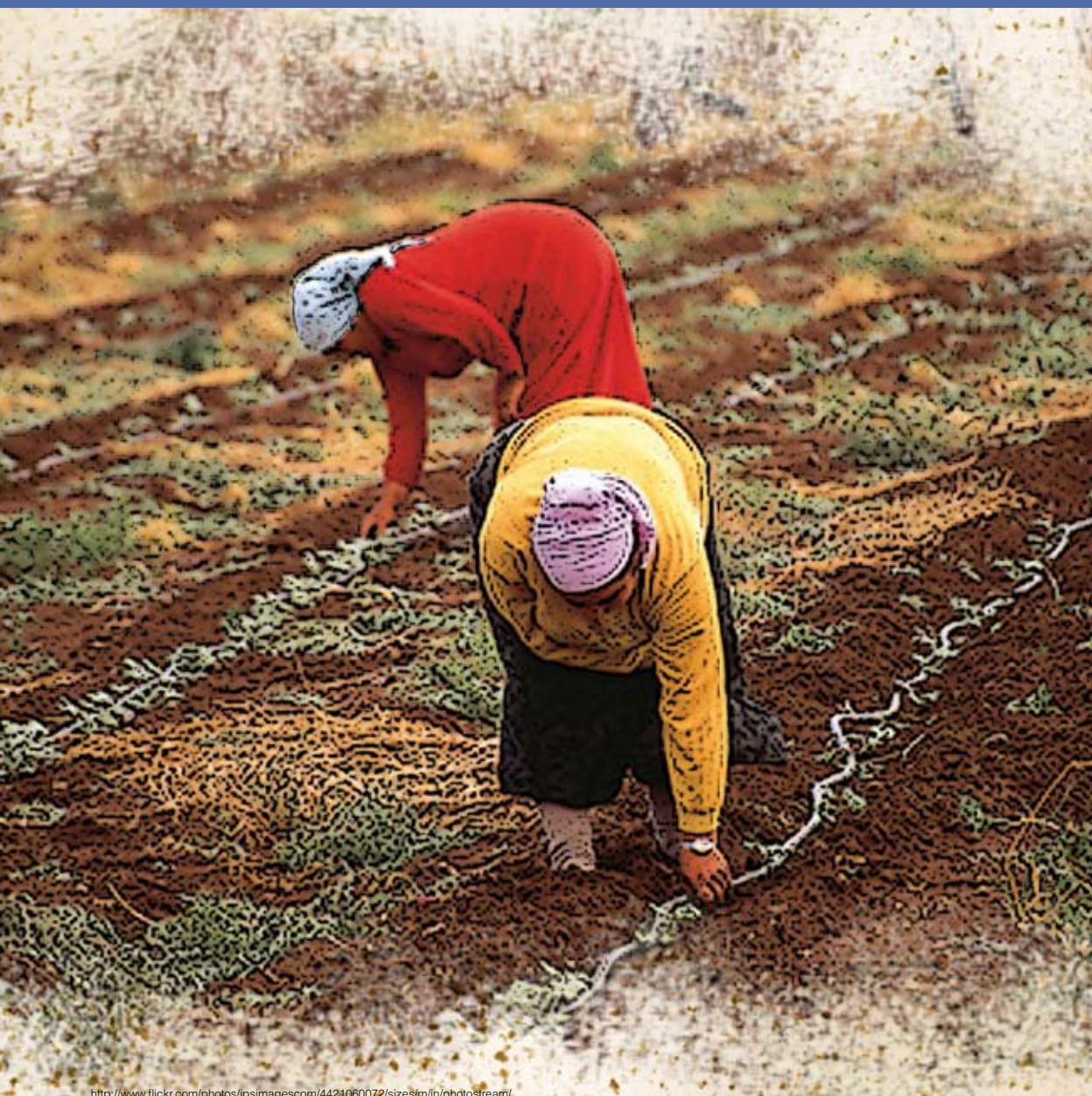
- Situation Analysis: HIV and violence against women in Guatemala (2010). Inter-American Commission of Women (CIM). Available at: [http://www.oas.org/es/cim/docs/AnalisisGUT\[Final\].pdf](http://www.oas.org/es/cim/docs/AnalisisGUT[Final].pdf)
- Situation Analysis: HIV and violence against women in Honduras (2010). Inter-American Commission of Women (CIM). Available at: [http://www.oas.org/es/cim/docs/AnalisisHON\[Final\].pdf](http://www.oas.org/es/cim/docs/AnalisisHON[Final].pdf)
- Situation Analysis: HIV and violence against women in El Salvador (2010). Inter-American Commission of Women (CIM). Available at: [http://www.oas.org/es/cim/docs/AnalisisELS\[Final\].pdf](http://www.oas.org/es/cim/docs/AnalisisELS[Final].pdf)
- Situation Analysis: HIV and violence against women in Panama (2010). Inter-American Commission of Women (CIM). Available at: [http://www.oas.org/es/cim/docs/AnalisisPAN\[Final\].pdf](http://www.oas.org/es/cim/docs/AnalisisPAN[Final].pdf)

- International declarations, action plans and initiatives and those derived from International Conferences related to HIV and VAW adopted or signed by the States.
- The Constitution of the Republics in question.
- Laws against domestic or family violence.
- Special laws on gender violence.
- Special laws on HIV and AIDS.
- Law of Equality of Opportunity for Women, National Strategy against Violence against Women.
- National HIV/AIDS Strategy.
- Specific laws on migrant smuggling and human trafficking, including for the purposes of sexual exploitation, and laws against commercial sexual exploitation.
- Penal Code.
- Code of Childhood and Adolescence.
- Education law.

The legal analysis also included a specific focus on evidence or examples of both VAW and HIV and their legal regulation, in order to indicate the benefits of either eliminating this type of regulation or standardizing it across the other countries of the region insofar as it respects and guarantees women's rights.

This report uses gender analysis to explore the consequences and effectiveness of the laws examined, and discusses both the letter of the law and the key structural factors affecting how the laws in question are applied in practice.

3. Contextual analysis



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3.1 Socio-demographic characteristics of the countries studied³



Guatemala

Guatemala is located in the far north of the Central American isthmus. It is the third largest country in Central America – little smaller than the largest two countries at just under 109 km². Two thirds of the country is mountainous.

The population is 14 million (according to 2009 figures), almost half of which are minors and just over half of which live in rural areas. Although only 38% of the population self-identifies as indigenous, almost all the population of Guatemala is of Mayan, Garifuna or Xinka descent, or belongs to the mestizo population.⁴

Since the signing of peace accords between the government and the guerrillas in 1996, Guatemala has been in a post-war period. It is, however, experiencing some of the most violent episodes of its history as a result of crime, with some 6,000 murders a year and the second highest murder rate in the region at 43 per 1000 inhabitants.⁵ Impunity and the lack of opportunities are the key underlying factors.

The Guatemalan economy relies mainly on production of raw materials. Agriculture accounts for around 25% of the GDP, employs half the working population, and produces most of the goods exported. Industry (including construction and manufacturing) makes up around 20% of the GDP, while in recent years tourism has grown in significance. Exports are primarily to the United States and other countries in Central America.

3. Information in this section draws on the Situation Analysis: HIV and violence against women in Honduras, Guatemala, El Salvador and Panama. (2010). CIM- OAS

4. INE, ENCOVI 2006. Cited in: Situation Analysis: HIV and violence against women in Guatemala (2010). Ibid.

5. Cabanas, Andrés. Guatemala, la Paz Incompleta (2008). Cited in: Situation Analysis: HIV and violence against women in Guatemala (2010). Ibid.

Average productivity is very low, and as a result Guatemala has one of the lowest average incomes in the region. It has also one of the highest levels of inequality in the distribution of assets and incomes, giving it one of the highest levels of poverty in the continent. It is estimated that 50.9% of the population faces poverty of income and 15.2% are living in extreme poverty. In rural areas, however, and particularly in the north of the country, over 70% of the population is living in poverty.⁶

Low wages are the reason for such poor income levels among the population, from relatively low salaries in the formal sector to even lower pay in the informal sector that accounts for more than 70% of the working population. Furthermore, 67.7% of the employed population works in businesses employing fewer than six staff, over 80% do not have an employment contract, and a similar proportion have no social security coverage. According to official statistics, 50% of the population receives less than the official minimum wage, 87% have an income which is not high enough to cover basic needs, and 61.4% are unable to cover even basic food needs. There is also a considerable income gap between men and women.⁷

Guatemala's social indicators are among the lowest in the continent, and social services coverage is precarious. Over 25% of the population over 15 years of age is unable to read or write, and among rural women this rises to over 40%. Barely 36.4% of the population has access to basic education, while young people of both sexes aged 15 to 24 have an average of 6.5 years of schooling. When this figure is broken down, the average for women is 5.7 years, and for the indigenous population it is 4.7 years.⁸

More than 54% of the population lives in homes which are not connected to drainage. Over 18% of homes are not connected to the public electricity network, 38% are not connected to drinking water supplies, and only 5.3%

6. UNDP. Guatemala: .Una economía al servicio del desarrollo humano? National Human Development Report 2007/2008. Volume II Guatemala: United Nations Development Programme –INDH-, Guatemala, 2008. Cited in: Situation Analysis: HIV and violence against women in Guatemala (2010). Ibid.

7. Ibid.

8. Ibid.

of homes in poor areas are served by municipal waste disposal services. There is also a housing shortage of over 1.5 million homes.⁹

These facts place Guatemala 118 out of 177 countries in the Human Development Index.



Honduras is in the north of the Central American isthmus. It shares borders with Guatemala to the north, Nicaragua to the south and El Salvador to the west. It is the second largest country in Central America with 112,000 km², of which two thirds are mountainous.

The population of Honduras is 7.9 million (according to 2009 estimates), half of which live in rural areas and a similar proportion being under 20 years of age.¹⁰ Ethnically, Honduras is defined by a wide range of indigenous groups and has a strong mestizo presence. These groups include Garífunas, Lencas, Misquitos, Chortís, Tawuahkas and Islanders, the latter making up 7.2% of the total population.¹¹

From the early 1980s until 2009, Honduras enjoyed political stability with regular election processes and smooth transfer of power. However, in June 2009 there was a coup against the constitutional Government, which marked the start of a period of instability, protests, repression and human rights violations. As of mid-2011, the crisis appears to have abated and a number of short and long-term political accords have been reached.

Like other countries in Central America, Honduras has very high rates of citizen insecurity and violence, rivalling Guatemala and El Salvador in the region.

9. Ibid.

10. INE. Proyecciones de Población 2001- 2015. Censo de Población y vivienda 2001. Cited in: Situation Analysis: HIV and violence against women in Honduras (2010). Ibid.

11. Ibid.

The Honduran economy is dominated by the production of raw materials – mainly traditional agricultural products such as coffee, beans and maize – and manufacturing. The Honduran manufacturing industry produces for the domestic and Central American markets. There is also an export textile sector.

The agricultural sector is low in profitability and pays low wages. The industrial sector also pays relatively low wages. As a result, Honduras is the Central American country with the lowest per capita income.

Low productivity and low incomes, among other factors, translate into poverty levels that are among the highest in Latin America and the Caribbean. The rate of income poverty in 2006 was estimated at 60.2% (68.9% in rural areas), of which 60% are estimated to live in conditions of extreme poverty. Furthermore, in the same year it was estimated that 35% of households were living in chronic poverty.¹²

At the same time, basic social services in Honduras have a relatively low coverage. This is a factor in the sustained high levels of deprivation and lack of opportunities for the population. Figures from 2006 showed that 16.4% of over-15s were unable to read or write, and only 57% of 5 to 18 year olds went to school. In rural areas, this figure dropped to 52.2%, compared to 64% in urban areas. In the last two decades there has been a significant increase in spending on education, although Honduras still has one of the lowest per-capital spends on education in the continent.¹³

In health, the last five years have seen improvements in key indicators such as child mortality. The fertility rate has also fallen, with an average of 3.3 children per woman in 2005-2006. However, these indicators continue to be among the most fragile in Latin America.¹⁴

12. Human Development Report. Honduras 2006. United Nations Development Programme UNDP. Honduras. 2006. Cited in: Situation Analysis: HIV and violence against women in Honduras (2010). Ibid.

13. Ibid.

The situation in terms of health is associated with the precarious living conditions of the majority of the population. In 2007, 14.8%¹⁵ of homes did not have an adequate water supply, and 16.7% lacked adequate sanitation, due to the poor coverage of services in rural areas. Similarly, only half of rural homes in Honduras have electricity.¹⁶

The most recent Human Development Report ranked Honduras 116th out of 177 countries. The report also revealed significant gender differences across the indicators, indicating that women face greater deprivation and have fewer opportunities.



El Salvador

El Salvador is on the Pacific coast of Central America. It is the only country in Central America without a Caribbean coast, and is the smallest country in the region at a little over 21,000 km². It has borders with Guatemala and Honduras.¹⁷

The total population is 5.7 million inhabitants (2007 figures), making this the most densely populated country in Central America.¹⁸ However, in recent years the fertility rate has reduced significantly to 2.5 children per woman.¹⁹ In contrast to other countries in the region, El Salvador has a very low male population, with 87 men to every 100 women. The urban population is relatively high, at just under 63%. Under 25s constitute 52% of the population, and less than 10% are indigenous.²⁰

14. Ibid.

15. Instituto Nacional de Estadística (INE). Trigésima Quinta Encuesta Permanente de Hogares. September 2007. Honduras. Cited in: Situation Analysis: HIV and violence against women in Honduras (2010). Ibid.

16. Encuesta Permanente de Hogares. September 2007. Honduras. Cited in: Situation Analysis: HIV and violence against women in Honduras (2010). Ibid.

17. http://es.wikipedia.org/wiki/El_Salvador

18. Ibid.

19. Encuesta Nacional de Salud Familiar, FESAL 2008- Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). CIM-OEA

Since the signing of peace accords between the guerrilla movement and the government in the early 1990s, El Salvador has experienced a period of political peace, regular elections and relative respect for civil rights. In the most recent national elections, the party of the guerrilla movement won the Presidency. However, as in other countries in the region, violent crime has increased significantly – particularly gang violence, which constitutes one of the most pressing social problems facing the country.

The Salvadorian economy went through a difficult transition in the 1990s from an economy based on agriculture, agro-exports and a manufacturing sector geared towards the domestic and regional markets, towards an economy heavily dependent on remittances, export assembly (maquilas) and, to a lesser degree, tourism. Since the 1970s, growing numbers of Salvadorians have chosen to migrate, leading to remittances being the main source of foreign currency in the country.

