

**BRIEFING FOR THE HUMAN RIGHTS
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OCTOBER 2023 - 3 NOVEMBER 2023),
WITH RESPECT TO VIOLENCE
AGAINST WOMEN IN: VENEZUELA**

*Submitted by Strategic Advocacy for Human Rights (SAHR),
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Strategic Advocacy
Human Rights

This thematic report¹ considers the legality of violence against women in Venezuela, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Venezuela, the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Venezuela during the Universal Periodic Review in 2022, it is our hope that the Committee will:

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Venezuela, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and**
- **in its concluding observations on Venezuela’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.**

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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1. INTRODUCTION

Strategic Advocacy for Human Rights (“SAHR”)², is a peer-led non-governmental organization by and for human right defenders, working to equip a movement of human rights defenders with knowledge and tools to end gender-based violence through litigation, policy, and law reform.

We submit this written contribution for State parties under review for consideration by the Human Rights Committee of the United Nations (the “Committee”), reporting before the 139th Session (9 October 2023 - 3 November 2023).

This report highlights key legal inequalities that women face in Venezuela (the “State party”) in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices in Venezuela against the UN Model Law on Rape³, published by the former UN Special Rapporteur on Violence against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee, the State, and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

We hope that the Committee will utilize this report as a key resource in the course of developing its list of issues for Venezuela.

2. KEY ISSUES OF CONCERN

2.1 Violence against women

(a) Background

(i) In paragraph 9 of its 2015 concluding observations (the “**2015 Concluding Observations**”), the Committee expressed concern about reports that violence against women remains a serious problem in Venezuela, despite the State party’s efforts to combat such violence.⁴

(ii) The Committee recommended that the State party should step up its efforts to prevent and combat all acts of violence against women and to investigate such acts and to prosecute and appropriately punish those responsible and should also ensure that all victims promptly receive appropriate reparation and protection, including access to a sufficient number of shelters throughout the country.⁵

(b) State party’s response

In response, the State party noted in its Fourth Periodic Report⁶ that it has taken various actions to prevent and combat acts of violence against women, including the following:

² Website: <https://www.sa-hr.org/>. Email: connect@sa-hr.org.

³ United Nations General Assembly, A framework for legislation on rape (model rape law), 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en>.

⁴ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 14 August 2015, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FVEN%2FCO%2F4&Lang=en [accessed 15 June 2023].

⁵ *Ibid.*

⁶ Human Rights Committee, *Fifth periodic report submitted by the Bolivarian Republic of Venezuela under article 40 of the Covenant, due in 2018*, available at:

- (i) amending the Organic Act on Women's Right to a Violence-Free Life⁷ in 2014 to incorporate femicide and inducement to suicide as new criminal offences;
- (ii) having specialized court circuits to address offences involving violence against women in 75 per cent of the territory, with special jurisdiction over offences involving violence against women given to municipal criminal courts in the remaining areas;
- (iii) having a Directorate General for the Protection of the Family and Women within the Public Prosecution Service, which encompasses the Directorate for the Defence of Women and 120 prosecutors' offices nationwide specializing in cases of gender-based violence against women and girls;
- (iv) setting up the National Coordination Office for the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings in 2012, whose role is to protect persons involved in criminal proceedings, including children, women victims of violence and survivors of the offence of trafficking;
- (v) establishing the Comprehensive Assistance Service for Victims of Gender-based Violence of the Directorate for the Defence of Women of the Public Prosecution Service in 2016, which receives and handles complaints and provides counselling to victims;
- (vi) having the National Office for the Defence of Women's Rights, attached to the Ministry of People's Power for Women and Gender Equality, which supports women victims of violence in judicial and extrajudicial proceedings, including by providing them with advice and legal assistance (with support provided to 133,329 women in the period between 2014 to 2020);
- (vii) having the National Institute for Women which provided advice and support on gender-based violence to 79,191 persons (70,888 women and 8,303 men) in the period between 2015 to 2020;
- (viii) having the National Training School for Prosecutors hold in-service training activities covering women's rights and gender equality for lawyers, prosecutors, and other legal professionals, as well as for police and criminal investigation officers (with 95,525 people, 60 per cent of whom were men and 40 per cent women, trained in the period between August 2017 to August 2020); and
- (ix) having the Ministry of People's Power for the Interior, Justice and Peace conduct training for 49,777 State security officers on the issue of violence against women and girls in the period between 2014 to 2020, carry out 21 investigations or studies of violence against women and girls, 22 awareness-raising campaigns on preventing violence against women and girls and supporting victims, and implement community-level training initiatives, with 485,000 people (343,000 women and 142,000 men) participating in the period between 2014 to 2020.

(c) *Analysis of State party's legislation*

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FVEN%2F5&Lang=en [accessed 15 June 2023].

⁷ *Gaceta Oficial de la República Bolivariana de Venezuela* No. 40.548 of 25 November 2014.

Despite the steps taken by the State party above, there remain gaps in the legislation and weaknesses in the implementation of such legislation to prevent and combat acts of violence against women in Venezuela:

- (i) 2014 Amendments to Organic Act on Women’s Right to a Violence-Free Life (the “Act”): As part of the 2014 amendments, Clause 6 of Section 3 of the Act has been amended to remove the reference to the Inter-American Convention on the Prevention and Punishment of Violence against Women (Convention of Belém do Pará), an instrument which establishes state responsibilities to refrain from, prevent and punish violence against women.⁸ Clause 6 of Section 3 now reads:

“The others [rights] enshrined in the Constitution of the Bolivarian Republic of Venezuela and in the relevant international conventions and treaties signed and ratified by the Bolivarian Republic of Venezuela, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).”

As has been observed, while Clause 6 is drafted in a non-exhaustive manner, the removal of the reference of the Inter-American Convention on the Prevention and Punishment of Violence against Women may suggest the State party’s intention to “dissociate itself from the Inter-American system and the rights contained in regional treaties ratified and, therefore, in force and of obligatory compliance by the Venezuelan State”.⁹

Additionally, while the 2014 amendments grant powers (e.g., powers and duties relating to prevention and awareness-raising of gender-based violence issues) to certain bodies, such as communal councils, communes and the Ministry of Popular Power, to combat violence against women, it has been noted that in practice, these bodies “operate with almost no resources at a practical level... The lack of training, technical, and multidisciplinary resources to deal with violence against women, place the victims of violence who come to them at risk”.¹⁰ The lack of resources afforded to such bodies is inconsistent with Article 6 (*The right to life*) of the International Covenant on Civil and Political Rights (the “**Covenant**”), as it evidences a failure by the State party to take special measures of protection towards persons in vulnerable situations.

- (ii) Insufficient Specialized Court Circuits: As noted in the State party’s Fourth Periodic Report, only 75% of the territory in Venezuela have specialised courts to address cases of violence against women. Additionally, while the municipal criminal courts in the remaining 25% of the territory have been granted special jurisdiction over offences involving violence against women, there is concern that such “cases of violence against women are transferred to the municipal courts, which do not have the necessary training to be able to conduct the process with a gender perspective and with respect for the principles established in the legal framework of the special law on the matter.”¹¹ The lack

⁸ United Nations Secretary-General. *In-depth study on all forms of violence against women*, 29 September 2020, available at: <https://daccess-ods.un.org/tmp/2966002.22587585.html> [accessed 16 June 2023].

⁹ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women’s Right to a Life Free of Violence of 2021*, July 2022, page 19, available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

¹⁰ *Ibid* at page 41.

