



Committee on the Elimination of Discrimination against Women
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva
Switzerland
By Email: cedaw@ohchr.org

7 June 2021

Information on Honduras for consideration by the Committee on the Elimination of Discrimination against Women at the Pre-Sessional Working Group of its 81th Session (5 July - 9 July 2021)

Introduction

1. We respectfully submit this letter for consideration in advance of the pre-sessional working group of the 81th session of the Committee on the Elimination of Discrimination against Women ('the Committee') taking place between 5 July - 9 July 2021, for consideration of the List of Issues in relation to the periodic report of Honduras. Equality Now, CLADEM Honduras and Jóvenas Latidas are writing to express our concerns with regard to laws related to rape and other forms of sexual violence and procedures and practices which effectively deny access to justice for survivors of sexual violence in violation of the Convention on the Elimination of All Forms of Discrimination against Women ('the Convention'). We are recommending questions to be asked to Honduras by the Committee and offering recommendations on the legal and procedural changes required to make sure that perpetrators of sexual violence are brought to justice and that survivors access justice.
2. **Equality Now** is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organization with partners and members in every region. Ending sexual violence, ending

sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work.

3. The Committee for Latin America and the Caribbean for the Defense of Women's Rights - **CLADEM Honduras** is a network that links feminist activists and organizations for the promotion, monitoring and defense of human rights of women of all ages.
4. **Jóvenas Latidas** is an autonomous regional movement built and led by diverse Latin American young women. They are indigenous, Afro-descendant, from the LGTBIQ + collective, from rural areas and urban peripheries, and fight for the human rights of girls, adolescents, young women and women, from a youth and feminist perspective. They have a presence in 12 countries of the LAC Region (Argentina, Brazil, Bolivia, Colombia, Ecuador, Guatemala, Honduras, Nicaragua, Mexico, Peru, Paraguay and Venezuela), and focus their work on 6 thematic areas: youth leadership, participation and advocacy politics; eradication of gender-based violence and discrimination; diverse identities and sexualities; racism; empowerment of afro-descendant and indigenous girls, adolescents and young women, guided by the worldview of indigenous peoples in a multicultural continent; sexual rights, reproductive and non-reproductive rights.
5. The legal provisions and practices detailed in our submission highlight the failure of the State to comply with its duty to provide equal protection under the law to survivors of sexual violence (Article 2(c) of the Convention) and failure of law enforcement to protect women from sexual violence (Article 2(c) and (e)). We submit that the root cause of the failures of the State is its non-compliance with the obligation to end discrimination against women in law and practice and address stereotypical and gender-discriminatory attitudes towards women and girls, contrary to Articles 2(f) and 5(a) of the Convention and the obligation to combat violence against women and provide access to justice to survivors, as described in General Recommendations 19, 33 and 35 of the CEDAW Committee.
6. We reiterate the Concluding observations on the combined seventh and eighth periodic reports of Honduras¹, and underscore in particular, the recommendations urging the Government of Honduras to:
 - “Ensure that all cases of gender-based violence against women are promptly and effectively investigated, that perpetrators are prosecuted and adequately punished and that impunity is combated by investigating reported cases of corruption”;²
 - “Implement existing laws to criminalize all forms of violence against women and ensure that cases are investigated and perpetrators prosecuted and adequately punished and to ensure adequate accountability and monitoring mechanisms for the implementation of the national plan against violence against women covering the period 2014-2022”; and to

¹ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Honduras, 25 November 2016, [CEDAW/C/HND/CO/7-8](#)

² Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Honduras, 25 November 2016, [CEDAW/C/HND/CO/7-8](#) para 13.

- “Ensure that women and girls have access to effective redress and protection, including a sufficient number of shelters, especially in rural areas, that provide specialized care to victims of sexual violence, and legal and psychosocial rehabilitation and reintegration programmes, in cooperation with civil society organizations”.³
7. We welcome the amendments to Honduras’ Penal Code⁴ that include aggravated penalties for sexual violence on the basis of discriminatory motive such as sex, sexual orientation and gender identity, and race among others, but note that parliament at the same time reduced penalties for sexual violence, including *estupro*, and for femicide so that the new Penal Code in effect contains less protection for women and girls.