Needless to say, migration is the result of lack of employment and other opportunities, particularly for younger people. Un- and under-employment rates are very high at 50%, and particularly affect women. This translates into low earnings and a relatively high level of poverty. In 2008 it was estimated that poverty affected 40% of the population, with 12.4% facing extreme poverty. Rural areas had much higher rates than urban areas. This is at least partly related to wage differences between rural and urban areas.²¹

While some progress has been made in terms of gender equity, the gaps between men and women remain wide. Women's workloads are measurably heavier than men's, and there are significant differences in income and employment opportunities linked to sex segregation and discrimination within the employment sector.²²

20. VI censo de Población y Vivienda de El Salvador (2008). Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). Ibid.

21. UNDP (2008). Human Development Report El Salvador 2007-2008. El empleo en uno de los pueblos más trabajadores del mundo. San Salvador. Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). Ibid.

In terms of education, in 2006 14.6% of the population was illiterate, with particularly high rates in rural areas. Average years of schooling stood at 5.8 years, dropping to around 4 years in rural areas. This shows there is significant access to primary education nationally. However, leaving rates rise rapidly from the age of 12, reducing the coverage of higher levels of education.²³

Finally, according to sources such as FESAL 2008, official records and the Multi-Purpose Homes Survey of 2008, El Salvador has made some good progress in health indicators. Life expectancy at birth in 2008 was relatively high at 74.5 for women and 68.3 for men.²⁴ One of the most important advances in health has been the reduction in maternal mortality to 45 per 100,000 live births.²⁵ Infant mortality has also fallen from 22.4 per 1000 live births in 1997 to 11.4 in 2008.²⁶



Panama is in the centre of the American continent and the far south east of Central America. It shares borders with Costa Rica to the west and Colombia to the southeast. The north coast is Caribbean and the south east coast is Pacific. The Panama Canal runs through the middle of the country, connecting the Caribbean and the Atlantic to the Pacific Ocean.

The country covers 78,200 km². In 2010 the population stood at 3.3 million inhabitants, making it a country of relatively low population density compared to other countries in the region. Population growth is moderate,

22. Ibid.

23. FESAL (2008). Ibid.

24. Encuesta de Hogares de Propósitos Múltiples 2008, El Salvador. Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). Ibid.

25. Programa de atención a la mujer, MSPAS (2008), El Salvador. Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). Ibid.

26. Evolución de la mortalidad infantil 1997-2007. MSPAS, Dirección de Planificación. Cited in: Situation Analysis: HIV and violence against women in El Salvador (2010). Ibid.

with a fertility rate of 2.5%. Some 64% of the population is between 15 and 64 years of age.²⁷

Due to its geographic position and the existence of the Canal, Panama became an important transit point. As a result, the population is of mixed ethnicity, including Hispanic, Hispanic-indigenous, Afro-Caribbean, indigenous (such as Kuna and others) and others (Chinese, South Asian, Jewish, Central European and Central American).

For the last few decades, with the exception of the period before and after the US military intervention of 1989, Panama has had relatively stable electoral processes every five years, and smooth transfer of power.

The economy has been strongly marked by the existence of the Panama Canal and the associated transport and trade activity. In spite of its size and vast tropical resources, the economy is markedly urban, with the City of Panama accumulating most of the value added production, particularly in the service sector thanks to the presence of the international banking sector. According to data from the Treasury of the Republic, the service sector accounts for 78% of the GDP of the country, although the Colon Free Trade Zone is also significant.²⁸ Tourism has seen significant growth in recent years, as has real estate activity.

According to data from the Treasury, this combination of activities has led to Panama achieving a per capita income which is relatively high for the region (US\$ 5,466 in 1996). However, it also has one of the highest levels of income inequality in Latin America and the Caribbean.²⁹

The same source shows unemployment in Panama as affecting around 6% of the adult population. However, there are notable differences in

27. Human Development Report Panama 2007-2008. PNUD (2008). Cited in: Situation Analysis: HIV and violence against women in Panama (2010). CIM

28. Treasury Inspector of the Republic, PIB. Cited en: Situation Analysis: HIV and violence against women in Panama (2010). Ibid.

29. Ibid

employment and income levels between men and women, and between the rural and urban population. Women have a much lower rate than men of participation in the labour market, and there is a clear gender segregation in terms of employment opportunities, with women concentrated in service activities such as hotels, restaurants and domestic services.

Official statistics in 2003 indicated that poverty affected 37% of households nationally. Of these, 20.5% were living in poverty, and 16.7% in extreme poverty. There was a marked difference between rural and urban areas, and indigenous areas were particularly affected. In non-indigenous rural areas, poverty affected 54.2% - almost half as much again as the national average, and two and a half times the average for urban areas. In indigenous areas, almost everyone is poor, with almost 90% in extreme poverty. Rural disadvantage is associated, among other factors, with income levels which are barely a third of average income in urban areas.³⁰

Inequality in Panama is also apparent in education. Literacy rates are relatively high and over 70% of the population have some schooling, but the brunt of educational inequality is borne by people living in rural areas, particularly indigenous people and women. A quarter of those without literacy skills are indigenous. However, the gap between men and women is closing, and there is a growing participation of women in the education system.³¹

Similarly, health indicators show significant geographical variation, despite improving national averages. Ministry of Health records show that while maternal mortality dropped to less than 60 per 100,000 live births, in one administrative region of the country with a high indigenous population (comarca), levels were several times higher than this.

30. Ministry of Economy and Finance (2003): "La pobreza en Panamá. Encuesta de Niveles de Vida". City of Panama 2005. Cited in: Situation Analysis: HIV and violence against women in Panama (2010). Ibid.

31. UNDP (2008). Ibid.

3.2 Dimensions of violence against women in El Salvador, Guatemala, Honduras and Panama

Despite the many legal provisions and efforts in the four countries involved in this project, violence against women in its different manifestations continues to grow on a daily basis, according to data kept by the different institutions with an interest in the issue. Below are some statistics which illustrate the situation, despite the fact they do not include many forms of VAW such as sexual harassment, forced pregnancy, abduction and kidnap, incest, forced displacement or institutional violence.

In some countries, such as Guatemala and El Salvador, rigorous investigations were carried out as part of the Peace Accords. In Guatemala, the Commission for Historical Clarification documented 10,568 women victims of the internal armed combat and 1500 cases of rape. This reflects the fact that due to gender inequality, the bodies of women are seen as spoils of war in domestic and international conflicts.³²



Guatemala

Between 2003 and 2007 the Guatemalan courts recorded 132,207 cases of family violence. While there sex-disaggregated data is not available, unofficial information and anecdote suggests that most of these cases were brought by women. Other manifestations of violence such as prostitution were not recorded, but studies show that in the capital alone there are more than 2,000 children and adolescent women who are exploited in over 600 brothels.³³

32. Inter-American Commission of Women (CIM)- OEA, 2010. Situation Analysis: HIV and violence against women in Guatemala

33. Grupo Articulador, Plan Nacional de Accion Contra la Explotacion Sexual Comercial de Ninas, Ninos y Adolescentes de Guatemala, 2001. Cited in: Situation Analysis: HIV and violence against women in Guatemala (2010).Ibid

According to official figures, in 2006-2007 there were 5,765 cases of sexual crimes, 58% of which were rape (3,344). In 2000 a registry of violent deaths among women was established. This records 182 cases in 2000, and documents 5,765 reported murders of women in the period 2000-2008. In Guatemala, as in Honduras and El Salvador, there is a high degree of impunity surrounding the murder of women. In 2006, there were 130 reported murders of women, but only nine prosecutions. Only four of these resulted in a guilty verdict.³⁴

Another feature common to all the countries involved in the study are the results of household surveys carried out at regular intervals, which show that a high percentage of women - particularly urban, better-educated women – acknowledge that they experience partner violence. In general, women do not report the violence to the authorities, but instead seek help from members of their own or their partner's family, or from female friends.



El Salvador

According to national police data, in the first half of 2011 there were 294 reports of murdered women. This was 41 fewer than in the same period of 2010. Records show that in El Salvador a woman is murdered every 12 hours. Most of these are young women. Women between 18 and 35 make up 52.5% of murder victims.³⁵

The same source informs that teenage girls between 12 and 18 are the most frequent victims of sexual assault. In 2010, 2,079 women were sexually assaulted. Of these, 45% (938) were 12 to 18 year olds, 9% (193) under 12, and 46% (948) were over 18. The Salvadorian Institute

34. CIMAC Guatemala: impunes, 2 mil 900 asesinatos de mujeres. Cited in: Situation Analysis: HIV and violence against women in Guatemala (2010).Ibid

35. ORMUSA, (2011). La Boletina, No.07/2011, Observatorio de Violencia de Género contra las Mujeres. San Salvador, El Salvador

for Women's Development (ISDEMU in its Spanish acronym) documented 311 reports of sexual assault and 2,262 cases of family violence in the first seven months of 2011.³⁶



Honduras

National Observatory on Violence figures for 2008 show 312 cases of violent death among women in Honduras. In the same year there were 890 requests for forensic evaluation of women who had experienced gender violence. Women between 25 and 29 were most affected, followed by 20-24 year olds. Seventy-nine teenagers experienced sexual violence at the hands of their partners. In 60% of cases, the attackers were people known to the victim, such as partners, ex partners, family members. In 2009 there were 773 cases of violence against women. Evaluations for sexual crimes were carried out on 3177 people, of which 84.7% were women and 15.3% men.³⁷



Panama

Most of the data on VAW comes from the police, the legal system, the Prosecutor General, the National Institute for Women, the Human Rights Ombudsman, the Treasury, NGOs and the Ministry of Health (MINSA in its Spanish acronym). Reports of violence are recorded as Cases of Suspicion of Family Violence and Child Abuse. MINSA reported a total of 2,476 such cases in 2004, 2,280 in 2005, 2,585 in 2006, 2,410 in 2007 and 3,092 in 2008. The Órgano Judicial database showed that of 7,435 cases in 2004, of which 5,699 were resolved; 72.6% were subjected to a provisional stay of proceedings and 11.2% resulted in a guilty verdict.³⁸

36. Ibid.

37. Data from the National Observatory on Violence (2008)

38. Inter-American Commission of Women (CIM) - OEA. 2010. Situation Analysis: HIV and violence against women in Panama

Statistics from the Panamanian Observatory on Gender Violence (OPVG in its Spanish acronym - part of the office of the Human Rights Ombudsman) show that in the first half of 2010, 41 women died violent deaths, of which 28 (70%) were classified as femicide. In 2009, there were 80 such deaths, of which 68% were femicide. A high number were “intimate femicides”, or murders committed by someone with a family or intimate relationship with the victim.³⁹

According to the OPVG, a significant proportion of the women who died at the hands of their partners or ex-partners had made official reports of domestic violence.

3.3 Dimensions of HIV in El Salvador, Guatemala, Honduras and Panama

In a 2010 publication, UNAIDS estimated that in 2009 there were some 33 million people with HIV around the world, including 15.9 million women and 2.5 million girls and boys. In the same year, there were 2.6 million new cases of HIV, and 1.8 million deaths due to AIDS. A total of 25 million people have died since 1981. In Africa alone, there were 14 million AIDS orphans, and 14.6 million people with an immediate need for HIV treatment, 64% of whom were unable to access such treatment.⁴⁰

These facts alone demand the prioritisation of HIV on the international and local agenda in view of the rise in prevalence and the damaging consequences of HIV. People living with HIV are affected by death, illness, stigma, discrimination, exclusion and coercion. This makes an integrated approach to the epidemic a question of human rights, public health and social justice.

39. Federación Fundación Ibero americana del Ombudsman, PANAMÁ: El femicidio sigue latente en la sociedad. Available at: <http://www.portalfio.org/inicio/noticias/item/6726-panam%C3%A1-el-femicidio-sigue-latente-en-la-sociedad.html>

40. UNAIDS, Global HIV and AIDS statistics. Available at: <http://www.avert.org/estadisticas-sida.htm>

In Latin America, Central America is the second most affected sub-region after the Caribbean. Four of the six Latin American countries with the highest HIV prevalence are located here. In Honduras, Guatemala and Panama, AIDS is among the top ten causes of death.⁴¹ According to UNAIDS (2006), 32.2% of those living with HIV in Central America in 2005 were in Honduras, 31.2% in Guatemala, 18.4% in El Salvador, 8.7% in Panamá, 3.8% in Costa Rica, 3.7% in Nicaragua and 1.9% in Belize.⁴²

The HIV epidemic in Central America particularly affects sex workers, men who have sex with men, people who are deprived of liberty, indigenous people and migrants,⁴³ particularly undocumented migrants and women who have been trafficked for the purpose of sexual exploitation.

The main mode of transmission of HIV in Central America is sexual transmission, with an ever-decreasing gap between men and women.

In 2010, the VI Central American Congress on STIs/AIDS⁴⁴ concluded that countries in the region are far from overcoming problems of stigma and discrimination. The right to health and social rights, the right to equality between men and women, and the right to sexual and reproductive health, constitute significant challenges in terms of human rights of people living with HIV/AIDS. The Conference concluded that this is evidenced in the lack of legal protection of people living with HIV, and in late or badly conceived verdicts.

Overcoming these challenges will depend on strategies such as strengthening the legal network in Central America to enable all cases of human rights violations to be investigated, and better monitoring

41. Press statement (2007). CONASIDA, Fifth Central American Congress of people living with HIV/AIDS, Managua. Available at: http://www.unicef.org/media/media_41709.html. UNICEF press centre.

42. UNGASS monitoring report, 2010. El Salvador

43. Migrants are defined as people who move from one place to another on a temporary, seasonal or permanent basis for a number of voluntary or involuntary reasons, IMO (2002). Position Statement on HIV/AIDS and Migration, IMO. Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/es/council/84/Mcinf252.pdf

44. Dra. María Isabel Pérez de Pio, (Dissertation), 2010. VI Central American Congress on STIs/AIDS, Juventud y VIH: Por mi Derecho a Saber y Decidir, San José, Costa Rica

and evaluation of state commitments in the sub-region, including the implementation of the Strategic Plan 2010-2015.

Although the HIV epidemic in the sub-region is similar from one country to another, reflecting a common history, geography and similar socio-economic indicators, national responses vary from one country to another, with different characteristics and dynamics to respond to particular social, economic, cultural and political factors in each.

Below there is a brief description of the HIV epidemic in the four Central American countries involved in this study.



El Salvador

The first case of HIV in El Salvador was identified in 1984. From 1984-2009, a total of 23,731 cases of HIV/AIDS were documented.⁴⁵ Of these, 63% were identified as HIV, and 36.42% as AIDS.⁴⁶ Since 2001 there has been a decline in HIV rates, from 31,000 people living with HIV in 2001, to 24,000 in 2006 and 23,731 in 2009. This encouraging trend can be attributed to multi-sectoral prevention efforts across the country.

The epidemic is concentrated in the 15-49 year old age group (81.4%). This is in line with the findings of studies around the world which indicate that the epidemic particularly affects young people – the population group most likely to be sexually and economically active.