¹¹ *Ibid* at page 11.

of specialised courts to adjudicate on cases of violence against women from an appropriate gender perspective is arguably inconsistent with Article 3 (*The equality of rights between men and women*) of the Covenant, which requires the State party to remove obstacles to the equal enjoyment of rights by men and women.

Further, in the 2018 case of *López Soto v. Venezuela*,¹² the Inter-American Court of Human Rights noted that “the functioning of these jurisdictional organs is increasingly more deficient, with long judicial proceedings and unjustified delays, added to the fact that the number of complaints “exceeds the response capacity of the competent institutions,” including the system of justice.” This undermines Article 6 (*The right to life*) of the Covenant as it evidences a lack of effective remedies for victims of violations of the right to life.

- (iii) Effectiveness of Training: In its 2020 report, the Office of the High Commissioner for Human Rights (“OHCHR”) stated that it had received information “on the existence of undue gender stereotyping in the legal system and gender-based violence, including threats, mistreatment and verbal abuse, by public officials and judicial actors.”¹³ From an empirical perspective, lawyer Dorennis Angulo, director of the non-governmental organisation Éxodo, also observed that the State party usually ignores victims of intrafamilial abuse or gender violence, despite the Organic Act on Women’s Right to a Violence-Free Life.¹⁴

This appears to suggest that, despite the gender-based trainings initiated by the State party across various avenues, the effectiveness of such training may be doubtful.

Indeed, in the 2018 case of *López Soto v. Venezuela*,¹⁵ the Inter-American Court of Human Rights noted that “there remain weaknesses in implementation of the law owing to errors in the design and execution of training programs for state agents, the absence of uniform standards with regard to assistance, investigation and prosecution in this type of case, as well as the absence of regulations to this law that would coordinate public policy on violence against women”.

The Inter-American Court of Human Rights recommended that the State party “adopt and implement compulsory permanent training programs and courses for public officials who, owing to their functions within the system for the administration of justice, are in contact with, work or intervene in cases of violence against women. These training programs and courses must address the

¹² I/A Court H.R., *Case of López Soto et al. v. Venezuela. Case of López Soto et al. v. Venezuela on Merits, Reparations and Costs*, Judgment of September 26, 2018, para 323, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_362_ing.pdf [accessed 19 June 2023].

¹³ OHCHR, *Independence of the justice system and access to justice, including violations of economic and social rights in the Bolivarian Republic of Venezuela, and the human rights situation in the region of the Orinoco Mining Arc*, 29 September 2020, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/242/31/PDF/G2024231.pdf?OpenElement> [accessed 16 June 2023].

¹⁴ Caracas Chronicles, *More Misery, More Femicides in Venezuela*, 30 August 2019 available at: <https://www.caracaschronicles.com/2019/08/30/more-misery-more-femicides-in-venezuela/> [accessed 16 June 2023].

¹⁵ I/A Court H.R., *Case of López Soto et al. v. Venezuela. Case of López Soto et al. v. Venezuela on Merits, Reparations and Costs*, Judgment of September 26, 2018, para 320, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_362_ing.pdf [accessed 19 June 2023].

standards of due diligence in the investigation and prosecution of such cases developed in this judgment and, especially, in cases of sexual violence against women, as well as the issue of measures of protection for the victim during the development of these procedures. In addition, the training programs must be imparted from a perspective of gender and protection of women's rights in order to deconstruct negative or prejudicial gender stereotypes and, thus, ensure that the investigation and prosecution of this type of act is conducted in accordance with the strictest standards of due diligence, the protocols ordered by this Court...and the relevant international human rights instruments.”¹⁶ Likewise, similar training programs should also be conducted for health care professionals working in the public health system who intervene in the diagnosis, treatment or support of women victims of any type of violence, as well as members of the police forces who, in their official capacity, intervene in the procedure for reporting acts of violence against women.¹⁷

The lack of effective training undermines Article 6 (*The right to life*) of the Covenant, as having well-trained public officials and judicial actors is instrumental to upholding and implementing a protective legal framework to address gender-based violence.

- (iv) Lack of Shelters: In general, there is also a lack of information on shelters for victims currently operating in the national territory, their capacity of care, or the number of women who benefited.¹⁸ Based on the 2020 report by the OHCHR, there are only five shelters providing protection to women victims of gender-based violence in Venezuela, and they have been considerably weakened owing to the economic crisis in Venezuela.¹⁹

The insufficiency of shelters also undermines Article 6 (*The right to life*) of the Covenant, as it reduces avenues where victims of gender-based violence may seek protection against their abusers and shows a failure by the State party to take special measures of protection towards persons in vulnerable situations.

- (d) *Issues regarding practical application of State party's laws at community level*

On a practical level, the evidence also suggests that despite the laws enacted by the State party to combat and prevent gender-based violence, incidences of women in Venezuela facing gender-based violence remains on the rise.²⁰ This is inconsistent with Article 6 (*The right to life*) of the Covenant which requires the State party to enact a protective legal framework that includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in deprivation of life, which would include gender-based violence and femicide.

¹⁶ *Ibid*, paras 338 to 340.

¹⁷ *Ibid*, paras 338 to 340.

¹⁸ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women's Right to a Life Free of Violence of 2021*, July 2022, page 12, available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

¹⁹ OHCHR, *Independence of the justice system and access to justice, including violations of economic and social rights in the Bolivarian Republic of Venezuela, and the human rights situation in the region of the Orinoco Mining Arc*, 29 September 2020, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/242/31/PDF/G2024231.pdf?OpenElement> [accessed 16 June 2023].

²⁰ Center for Strategic & International Studies, *From Crisis to Inclusion: The Story of Venezuela's Women*, 4 March 2020, available at: <https://www.csis.org/analysis/crisis-inclusion-story-venezuelas-women> [accessed 16 June 2023].

According to the data provided by the monitoring of femicides carried out by the Digital Observatory of Femicides of the Centre for Justice and Peace, there were 177 femicides in Venezuela during the first 8 months of 2021.²¹ In the first nine months of 2022, it was reported that there was one femicide every 37 hours in Venezuela.²² According to Peace for Venezuela, a campaign that aims to break down the information bias surrounding the Venezuelan crisis within the international community, the State party has ignored calls made by different women's rights organisations to work on a multidisciplinary public policy regarding violence against women and there is no structured national plan against gender-based violence.²³

Further, based on information provided by 792 women between January 2020 and October 2022, the International Rescue Committee, a global humanitarian aid, relief, and development nongovernmental organization, found that there was a reluctance by women in Venezuela to report any violence suffered to the authorities, with 4 in 5 women indicating that they did not want to report the case to the authorities.²⁴

Suggested List of Questions for the State Party

- Please report on the steps that the State party is taking to establish specialised courts to address cases of violence against women in all territories in Venezuela, including the expected timeline for completing this.
- Please elaborate on the type of gender-based training conducted by the State party for lawyers, prosecutors, and other legal professionals, as well as for police and criminal investigation officers, and how the State party will ensure that this training is effective.
- Please describe if the police procedures for asking victims to identify the perpetrator, conducting witness interviews, protection of children and witnesses of rape, and investigation are in compliance with the UN Model Rape Law and whether these procedures take a victim-centered approach.
- Please report generally on the practical application of the Organic Act on Women's Right to a Violence-Free Life (as amended in 2014) at the community level.
- Please report on how many shelters there are in Venezuela for victims of gender-based violence, and whether these are sufficient.
- Please report on any new or contemplated legal and non-legal initiatives by the State party to prevent and combat gender-based violence.

²¹ Peace for Venezuela, *Violence against women: every 28 hours there is a femicide in Venezuela*, 2 September 2021, available at: <https://peaceforvenezuela.org/july-2021-there-was-a-femicide-action-in-venezuela-every-24-hours> [accessed 16 June 2023].