Legal Provisions which are discriminatory towards women and girls or enable impunity for perpetrators of sexual violence

Definition of Rape

8. Complementing other international human rights standards⁵ the CEDAW Committee in its General Recommendation 35 provides that the definition of rape should be based on lack of freely given consent, and take account of coercive circumstances.⁶ The Committee in the case of *Karen Tayag Vertido v. the Philippines*, relies on the standards developed by the international courts, suggesting that States enact a definition of rape, which requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.⁷
9. Furthermore, the UN Women Guidelines state that laws should provide a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a

³ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Honduras, 25 November 2016, [CEDAW/C/HND/CO/7-8](#) para 23.

⁴ Observatorio de Derechos Humanos de las Mujeres, Boletín nuevo código penal. Centro de Derechos de Mujeres (CDM), May 2020. [Boletín-nuevo-Código-Penal-17MAY2020.pdf \(derechosdelamujer.org\)](#)

⁵ CEDAW Committee, General recommendation No. 35.; Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012); OEA/Ser.L/11.710 MESECVI/CEVI/DEC.4/14 (19 Sept. 2014); UN Women, ‘Handbook for legislation on violence against women’, 2012, p. 24; Article 36(2) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); CEDAW Committee, *Vertido v Philippines*, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); *R.P.B. v Philippines*, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014); ICC Rules of Procedure and Evidence; Articles 7(2) and 8(2) of the ICC Elements of the Offences; Article 7 (1) (g)-1, Elements of Crimes, International Criminal Court, 2011; *Katanga ICC-01/04-01/07*, Decision on the Confirmation of Charges, 30 September 2008, § 440; *Bemba ICC-01/05-01/08-3343*, 21 March 2016, §§ 105-106; *Case of Fernández Ortega et al v México*, Judgment of May 15 2011, Interpretation of judgment on preliminary objection, merits, reparations and costs; *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Chamber I, 2 September 1998 7 *Prosecutor v Kunarac, Kovac and Vukovic* (No. IT-96-23& IT-96-23/1-A); *Prosecutor v Kunarac, Kovac and Vukovic* (No. IT-96-23& IT-96-23/1-A), ICTY, 12 June 2002.

⁶ Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.

⁷ Committee on the Elimination of Discrimination against Women, *Karen Tayag Vertido v. the Philippines*, OHCHR, 16 July 2010, [Jurisprudence \(ohchr.org\)](#).

position of authority such as in a correctional facility, a religious or school setting or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship, and provide for a broad range of coercive circumstances around consent such as intimidation or fraud.⁸ In addition, the UN Special Rapporteur on Violence against Women recommends that when the perpetrator abuses power or authority over the victim, this should be considered an aggravating circumstance.⁹ Finally, UN Women states that laws criminalizing rape should recognize and represent that the hallmark of a lawful sexual act is active and willing consent to a welcome act, while at the same time recognizing a broad range of coercive circumstances which negate consent.¹⁰

10. While Honduras defines rape as non-consensual, the law does not fully describe what this means except in the context of force, mental capacity or age suggesting that it does not recognise a broad range of coercive circumstances that negate consent. Particularly missing from the enumerated circumstances in which sexual acts are considered non-consensual are circumstances in which the perpetrator abuses power or authority over the victim. Honduras has a separate provision on the exploitation of a position of power with respect to adolescents, but this provision invokes much lower penalties (see footnote 15). Honduras should provide for a broad range of coercive circumstances and include the exploitation of positions of power and authority in all cases of rape. Failing to do so results in victims often falling through the cracks and never obtaining justice.
11. Furthermore, rape law in Honduras does not consider rape by a spouse or intimate partner or family member as aggravating factors.¹¹ The UN Special Rapporteur on Violence against Women recommends that when the perpetrator is a family member, current or former spouse or intimate partner, such relationship should be listed as an aggravating circumstance. Honduras should ensure that rape by a spouse or intimate partner or family member is considered an aggravating circumstance carrying a higher penalty due to the breach of trust involved.