Ministry of Health statistics from the National STI/HIV/AIDS programme show that new diagnoses in 2010 were most frequent in people aged 20-39, followed by the 40-59 age group. There has been a slight decline compared to previous years in new diagnoses among the over 40s, while new cases among 10-39 year olds are rising.⁴⁷

45. National STI/HIV/AIDS Programme, Ministry of Public Health and Social Welfare (2010) UNGASS Report, 2010.

46. Ibid.

47. ORMUSA, 2011. El Salvador

The main mode of HIV transmission is sexual (99.5%), with vertical transmission representing 0.5% of cases. In 2009, the country reported that the quality of blood samples was 100%.⁴⁸

In 2006, UNAIDS classified the epidemic in El Salvador as a concentrated epidemic with low prevalence in the general population (0.8).⁴⁹ The gender ratio in 2010 was 1.5:1 men to women.

HIV in El Salvador is concentrated in urban areas. San Salvador, La Libertad and Sonsonate have the highest numbers of new cases (at November 2009). San Salvador, the country's capital and largest conurbation, has 51% of the country's HIV cases, which are concentrated in the most vulnerable population groups: men who have sex with men, sex workers, and migrant workers who have come to the city from the countryside.

Among these populations, men who have sex with men have the highest HIV prevalence, with a national average of 9.8%.⁵⁰ Prevalence among sex workers was 4.1% in 2008.⁵¹

With regard to the reach of prevention programmes aimed at the most at risk populations, the UNGASS report of 2010 revealed that 58.1% of the population of men who have sex with men and 77.05% of sex workers had access to prevention programmes in 2009.

In terms of access to antiretroviral treatment, the same report indicated that among over 15 year olds living with HIV, 74.5% were receiving ARV treatment, with a rate of 93% among under 15s living with HIV.

47. ORMUSA, 2011. El Salvador

48. Ibid.

49. HIV prevalence in the general population in 2009. INDEX, MUNDI, (2011) HIV/AIDS – Incidence in the adult population – global. Available at: <http://www.indexmundi.com/map/?v=32&l=es>

50. Estudio Centroamericano de Vigilancia del Comportamiento Sexual y Prevalencia del VIH/ITS en poblaciones vulnerables 2009. Cited in: UNGASS, 2010. El Salvador

51. Sex-disaggregated data is not available.



Panama

Since 1985 when the first case of HIV was reported in Panama, there have been a total of 10,281 cases (as of December 2009). Of these, 75% were in men, and 25% women, giving a ratio of 3:1.⁵² The gap has narrowed over the years (at the start of the epidemic the ratio of men to women was 17:1), in line with what is known as the feminization of the epidemic.

The age group most affected is 25-44. Vertical transmission accounts for 3.2% of cases, while sexual transmission accounts for 69.1%. Some 52.6% of reported cases are in men identifying as heterosexual.⁵³

While this implies that prevalence is higher among heterosexuals than among the homosexual and bisexual population, prevalence rates within specific populations show that in fact Honduras has a concentrated epidemic among men who have sex with men. There are of course challenges in capturing sexual preference in epidemiological studies, since a high percentage of men (26%) do not provide this information when accessing health services.⁵⁴

In 2003, the HIV and AIDS Epidemiological Surveillance System found a prevalence of 10.6% among men who have sex with men. Prevalence was 12.7% among men identifying as homosexual, and 5.5% among men identifying as bisexual. In 2008, these prevalence rates had risen to 17% for men who have sex with men generally, and 19.4% and 12.5% for men self-identifying as homosexual and bisexual respectively.⁵⁶

52. Department of Epidemiology of the Ministry of Health (MINSa), Sf. Cited in: UNGASS Monitoring Report (2010). Panama

53. Ibid

54. Base de Datos y Referencias para una Estrategia Basada en Evidencias Panamá; July 2009. Cited in: Comisión Nacional para la Prevención y Control del VIH (CONAVIH) y Ministerio de Salud de Panamá Para el Programa Nacional de ITS VIH SIDA (2009). Plan Estratégico Nacional Multisectorial de ITS VIH y Sida , 2009-2014

55. USAID | PASCA, Ministerio de Salud, Programa Nacional de ITS VIH SIDA, AHMNP. Estudio Multicentrico Centroamericano de Prevalencia de VIH/ITS y Comportamiento en HSH en Panamá. June 2003. Cited in: Plan Estratégico Nacional Multisectorial de ITS VIH y Sida , 2009-2014. Ibid

56. Ibid

Comparing this to the prevalence among pregnant women from 2003 to 2008, it is clear that there is a concentrated epidemic among men who have sex with men. In 2003, prevalence among men who have sex with men was almost twelve times the prevalence among pregnant women. Latest figures (2007 for pregnant women and 2008 for men who have sex with men) indicate that prevalence is at least 85 times higher in men who have sex with men than in pregnant women.⁵⁷

In 2009, the prevalence among the general population was low at 0.09%, rising to 0.9% in the urban population. This indicates that the country has a concentrated epidemic in urban areas, although prevalence is rising in rural areas. Mortality rates in 2009 among the urban population were 67.5%. HIV and AIDS currently represents the ninth highest cause of death in Panama.⁵⁸



Honduras

Honduras is the second most affected country in Central America, with official statistics showing a total of 27,021 people living with HIV in 2009, of which 11,478 are men and 8,424 are women. Life expectancy among people living with HIV is only 31 years, which is 39 years less than the national average life expectancy at birth. There are 19,902 cases of AIDS. It should be noted that there is an estimated under-reporting of 45% of cases of HIV/AIDS.⁵⁹

As in other countries in the sub-region, the epidemic in Honduras is primarily spread by sexual contact.

There has been a worrying increase in HIV among women, which is disproportionate compared to other countries in the sub-region. The 2009 ratio of men to women is 1.3:1. Health authorities are concerned about

⁵⁷.Ibid

⁵⁸. Ibid

⁵⁹. UNGASS Monitoring Report (2010). Honduras

this situation because of the possibilities of vertical transmission. AIDS is one of the principal causes of death of women of reproductive age in Honduras, with an estimated rate of 25 per 100,000.⁶⁰ In 2009, there were 398 cases of AIDS in women and 319 in men.⁶¹

The age group which is most affected is 20-39 year olds; young people of reproductive age who are economically active, predominantly in urban areas and along the north coast.⁶²

The estimated prevalence in 2009 was 0.66%, with a co-existing concentrated epidemic in high-risk populations with a prevalence above 5% (HIV prevalence among men who have sex with men was 9.9%, sex workers 4.6% and the Garifuna population 5%⁶³), giving Honduras a mixed or combined epidemic.⁶⁴



Guatemala

The first case of AIDS in Guatemala was identified in 1984. There have now been a total of 65,701 people with HIV.⁶⁵

Women account for 38% of cases and men 62%. Transmission is primarily sexual at 94%. Up to 1996, there were between 5 and 7 men for every woman. The ratio is currently 1.6:1, highlighting the rapidly growing prevalence among women, and the need to focus on the factors underlying this rise.

60. Informe Estadístico Mensual de la Situación VIH/SIDA en Honduras. Período 1985 – Marzo 2009. Departamento de ITS/VIH/ SIDA, Secretaría de Salud, Honduras.

Available at: http://onusida.hn/publicaciones_recientes/estadisticas_marzo_2009.pdf

61. Ibid.

62. UNGASS Monitoring Report (2010). Honduras

63. Encuesta Centroamericana de Vigilancia del Comportamiento del VIH (2006), Citada en el Informe UNGASS (2010). Honduras

64. UNGASS Monitoring Report (2010). Honduras

65. Centro Nacional de Epidemiología Ministerio de Salud Pública y Asistencia Social (2011). Boletín No.1. Estadísticas VIH y SIDA avanzado. Guatemala enero 1984—diciembre 2010

Available at: <http://infeciosashr.org/noticia-3/>

The age group reporting most cases for both sexes is 20-39. Only 5% of cases are in 0-4 year olds, which can be attributed to surveillance of pregnant women and the identification of cases in children.⁶⁶

The population groups which are most affected are men who have sex with men, followed by women sex workers, pregnant women, people deprived of liberty, and those in uniform. Guatemala's epidemic is classed as concentrated. Seventy eight per cent of people living with HIV are single and 22% married. By ethnicity, 77% are ladino, 2.2% Maya, 0.6% Garifuna and 0.2% Xinc. In educational terms, 67% of HIV was recorded among people with low levels of education: 23% were unable to read or write, 17% had basic literacy and 27% had completed primary education. One per cent identified as university educated.⁶⁷ These statistics confirm the link between poverty and HIV.

66. Ibid.

67. Ibid.

4. Legal framework linking HIV and VAW



Foto: <http://www.flickr.com/photos/14199324@N02/5405947580/sizes/l/in/photostream/>

4.1 International commitments on HIV and VAW

a. Violence against women and international human rights instruments

The approval of international instruments aimed at preventing and eliminating VAW is intimately related to the recognition of women's rights as human rights. However, a definite causal connection between the two has not been made in the development of human rights theory, despite the impact of feminist theory that successfully increased visibility of the issue and the damage caused to women experiencing violence. In the 1980s the focus was on the horror of rape within the context of the armed conflict, with human rights organisations obliged to develop responses to these issues and treat them as human rights violations.⁶⁸

As a result, the first acts of violence against women to be accepted as human rights violations were those involving sexual violence. However, with the passage of time other manifestations of VAW have been incorporated, and the legally protected right to "chastity and honour" has been reformulated to encompass personal integrity, dignity and autonomy of women. There has been an ongoing tension between safeguarding women as vulnerable people who need the protection of the law, and safeguarding the rights of women.

The latter undoubtedly presents a greater challenge, since it requires that enabling conditions be created for the enjoyment and guarantee of women's human rights, including the right to a life free of violence. In other words, a rights and empowerment approach means reconceptualising women. It means not seeing them as victims who need to be rescued and protected by the system, but viewing them rather as people capable of

68. Miller, Alice M. (2004). *Sexuality, violence against women and human rights: Women demand, ladies are protected*. Heilbrunn Department of Population and Family Health, Mailman School of Public Health, Columbia University, New York, USA.

exercising their political, economic and social rights, who demand their right to justice from a position of full citizenship.⁶⁹

Probably the clearest and most specific expression of the right of women to a life free of violence as a human right is found in the Declaration and Programme for Action of the World Conference on Human Rights which took place in Vienna in 1993. Subsequently, the Platform for Action of the Fourth World Conference on Women in Beijing further developed the implications of the different manifestations of violence against women. It included very precise recommendations for States, and called for other sectors to participate in the elimination of this social scourge affecting half the world's population.

Below are listed the key international instruments related to the protection of the rights of women which have been ratified or signed by Guatemala, Honduras, El Salvador and Panama.

- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convención de Belém do Pará), 1994
- Optional Protocol to CEDAW, 1999
- Convention on Slavery, 1926
- Universal Declaration of Human Rights, 1948
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Civil and Political Rights, 1966

69. Full citizenship is defined as the full enjoyment of all civil rights related to election and participation, social rights related to the distribution of wealth, and sexual rights related to acknowledgement. Miyares, Alicia (2003). *Democracia Feminista, FEMINISMOS*. Universidad de Valencia, Instituto de la Mujer.

- American Convention on Human Rights, 1969
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- Declaration and Programme of Action of the World Conference on Human Rights (Vienna), 1993
- Declaration and Programme of Action of the World Conference on Population and Development (Cairo), 1994
- Declaration and Platform for Action of the Fourth World Conference on Women (Beijing), 1995
- Convention on the Worst Forms of Child Labour, 1999
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000

b. HIV and international human rights instruments

International instruments and declarations related to HIV have focused in their analysis and proposals on the link between the discrimination and stigma associated with the epidemic on the one hand, and the violation of human rights on the other. Millions of people around the world have suffered serious damage to their human rights because of their HIV positive status, including their right to health, life, non-discrimination, work, education, freedom of movement, intimacy, safety and social welfare. In effect, the relationship between the HIV epidemic and the violation of human rights other than the right to health is one consequence more of the social inequalities and social exclusion which are rife in our societies around the world. People living in poverty, migrants of insecure legal status, people deprived of liberty, sex workers, homosexuals and

women constitute the population groups which are most exposed and vulnerable to HIV, identified by the international community as a priority and therefore included under international law.

With regard to women, these instruments call on States to take into account the double discrimination faced by women living with HIV. They incorporate measures which address the biological, social, economic and cultural factors which place women in a position of social disadvantage, make them more vulnerable with regard to prevention of HIV transmission and make living with HIV more challenging.

The governments of Guatemala, Panama, El Salvador and Honduras have signed up to the following international and regional commitments and initiatives:

- The Millennium Development Goals (MDG)
- The United Nations General Assembly Special Session on HIV/AIDS (UNGASS) of 2001
- The Global Strategy Framework on HIV/AIDS
- The Global Fund to Fight HIV/AIDS, TB and Malaria
- Political Declaration on HIV/AIDS
- Regional Plan on HIV/STIs for the Health Sector
- COMISCA (Central American Meeting of the Council of Ministers of Health), the Extraordinary Summit of Heads of State and the Government of the Central American Integration System countries (SICA in its Spanish acronym).

These commitments provide States with clear guidelines for formulating effective responses that have real possibilities of reducing the transmission and effects of HIV, within a framework of respect and guarantee of human rights for all men and women, in conditions of equality.

To this effect, the *International Guidelines on HIV/AIDS and Human Rights*⁷⁰ (first consultation 1996 and second consultation 2002) developed with the participation and agreement of the international community, constitutes a useful tool for the design, implementation and evaluation of the actions of governments and the fulfilment of their responsibilities.

Guideline Eight: Women, children and other vulnerable groups

States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.⁷¹

C. International instruments on HIV and VAW

- With the growing recognition of the need to link policies on VAW and HIV as intersecting issues which negatively impact on the lives of women, the international community has developed plans, declarations and strategies geared towards strengthening government responses to the issues and consolidating integrated local and regional interventions. These efforts and initiatives include the following:
- Call for Action on Family Planning and HIV/AIDS for Women and Children.
- New York Call to Commitment: Linking HIV/AIDS and Sexual and Reproductive Health.
- San Salvador Declaration on Gender, Violence and HIV/AIDS of the Inter-American Commission of Women (CIM), 2007.

70. United Nations Office of the High Commissioner for Human Rights and UNAIDS International Guidelines on HIV/AIDS and Human Rights Consolidated Version 2006

71. See Appendix 1 for institutional accountability and processes relating to guideline eight, which States are advised to adopt and implement.

4.2 National constitutions

The Constitution is the most important law within the legal systems of the four States covered by this report. It is important to state that the legal framework provided by the four Constitutions in question is coherent with the basic premises of human rights theory with regard to VAW and HIV.