²² International Rescue Committee, *For Venezuelan women, gender-based violence is a widespread risk at home and abroad, warns IRC*, 25 November 2022, available at: <https://www.rescue.org/press-release/venezuelan-women-gender-based-violence-widespread-risk-home-and-abroad-warns-irc> [accessed 16 June 2023].

²³ Peace for Venezuela, *Violence against women: every 28 hours there is a femicide in Venezuela*, 2 September 2021, available at: <https://peaceforvenezuela.org/july-2021-there-was-a-femicide-action-in-venezuela-every-24-hours> [accessed 16 June 2023].

²⁴ International Rescue Committee, *For Venezuelan women, gender-based violence is a widespread risk at home and abroad, warns IRC*, 25 November 2022, available at: <https://www.rescue.org/press-release/venezuelan-women-gender-based-violence-widespread-risk-home-and-abroad-warns-irc> [accessed 16 June 2023].

- Please provide information on the coexistence of the statutory law alongside with the customary legal system and how it complies with the Covenant.

2.2 Voluntary termination of pregnancy

(a) *Background*

- (i) In paragraph 10 of its 2015 Concluding Observations, the Committee expressed concern that voluntary termination of pregnancy, except when it is essential in order to save a woman's life, is still an offence under the Criminal Code in Venezuela, which leads pregnant women to seek clandestine abortions that endanger their lives and health.²⁵
- (ii) The Committee recommended that Venezuela should amend its legislation to establish exceptions to the general prohibition of non-therapeutic abortions and see to it that women do not resort to clandestine abortions under unsatisfactory conditions that may endanger their lives and health. It further recommended that the State party take the necessary steps to ensure the provision of appropriate sexual and reproductive health services.²⁶

(b) *State party's response*

Venezuela's Fourth Periodic Report offers no response to this recommendation.

(c) *Analysis of State party's legislation*

Venezuela's legislative framework is severely restrictive in respect of abortions, which are permitted only in cases where the life of the mother is threatened, with no exceptions (even for situations such as pregnancy from rape). As explained by the American Bar Association, under the Venezuela Penal Code:²⁷

- (i) Article 430 criminalizes the voluntary termination of pregnancy and imposes a punishment of six months to two years imprisonment on women who undergo abortions.²⁸
- (ii) Article 431 provides that helping a woman voluntarily obtain an abortion is a criminal offense that carries a sentence of twelve to thirty months in prison, with three to five years levied if the woman died as a result of the procedure, and four to six years if the woman died and the methods used were "more dangerous than those consented to" by the woman.²⁹

²⁵ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 14 August 2015, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FVEN%2FCO%2F4&Lang=en [accessed 15 June 2023].

²⁶ *Ibid.*

²⁷ American Bar Association, *Venezuela v. Vannesa Rosales*, December 2022, available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/vannesa-rosales-report-english.pdf [accessed 16 June 2023].

²⁸ Penal Code, Article 430: The woman who intentionally aborts, making use of means employed by herself or by a third party, with her consent, will be punished with imprisonment from six months to two years.

²⁹ Penal Code, Article 431: Whoever has caused the abortion of a woman, with her consent, will be punished with imprisonment from twelve to thirty months. If, as a consequence of the abortion and the means used to carry it out, the death of the woman is caused, the penalty will be imprisonment from three to five years; and it

- (iii) Article 433 provides a penalty enhancement for medical professionals who carry out or assist in terminating pregnancies, and an exception that no penalty will be incurred if a doctor does so to save the life of the woman.³⁰

Thus, under the Venezuela Penal Code, a pregnancy can only be legally terminated if the doctor determines that the woman's life is in imminent danger. In such a case, only the doctor can decide to proceed; in other words, essentially, a pregnant woman cannot legally decide to terminate a pregnancy in Venezuela.³¹

It has also been noted that even the narrow exception for saving the life of the mother is difficult to invoke in practice – the process of obtaining authorization to terminate a pregnancy requires the doctor to provide a diagnosis that the pregnancy is life-threatening, and a hospital ethics committee must further subsequently approve the procedure. There is a lack of public information about how to obtain such authorization, and there are reportedly few doctors willing to provide one.³² As such, the American Bar Association concluded in their report that “in reality, abortions are nearly impossible to obtain even where they are protected by law.”³³

The existing legal framework of restricting access to abortion is not aligned with international human rights law and standards. In particular, the failure to provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering (including where the pregnancy is the result of rape or incest or where the pregnancy is not viable), is a breach of Article 6 (the right to life) and the right of non-discrimination under Article 3 (the equality of rights between men and women) of the Covenant. The criminalising of medical service providers who assist women in undergoing abortions under Article 433 of the Venezuela Penal Code is also inconsistent with Article 6 of the Covenant. Likewise, the practical barriers such as limited information about the process for securing exceptional authorization for abortion where a woman's life is threatened and a lack of doctors willing or trained to perform such procedures make any legal abortion, in practice, difficult to obtain, which further undermines Article 6 of the Covenant.³⁴

will be from four to six years, if death occurs through means more dangerous than those consented to by her. Note: Article 432 imposes harsher sentences on anyone who procures an abortion against the woman's will.

³⁰ Penal Code, Article 433: When the culprit of any of the crimes provided for in the preceding articles is a person who exercises the art of healing or any other profession or art regulated in the interest of public health, if said person has indicated, facilitated, or used means with which the abortion in which death has occurred, the legal penalties will be applied with the increase of one sixth. The sentence will always result in the suspension of the exercise of the art or profession of the culprit, for time equal to the sentence imposed. The doctor who causes the abortion as an indispensable means to save the life of the woman will not incur any penalty.

³¹ Venezuela Analysis, *Decriminalizing Abortion, the Case of Vannesa Rosales: A Conversation with Venus Faddoul*, 19 February 2021, available at: <https://venezuelanalysis.com/interviews/15127> [accessed 16 June 2023].

³² American Bar Association, *Venezuela v. Vannesa Rosales*, December 2022, page 8 available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/vannesa-rosales-report-english.pdf [accessed 16 June 2023].

³³ *Ibid.*

³⁴ American Bar Association, *Venezuela v. Vannesa Rosales*, December 2022, page 8 available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/vannesa-rosales-report-english.pdf [accessed 16 June 2023].

Indeed, the criminalisation of abortion has been viewed as a form of gender-based violence which violates the rights to life and health, as well as the right of girls, women, and pregnant people to live a life free of torture and patriarchal violence.³⁵

As a consequence of the restrictive abortion laws and practical barriers to invoke the narrow exception in Venezuela, women are forced to seek abortions outside of the formal healthcare system to terminate unwanted or dangerous pregnancies, which is often unsafe and hazardous.

Venezuela has one of the highest maternal mortality rate in Latin America (125 deaths per 100,000 live births),³⁶ and data gathered by civil society organizations “estimate that 16% of maternal deaths in the country result from unsafe abortions,” with the figure increasing “by up to 60% in rural and indigenous communities.”³⁷ Likewise, Human Rights Watch reported that the latest official statistics available from the Venezuelan Ministry of Health indicate that in 2016, maternal mortality rose 65 percent and infant mortality rose 30 percent in just one year.³⁸

Suggested List of Questions for the State Party

- How many abortions are legally approved each year in Venezuela? Please provide disaggregated data about how many abortion requests are received, the reasons why the abortion was sought, and the basis on which the abortion approval was granted.
- Please provide statistics on the number of persons who have been prosecuted or received penalties for abortion per year, including the breakdown of whether such persons are the pregnant woman or family members or medical professionals, and the average quantum of penalties and/or custodial sentence imposed.
- Please report on whether the State party is taking steps to reform the current restrictive abortion laws in Venezuela.
- Please report on the existing avenues which women in Venezuela may seek assistance from in the event of an unwanted pregnancy (e.g., due to rape).
- Please report on any other steps that the State party has taken to help women prevent unwanted pregnancies, educate women on their abortion rights, and facilitate access to safe abortion.