Estupro

12. The law of *estupro* impedes access to justice for survivors and specifically under-protects and discriminates against adolescent survivors. The *estupro* provision applies to sexual intercourse with adolescents. Under this provision, when an adult uses deception to perform acts of a sexual nature with a person between the ages of 14-18 the person

⁸ UN Women, Legislation *should define consent as unequivocal and voluntary agreement*, UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, 2011, <https://www.endvawnow.org/en/articles/469-consent.html>.

⁹ Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, 19 April 2021, A/HRC/47/26 para.90(b).

¹⁰ UN Women, Legislation *should define consent as unequivocal and voluntary agreement*, UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, 2011, <https://www.endvawnow.org/en/articles/469-consent.html>.

¹¹ Observatorio de Derechos Humanos de las Mujeres, Boletín nuevo código penal. Centro de Derechos de Mujeres (CDM), May 2020. [Boletín-nuevo-Codigo-Penal-17MAY2020.pdf \(derechosdelamujer.org\)](https://www.derechos.org/nizkor/boletin-nuevo-codigo-penal-17MAY2020.pdf)

commits *estupro*. In June 2020, the Penal Code of Honduras was amended, making the penalty for someone committing *estupro* even less severe. The offense is currently punishable with imprisonment for only 6 months to 1 year or, if during the commission of *estupro* there is carnal access of the victim by any means, 1 to 3 years.¹² In comparison, rape is punishable by imprisonment for 9 to 13 years.¹³ While *Estupro* laws contemplate numerous aggravating circumstances with the possibility of a minor increased penalty,¹⁴ it does not resolve the discriminatory impact that *estupro* provision has on adolescents.

13. Furthermore, while the current *estupro* law contemplates that an adult may abuse a position of power to commit acts of a sexual nature with a person between the ages of 14 to 18, the law punishes that adult less severely with a possible sentence of only 1 to 3 years of prison¹⁵ as compared to 9 to 13 years for rape. This is concerning because adolescents are especially vulnerable to being sexually exploited and abused by adults in positions of power over them, such as in the school, church, hospital or sports team setting. The very nature of these relationships provides for a coercive power dynamic between the adult and the adolescent in which any consent by the adolescent should be considered immaterial. It is important that the law contemplates that a perpetrator can take advantage of a relationship of power, and it is equally important that the penalty reflects the serious nature of the crime.
14. Although *estupro* laws mean that rape of adolescents can be prosecuted, albeit with less accountability, since where no additional violence can be proved the crime of rape cannot be prosecuted, this provision tends to weaken the overall statutory scheme against sexual violence. This is for two reasons: a) because [judges and/or prosecutors] not infrequently reduce what should be rape charges to *estupro* because they buy into rape myths and tend to blame the adolescent girls for being “temptresses” and therefore effectively to blame for the violence perpetrated against them; and b) the law plays a normative role in suggesting a notion of a hierarchy of rape and the harms caused by it, and the law itself and the way it is implemented reinforce the myth of adolescent girls as “temptresses” and therefore effectively to blame for the violence perpetrated against them. Moreover, girls sexually exploited by older men often end up being coerced into marriage or informal unions on the basis of the structural discrimination they face.

¹² See Article 254 of the Penal Code of Honduras.

¹³ See Article 249 of the Penal Code of Honduras.

¹⁴ See Article 260 of the Penal Code of Honduras

¹⁵ ARTICLE 254.- ESTUPRO. Whoever, using deception, performs acts of sexual content with a person over fourteen (14) and under eighteen (18) years of age, must be punished with a prison sentence of six (6) months to one (1) year. If the sexual acts imply carnal access by any means, the penalties must be imprisonment from one (1) to three (3) years and the provision of services of public utility or victims for a period of two (2) to four (4) months or a fine of three hundred (300) to six hundred (600) days.

Who, taking advantage of a relationship of manifest superiority originated by any cause and that conditions the freedom of the victim, performs acts of sexual content with it, must be punished with the penalty of one (1) to three (3) years in prison and a fine from one hundred (100) to three hundred (300) days. If the sexual acts involve carnal access by any means, the penalties must be imprisonment from four (4) to seven (7) years and a fine of three hundred (300) to five hundred (500) days.