The independent and indivisible nature of human rights does not allow the classification or separation of those rights which guarantee women the right to a life free of violence from those that ensure the full enjoyment of the right to health. However, for the purposes of analysing the constitutional framework with regard to the issues of concern in this report, some of the most directly relevant provisions are referred to below:

Equal rights before the law

The overarching constitutional principle is equality in fundamental rights and equality in the enjoyment of rights, and guarantees capable of ensuring this.⁷² This principle, which is both a value and a constitutional right, is written into the constitutions of the four countries. In Honduras, Panama and El Salvador, the constitution establishes equality before the law, while the constitution of Guatemala gives a clear stipulation of equality in dignity and rights.

The right to non-discrimination is specifically acknowledged in the Constitutions of Honduras and Panama. In the case of El Salvador and Guatemala, it is mentioned in terms of the right to equal treatment regardless of condition or situation: students, workers (male and female), family members, those within the penitentiary system, etc.

72. Reyes Meléndez, María Elena (2007). Propuesta de Reforma Constitucional en República Dominicana, la Constitución que queremos las mujeres, Foro de Mujeres por la Reforma Constitucional, Progreso, Santo Domingo, Dominican Republic.

The right to health and education is a fundamental constitutional right in all four countries. However, sexual and reproductive rights are not mentioned in any of the four constitutions as a key aspect of the right to health. Neither is sex education mentioned as a priority subject within the obligatory public education curriculum. In both cases, experience in other countries shows that a specific reference in the constitution is of great importance in terms of recognition and protection of the rights of women with regard to gender violence. This kind of constitutional acknowledgement provides strong support to the issues, which carries through to other legislation within a country.

Similarly, the four countries fail to include state protection against gender violence, or to identify it as an issue of public concern requiring the intervention of the State and society as a whole. Fortunately, there are other legal provisions within the four constitutions which serve to fill the gap by recognising the right to integrity, dignity and personal liberty. In particular, the constitutions establish the constitutional authority of international human rights conventions and treaties ratified by the State, as well as their supremacy when these conflict with domestic laws.

4.3 Analysis of laws on VAW and HIV

As mentioned above, the study of the causes and multiple consequences and dimensions of VAW and HIV in women identifies unequal power relations between men and women as a common factor between the two problems. This structural factor explains and heightens the impact of the two epidemics in the lives of women.

The links between VAW and HIV can be direct – through forced sex or rape – or indirect, for example by ignoring the will of women, or undermining their ability to protect themselves from things such as violence within the relationship, childhood sexual abuse, incest, trafficking of women for the purposes of sexual exploitation, sex work or sexual harassment. These

indirect links can be more difficult to identify and address, and require the recognition and protection of other human rights of women.

Luciano D.⁷³ (2007) identifies intersections between HIV and VAW which have been well evidenced in a number of studies around the world. These show that forced sex or rape constitute a direct biological risk of HIV transmission. Unprotected sexual contact of this nature places women at greater risk of STIs and/or HIV due to tearing of the vaginal and anal walls.⁷⁴

Indirect links between VAW and HIV transmission which are listed by the same author include transactional sex, sex work, sexual behaviours which particularly increase the risk of violence, limitations in the ability to negotiate safe sex due to the risk of violence, and violence as a consequence of HIV. She also suggests that it is important to explore how VAW influences women's perception of STI/HIV risk, the use of existing HIV services, and access to information on STIs/HIV. All these intersections between VAW and HIV are linked to social exclusion and the lack of women's empowerment, as well as other social stratifiers.⁷⁵

Strengths, barriers and gaps in the legislation of Guatemala, Honduras, El Salvador and Panama

With these considerations in mind, this section presents an analysis of the legislation of Guatemala, El Salvador, Honduras and Panama with regard to the link between VAW and HIV.

The main gap identified in the legislation is that it does not take an integrated approach to the two epidemics. As a result, the analysis of the focus and

73. Luciano, Diny (2007). Explorando las intersecciones entre empoderamiento, VIH y violencia contra las mujeres en América Latina y El Caribe. Development Connections

74. PAHO/WHO. Gender and HIV/AIDS. Women, Health and Development Programme. Washington D.C. Cited in Luciano, Diny (2007). Ibid.

75. Empowerment is understood as "a process in which women increase their capacity to influence their own lives and environment, an awareness-raising of women about themselves, their status and their social interactions" De León, Magdalena. 1997. Poder y empoderamiento de las mujeres. Bogotá. Región y Sociedad, Vol.XI No. 18. 1999. Cited in: Diny (2007). Ibid.

scope of the law will be presented in two parts: a first section exploring current legislation in relation to VAW and highlighting the links with HIV; and a second section focusing on the legislation aimed at addressing HIV.

4.3.1 Legislation on VAW

a. Laws on domestic and family violence

Strengths and opportunities to address the link between VAW and HIV include laws against domestic or family violence which have been passed in the four countries: El Salvador (1996 and 2010), Honduras (1997), Panama (2001) through a reform of the Penal Code, and Guatemala (1996).

The passing and application of laws against domestic or family violence marked importance progress in recognising the human rights of women in the respective countries. They raised awareness within legal and general culture of the damage to human rights caused by VAW, and the fact that while VAW may also be perpetrated by non-state actors in the private sphere, this does not release the State from the urgent and unavoidable obligation to take action. Furthermore, beyond the awareness-raising function of the law, the contents of the legislation represented at the time the first and only state initiative to protect women from violence in the private sphere.

Key characteristics and evaluations

A common feature of this legislation is the declaration of public order and legal action in the face of family violence, enabling the Ministerio Público [State Prosecutor], the police and the different levels and sectors involved in application of the law, to receive complaints, provide women with immediate protection, request and/or impose protection orders, precautionary measures and/or other measures. Institutional

responses to the application of the legislation also included the creation of organisations and bodies specialising in VAW.

The four laws analysed include, to a greater or lesser degree, obligations to undertake mass awareness raising, formal education, training for the authorities charged with addressing the problem, specialised research on the issue, counselling and rehabilitation for men with a history of aggression, integrated services for women survivors of violence (including temporary refuges or hostels), social and employment rehabilitation programmes for women, and standardised protocols for interviewing victims.

However, there are also limitations within these laws which constrain their effectiveness. One of these is the lack of differentiation between gender-based violence against women and family violence.

Family members such as older people, children and disabled people need protection from abuses of power by other relatives. However, this should not be done by conflating different types of violence and discrimination under a single law. This limits the possibility of addressing the specific violence in each case - particularly gender violence, which is characterised by its invisibility and high societal toleration.

Family and domestic violence and HIV

Given the link with HIV in women, the legal framework for the prevention, care and punishment of VAW takes on particular importance in the light of studies showing that fear of abuse from a partner prevents women from negotiating condom use, testing for HIV, disclosing their HIV status to a partner, accessing information on prevention, or seeking HIV treatment and services.

A study carried out in Honduras by PAHO/WHO with 375 women, of whom 55% were HIV positive and 45% survivors of violence, showed that 46% of the HIV positive women interviewed did not use condoms. 79% had asked their partners to use condoms, but in 45% of cases the partner had refused. 69% (143) had not disclosed to their family/partner because of fear.⁷⁶

A qualitative study in Guatemala showed that positive women experience increased exclusion from health services, in the community, and in the family, as well as increased violence from partners. They also reported being the object of mocking, insults and abuse, as well as experiencing discrimination in their intimate lives and in the work setting. Forced moves, increased verbal and physical abuse, exclusion from social events, exclusion from the family, and loss of economic support from the family were further expressions of violence.⁷⁷

Despite growing evidence of the link between VAW and the rapid rise in HIV among women, the wording of laws on family and domestic violence in the four countries does not use integrated analysis or take an integrated approach. This is reflected in the fact that legal strategies to prevent VAW do not refer to HIV, prevention methods, rights of people living with HIV and so on.

Similarly, there is no legal stipulation for the availability of services specialising in identifying, reporting and supporting women living with HIV who may be exposed to acts of violence or increased violence due to their HIV status.

Sexual violence and HIV within family violence laws

Another element with a direct impact on the HIV risk of women survivors of violence is the treatment of sexual violence as a legal issue which is very similar or equivalent to rape, but which is dealt with very differently under the legal system. This leads to a potential situation of effective impunity for sexual violence, thereby increasing the risk to women of sexual assault and acquiring HIV from their partner as a result. This possibility occurs

76. Estudio Multicéntrico Exploratorio sobre las Relaciones entre VIH/SIDA y Violencia Doméstica e Intrafamiliar. OPS/OMS. Honduras 2006. Cited in: Situation Analysis: HIV and violence against women in Honduras (2010). Ibid.

77. Study on the link between VAW and HIV, carried out by the Guatemalan Women's Group with the support of Action Aid and the Red de Mujeres Positivas en Acción. Cited in: Situation Analysis: HIV and violence against women in Guatemala, CIM (2010). Ibid.

when the laws on family violence grant jurisdictional authorities discretion to classify sexual assault within an intimate partner relationship as either family violence or rape.⁷⁸

In the case of both sexual violence and rape, the law acts to protect personal integrity and sexual freedom. The actions constituting a breach of the law are identified on the same basis, and are defined as sexual acts carried out with force or any other method which ignores the will or consent of women. The harm caused is also treated as equivalent.

It is important to note that the definition of sexual violence in these laws is broader than the traditional conceptualisation of sexual violence as ‘carnal or coital access’. Traditionally, where such coital access does not occur, the act is not identified as rape but as sexual abuse or similar, and carries lighter penalties. In these laws, coitus is not required for the act to be classified as sexual violence. This means that in cases of sexual violence within a partner relationship, the tendency is to apply the law of family and domestic violence, since the law does not recognise rape within a partnership.

In other words, in the laws on family and domestic violence in El Salvador, Honduras y Guatemala (but not in Panama, where the situation is different⁷⁹), there is no legal possibility of rape being perpetrated by a partner, which can lead the judge or the court to classify the act as sexual violence and apply the measures established for sexual violence which generally carry a sentence of no more than six months.

Alternatively, the jurisdictional authorities may instead opt to apply the provisions of the Penal Code on family violence.⁸⁰ These also carry penalties which are considerably less than those for rape.

78. See Appendix 2 for a comparative table of definitions of sexual violence (contained in laws on domestic or family violence) and rape (contained in the Penal Code) of the four countries involved in the study.

79. The Panamanian legislation does not suffer from this tension: the 2007 reform of the Penal Code, rape committed in the context of domestic violence is considered an aggravating factor, as it is in the crime of homicide (Art. 188 and 131 respectively).

80. See Appendix 3 for the articles on family violence in the Penal Codes of Panama, El Salvador and Honduras.

As conceptualised in the Penal Codes of El Salvador and Honduras, the perpetrator being a current or former partner is not considered an aggravating factor to the crime of rape.

This situation not only reinforces the idea that women must satisfy the sexual desires of their partners without resistance, as part of their ‘conjugal duties’, but also does not contribute to disincentivising men who carry out acts of sexual violence against women.

In this context, women who are obliged to have sex with their partners (through force, intimidation, threat, coercion or any other form of denial of their will) are further exposed to acquiring HIV. If they do acquire HIV, their possibilities of demanding compensation for damages are reduced.

Protection against HIV within the definition of sexual violence contained in family violence laws

A third element to highlight is that family and domestic violence laws include non-use of protection or contraception as a manifestation of sexual violence against women.

Under Honduran law, sexual violence is defined as “Any conduct which (...) affects the integrity or self-determination of women, such as (...) denial of contraception and protection (...).” This acknowledges that sexual violence includes the denial of women’s right to avoid unwanted pregnancy or to protect themselves from sexually transmitted infections such as HIV. Refusal to use condoms is therefore classified as VAW and covered by laws on domestic violence.

El Salvador and Guatemala do not include this provision, at least in their respective family violence laws. Panama includes non-use of protection or contraception under the reform of the Penal Code. This will be explored below.

Compensation for damages, women and HIV within family violence laws

In terms of compensation for damages caused by violence, all the laws referred to include an obligation for the perpetrator to cover the cost of health services, medicines, goods and objects which are destroyed or retained, as well as other expenses caused by the violence. Under these provisions, the transmission of HIV as a result of sexual violence within a partner relationship would obligate the aggressor to pay the costs of treatment, but probably only for a specified duration which would not exceed six months. This is because a time-limited punishment could not easily give rise to a permanent sanction.

b. Special second generation laws on VAW and the link with HIV

Fifteen years on from the passing of the first family violence law (in El Salvador, the first of the four countries to approve such a law), users and women's organisations in the respective countries highlight numerous weaknesses on the part of the State. These focus on the difficulty of applying laws which were conceived to address the problem of family violence, but not the specific problem of the violence women experience by virtue of their gender, and which is not limited to the private realm or the partner relationship, but also occurs in the public sphere and in all social spheres where women are present.

New laws proposed and passed in countries such as Guatemala and El Salvador define and broaden the concept of violence against women, including the different types and kinds of violence, different strategies for addressing it, the direct responsibilities of government bodies and society in addressing this social scourge, and regulations aimed at improving and increasing access to justice and the application of the law in cases of gender violence against women. These are some of the key characteristics of so-called second generation laws, the aim of which is to fill legal gaps and address weaknesses in the family and domestic violence

laws which constituted the first generation of laws which established and punished violence against women for the first time in the legal history of the countries of the region.

The following section presents important aspects of these second generation laws on violence against women and HIV.

Special Integrated Law for a Life free of Violence (El Salvador)

El Salvador recently passed a Special Integrated Law for a Life free of Violence for Women. This law comes into effect in January 2012, and contains general guidelines for a national policy for the detection, prevention, care, protection and punishment of VAW.

Without doubt, this new law advances the recognition and protection of the right of women to a life free of violence, which it conceives as the most serious expression of the unequal power relations between men and women. The law emphasises prevention and the protection of the rights of women survivors of violence.⁸¹

The law uses an integrated definition of sexual violence which moves beyond traditional definitions. It distinguishes between sexual assault and rape, and recognises the partner as capable of committing both of these:

“f) **Sexual Violence:** This is any conduct which threatens or endangers the right of women to make decisions of their own free will about their sexual lives, including not only the sexual act but also any other form of sexual contact or access, whether genital or non-genital, and regardless of whether the aggressor has or does not have a relationship with the woman victim, be this a spousal, intimate partner, social, work-related, friendship or family relationship.”

81. See Appendix 4 for key aspects of this law.

The limitation of this provision – which extends to other manifestations and the very definition of violence – is that it does not define the corresponding punishment, but refers back to family violence and crimes against sexual freedom contemplated in the Penal Code. In other words, by not establishing the relevant punishment, the definition of violence in this law has a purely declarative effect. It also fails to include the concept of denying or prohibiting women from exercising their sexual rights.