2.3 Lack of official information and statistics on gender-based violence

³⁵ Venezuela Analysis, *Decriminalizing Abortion, the Case of Vannesa Rosales: A Conversation with Venus Faddoul*, 19 February 2021, available at: <https://venezuelanalysis.com/interviews/15127> [accessed 16 June 2023].

³⁶ Génesis Luigi-Bravo and Roopan Kaur Gillb, *Safe abortion within the Venezuelan complex humanitarian emergency: understanding context as key to identifying the potential for digital self-care tools in expanding access*, 20 May 2022, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9132459/> [accessed 16 June 2023].

³⁷ *Ibid.*

³⁸ Human Rights Watch, *Venezuela’s Humanitarian Emergency*, 4 April 2019, available at: https://www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health#_ftn20 [accessed 16 June 2023].

(a) *Background*

In general, there is a lack of official information and statistics available from the State party in respect of gender-based violence in Venezuela. As noted by Acceso a la Justicia, a human rights non-governmental organization specialized in monitoring the administration of justice and the rule of law in Venezuela, the most recent official data is from 2016.³⁹ The dearth of official information and data has become an obstacle to preventing and combating gender-based violence in Venezuela because the lack of information creates difficulties in arriving at a correct diagnosis of the causes, consequences and dynamics of gender-based violence in Venezuela.⁴⁰

(b) *Gaps in provision of information and statistics*

Although Venezuela's National Institute of Statistics has established a subcommittee in charge of designing procedures to apply a gender perspective to the figures obtained, it has been reported that there is still insufficient information available, and the State party does not use gender-sensitive statistics.⁴¹

Indeed, it has been commented that the Venezuelan government has evaded its obligation to keep a detailed record of the femicides that occur in the country.⁴² Hence, even though the Organic Act on Women's Right to a Violence-Free Life introduces the crime of femicide, the effectiveness of such legislation is undermined because there are no official reports on the number of women that are killed by violence in Venezuela.⁴³ As a result, civil rights groups are reliant on media reports, and femicides that are not reported may be excluded, making the true number of deaths likely higher.⁴⁴

Further, in the 2018 case of *López Soto v. Venezuela*,⁴⁵ the Inter-American Court of Human Rights echoed that "concerns have repeatedly been expressed regarding the scarcity of reliable official statistics that reflect the phenomenon of violence against women in Venezuela precisely... The Court also notes that the Public Prosecution Service prepares annual reports in which it disseminates statistical data on its work throughout national territory. Although the 2015 report provided by the State includes the figure for the femicides that occurred that year, as well as the number of denunciations, charges brought and measures of protection ordered, it did not include essential data such as the number of reports filed for acts of violence, or the number of cases prosecuted that ended with the conviction of the aggressor."

Accordingly, the Inter-American Court of Human Rights ordered the State party to implement a system for the collection of data and figures on cases of violence against

³⁹ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women's Right to a Life Free of Violence of 2021*, July 2022, page 19, available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Peace for Venezuela, *Violence against women: every 28 hours there is a femicide in Venezuela*, 2 September 2021, available at: <https://peaceforvenezuela.org/july-2021-there-was-a-femicide-action-in-venezuela-every-24-hours> [accessed 16 June 2023].

⁴³ InSight Crime, *Violence Against Women Regular Tactic for Venezuela Criminal Groups*, 6 February 2023, available at: <https://insightcrime.org/news/violence-against-women-regular-tactic-venezuela-criminal-groups/> [accessed 16 June 2023].

⁴⁴ *Ibid.*

⁴⁵ I/A Court H.R., *Case of López Soto et al. v. Venezuela. Case of López Soto et al. v. Venezuela on Merits, Reparations and Costs*, Judgment of September 26, 2018, para 323, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_362_ing.pdf [accessed 19 June 2023].

women throughout national territory, which should include a database of precise and reliable statistics, with data disaggregated as to type of violence, place where the acts took place, number of cases reported and how many of these were prosecuted, also indicating the number of indictments, convictions and acquittals.

It has also been suggested that the key reason for the lack of available information relating to gender-violence is the existence of a policy on the part of the Venezuela authorities to hide official figures that recognize the magnitude of the problem of violence against women.⁴⁶ This in turn prevents a recognition of the severity of gender-based violence in Venezuela, and impedes the adoption of measures to prevent and combat such gender-based violence.

Suggested List of Questions for the State Party

- Please provide official statistics on the number of femicide, rape, sexual violence, and domestic abuse cases in Venezuela on an annual basis.
- Please describe the State policy on the publication of official statistics in respect of gender-based violence (including number of femicide, rape, sexual violence, and domestic abuse cases in Venezuela annually).
- Please report on whether there are any established procedures to collect and analysis such statistics to identify the causes, consequences, and dynamics of gender-based violence in Venezuela.

3. LEGISLATIVE PROTECTION AGAINST SEXUAL VIOLENCE

3.1 Background context

(a) Rape and Sexual and Gender Based Violence in Venezuela

Rape is recognized as a human rights violation and a manifestation of gender-based violence that could amount to torture by the internal human rights framework and jurisprudence. Under international humanitarian law and international criminal law, rape can constitute a war crime and a crime against humanity.⁴⁷

Advocates observed that, in Venezuela, there had been a lack of public awareness regarding resources and support available to prevent and combat gender-based violence and a lack of adequate protection for survivors of general-based violence and sheltering facilities with minimum operating conditions.⁴⁸ In 2019, the Office of the Attorney General of the Government of Venezuela received 32,530 complaints of violence against women.⁴⁹ Between 1 June 2019 and 31 May 2020, there were only five shelters

⁴⁶ *Ibid.*

⁴⁷ United Nations Human Rights, *Rape as a grave and systematic human rights violation and gender-based violence against women, 5 August 2020*, available at <https://www.ohchr.org/en/calls-for-input/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence-against> [accessed 23 June 2023].

⁴⁸ Bureau of Democracy, Human Rights, and Labor of U.S. Department of State, *2022 Country Reports on Human Rights Practices: Venezuela, 2022*, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/venezuela/> [accessed 23 June 2023].