15. The *estupro* law allows adults who rape adolescents to avoid the full consequence of their crime. This law ignores the unequal power dynamics between adolescents and adults, and renders adolescents potentially vulnerable to exploitation. In the recent report of the UN Special Rapporteur on Violence against Women, the Special Rapporteur recommends that “*estupro* provisions, where they exist, should be abolished.”¹⁶
16. While we implore the Honduras Government to abolish *estupro*, we also urge the Government to ensure the definition of rape is amended prior to or in conjunction with the elimination of *estupro* to ensure there are no gaps in the law and that those who commit rape, including of adolescents, will always be held accountable.

Reproductive Rights

17. ***Emergency Contraceptive.*** In 2009, the Ministry of Health issued Ministerial Agreement No. 2744-2009¹⁷ through which it immediately prohibited the promotion, use, purchase and sale of emergency contraceptive pills throughout the country, even in cases of rape. Seven different ministers have held that office since then, but none has revoked this Agreement. This is having an impact on other protocols and policies for survivors. For example, this means that the *Protocol for Victims of Sexual Violence*, which provides other essential health services to survivors, remains on hold due to controversy over incorporating critical access to and use of emergency contraception in cases of rape.
18. ***Abortion.*** Article 196 of the new Penal Code defines abortion as “the death of a human being at any time during pregnancy or during childbirth.” **The penalties range from three to six years in prison, even prosecuting women who arrive at public hospitals for obstetric emergencies.** Even though in 2016 the Ministry of Health of Honduras approved a National Policy on Sexual and Reproductive Health¹⁸ in which it was recommended to update and harmonize national legislation to allow therapeutic abortion. Recently and of concern, through an expeditious and irregular process, the absolute prohibition of abortion was reinforced within the Constitution of the Republic¹⁹, in order to create a constitutional shield that makes it impossible to legalize abortion in the future in the country. Due to this, girls, adolescents and women who become pregnant as a result of sexual violence may be forced to carry a pregnancy to term or go to jail if they try to

¹⁶ Report of the United Nations Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, “Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention”, A/HRC/47/26, April 2021, para 112.

¹⁷ Center for Reproductive Rights, Supreme Court of Honduras reaffirms prohibition of the sale, distribution and use of Emergency Contraceptive, February 29, 2012, available at: <https://reproductiverights.org/centro-de-prensa/corte-suprema-de-honduras-reafirma-prohibici%C3%B3n-de-venta-distribuci%C3%B3n-y-uso-de-pae>

¹⁸ Secretary of Health of the Government of Honduras, National Policy on Sexual and Reproductive Health, p. 42 (2016), Available at: https://oig.cepal.org/sites/default/files/hon_politica_nacional_ssr_2016.pdf

¹⁹ Congreso Nacional de la República de Honduras, Gaceta Oficial No. 35,494. Decret No. 192-2020. Available at: <https://www.tsc.gob.hn/web/leyes/Decreto-192-2020.pdf> See **ARTICLE 67.- To the one who is by born...The practice is considered prohibited and illegal any form of interruption of the life on the part of the mother or a third party to the one who is about to be born, to whom he owes his life be respected from his conception.**

access an abortion (even for an obstetric emergency), all of which pose serious violations of their rights to life, health, bodily and emotional integrity.

Suggested Questions for State Party's List of Issues

19. We respectfully urge the Committee to raise the following questions with the government of Honduras:

20. Will the Government ensure that the definition of rape includes a broad range of coercive circumstances and specifically list the following as aggravating factors: when the perpetrator abuses power or authority over the victim and when perpetrator is a current or former spouse, intimate partner or a family member? And will the Government ensure this change is further reflected in any protocols that relate to sexual violence?
21. What is the Government doing to eliminate *estupro* or similar provisions that treat adolescents differently? And will the Government ensure that the definition of rape is amended prior to or in conjunction with the elimination of *estupro* to ensure there are no gaps in the law and that those who commit rape, including of adolescents, will always be held accountable?
22. What are the steps that the Government will take to guarantee the health and life of women and girls through the decriminalization of therapeutic abortion recommended multiple times by this Committee?
23. Twelve years have passed since the ban on emergency contraception, how much longer will Honduran girls and women have to wait to regain access to the only contraceptive capable of preventing pregnancy after sexual abuse?