This law establishes in its Procedural Guarantees for women who face acts of violence their right to “receive medical attention and appropriate and specialised treatment where this is required. It also provides for the use of the care protocol for the prevention of sexually transmitted infections and the Technical Guidance for Family Planning Care in cases of sexual violence” (Art. 57, clause h).

This law is of the greatest importance since it acknowledges the relationship between sexual violence and the transmission of STIs (including HIV), and incorporates the obligation of the State to provide women with the necessary support, and the right of women to receive and demand it.

Law against sexual violence, exploitation and human trafficking (Guatemala)

The aim of this law is to “prevent, repress, punish and eradicate sexual violence, exploitation and trafficking of people, provide care and protection to victims and compensate for damages and harm caused”.⁸²

This is a special law which reforms some of the provisions of the Penal Code while also creating an oversight body against sexual violence, exploitation and trafficking of people. It defines preventive measures against these offences, as well as providing for care of the victims and protection against these crimes.

82. Article 1. Object of the Law. Law against sexual violence, exploitation and human trafficking. Guatemala, 2009

A key element throughout the text of the law is the focus on protecting and guaranteeing the rights of the victims of sexual violence, exploitation and trafficking. The governing principles include confidentiality, special protection for victims, non-revictimisation, non-discrimination, right to participation of victims, respect for cultural identity, access to information, and restoring access to rights.

Another important aspect of this law is an article on factors which aggravate the crime of rape contemplated within the Penal Code of Guatemala, which introduces three landmark circumstances: one referring to pregnancy arising from rape; another addressing the relationship between the victim and the perpetrator – with a current or previous relationship of marriage or cohabitation deemed an aggravating factor; and a third making reference to the transmission of any sexually transmitted infection to the victim as a result of the crime.

These aggravating circumstances suggest the following:

- Pregnancy resulting from rape is an additional damage that requires criminal and civil measures in compensation or restitution for the damage caused and the violation of rights. Safe and voluntary abortion in cases of pregnancy arising from rape is a right that must be guaranteed, as well as appropriate pregnancy prevention measures such as emergency contraception.
- Rape by an intimate partner is punishable. This is a significant step forward, given that previous laws on rape authorised (through impunity) men to rape women with whom they had an intimate relationship on the understanding that women had the duty to fulfil men's desires.
- The law offers legal recourse to civil damages and compensation in the case of acquisition of a sexually transmitted infection as a result of rape, to cover the cost of medical, social and psychological treatment required by the survivor of a rape committed by a partner.

These three aggravating circumstances are also included in the Penal Code of Panama, along with sex with a minor aged 14-18, and pregnancy or transmission of an STI or HIV resulting from abuse of a position of power with or without the consent of the minor involved (Art. 173).

Law against Femicide and other forms of violence against women (Guatemala)

This law was approved in Guatemala in 2008. Although it is a criminal law, it will be addressed here separately given its specific and direct relevance to the issues.

The Law against Femicide protects the human rights of women who experience violence because they are women, both in the public and private spheres. Its aim is to promote and implement legal provisions geared towards the eradication of physical, psychological, sexual, economic and any other type of violence or coercion against women, guaranteeing them a life free of violence, as stipulated in the Political Constitution of the Republic and international human rights instruments ratified by Guatemala (Art. 1 of the law).

A notable element of this definition is the fact that it refers to the role of both the Constitution of the Republic and international human rights instruments in protecting the right of women to a life free of violence, thereby reaffirming that this is indeed a human right. It also broadens the interpretation and takes up the commitments signed by the State with regard to guaranteeing the right of women to a life free of violence.

Importantly, it also conceptualises sexual violence as a crime which can occur regardless of the relationship between the parties, and which should be punished in accordance with the harm caused. It uses a definition of sexual violence which highlights actions impacting on the right of women to protect themselves from sexually transmitted infections (such as HIV). Indeed, the scope of this definition directly addresses one of the

intersections between VAW and HIV, in recognising the constraints women face in negotiating safer sex with their partners given the unequal power relationships between the sexes.

Special laws, government accountability, and HIV in women

The Law against Femicide and other forms of violence against women contains novel provisions regarding institutional accountability and the individual responsibility of civil servants who are charged with applying the law. As well as compensation measures aiming to place the victim in a position which approximates that in which she would have found herself had the crime not occurred, it also provides for solidarity on the part of the State and accountability for the act or omission of civil servants who hinder, delay or refuse to implement the commitments of punishments laid down in this law, and may take action against those found guilty by imposing an action of repetition, without prejudice to their administrative or civil duties.

Similarly, El Salvador's Special Integrated Law for a life free of violence for women establishes that civil servants may be liable to imprisonment or disqualification from public service should they propagate, promote or tolerate impunity or impede an investigation, prosecution or punishment of the crimes established in this Law (Art. 47).

These provisions are particularly relevant to women living with HIV who may find themselves facing greater barriers to access justice, restitution and protection of their rights due to the discrimination and stigma associated with HIV.

C. Penal codes

Criminal law covers rape, trafficking, commercial sexual exploitation and prostitution. These have been the subject of reforms which aim to strengthen the rights approach and differentiate this from other approaches based on risk (legislation on childhood), organised crime (migrant smuggling

and human trafficking) or the protection of honour (sexual crimes). Under criminal law in the four countries, VAW laws also establish direct implications for women's right to protection against HIV.

The crime of family violence and HIV in women

Alongside special laws on family and domestic violence, criminal law In Guatemala, Honduras and El Salvador also establishes the crime of family violence, which complements civil laws on the same subject.⁸³

Family violence can be applied in the case of sexual violence in the context of the partner relationship, when this cannot be classified as the crime of rape (see above).

There is no law addressing the risk of transmission of HIV through sexual violence by a partner, or the need for punishment, compensation or damages for this.

While all the special laws on domestic or family violence, and the crime of family violence established in the Penal Code, refer to other punishments in cases where the damage caused can be deemed to constitute a crime other than family violence, it is nevertheless rarely possible to classify partner violence as another crime unless the harm caused is serious, evidenced or irrefutable (for example, serious or permanent injury). This is because the parameters used by criminal justice to evaluate the harm caused by a crime cannot be applied to the characteristics and effects of violence against women. Examples of this include the fact that harm is

83. The crime of family violence

Domestic or family violence becomes a crime in the following circumstances:

Panama imposes imprisonment without affecting the application of protective measures in cases of breach of preventive security measures or supervised community service. Preventive security measures are an alternative to prison.

Guatemala imposes the criminal punishment detailed in the Law against Femicide and other forms of violence against women.

In Honduras the punishment for the crime of family violence may be imposed outside the application of the law against domestic violence or when the possibilities under this law have been exhausted, except in the case of rape when only the crime detailed in the Penal Code may be used.

El Salvador: Under criminal law, the crime of family violence may be applied only once all legal proceedings established under the Law of Family Violence have been exhausted.

assessed on the basis of number of days missed from (paid) employment, or visible or permanent injury.

Article 135 of the new Penal Code of Panama, approved in Law Number 14 of May 2007, provides a clear example of the problem. This article includes under crimes of personal injury the aggravating factor of those committed in the context of domestic violence. However, the stipulated requirements refer to serious injury which incapacitates for more than 60 days, incurable physical or psychological harm, disability and loss of fertility.

This demonstrates that legal proof and demands for compensation for damages for the acquisition of HIV as a result of family violence will meet serious obstacles under criminal law in these countries, since civil action to this end is not supported by criminal law. The exceptions to this are two second generation laws in Guatemala: the Law against Femicide and other forms of violence against women and the Law against sexual violence, exploitation and trafficking of people. These two laws contain various provisions for the restitution of rights violated by acts of violence.

HIV transmission and criminal punishment

Intentional transmission of HIV is punished in cases of rape under the Penal Code of Honduras and Panama.⁸⁴ For this to be considered as an aggravating factor in the crime of rape, the aggressor must know his HIV status. The Guatemalan Law against Femicide does not refer specifically to HIV transmission as an aggravating factor in sexual violence, although the definition of sexual violence implicitly includes this risk.

El Salvador's Penal Code does not make any reference to HIV transmission.

However, the Law against violence, trafficking and sexual exploitation (El Salvador) establishes in article 24: Sexually transmitted infections.

84. See Appendix 5 for a list of laws punishing the intentional transmission of HIV in cases of rape under the Penal Codes of Honduras, Panama and Guatemala

Anyone who knowingly suffers from a sexually transmitted infection and exposes another person to infection will be punished with two to four years' imprisonment. If the victim is a minor or has cognitive impairment or a disability affecting their capacity to consent, the sentence may be increased by two thirds.”

The importance of this article is that it attributes criminal responsibility to anyone exposing another person to a sexually transmitted infection (such as HIV), regardless of whether it is as a result of rape or not. This represents a recognition of sexual rights, and the protection of these rights. In other words, there is acknowledgment of the right of all humans to have the information needed to take decisions about their sexuality, and to protect and take responsibility for themselves and others.

However, this law may also be applied against women who experience violence, since under such circumstances fear may lead them to remain silent and not inform their partner of their HIV status. This is a good illustration of how equality before the law cannot be interpreted as equal legal treatment for those whom society treats differently. Criminal punishments for women survivors of violence who fail to inform their partner of their HIV status may become a double discrimination and another expression of violence.

Women, sex work and HIV

In spite of the rights approach taken by the second generation laws in Guatemala and El Salvador, other legislation, such as the Penal Code, contradicts this approach. This is particularly true in laws relating to sex work (which is frequently the final destination of trafficked women). While most countries do not specifically and directly punish sex work, Guatemala does, as can be observed in article 87 of the Penal Code. This article describes “states of danger” including prostitution, and establishes security measures for such people including conditional liberty, prohibitions on place of residence and frequenting certain places, and good conduct cautions.

Also in Guatemala, the Ministry of Health monitors women involved in prostitution, obliging them to carry an identity card and health records confirming their attendance at health checks. These documents may be inspected by police, creating a hostile environment and putting women at risk of police violence, corruption and impunity.⁸⁵ It goes without saying that this is not unique to Guatemala, since numerous studies of sex work in the region describe and evidence this and other forms of violence faced by sex workers on a daily basis.

Instead of contributing to the prevention of HIV, this kind of regulation increases the risk of transmission of the virus, inasmuch as women sex workers are seen as a danger to society rather than as citizens requiring particular care and protection of their rights, given the social disadvantage associated with their livelihood activity. This view of sex work converts women sex workers into criminals who are seen as responsible for HIV transmission, and this situation makes it difficult for them to protect themselves and seek information or medical attention for HIV.

Women, HIV and people trafficking

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, trafficking of persons is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁸⁶

⁸⁵ Situation Analysis: HIV and violence against women in Guatemala (2010). Ibid.

⁸⁶ Article 3. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention on Transnational Organised Crime

This crime is considered a violation of human rights which particularly affects women and girls due to gender-based social disadvantage and discrimination. It is not by chance that sexual exploitation is one of the main aims of trafficking of women and children at a global level. The international community's concern and commitment to combatting this crime has led to the approval and implementation of instruments and mechanisms to prosecute and punish these practices which are so damaging to human rights.

In Central America, and particularly in the countries covered by this report, governments have begun a series of efforts to this end, including the ratification of international instruments and the approval or reforms of laws to punish this crime and attend to the victims.

The penal codes of Honduras, El Salvador, Panama and Guatemala provide for the punishment of these crimes. However, only the Penal Code of Panama refers to the transmission of HIV as a risk or collateral damage of sexual exploitation or a consequence of physical and psychological violence experienced by the victims of trafficking. This omission is due to an approach which is more concerned with combatting organised crime than with the protection and guarantee of the human rights of trafficked people.

In this context, there is a notable provision in the Salvadorian Law against sexual violence, exploitation and human trafficking, which establishes “the obligation of those found guilty of human trafficking to pay compensation to the victims for the harm and damages caused, including all the costs of treatment needed for complete physical, psychological and economic recuperation, even if the victim has made no particular accusation or has not specifically demanded compensation, or has withdrawn an accusation (...).” Art. 58 of the Law.

Commercial sexual exploitation and HIV

Commercial sexual exploitation is a complex and multidimensional problem with a number of causal factors, including the decisive role of discrimination and economic and social inequalities which affect large numbers of people around the world.

In Central America, commercial sexual exploitation is a problem which affects the human rights of children and adolescents – particularly girls – in many ways. The national plans for the eradication of commercial sexual exploitation, the approval of laws or reforms to the penal codes and legislation relating to children, and the creation of committees for the eradication of the worst forms of child labour, or specifically the eradication of commercial sexual exploitation, are all part of the different strategies and scenarios used by the four countries to address this problem, with efforts having increased in the last decade.

The four countries studied all provide for criminal punishment of commercial sexual exploitation in its different manifestations, including child pornography, sex tourism, pimping, rape of minors, sexual acts in exchange for pay, remuneration in cash or in kind, and trafficking for sexual exploitation.

The Law against sexual violence, exploitation and human trafficking in Guatemala and the Penal Code of Panama include as aggravating factors the accidental or intentional transmission of HIV to people who are sexually exploited, pregnancy resulting from this sexual abuse, and the use of violence as a means of committing the crime. This takes on great significance in relation to the links between VAW and HIV, since these circumstances are highly likely to occur in this practice which seriously violates the human rights of people who are subjected to sexual exploitation, particularly children and young women.

Termination of pregnancy and HIV

Considering that pregnancy, and possible HIV transmission, are implicit risks of sexual violence, the criminalisation of termination of pregnancy in these circumstances would undermine the human rights of women victims. Health, equality, integrity, dignity, liberty, sexual autonomy and self-development are only some of the human rights which are undermined by the criminalisation of women who decide to terminate a pregnancy resulting from rape. As a consequence of the criminalisation of abortion, many women in the four countries are obliged to carry their pregnancy to term. Forced maternity and all its implications, particularly for women who have acquired HIV, translates into a further violation of women's rights.

Honduras and El Salvador are among the small number of countries in the Latin American region which criminalise abortion in all circumstances, including in cases where pregnancy endangers the life of the woman.

The Penal Codes of Guatemala and Panama establish that therapeutic abortion to protect the lives of women is a non-punishable act.⁸⁷ In Panama, abortion is not punishable in cases of serious health issues where the life of the product of conception is at risk, as well as in cases of rape.

While care protocols for women victims of sexual assault provide for emergency contraception to avoid a pregnancy arising from the crime, in practice women are not always able to access the relevant services in time, and are therefore forced to continue the pregnancy or seek alternative – and often dangerous – means of termination.

d. Other legal provisions

The four countries studied have approved a number of measures, protocols and decrees, and have set up mechanisms for their application

87. Article 137 of the Penal Code of Guatemala and Article 134, clause 2, of the Penal Code of Panama.

and articulation. In combination, these constitute public policy on gender-based violence against women.⁸⁸

There are a number of commonalities in how this public policy is institutionalised in the countries studied. In general, they have national policy documents on women, gender equality and/or laws in favour of equal opportunities for women, which include VAW as an element or priority action. They have national plans or strategies for the prevention, care and punishment of VAW. These laws support the commitments enshrined in the international instruments ratified by the respective states, especially the Inter-American Convention to Prevent, Sanction and Eradicate Violence Against Women (Convención de Belém do Pará, 1994).