⁴⁹ Office of the High Commissioner for Human Rights, *A/HRC/44/54: Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region*, 1 September 2020, available at

providing protection to women victims of gender-based violence in Venezuela, and they had been considerably weakened owing to the economic crisis.⁵⁰

From 1 May 2021 to 30 April 2022, Venezuela took certain steps towards strengthening the rule of law, including aspects pertaining to the police and justice. The restructuring of the Bolivarian National Police (BNP) was initiated in April 2021 and continued throughout April 2022. 13 offices were created to assist victims of gender-based violence.⁵¹ During the same period of time, the specialized jurisdiction on violence against women was reportedly functioning across the country. In 2021, 1,155 individuals were convicted for crimes of sexual violence against women, children, and adolescents, and 204 individuals were indicted on charges of femicide.⁵²

(b) *Legislation relating to rape and sexual and gender-based violence in Venezuela.*

In Venezuela, the specific legislation on violence against women is the Organic Act on Women's Right to a Violence-Free Life, which was entered into force on 19 March 2007.⁵³ The Organic Act on Women's Right to a Violence-Free Life proscribes 19 forms of violence against women, including, inter alia, "psychological violence," "harassment," "threats," "physical violence," "domestic violence," "sexual violence" "property-related and economic violence," and "trading in women, girls and adolescents."⁵⁴ The Organic Act on Women's Right to a Violence-Free Life lists 13 measures for protection and security, which include, among others, removing the perpetrator from the home (if the safety of the victim is at risk), requesting a judge to restrict the perpetrator's visits to the victim, imposing restrictions on how close a perpetrator can get to the victim, requesting temporary arrest of the perpetrator, posting police at the woman's residence "when the time is convenient," and "all other measures necessary for the protection of all rights of women victims of violence and the rights of their family members."⁵⁵

An amendment to the Organic Act on Women's Right to a Violence-Free Life was passed in 2014 ("**2014 Amendment**"), which included the criminal offense of femicide and defined the crime of inducing or assisting suicide.⁵⁶

In addition to listing and classifying various forms of violence against women as crimes, the legal framework created by the Organic Act on Women's Right to a

<https://www.ohchr.org/en/documents/country-reports/ahrc4454-independence-justice-system-and-access-justice-bolivarian> [accessed 23 June 2023].

⁵⁰ *Ibid.*

⁵¹ Office of the High Commissioner for Human Rights, *A/HRC/50/59: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights*, 23 June 2022, available at <https://www.ohchr.org/en/documents/country-reports/ahrc5059-situation-human-rights-bolivarian-republic-venezuela-report> [accessed 23 June 2023].

⁵² *Ibid.*

⁵³ Immigration and Refugee Board of Canada, *Venezuela: Implementation and effectiveness of the 2007 Organic Law on the Right of Women to a Life Free of Violence*, 3 April 2008, VEN102784.E, available at: <https://www.refworld.org/docid/49b92b1cc.html> [accessed 29 June 2023].

⁵⁴ *Ibid.*

⁵⁵ Immigration and Refugee Board of Canada, *Venezuela: Implementation and effectiveness of the 2007 Fundamental Law on the Right of Women to Live Free of Violence (Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia, LODMVLV) (2008-February 2012)*, 13 April 2012, VEN104016.E, available at: <https://www.refworld.org/docid/5072901f2.html> [accessed 29 June 2023].

⁵⁶ Sara Fernández Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women's Right to a Life Free of Violence of 2021*, July 2022, available at <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

Violence-Free Life and the 2014 Amendment also contains regulations on the functioning of the specialised police and jurisdictional agencies to promote access to justice for women affected by violence and provides for a series of mechanisms for the protection of victims and the treatment of their aggressors.⁵⁷

In December 2021, the Venezuela National Assembly passed another amendment to the Organic Act on Women's Right to a Violence-Free Life ("**2021 Amendment**"), which is a step towards ensuring protection of women and accountability for gender-based violence.⁵⁸ The 2021 Amendment incorporated new forms of gender-based violence, such as political and cyber violence, raised criminal penalties, and established a jurisdiction of specialized courts for cases of gender-based violence. A new Venezuela National Commission was also created to coordinate public policies on gender-based violence with the participation of civil society organizations.⁵⁹

3.2 Material deviations in Venezuela's current laws against UN Model Rape Law

The below sets out material deviations in Venezuela's current laws against UN Model Rape Law. Please refer to the Annex for a comparison table of the UN Model Rape Law and the State legislation.

(a) *Definition of rape: use of violence or threats vs. non-consensual acts*

Subject to limited exceptions, violence or threats must be involved for an act to constitute a rape under Venezuelan law.⁶⁰ By contrast, the UN Model Rape Law does not require the element of violence or threats to constitute a rape offence. Instead, it only requires the act at issue to be non-consensual. This difference means that the bar for proving a rape offence is higher under Venezuelan law than under the UN Model Rape Law.

Certain exceptions exist under Venezuelan law where a carnal act would be punished as a rape even without the use of violence or threats.⁶¹ Essentially, under these exceptional circumstances, use of violence or threats would be presumed. Such presumption is functionally equivalent to the provisions under the UN Model Rape Law where a lack of consent is presumed. However, the scope of circumstances where use of violence or threats is presumed under Venezuelan law appears to be narrower than the scope of circumstances where a lack of consent is presumed under the UN Model Rape Law.

⁵⁷ *Ibid.*

⁵⁸ Office of the High Commissioner for Human Rights, *A/HRC/50/59: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights*, 23 June 2022, available at <https://www.ohchr.org/en/documents/country-reports/ahrc5059-situation-human-rights-bolivarian-republic-venezuela-report> [accessed 23 June 2023].

⁵⁹ *Ibid.*

⁶⁰ Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 5 July 2023].

⁶¹ Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 5 July 2023].

For example, under UN Model Rape Law, a person is considered incapable of giving genuine consent if she is below the age of 16. In contrast, under Venezuelan law, a carnal act without violence or threats with a person under the age of 16 would not necessarily be punished as a rape, though it will be if the victim is under the age of 13.⁶² In addition, lack of consent is presumed under UN Model Rape Law where the perpetrator abuses a relationship or position of power or authority over the victim. For this purpose, a position of power or authority includes explicitly that in a school, hospital, religious, correctional or care facility setting, or a professional or occupational setting, or by acting in a position of welfare in relation to the victim such as a sports coach, instructor, minister of religion, babysitter, or child-minder. By contrast, Venezuelan law does not explicitly provide that abusing a position in these settings would render a carnal act without violence or threats punishable as a rape.

(b) *Mitigating Circumstances*

UN Model Rape Law explicitly prohibits the use of the perpetrator's subsequent marriage with the victim or other attempt or wish to reconcile with the victim or compensate for the harm as mitigating circumstances to exempt the perpetrator from or subject him to reduced punishment.

While Venezuelan law has repealed the practice of conciliatory acts with respect to violence against women, it was reported in May 2020 that such practice had been maintained in reality.⁶³

The new section 13 of the Organic Law on Women's Rights, published on 16 December 2021, provides that in cases involving violation of or threat to the right to life and physical integrity, "mediation, conciliation, and other alternative means of conflict resolution" should be prohibited "in gender-based violence against women proceedings." It remains to be seen whether this prohibition would be enforced in practice such that conciliatory acts will cease to apply.

(c) *Victim-centred protection; Investigations; Victim-centred protection measures*

Currently there is no formal rule in Venezuela that regulates a specific protocol for action and investigation of cases of sexual violence.⁶⁴ According to Asociacion Civil Mujeres en Linea, the absence of specific protocols regarding cases of sexual violence have promoted a tendency in courts to request testimonial evidence from third parties and the taking of physical samples in order to confirm the victim's statement, which is often questioned.

Furthermore, Venezuela still struggles with inefficiency or indifference in regards to women and their access to justice due to a lack of diligence and due process when

⁶² Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 5 July 2023].

⁶³ Sara Fernandez Rivera, *Analysis of the Venezuelan reform of the organic law on women's right to a life free of violence of 2021*, July 2022, available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

⁶⁴ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

dealing with cases of sexual violence.⁶⁵ In most cases, alleged perpetrators of crimes of sexual violence are not prosecuted because there is no suitable means to investigate and punish those responsible.⁶⁶ There is also an absence of public policies aimed to educate and train police officers to handle cases of sexual violence.⁶⁷ As such, despite the enactment of legal provisions that criminalizes such acts, execution of these provisions continues to be ineffective.⁶⁸ Many of the complaints do not reach the trial stage, due to inexperience on the part of police officers, prosecutors and even judges. Reports have also documented that, when dealing with crimes of sexual violence, the Venezuela justice system continues to treat offenders with a degree of tolerance.⁶⁹

(d) *Prohibition of mandatory reconciliation or mediation*

Although the rule that allows for mandatory reconciliation or mediation has been repealed, according to Asociacion Civil Mujeres en Linea, in practice, this is still allowed.⁷⁰

While Venezuelan law has repealed the practice of conciliatory acts with respect to violence against women, it is reported that such practice has been maintained in reality.⁷¹

The new section 13 of the Organic Law on Women's Rights, published on 16 December 2021, provides that in cases involving violation or threat to the right to life and physical integrity, "mediation, conciliation, and other alternative means of conflict resolution" should be prohibited "in gender-based violence against women proceedings." It remains to be seen whether this prohibition would be enforced in practice such that conciliatory acts will cease to apply.

⁶⁵ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁶⁶ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁶⁷ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁶⁸ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁶⁹ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁷⁰ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

⁷¹ Sara Fernandez Rivera, *Analysis of the Venezuelan reform of the organic law on women's right to a life free of violence of 2021*, July 2022, available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

Suggested List of Questions for the State Party

- Please report generally whether the State party has any legislation proposal or plan to reform or update its domestic laws to conform to the standards adopted by the UN Model Rape Law, in particular to replace its current force or threat element with the non-consent concept applied by the UN Model Rape Law.
- Please report whether the practice of conciliatory acts has ceased in reality in proceedings with respect to violence against women.
- Please report whether any specific protocol for action and investigation have been enacted with respect to violence against women.
- Please report whether there have been any public policies introduced to increase awareness and training of police officers with respect to violence against women.

ANNEX - COMPARISON TABLE OF UN MODEL RAPE LAW AND STATE LEGISLATION

In addition to the above observations, we annex a table comparing the State’s law on rape and sexual violence with the UN Model Law on Rape.

UN Model Rape Law	Corresponding Legislative Provisions of State ⁷²	Comments
A. Criminalization of rape		
<p>Article 1. Definition of rape</p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p>	<p>Article 374. of the Criminal Code of Venezuela - Who by means of violence or threats has forced any person, of either sex, to a carnal act by vaginal, anal or oral route, or the introduction of an object by one of the first two routes, or by oral route, enter an object that simulates sexual objects, the person responsible will be punished, as charged of rape, with a prison sentence of ten years to fifteen years. If the crime of rape here provided has been committed against a girl, boy or adolescent, the penalty will be fifteen years to twenty years in prison.</p> <p>Article 43 of the Law on the Right of Women to a Life Free of Violence includes a similar definition.</p>	<p>Under Venezuelan law, definition of rape deviates from the UN Model Rape Law in that it removes the “consent” element. Instead, it defines rape primarily as “violence or threat” based. This definition may elevate the bar for proving a relevant crime.</p>
<p>Article 2. On consent</p> <p>17. Consent must be given voluntarily and must be genuine and result from the person’s free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p>	<p>None.</p>	<p>We note that Venezuelan law primarily uses the concept of “violence” or “threats” rather than voluntary consent.</p>

⁷² Unless otherwise indicated, descriptions of corresponding legislative provisions of State included in this column are based on the following secondary materials: Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 5 July 2023].

<p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim’s past sexual behavior; or</p> <p>(d) the victim’s status, occupation, or relationship to the accused.</p>		
<p>Article 3. Age of consent</p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>	<p>Article 374. of the Criminal Code of Venezuela - The same penalty will be applied, even without violence or threats, to the individual who has a carnal act with a person of either sex when the victim is especially vulnerable, due to their age or situation and, in any case when under the age of thirteen.</p> <p>Article 44 of the Law on the Right of Women to a Life Free of Violence include a similar provision.</p>	<p>Carnal act with anyone under the age of 13 is punished as a rape even without violence or threats. This age threshold is lower than the age of consent under UN Model Rape Law.</p>
<p>Article 4. On the incapability of giving genuine consent</p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p>	<p>Article 374. of the Criminal Code of Venezuela - The same penalty will be applied, even without violence or threats, to the individual who has a carnal act with a person of either sex:</p> <ol style="list-style-type: none"> 1. When the victim is especially vulnerable, due to their age or situation and, in any case when under the age of thirteen. 2. Or has not completed sixteen years, provided that for the execution of the crime, the person responsible has prevailed himself of a relationship of superiority or kinship, because is ascendant, descendant or brother or sister, by nature or adoption, or related to the victim. 3. Or that while being detained, convicted, the custody of the culprit has been entrusted. 	<p>See our comments regarding Article 6 below.</p>

	<p>4. Or who is not able to resist due to physical or mental illness; for another reason, independent of the will of the culprit or as a consequence of the use of fraudulent means or narcotic or exciting substances that it has been used.</p> <p>Article 44 of the Law on the Right of Women to a Life Free of Violence include a similar provision.</p>	
<p>Article 5. Use of force, threat, or coercion</p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim’s subjugation or acquiescence; or</p> <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>	<p>None on presumed lack of consent.</p>	<p>We note that under Venezuelan law the use of “violence” or “threats” is a required element of the crime of rape, with limited exceptions, which is a higher bar than the “consent” element under the UN Model Rape Law.</p>
<p>Article 6. On presumed lack of consent</p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed</p>	<p>Article 374. of the Criminal Code of Venezuela - The same penalty will be applied, even without violence or threats, to the individual who has a carnal act with a person of either sex:</p> <ol style="list-style-type: none"> 1. When the victim is especially vulnerable, due to their age or situation and, in any case when under the age of thirteen. 2. Or has not completed sixteen years, provided that for the execution of the crime, the person responsible has prevailed himself of a relationship of superiority or kinship, because is ascendant, descendant or brother or 	<p>Use of “violence” or “threats” is a required element of the crime of rape under Venezuelan law, with limited exceptions where carnal act without violence or threats will be punished as rape. These exceptions are similar to, but their scope is much narrower than, situations presumed as non-consensual under UN Model Rape Law.</p>

<p>below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence, or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home, or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological, or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training, or supervision of the victim.</p>	<p>sister, by nature or adoption, or related to the victim.</p> <p>3. Or that while being detained, convicted, the custody of the culprit has been entrusted.</p> <p>4. Or who is not able to resist due to physical or mental illness; for another reason, independent of the will of the culprit or as a consequence of the use of fraudulent means or narcotic or exciting substances that it has been used.</p> <p>Article 44 of the Law on the Right of Women to a Life Free of Violence includes a similar provision.</p>	
B. Sentencing, aggravating and mitigating circumstances		
<p>Article 7. Sentencing</p> <p>(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive, and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p>	<p>Organic Law Reforming the Organic Law on Women’s Rights to a Life Free of Violence, published on 16 December 2021 (i.e., the 2021 Amendment), increased the sentence for the crime of sexual violence from 10 to 15 years to 12 to 18 years, and the crime of sexual activity with a particularly vulnerable victim from 15 to 20 years to 20 to 25 years.⁷³</p>	

⁷³ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women’s Right to a Life Free of Violence of 2021*, July 2022, available at: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