However, the problem of the feminisation of HIV is barely covered within these laws. This indicates a definite need to broaden and deepen the analysis of VAW and its multiple and complex intersections with the factors underlying the rapid spread of HIV among women.

Laws which incorporate the links between VAW and HIV include the following:⁸⁹

Honduras. The National Plan for Prevention, Detection, and Care of Violence against Women (2006- 2010) includes a line of action on research which provides for studies on HIV. It is worthy of note that in spite of this issue being described as a serious problem for women, it is not mentioned in any other point within the Plan.

El Salvador. Law on Integrated Protection of Children and Adolescents includes provisions under the title 'Accountability of the State with regard to education' which establish that the State and its organs will guarantee the existence of and access to services and

88. See Appendix 6, Laws on VAW in the four countries studied.

89. Author's highlighting

programmes on health and integrated sex education for children and adolescents, with the aim of strengthening their personal development, preventing sexually transmitted infections, reducing the risk of sexual abuse and preparing them for responsible, safe and risk-free maternity and paternity in adulthood (...).

Guatemala. The Law on Universal and Equal Access to Family Planning and its incorporation into the National Programme on Reproductive Health establishes in article 1 the Law's aim to ensure access of the population to family planning services, including information, counselling, sexual and reproductive health education, and provision of family planning methods (...).

Panamá. Decree No. 56 which regulates Law N° 4 of January 29, 1999, institutionalises equal opportunities of women and establishes:

Article 84. The Ministry of Health will review the procedures and mechanisms of the National Commission on Therapeutic Abortion, taking into account the sexual and reproductive rights of all women in accordance with international law as adopted by the Republic of Panama.

Article 88. The Ministry of Health and the Department of Social Security will develop programmes to provide training and education for women and their families on the prevention of sexually transmitted infections including HIV and AIDS.

Article 33. The National Directive for Families, part of the Ministry for Young People, Women, Children and Families, will develop a policy to promote shared family responsibility through the following actions: (...) Create an Education Programme and campaigns on responsible parenting for men and women, covering the issue of domestic violence as well as the different forms of violence against women.

4.3.2 Laws on HIV

Since the first HIV cases were identified in Central America in the 1980s, the region has initiated a number of efforts to avoid the spread of the epidemic which from the start has been associated with stigma and discrimination against people living with the virus.

As the years have passed, medical or clinical approaches to the epidemic have gradually been complemented by a rights approach in the light of infringements of the human rights of people living with HIV.

Unfortunately, the factors which place people at risk of acquiring HIV are multiple, complex and varied (structural, cultural, biological etc), making it difficult to contain the spread of the epidemic. This underlies the different strategic priorities of national, regional and global responses to HIV. Women are among the population groups prioritised in these strategies because of the social disadvantages they face as a result of gender.

Studies around the world have identified a number of factors which intersect with gender subordination to increase women's risk of acquiring HIV and influence how HIV affects them. VAW is one of these factors: government intervention is needed to eradicate this serious problem and its pernicious links with HIV.

The next section analyses approaches to VAW in laws on HIV.

a. Laws on HIV and AIDS

Laws on HIV and AIDS in the countries studied were introduced on the following dates: 1999 in Panama and Honduras, 2000 in Guatemala and 2001 in El Salvador.

These four laws have close similarities in terms of their approach to HIV. All take a medical or clinical approach to the HIV/AIDS epidemic. In particular,

they are weak in terms of human rights and gender, and as a result the links between VAW and HIV.

Before going on to indicate the gaps, below we briefly highlight some of the key aspects of these laws by country.

Guatemala: The General Law to Combat the Human Immunodeficiency Virus (HIV) and the Acquired Immuno-Deficiency Syndrome (AIDS) and the promotion, protection and defence of human rights with regard to HIV/AIDS places most emphasis on the rights of people living with HIV. It does not impose obligations or punishments on people living with HIV.

The law makes detailed mention of education as a mechanism of HIV prevention, as follows:

Article 9.- Educational content.-

The Ministry of Education, in coordination with the Ministry of Public Health and Social Welfare will, through the National Health Programme (PNS), include within the curriculum an education unit on the prevention of STIs and HIV/AIDS, to take place during the school cycle of formal and informal education within the Fifth Grade of the Basic Diversified Cycle in both the public and the private systems.

Another positive aspect of this Law is the inclusion within the General Income and Expenditure Budget of the State an allocation of resources for the implementation of the actions needed to carry out the Law, and a stipulation regarding accountability with regards to the management of the programme.

El Salvador: The Law on the Prevention and Control of Infection related to the Human Immunodeficiency Virus emphasises the duties of people living with HIV, imposes sanctions on those who know their HIV positive status and do not disclose it to their partner, whether a long-term or casual, current or former partner, and other people with whom there

has been or may have been risky contact (Art.28). The Law includes a chapter describing the procedure for the reporting and prosecution of this offence.

These provisions establish a compulsory duty to disclose HIV status without the necessary counselling of safety measures for women survivors of violence, which violates their right to protection from violence. People living with HIV are the subject of sanctions without consideration of the stigma and discrimination they may face when they disclose their status. The State has a duty to offer the advice, support and protection needed to enable people living with HIV to inform their contacts that they may be at risk of acquiring the virus, without this putting their own safety at risk.

The educational component of this law is as follows:

Art. 27.- The Ministry of Education must ensure that the curricular theme of sex education should include the study of sexually transmitted infections including HIV/AIDS in ways which respect the principles and traditional values of our society, and that this should be taught in all educational establishments around the country, whether public or private.

The wording underlined above is at odds with the concept of addressing the cultural causes of the spread of HIV, since it is precisely those traditional values which justify male promiscuity, the sale of women's bodies and partner rape, among other practices which are harmful to the human rights of women and which make them more vulnerable to HIV.

Panamá: Under Law 3 of 5-1-2000 on HIV, people who know they are HIV positive are obliged to inform their contacts, although there is no legal punishment for failing to do so. Intentional transmission is punishable under this law, although this also poses challenges to the legal system, since proving intention to harm is not straightforward.

Honduras: The Special Law on HIV/AIDS reveals a strong religious bias which can be seen in, for example, the fact that the Catholic and

Evangelic churches are represented on the National AIDS Commission. Article 19 has a similar bias, establishing:

Article 19.- under Article 10 of the Health Code, the National AIDS Commission (CONASIDA) will promote through the National Telecommunications Commission (CONATEL) the free broadcasting in the public and private mass media of messages aimed at the general population on the prevention of sexually transmitted infections and AIDS. This guidance must respect the moral and religious conditions of the Honduran people.

Honduran Law criminalises the intentional or accidental transmission of HIV. Under the latter circumstance, however, punishment would infringe the human rights of people living with HIV.

Without doubt, these and other aspects of the law on HIV limit the effectiveness of a number of other provisions of these same texts which aim to prevent or reduce the negative impact of the epidemic on the general population, and particularly on those populations which are most vulnerable and most at risk, including HIV positive women and survivors of gender violence.

In this sense, the significant gaps which can be observed regarding the rights and gender approaches, as well as laws which contravene these approaches, become real barriers to the enjoyment and protection of the human rights of women, particularly those experiencing violence.

Among the weaknesses identified are the following:

- The composition of the body overseeing the policy on HIV does not include women's organisations in any of the four countries. In contrast, it does include the churches (Catholic, Evangelical or the Ecumenical Council), except in Guatemala.⁹⁰ This violates women's right to participation.

90. In Guatemala representation includes NGOs working on reproductive health, and the Human Rights Ombudsman.

- There is no reference to VAW as a factor which increases the risk of and vulnerability to HIV.
- There is no policy on the acquisition and distribution of the female condom.
- There is no provision for changing cultural patterns which discriminate against women as a priority intervention for the prevention strategy. However, sexual and reproductive health are included.
- There is no reference to including VAW as a priority theme for research on most at risk populations.
- There is no requirement for health care protocols for people living with HIV to include mechanisms for registering, referring, counter-referring and monitoring cases of women who are HIV positive and survivors of violence.
- There is no legal mandate for the obligatory provision of free legal advice and representation services for women who are HIV positive as a result of violence or vice versa.
- Prevention of vertical transmission of HIV linked to VAW is not included as a priority for integrated approaches to the epidemic.
- There is no recognition of the gender discrimination faced by women as a factor for consideration in the process of compulsory partner notification, or of the increased risk of violence and discrimination they may face in all spheres of life.
- There is no obligation to adopt special care protocols for the treatment of women survivors, for example with post-exposure prophylaxis.⁹¹

b. Other laws

The countries of Central America have a well-developed legal framework covering the national HIV response with a particular focus on health.⁹²

91. Guatemala, Panama and El Salvador implement these protocols under other health laws.

92. See Appendix 7 for HIV-related laws and policies in the four countries.

In general, the law does cover – though still insufficiently – sexual and reproductive rights, information on the prevention of sexually transmitted infections and HIV, care protocols for treating women survivors of sexual violence and so on.

Strategic plans for the prevention, treatment and control of the HIV epidemic form part of the regulatory framework governing the national HIV and AIDS response in each country.

The strategic plan documents are very clear on the different gender-related factors underlying women's greater vulnerability to HIV and affecting their ability to overcome the barriers involved in living with the virus. However, this aspect is not well developed in the strategies, actions, indicators and goals laid out in these plans.

There is a virtual absence in the strategic plans of strategies and actions to transform cultural patterns, practices and customs which discriminate against women and which are at the root of VAW and its link to the rapid spread of HIV among women. Women are regarded as a priority only when they are pregnant (with a view to preventing vertical transmission) or when they are involved in sex work. In other words, they are generally seen as vectors of HIV transmission, rather than as people who need to be able to exert their rights to prevent the virus.

Some exceptions to this approach include:

El Salvador. Strategic Objective 7: Increased respect for human rights and gender equality in the prevention, care and control of HIV/AIDS

Strategic activities

3. Implement actions to reduce the social vulnerability of women with regard to HIV/AIDS.

Honduras (III National Strategic Plan to Respond to HIV and AIDS in Honduras, PENSIDA III 2008 – 2012)

Goals

Institutionalise public policy on HIV with a focus on human rights, gender equality, violence, poverty and insecurity.

Women are identified as a vulnerable or high-risk group, but it was agreed that further research would be needed before prioritising them. This group includes women victims of gender-based violence and housewives.

Guatemala (National Strategic Plan on STIs, HIV and AIDS 2006-2010)

HIV infection is associated with specific risks such as forced sexual relationships.

Panamá (Multisectoral Strategic Plan on HIV and AIDS)

Priority Area 7 – Stop violence against girls and women.

The Multisectoral Strategic Plan 2009-2014 sets out five fundamental treatment actions: we highlight here that in the case of post-exposure prophylaxis in cases of sexual violence and/or work-related exposure, this action was included in the Prevention theme.

C. Laws on education and protection of children and adolescents

HIV in women and VAW are seen as separate problems. This can be seen in laws on education and protection of the rights of children and adolescents. While these include provisions for sexual education and/or sexual and reproductive rights, and protection against violence (especially sexual abuse in all its forms), there is not an integrated understanding of the links between the issues from a human rights and gender perspective.

They do not identify the subordination and discrimination against women as a structural factor underlying their greater risk and vulnerability to HIV and violence, or the determining role of other structural factors, including economic, social and cultural factors which are also rooted in processes of exclusion such as poverty, racism, homophobia, etc.

d. Contradictions between laws

An indicator of the distance still to travel to institutionalise a coherent and consistent public policy is the existence of other laws which contradict or undermine the focus and effectiveness of the laws discussed above. An example of this tension can be found in article 24 of the Law on the Prevention and Control of Infection caused by the Human Immunodeficiency Virus in El Salvador, which states:

Art. 24.- Sexual abstinence and mutual faithfulness are the only guaranteed forms of prevention within a full process of education which is respectful of the traditional values and principles of society, which constitute an effective barrier against sexually transmitted diseases. For this reason, the state and society should promote their practice. Scientifically proven and accepted methods of prevention and control must be widely disseminated through social, traditional and alternative media, in order to ensure coverage of the entire population, particularly those living with HIV/AIDS. To this effect, social, public and private media shall collaborate with the Ministry to disseminate these methods. Any campaign promoting the use of condoms or other barrier methods must protect the consumer by informing them that such methods are not one hundred per cent effective.⁹³

93. Author's highlighting

4.4 Structural considerations in the application of laws on VAW and HIV

So far our focus has been on the regulatory aspects of the legal framework on HIV and VAW. However, it is well known that the effectiveness of legal regulations does not depend only on their written content, but also on a combination of cultural and structural factors which have a strong bearing on the application of the law.

Given the multidimensional character of VAW and HIV, the institutions involved in addressing both issues are also diverse and span the sectors: governmental and other organs of the state, civil society and international cooperation. Among these the following are particularly relevant: Courts of Law, Ministries of Public Health, Education, Women, Migration and Immigration, the Police, the State Prosecutor, Ministries of Culture, Communication, Tourism, Institutes of the Family, Childhood and Adolescence, Councils and Commissions on HIV and AIDS and others.

Interagency and multisectoral commissions and committees are a common form of joint working among the different institutions responsible for or involved in national responses to VAW and HIV. In the four countries involved in this study, a range of these involve (at least nominally) civil society organisations, albeit with different levels of decision-making power. However, there is little clear institutionalisation of monitoring and accountability in these instances. Social watchdogs lack the information needed to carry out monitoring and demand the fulfilment of state duties and/or the restitution of rights undermined by the action or omission of the State in the carrying out of such duties.

In this context, women are further disadvantaged in comparison with men. Women who have experienced violence and/or women who are HIV positive face the restriction of their right to participate in the formulation of policies which affect their lives – a truth which is evidenced by the absence of

women in committees on HIV and the absence of organisations of women living with HIV in commissions working on VAW.

Other factors which affect the application of laws on VAW and HIV include:⁹⁴

- Limited knowledge among women who have experienced violence about information on HIV, prevention methods, services available and organisations responsible for providing those services. Similarly, women living with HIV lack information and access to services addressing gender based violence.
- Weak or ineffective mechanisms to monitor reports of VAW and any measures imposed, which leads to impunity and all its ramifications such as the transmission of HIV.
- The strong influence of religion and the churches in HIV prevention and treatment strategies. This undermines the right to freedom of conscience and freedom of religion, and creates barriers to the development of effective strategies for the prevention and treatment of HIV and VAW, promoting as it does attitudes of toleration, submission and silence among women whose rights are violated, particularly when this occurs in the context of the partner relationship.
- Inadequate or no budget allocation to implement actions to address VAW and HIV.
- Limited coverage of the services available for survivors of gender violence and HIV.
- Fragmented information systems for recording cases of VAW and HIV, impeding the measurement of the magnitude and characteristics of the problem in each particular context.