<p>(d) The death penalty should never be imposed for rape.</p>		
<p>Article 8. Aggravating circumstances</p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a former or current spouse or partner; (ii.) the offence was committed by a member of the family or a person cohabiting with the victim; (iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim; (iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State; <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a victim who for any reason is imprisoned or detained; (ii.) the offence was committed against a child or against an older person; (iii.) the offence was committed against or in the presence of relatives of the victim or any child; (iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political 	<p>The aggravating factors for the crime of rape in Venezuelan law are the following:</p> <ul style="list-style-type: none"> ▪ That the crime of rape has been committed against a girl, boy or adolescent. ▪ The guilty party having committed the crime of the efforts of the ascendants, guardians, legal representatives, or other persons in charge of supervising the minor or of the offices of pimps or habitual corrupters. ▪ That the crime of rape has been committed by the spouse, cohabitant partner, ex-spouse, ex-cohabitant partner, person with whom the victim maintains or maintained an emotional relationship even without coexistence. ▪ That the crime of rape has been committed to the detriment of a girl or adolescent, daughter of the woman with whom the author maintains or maintained an emotional relationship; even without coexistence. ▪ When the rape victim is especially vulnerable, due to their age or situation. ▪ That in the execution of the crime of rape, the perpetrator has availed himself of a relationship of superiority or kinship, because he is ascendant, descendant or sibling, by nature or adoption, or related to the victim. ▪ That the victim being detained, convicted, has been entrusted or confined to the custody of the guilty party. 	<p>The aggravating circumstances prescribed under Venezuelan law are not as extensive as those under the UN Model Rape Law.</p>

<p>violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation, or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p> <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol, or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>	<ul style="list-style-type: none"> ▪ That the victim is not able to resist due to physical or mental illness; for any other reason independent of the will of the guilty party or due to the consequences of the use of fraudulent means or narcotic or exciting substances that have been used. ▪ When the crime has been committed with the simultaneous assistance of two or more people. ▪ When the crime has been consummated in the execution of another crime; like kidnapping or robbery. 	
<p>Article 9. Mitigating circumstances</p>	<p>Section 13 of the Organic Law on Women's Rights to a Life Free of Violence, as amended by</p>	

<p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions, or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator’s family or community, to compensate for the harm.</p> <p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p>	<p>the 2021 Amendment prohibits mediation, conciliation, and other alternative means of conflict resolution in gender-based violence against women proceedings.⁷⁴</p>	
<p>Article 10. Withdrawal of parental rights</p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration</p>	<p>Article 19 of the Law for the Prevention and Eradication of Sexual Abuse against Children and Adolescents establishes the full deprivation of parental authority of persons convicted of any form of sexual abuse of a child or adolescent with respect to all their children.</p> <p>Article 85 of the Organic Law on Women’s Rights to a Life Free of Violence provides for termination of parental rights in cases of femicide, sexual violence, sexual violence with a</p>	

⁷⁴ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women’s Right to a Life Free of Violence of 2021*, July 2022, page 19, available at: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

<p>the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child's right to enjoy any benefit accruing from their paternity.</p>	<p>particularly vulnerable victim and sexual abuse without penetration.⁷⁵</p>	
C. Investigation, prosecution, and trial		
<p>Article 11. Victim-centred approach</p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p>	<p>The Law for the Protection of Victims, Witnesses, and other Persons in Proceedings (Ley de Protección de Víctimas, Testigos y demás Sujetos Procesales) provides for special treatment for vulnerable victims in proceedings and grants protection measures during and after the legal process.⁷⁶</p> <p>There are no specific procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings.⁷⁷</p>	<p>Although some aspects of the UN Model Rape Law are covered under various Venezuelan laws, the protection of victims prescribed under Venezuelan laws are not as extensive or complete as those under the UN Model Rape Law.</p> <p>Although there is no legal mandate that requires certain mandatory proof of rape, the practice of forensic medical-legal expertise, such as a general physical examination of the victim, psychological tests, still has a fundamental impact on the prosecution of the culprit and its respective conviction.</p>

⁷⁵ Sara Fernandez Rivera, *Analysis of the Venezuelan Reform of the Organic Law on Women's Right to a Life Free of Violence of 2021*, July 2022, page 19, available at: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

⁷⁶ Article 6 of the Law for the Protection of Victims, Witnesses and other Persons in Proceedings of 2006, available at: http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_25_sp.pdf [accessed 4 July 2023].

⁷⁷ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

<p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice unless a reasoned decision has been made to the contrary.</p>		
<p>Article 12 – Child victims and witnesses of rape</p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> <p>(v.) A child victim or witness shall have the right to express his or her views, opinions, and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.</p>	<p>The Law for the Protection of Victims, Witnesses, and other Persons in Proceedings (Ley de Protección de Víctimas, Testigos y demás Sujetos Procesales) provides for special treatment for vulnerable victims, which includes children, in proceedings and grants protection measures during and after the legal process.⁷⁸</p> <p>The general rule applies that a child witness can only be heard by a judge once he or she reaches the age of twelve. However, Yet under some circumstances, the Organic Law for the Protection of the Child and Adolescent (Ley Orgánica para la Protección del Niño y del Adolescente, or “OLPCA”) authorizes the child to intervene in procedures and express its opinion, such as in administrative procedures⁷⁹ and conciliation procedures.⁸⁰ Furthermore, child witnesses below the age of fifteen do not have to swear an oath when testifying in criminal proceedings.⁸¹</p> <p>While court hearings in criminal proceedings are usually public in Venezuela, the Code of Criminal Procedure allows for the court to hear evidence behind closed doors in cases of child</p>	<p>Venezuelan laws seem to provide most mechanisms as prescribed by the UN Model Rape Law to protect child victims and witnesses of rape.</p>

⁷⁸ Article 6 of the Law for the Protection of Victims, Witnesses and other Persons in Proceedings of 2006, available at: http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_25_sp.pdf. [accessed 4 July 2023].

<p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <ul style="list-style-type: none"> (i.) At his or her request; (ii.) At the request of his or her parents or guardian; (iii.) At the request of the support person, if one has been designated; (iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child. <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p> <ul style="list-style-type: none"> (i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process; (ii.) Requesting restraining orders from a competent court; (iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions; (iv.) Requesting an order from a competent court to place the accused under house arrest; (v.) Requesting protection for a child victim or witness by the police or other relevant agencies: 	<p>victims where the court decides it would be inconvenient for the trial to take place publicly.⁸²</p> <p>The Organic Law for the Protection of the Child and Adolescent establishes the principle of gratuity, which provides that legal assistance for children and/or their representatives shall be free of charge.⁸³</p> <p>Furthermore, the civil code regulates that every child without any legal representative shall be provided with a guardian and a ‘protutor’, meaning a vigilant individual which is not as legally invested in the child as the main guardian.⁸⁴ The guardian and the protutor may be appointed by the parents, in case the child is subject to guardianship.⁸⁵ In the event that neither of the parents appoints a guardian, the judge may appoint a grandparent as guardian.⁸⁶ If the child has no grandparents, the judge of first instance, upon hearing a guardianship council, shall appoint another person to act as guardian.⁸⁷</p> <p>In the event of abandoned children and if the laws specifically provide for it, the state assumes guardianship.⁸⁸ In the absence of such specific regulations, the child shall be placed in a designated institution by a civil judge and the</p>	
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⁸³ Article 9 of the Organic Law for the Protection of the Child and Adolescent of 1998.

⁸⁴ Article 301 of the Civil Code of 1982.

⁸⁵ Article 305 of the Civil Code of 1982.

⁸⁶ Article 308 of the Civil Code of 1982

⁸⁷ Article 309 of the Civil Code of 1982.