94. These factors draw heavily on the evaluation and analysis of laws on violence against women carried out by women's organisations in the countries studied.

- Predominance of cultural values which discriminate against women among legal professionals, health staff, educators and other state institutions.
- Lack of research to provide more and better evidence on the link between HIV and VAW and to serve as a resource in defining regional policies on the issue.

In this context of significant cultural and structural barriers preventing women from exercising their human rights, there is also institutional violence on the part of the state and which is committed against women survivors of violence and/or living with HIV.

Institutional violence can be seen in laws, both explicitly (in the form of sanctions against women who do not disclose their status, yet without any provision for support and safety measures) and implicitly (failure to include integral services for women survivors of violence and women living with HIV). This failure to carry out the laws which prohibit the violation of rights in turn becomes institutional violence against women when it leads to HIV testing without consent among pregnant women, sex workers or women hoping to access employment, sterilisation of HIV positive women, lack of measures to ensure confidentiality in testing and treatment, coerced contraception for HIV positive women, etc.

Generally these violations of the law which are practised, promoted or tolerated (and not only by the state) have been conceptualised as acts of discrimination or stigma, the effect of which is that they are not recognised as violence against women. In consequence, such an expression of gender-based violence is not seen by the women's movement as an important part of its demands and struggles.

5. Conclusion



<http://www.flickr.com/photos/cambodiastrust/844393976/sizes/o/in/photostream/>

Violence against women and the rapid expansion of HIV in women is a problem which transcends the realm of health to encompass other social, economic, political and cultural factors. At the root of these factors are social inequalities, including gender inequalities. This is a common factor between HIV and VAW, making this link an issue of human rights and development.

An integrated response to this situation from a human rights perspective requires a legal framework which guides, legitimates and commits to action on the part of the sectors and actors directly involved or responsible for addressing the two epidemics. This action must be led by the state.

The hierarchy of laws in relation to the link between VAW and HIV indicates that the four countries involved in this study (Guatemala, Honduras, El Salvador and Panama) have ratified the international instruments, giving a theoretical and legal foundation for the development of national legislation which upholds human rights. Equally, the constitutions of the four countries provide the necessary legal framework for the approval and implementation of laws designed to address this problem which harms the human rights of women in many ways.

However, ordinary law does not take an integrated approach to VAW and HIV. The key laws on VAW in these four countries do not include HIV as a risk factor. Legal regulations on HIV do not include VAW as something which can increase the violation of human rights of women living with HIV. Overcoming this gap will involve broadening the understanding of the link between VAW and HIV and deepening the understanding of the multiple dimensions of violence in the lives of women, not only as something which increases the risk of acquiring the virus but also after an HIV positive diagnosis.

Regulations, protocols and agreements, which have less standing in the hierarchy of law, do contain more references to the intersections of cause and effect of VAW and HIV. Unfortunately, these references are developed in the context analysis and/or justification sections of the documents, but are not carried through with the same breadth and clarity

into the formulation of strategies, measures, actions or indicators for the achievement of objectives.

An issue for all four countries from the perspective of the structural aspects of the law is a focus on the persistent challenges to the implementation of the strategies proposed and the coordination between the different areas of intervention requiring an effective response to violence against women and its relationship to HIV.

Finally, in the cultural component of the law – which explains and determines the scope of the other two (normative and structural) – the evaluations and analyses of women's organisations identify the lack of information women have on their rights, and the patriarchal thinking of law professionals and the staff of the different public bodies as significant barriers to the implementation of laws on the rights of women.

Overcoming these challenges requires a stronger focus on empowering women and promoting the recognition and guarantee of women's rights to participation, access to information, to make decisions about their own bodies, reproduction and sexuality, access to justice, integrated healthcare, and the right to demand state protection and restitution in the case of infringement of their rights.

In summary, the lack of a full understanding of the causal role of gender inequalities in both VAW and HIV in women, leads to the law treating these as two separate problems. This undoubtedly undermines the effectiveness of efforts to stop the violation of human rights of women survivors of violence and/or women living with HIV, and has a significant impact on the quality of life of women.

The challenge is to ensure a rights and gender approach to HIV and VAW among decision-makers and policy makers in the four countries involved in this study. However, despite all the limitations mentioned in this report, there has been progress. There are positive aspects which could facilitate the design and implementation of integrated policies which link VAW and HIV. These include the following:

- Active participation of women's organisations in the application of laws on VAW and the monitoring of government commitments.
- Existence of public and civil society bodies which focus on VAW and HIV, albeit separately – requiring closer coordination between these agencies, especially those organisations which are involved in oversight of policies on the two issues.
- Recognition and legal protection for sexual and reproductive rights within laws on childhood and adolescence in some of the countries.
- The international legal framework on human rights, VAW and HIV has been ratified by the study countries.
- Existence of Protocols for the Care of Victims of Sexual Violence incorporating HIV (Panama and El Salvador). This is something which could be useful shared with other countries in the sub region.
- New laws which differentiate between family violence and gender-based violence against women (El Salvador and Guatemala). This distinction should also be made in other legislation in the countries in question.
- Full development of rules and regulations relating to restitution and/or compensation for the infringement of rights through violence (Guatemala, El Salvador and to a lesser extent, Panama).
- Evidence exists (though still not enough) to prove there is a link between HIV and VAW and that state intervention on these issues is needed.

5. Recommendations



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On the basis of this analysis of the legal framework of Guatemala, Honduras, El Salvador and Panama with regard to VAW and HIV, this section presents recommendations for overcoming the gaps and weaknesses observed. These recommendations require of necessity a rights approach, which must characterise the legal framework on the link between the two issues. This requires that women are valued as the subjects of rights, and as capable of exercising such rights and demanding protection of these rights from the State.

Recommendations

Recommendations for Governments, with the participation of women's organisations and other civil society organisations:

- Unify the rights approach in national legislation for the effective recognition and guarantee of the human rights of women, especially those regulations which have direct relevance to the protection against violence and HIV.
- Carry out mass awareness-raising campaigns to modify cultural norms which currently reinforce the subordination of women and justify violence against them. Dissemination and awareness-raising on the subject of women's rights, particularly their sexual and reproductive rights and their rights to a life free of violence, must be a priority in these campaigns, in order to reduce the worrying levels of VAW and the spread of HIV in this population group.
- Implement laws and mechanisms which address impunity in the case of violence against women. As long as there is state and societal toleration of VAW, it will be impossible to eliminate this serious violation of the human rights of women, and as a consequence it will not be possible to control the spread of HIV in this population group.
- Initiate coordination between different state and civil society organisations working on HIV and VAW.

- Guarantee the participation of organisations of women living with HIV in decision-making, monitoring and/or evaluation of policies on violence against women. Ensure the participation of women's organisations in the oversight bodies or councils governing public policy in relation to HIV at a national level.
- Integrate HIV, VAW and human rights in governing documents of HIV and VAW interventions.
- Standardise models of integrated care for women survivors of violence which incorporate HIV and maintain human rights standards.
- Design and carry out quantitative and qualitative research to provide evidence at national and regional level on the manifestations, factors and dimensions of the link between VAW and HIV in women, to ensure that policies and guidelines on these issues are based on relevant information. It is important to target efforts towards the study of the specific conditions facing women belonging to sub-populations at increased risk of vulnerability to HIV and VAW, including indigenous women, transsexual women, women who have not attended school, and victims of human trafficking and migrant smuggling.
- Allocate budgetary resources for the national response to HIV and violence against women, to ensure funding is available for integral approaches to VAW and HIV.

For regional organisations

- Design and develop regional programmes to raise awareness among the administrators of justice, health professionals, public prosecutors, police and other service providers working with women living with HIV and experiencing violence, or women who have experienced violence because of their HIV positive status.
- Set up a system of regional records, statistics, indicators and information on violence against women and HIV.

- Sign, adhere to or apply regulations which are standardised across the region to include sex education at all educational levels. This should include integrated approaches to prevention of HIV and other STIs and cover VAW as a risk factor which infringes the rights of women.
- Develop a regional model policy which serves as a reference for the development of public policies which integrate VAW and HIV. This policy should contain basic guidelines for integrated care of VAW and HIV, taking into account the particular nature of this problem in the sub-region which includes among other factors the practice of migrant smuggling and trafficking of women and girls for the purposes of sexual exploitation. Such a regional model policy should refer to and have as its objective the application of the Interamerican Convention to Prevent, Punish and Eradicate Violence Against Women (Convención de Belém do Pará). COMMCA (the Central American Council for Women's Ministries) could take responsibility for the development of this policy framework.
- Allocate responsibility to monitor the application of this regional model policy, as well as laws and policies to address the links between VAW and HIV in the respective countries of the sub-region. This responsibility should be taken on at national level by the respective Ministries, Secretariats and Institutes for Women in each country, and at regional level by COMMCA.

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Appendix 1

International Guidelines on HIV/AIDS and Human Rights (2006)
GUIDELINE 8: WOMEN, CHILDREN AND OTHER VULNERABLE GROUPS
Institutional responsibilities and processes

- a. States should support the establishment and sustainability of community associations comprising members of different vulnerable groups for peer education, empowerment, positive behavioural change and social support.
- b. States should support the development of adequate, accessible and effective HIV-related prevention and care education, information and services by and for vulnerable communities and should actively involve such communities in the design and implementation of these programmes.
- c. States should support the establishment of national and local forums to examine the impact of the HIV epidemic on women. They should be multisectoral to include Government, professional, religious and community representation and leadership and examine issues such as:
 - i. The role of women at home and in public life;
 - ii. The sexual and reproductive rights of women and men, including women's ability to negotiate safer sex and make reproductive choices;
 - iii. Strategies for increasing educational and economic opportunities for women;
 - iv. Sensitizing service deliverers and improving health care and social support services for women; and
 - v. The impact of religious and cultural traditions on women.

- d. States should implement the Cairo Programme of Action of the International Conference on Population and Development and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women. Primary health services, programmes and information campaigns in particular should include a gender perspective. Violence against women, harmful traditional practices, sexual abuse, exploitation, early marriage and female genital mutilation, should be eliminated. Positive measures, including formal and informal education programmes, increased work opportunities and support services, should be established.
- e. States should support women's organizations to incorporate HIV and human rights issues into their programming.
- f. States should ensure that all women and girls of child-bearing age have access to accurate and comprehensive information and counselling on the prevention of HIV transmission and the risk of vertical transmission of HIV, as well as access to the available resources to minimize that risk, or to proceed with childbirth, if they so choose.
- g. States should ensure the access of children and adolescents to adequate health information and education, including information related to HIV prevention and care, inside and outside school, which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality. Such information should take into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent and means of prevention, as well as the responsibilities, rights and duties of parents. Efforts to educate children about their rights should include the rights of persons, including children, living with HIV.
- h. States should ensure that children and adolescents have adequate access to confidential sexual and reproductive health services, including HIV information, counselling, testing and prevention

measures such as condoms, and to social support services if affected by HIV. The provision of these services to children/adolescents should reflect the appropriate balance between the rights of the child/adolescent to be involved in decision-making according to his or her evolving capabilities and the rights and duties of parents/guardians for the health and well-being of the child.

- i. States should ensure that persons employed to child care agencies, including adoption and foster-care homes, receive training in the area of HIV-related children's issues in order to deal effectively with the special needs of HIV-affected children including protection from mandatory testing, discrimination and abandonment.
- j. States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalization, e.g. minorities, migrants, indigenous peoples, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users.

Appendix 2

Definitions of sexual violence contained in domestic and family violence laws, and definitions of rape contained in the Penal Codes of the four countries studied

Domestic and family violence laws	The crime of rape Penal Code
<p>El Salvador Sexual violence: Actions which force a person to have physical or verbal sexual contact, or to participate in these through force, intimidation, coercion, blackmail, bribery, manipulation, threat or other means which deny or constrain personal will. Sexual violence also occurs when the aggressor forces the victim to carry out any of these acts with third parties.</p>	<p>RAPE Art. 158.- Anyone who uses force to gain vaginal or anal carnal access to another person shall be punished with six to ten years' imprisonment.</p> <p>OTHER SEXUAL ASSAULT Art. 160.- Anyone who subjects another person to sexual assault other than rape shall be punished with three to six years' imprisonment. If the sexual assault in question consists of oral access, or the introduction of objects into the vagina or anus, the punishment shall be six to ten years' imprisonment.</p>
<p>Panama Sexual violence. Actions which use force, intimidation, coercion, blackmail, bribery, manipulation, threat, use of drugs or other substances, or any other means which affect the will, to oblige a person to participate in sexual interaction which in itself does not necessarily constitute a crime against morality or sexual freedom. Equally, sexual violence occurs when the aggressor forces the victim to witness or engage in such acts with third persons.</p>	<p>Article 174. Anyone who uses violence or intimidation to gain carnal access to someone of either sex shall be punished with five to ten years' imprisonment.</p> <p>The same punishment shall be imposed on anyone who carries out an oral sex act without consent, or introduces any object or body part into the anus or vagina for sexual purposes.</p>

Ley contra la violencia doméstica o intrafamiliar	Delito de Violación Código Penal
<p>Honduras Sexual violence: Any conduct involving threat or intimidation which affects the physical integrity or sexual self-determination of a woman, including unwanted sexual relations and refusal to use contraception or protection, as long as these actions are not among those classified as a crime under the Penal Code.</p>	<p>Article 140. Carnal sex with a person of either sex through the use of violence or threat of violence or serious and imminent harm to the victim or their spouse, cohabiting partner or family member to the fourth degree of blood relationship or second degree of kinship, constitutes the crime of rape.</p> <p>The perpetrator of the crime of rape shall be punished with nine to thirteen years' imprisonment.</p>
<p>Guatemala ARTICLE 1. Family violence. Family violence is a violation of human rights and for the purposes of this law shall be understood as any public or private act or omission by a relative, cohabitee or ex-cohabitee, spouse or ex-spouse, or co-parent to children, which directly or indirectly causes physical, sexual, psychological harm or suffering or damage to assets to anyone belonging to the family.</p> <p>Note: The Law for the Prevention, Punishment and Eradication of Family Violence does not define sexual violence.</p>	<p>ON RAPE Article 173. Rape. Anyone who uses physical or psychological force to gain vaginal, anal or oral access with another person, or introduces any part of the body or any object into any of the openings indicated above, or forces another person to do so themselves, shall be punished with eight to twelve years' imprisonment. In cases where the victim is under fourteen years of age or has mental or cognitive impairment, these acts shall be considered rape even in the absence of physical or psychological force. The sentence shall be imposed without prejudice to other punishments which may correspond to the committing of other crimes."</p>

Appendix 3

Family violence within the Penal Codes of Panama, El Salvador and Honduras

El Salvador

Family violence

Art. 200.- Any family member who, within the scope of the Law against Family Violence, exerts violence in any of the forms indicated under Art 3 of the same shall be punished with one to three years' imprisonment. Criminal action may begin once the judicial proceedings established by the Law have been exhausted.

Panamá

Family violence and abuse of minors

Article 215-A. Any member of the family who physically or psychologically harms another shall be punished by 6 months to one year's imprisonment or preventive security measures or both. In the case of psychological harm, duly confirmed by the forensic psychiatrist, the primary aggressor shall be punished by preventive security measures in accordance with Article 115 of the Penal Code, duly overseen by the Department of Correction. Should the preventative security measures be breached, the judge may substitute it for a prison sentence of 6 months to one year.

Honduras

Family violence

Article 179-A. Anyone causing physical or emotional harm or damage to assets through the use of force, intimidation or persecution of a spouse or ex-spouse or the person with whom they cohabit or formerly cohabited, or someone with whom they have had a child, shall be punished with

one to three years' imprisonment, without prejudice to the punishment due for the harm or damage caused. The same punishment shall be applied when the violence is directed against any children where there is parental authority, whether these are the children of the aggressor or of the people mentioned above, or any minors or people with incapacities who are under their tutelage or guardianship, or their ascendants.

Article 179-B. Anyone mistreating their spouse, ex-spouse, cohabitee, ex-cohabitee, or anyone with whom they have had children, in any of the following circumstances shall be punished with 2 to 4 years' imprisonment:

- a. Enters the home of the person or the place in which they are staying or have been deposited to commit the act;
- b. Inflicts serious bodily harm;
- c. Carries out the act with a fatal weapon even if there is no intention to kill or maim;
- d. Acts in the presence of minors;
- e. Induces, incites or obliges the person to consume drugs, narcotics or other psychotropic or intoxicating substances;
- f. Also mistreats a minor; and
- g. Uses the victim's illness or mental incapacity as a pretext to limit their freedom.

These provisions shall be understood to be without prejudice to the punishment for other crimes committed.

Article 179-C Notwithstanding the provisions of article 15 of the Procedural Penal Code, the crimes detailed in this Chapter and the previous Chapter shall be subject to criminal action.

Anexo 4

Significant aspects of the Special Integrated Law for a Life free of Violence for Women (El Salvador)

Aim of the law

This law aims to establish, recognise and guarantee the right of women to a life free of violence, by means of Public Policies to detect, prevent, care, protect, provide reparation for and punish violence against women; in order to protect the right to life, physical and moral integrity, freedom, non-discrimination, dignity, guardianship, personal security, equality and equity.

Governing body

The Salvadorian Institute for the Development of Women is the governing body for the National Policy for Women's Access to a Life Free of Violence.

Crimes and punishments

- The crimes of Femicide or Aggravated Femicide shall be punished with 20-35 years imprisonment and 30-50 years imprisonment respectively.
- Anyone who in the exercise of public office promulgates, promotes or tolerates impunity or impedes the investigation, prosecution or punishment of the crimes established by the law shall be imprisoned for 2-4 years and barred from public office for the same period.
- Anyone who individually, collectively or as part of an organisation publishes, distributes, sends, promotes, facilitates, administers, funds or organises in any way the use of women under 18 without their consent in sexual or erotic acts using information or digital technology shall be imprisoned for 5-10 years.

- Fines shall be levied for acts which constitute other expressions of violence against women not covered by those defined.

Responsibilities of the State

The Ministries of Education, Governance, Health and Employment, as well as other ministerial bodies, shall have their own responsibilities for the implementation and operationalization of the law. These institutions must eliminate from all educational programmes any norms, regulations and materials which directly or indirectly promote any form of violence against women, including behavioural guides, prejudices and stereotypes which promote, legitimate, naturalise, invisibilise and justify violence against women.

National System for Data and Statistics

The Ministry of Justice and Public Security shall be responsible for managing the National System for Data, Statistics and Information on violence against women, which shall be coordinated by the National Directorate for Statistics and Censuses.

The Treasury shall ensure annual budgetary allocation within the National General Budget for each of the public bodies responsible for the implementation of this law.

Appendix 5

Intentional transmission of HIV within the Penal Codes of Honduras, Panama and Guatemala

Honduras

Art. 140. Rape (...)

The punishment mentioned in the paragraph above shall also be applied to those who commit rape while knowingly carrying Acquired Immuno-Deficiency Syndrome/Human Immunodeficiency Virus (HIV/AIDS) or another incurable contagious disease. (15 to 20 years)

Panamá

Art. 144 Rape (...)

The punishment shall be from 10 to 15 years if the rape is committed by a person who knowingly suffers from or carries an incurable sexually transmitted infection or the acquired human immunodeficiency virus.

Guatemala

Law against Femicide and other forms of violence against women

Sexual violence: Acts of physical or psychological violence the aim of which is to infringe a woman's sexual freedom and integrity, including sexual humiliation, forced prostitution and the denial of the right to use family planning methods, whether natural or artificial, or to take measures to protect against sexually transmitted diseases.

Law against sexual violence, exploitation and human trafficking

ARTICLE 24. Article 151 of the Penal Code, Decree Number 17-73 of the Congress of the Republic, is reformed and stands as follows: Anyone who knowingly suffers a sexually transmitted infection and exposes another person to infection shall be punished with two to four years in prison. If

the victim is a minor or has cognitive or other impairment affecting their capacity to consent, the sentence shall be increased by two thirds.”

ARTICLE 30. Article 174 of the Penal Code, Decree Number 17-73 of the Congress of the Republic, is reformed and stands as follows: “Article 174. Aggravation of the sentence. The sentence for the crimes detailed in previous articles shall be increased by two thirds in the following cases: 1. When the behaviour is committed by two or more people acting together. 2. When the victim is particularly vulnerable because of advanced age, sickness, physical or mental disability, or deprived of liberty. 3. When the perpetrator uses weapons or alcoholic, narcotic or intoxicating substances or other instruments or substances which seriously damage the health of the person attacked, or affect her capacity to consent. 4. When the act is committed against a pregnant woman, or when she becomes pregnant as a result of the crime. 5. When the perpetrator is a relative of the victim, or is responsible for her education, or responsible for her guardianship, custody, care or tutelage, or is her spouse, ex-spouse, cohabiting partner or ex-partner of the victim, or one of her relatives within the degrees of kinship established by the law. 6. When as a consequence of the act, the perpetrator infects the victim with any sexually transmitted infection. 7. When the perpetrator is a civil servant or employed in a public or professional role and is on duty.”

Appendix 6

Laws and policies concerning VAW

Information drawn from the Situation Analysis: HIV and Violence Against Women in Honduras, El Salvador, Guatemala and Panama, 2010. CIM-OEA

Honduras

- Accord 003-2004 of the Supreme Electoral Tribunal
- This accord clarifies the procedures to follow for Primary and General Elections to be carried out on the third Sunday of February and the last Sunday of November of 2005.
- Executive Decree Number 015-2002
- This decree makes the National Policy on Women an official part of State Policy
- National Policy on Women – First National Plan on Equality of Opportunities
- Executive Decree Number PCM-028-2010 – Approval of the II Plan for Equality and Gender Equity in Honduras (PIEGH)
- Law of the National Institute on Women
- Law against Domestic Violence, and reforms
- Law of Equality of Opportunities for Women
- Constitution of the Republic of Honduras, 1982
- Law of Elections and Political Organisations, Decree No. 44-2004
- National Plan against Violence against Women
- National Plan for the Prevention, Detection and Care of Violence against Women (2006- 2010).

El Salvador

- Law of the Salvadorian Institute for Women's Development
- Law against Family Violence (D.L. N ° 902, December 12 – 96; Reform D.L. N° 892)
- Law on Integrated Protection for Children and Adolescents
- National Policy on Women (PNM in its Spanish acronym)
- National Plan for the Prevention and Care of Family Violence
- Special Integrated Law for a life free of violence for women

Guatemala

- Approval of the Law to Prevent, Punish and Eradicate Family Violence (Governmental Agreement 831 and 868-2000)
- Creation of the National Coordination for the Prevention of Family Violence and Violence against Women (CONAPREVI in its Spanish acronym) (Governmental Agreement 831-2000) and its reform under Agreements 868-2000 and 417-2003.
- The Law to Prevent, Punish and Eradicate Family Violence (Decree 97-96)
- Law against Femicide and other forms of violence against Women, Decree 22-2008.

Panamá

- Law N° 27 of June 16, 1995, on Family Violence, and Law 38 of July 10, 2001, which reforms and adds articles to the Penal and Judicial Codes on Domestic Violence and Abuse of Children and Adolescents (which repeals some articles of the former law), regulate different aspects of the treatment of the victims of these crimes.

- The Law to Protect Victims of Crime (Law 31/98, of May 28) provides generic protection to the victims of any crime, and therefore also apply to women and children.
- Law N° 4 of January 29, 1999, establishes equality of opportunities for women, transposing to Panamanian law the contents of the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women. The Law is developed in Executive Decree N° 53 of June 25, 2002.
- Other laws which refer to gender-based violence include: the Plan for Equality of Opportunities for Women (PIOMII 2002-2006); the National System for Gender Training (SNCG), created via Executive Decree N° 31 of April 16, 2001 and the Panamanian System of Gender-Based Indicators (SIEGPA) regulated by Executive Decree N° 89 of November 13, 2002.
- National Plan against Domestic Violence and Forms of Citizen Coexistence and Cohesion, 2004- 2014. National Report, Regional Committee, Inter-American Commission on Human Rights on Domestic Violence. National Network Against Violence (CLADEM) – Panama Chapter of the Alliance for Women and Development – CODIM.
- The new Penal Code, approved by Law N° 14 of May 2007, which entered into effect in May 2008 and by which the crime of homicide is aggravated when it takes place in a context of domestic violence. The prison sentence in this case increases from 1 to 3 years.

Appendix 7

Laws and policies concerning HIV⁹⁵

El Salvador

- Law and Regulation on AIDS
 - Post-exposure prophylaxis guidelines (SIPPE in the Spanish acronym)
 - Prevention of vertical transmission guidelines (PTMI in the Spanish acronym)
 - Dental guidelines
 - Nutritional guidelines
 - Biosafety guidelines
- Care protocols for people living with HIV
- Strategic Plan on HIV/AIDS
- Integrated Care Policy
- Methodological guidelines for support groups
- Modules for support groups
- Operational guide to counselling
- Manual for counselling facilitators
- Guide for female sex workers
- Care Guide for Mobile Populations
- STI norms and guidelines

95. Information drawn from the Situation Analysis: HIV and violence against women in Honduras, El Salvador, Guatemala and Panama, 2010. CIM-OEA

- Care guidelines in the prison system
- HIV prevention manual for promoters
- Quality control guidelines for HIV laboratories

Honduras

- Special Law on HIV/AIDS
- Manual of Norms and Procedures for the care of Users of Health Services for Sexually Transmitted Infections. 2006. National STI Control Programme, Department of STIs/HIV/AIDS
- Manual of Norms and Procedures for the Integrated Care of Women. 1999. Women's Care Unit. Department of Maternal/Child Health
- Methodological Strategy for Family Planning Services within the Health Services Network. 2008. Department of Integrated Family Health, Department of Service Development
- Norms for Integrated Care of Pregnant Women for the Prevention of Vertical Transmission of HIV from Mother to Child. 2002-2006. Department of STIs/HIV/AIDS
- Norms for Clinical Care of Paediatric HIV Patients. 2003 Department of STIs/HIV/AIDS. Ministry of Health
- National Norms for Neonatal-Maternal Health Care. 2005. Programme for Integrated Care of Women, Department of Maternal-Child Health
- Norms for HIV/AIDS Counselling Care. 2005. Department of STIs/HIV/AIDS. Department of Mental Health. Ministry of Health
- National Strategic Plan to Respond to HIV/AIDS (PENSIDA III). 2008-2012. National AIDS Commission (CONASIDA)
- Monitoring and Evaluation Plan (M&E). Department of STIs/HIV/AIDS. 2006 Ministry of Health

- STI/HIV/AIDS Information System, Ministry of Health
- Epidemiological profile of STIs/HIV/AIDS in Honduras. 2007. Department of STIs/HIV/AIDS
- National Strategic Plan to Respond to HIV and AIDS (PENSIDA III), 2008- 2012. National Operational Programme 2009. National AIDS Commission of Honduras (CONASIDA). December, 2008
- Honduran Workers' Plan to Respond to HIV. Programme of the ILO on HIV/AIDS in the Workplace. 2007

Guatemala

- National Strategic Plan (PEN) for the prevention, care and control of STIs, HIV and AIDS, Guatemala 2006 – 2010
- Governmental Agreement 638-2005 of the Ministry of Public Health and Social Welfare contains the Public Policy for the prevention of sexually transmitted infections (STIs) and the response to the AIDS epidemic
- Policy of Social Development and Population, approved in April 2002, is included as a tool of the National Programme for the Prevention of HIV/AIDS and has as specific goals: strengthening of integrated care for STIs/HIV/AIDS, and informing and educating the population on the prevention of STIs/HIV/AIDS.

Panamá

- Law 51 of 2005 which reforms the Organic Law of the Social Security Fund.
- Law 59 of 2005, which adopts employment protection norms for people with chronic, involuntal and/or degenerative illnesses which make them unfit to work.

- Law 16 of 2004, which provides for the prevention and classification of crimes against integrity and sexual freedom, and which modifies and adds articles to the penal and judicial codes.
- Law 68 of 2003, which regulates the rights and obligations of patients with regard to information and free and informed decision-making.
- Law 55 of 2003, which reorganises the prison system.
- Law 6 of 2002, which sets out norms for transparency in public administration, establishes Habeas Corpus, and other provisions.
- Law 1 of 2001, which regulates medicines and other products for human health.
- Law 3 of 2000, which establishes the General Law on Sexually Transmitted Infections, the Human Immunodeficiency Virus and AIDS.
- Law 4 of 1999, which establishes Equality of Opportunities for Women.
- Law 4 of 1981, which approves the Convention on the Elimination of all forms of Discrimination Against Women.
- Executive Decrees:
 - Executive Decree No. 428 of 2004 which guarantees free maternity services and care in all Ministry of Health establishments.
 - Executive Decree No. 53 of 2002 which regulates Law 4 of 1999 on Equality of Opportunities for Women.
 - Executive Decree No. 119 of 2001 which regulates Law 3 of 2000 on STIs/HIV/AIDS.
 - Executive Decree No. 268 of 2001 which identifies health problems requiring compulsory notification.



HIV and violence against women en Central America:

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of the legal framework



Organization of
American States



Inter-American Commission of Women



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