<p>(vi.) Making or requesting from competent authorities' other protective measures that may be deemed appropriate</p>	<p>director of the institution then becomes the child's guardian.⁸⁹</p>	
<p>Article 13. Investigation</p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p>	<p>None found.</p>	<p>Despite the existence of different laws on gender-based violence that complement the Penal Code, there is no formal rule in Venezuela that regulates a specific protocol for action and investigation of cases of sexual violence.⁹⁰</p>

⁹⁰Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

<p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p>		
<p>Article 14. Ex officio prosecution</p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>	<p>Article 379 of Venezuela Penal Code establishes <i>ex officio</i> prosecution in cases of rape.⁹¹</p>	<p>In practice the Presidential Commission for Human Rights has noticed that that <i>ex officio</i> investigations aren't common. Conversely, sometimes, due to free or festival days, or due to bureaucracy issues, the denouncees are not investigated when the authorities receive information about them.⁹²</p>
<p>Article 15. Timely and without undue delay</p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly, and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>	<p>None found.</p>	<p>According to a submission to the UN Special Rapporteur on Violence against Women and Girls, the Venezuelan justice system, in the face of violence against women, continues to act with inefficiency or indifference that constitutes (in itself) a discrimination against women in their access to justice.⁹³</p>

⁹¹ Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 4 July 2023].

⁹² Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 4 July 2023].

⁹³ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

<p>Article 16. Evidentiary requirements, rape shield provisions</p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable, and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>	<p>There is no legal mandate that requires mandatory proof of rape such as medical evidence or the need for witnesses.</p> <p>No rape shield provision is found.</p>	<p>Although there is no legal mandate that requires certain mandatory proof of rape, the practice of forensic medical-legal expertise (such as a general physical examination of the victim, and psychological tests, taken in a timely manner), together with the correct substantiation of the investigation, has a fundamental impact on the prosecution of the culprit and its respective conviction.⁹⁴</p>
<p>Article 17. Statutory Limitations</p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>	<p>Article 379 of the Criminal Code of Venezuela establishes: “... <i>but the complaint is not admissible if a year has elapsed from the day the act was committed or from the day the person who may complain on behalf of the aggrieved became aware of it</i>”.</p>	<p>Although some aspects of the UN Model Rape Law are covered under various Venezuelan laws, Venezuelan laws continue to prescribe statute of limitations for the prosecution of rape. Furthermore, there are no provisions under Venezuela laws that allows a child to circumvent the statute of limitations after he or she reaches adulthood.</p>

⁹⁴Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 4 July 2023].

	<p>No statute of limitations for prosecuting rape in war or in conflicts context is found.⁹⁵</p> <p>No provision is found that allows a child who was a victim of rape to report it after reaching adulthood.⁹⁶</p>	<p>One aspect where Venezuelan laws are consistent with UN Model Rape Law is regarding the absence of statute of limitations for prosecuting rape in the context of war or conflicts.</p>
<p>Article 18. Jurisdiction and Cooperation between States</p> <p>States should:</p> <ul style="list-style-type: none"> i. Establish jurisdiction over offences of rape when the offence is committed: ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or v. by one of their nationals. <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances, or humanitarian crises.</p> <p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating, and prosecuting all rape cases, protecting, and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil</p>	<p>None found.</p>	

⁹⁵Presidential Commissioner for Human Rights and Attention to Victims of the Interim, *Questionnaire on criminalization and prosecution of rape*, 20 May 2020, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWomen%2FSR%2FRapeReport%2FOthers%2Fnational-assembly-of-venezuela.docx&wdOrigin=BROWSELINK> [accessed 4 July 2023].

⁹⁶Asociacion Civil Mujeres en Linea, Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women, *December 2020*, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

<p>and criminal judgments by judicial authorities of other States, including protection orders.</p>		
<p>Article 19. Prohibition of mandatory reconciliation or mediation</p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>	<p>The new section 13 of the Organic Law on Women’s Rights, published on 16 December 2021, provides that in cases involving violation or threat to the right to life and physical integrity, “mediation, conciliation, and other alternative means of conflict resolution” should be prohibited “in gender-based violence against women proceedings.”</p>	<p>While Venezuelan law has repealed the practice of conciliatory acts with respect to violence against women, in reality, such practice had been maintained.⁹⁷ For example, Asociacion Civil Mujeres en Linea reported that it is still common for public officials, upon encountering complaints of gender violence involving conjugal relationships, to attempt to reconcile the victim with the perpetrator and recommend them to seek professional help such as couples therapy.⁹⁸</p>
<p>Article 20. Victim-centred protection measures</p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members, and witnesses from intimidation, retaliation, and secondary victimization, including through physical protection of victims and their family members where necessary;</p>	<p>The Law for the Protection of Victims, Witnesses, and other Persons in Proceedings (Ley de Protección de Víctimas, Testigos y demás Sujetos Procesales) provides for special treatment for vulnerable victims in proceedings and grants protection measures during and after the legal process.⁹⁹</p> <p>However, there are no specific procedural criminal law provisions aimed to avoid re-</p>	<p>Although some aspects of the UN Model Rape Law are covered under various Venezuelan laws, the protection of victims prescribed under Venezuelan laws are not as extensive or complete as those under the UN Model Rape Law. Furthermore, in reality, reports have shown that public officials still continue to try to reconcile the victims of gender violence with their</p>

⁹⁷ Sara Fernandez Rivera, *Analysis of the Venezuelan reform of the organic law on women’s right to a life free of violence of 2021*, July 2022, available at: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

⁹⁸ Sara Fernandez Rivera, *Analysis of the Venezuelan reform of the organic law on women’s right to a life free of violence of 2021*, July 2022, available at: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/07/Analysis-of-the-venezuelan-reform-of-the-organic-law-on-womens-right-to-a-life-free-of-violence-of-2021.pdf> [accessed 5 July 2023].

⁹⁹ Article 6 of the Law for the Protection of Victims, Witnesses and other Persons in Proceedings of 2006, available at: http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_25_sp.pdf [accessed 4 July 2023].

<p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation, and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p>	<p>victimizations during the prosecution and court hearings.¹⁰⁰</p> <p>The general rule applies that a child witness can only be heard by a judge once he or she reaches the age of twelve. However, under some circumstances, the OLPCA” authorizes the child to intervene in procedures and express its opinion, such as in administrative procedures¹⁰¹ and conciliation procedures.¹⁰² Furthermore, child witnesses below the age of fifteen do not have to swear an oath when testifying in criminal proceedings.¹⁰³</p> <p>While court hearings in criminal proceedings are usually public in Venezuela, the Code of Criminal Procedure allows for the court to hear evidence behind closed doors in cases of child victims where the court decides it would be inconvenient for the trial to take place publicly.¹⁰⁴</p> <p>The Organic Law for the Protection of the Child and Adolescent establishes the principle of gratuity, which provides that legal assistance for children and/or their representatives shall be free of cost.¹⁰⁵</p>	<p>perpetrators, especially in cases of conjugal relationships.</p>
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¹⁰⁰ Asociacion Civil Mujeres en Linea, *Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women*, December 2020, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/175-venezuela.pdf> [accessed 4 July 2023].

¹⁰¹ Article 294 and 299 of the Organic Law for the Protection of the Child and Adolescent.

¹⁰² Article 311 of the Organic Law for the Protection of the Child and Adolescent.

¹⁰³ Article 228 of the Organic Code of Criminal Procedure of 2001.

¹⁰⁴ Article 333 of the Organic Code of Criminal Procedure of 2001.

¹⁰⁵ Article 9 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<p>(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</p> <p>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child’s testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</p> <p>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist, or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available, and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p>	<p>Furthermore, the civil code regulates that every child without any legal representative shall be provided with a guardian and a ‘protutor’, meaning a vigilant individual which is not as legally invested in the child as the main guardian.¹⁰⁶ The guardian and the protutor may be appointed by the parents, in case the child is subject to guardianship.¹⁰⁷ In the event that neither of the parents appoints a guardian, the judge may appoint a grandparent as guardian.¹⁰⁸ If the child has no grandparents, the judge of first instance, upon hearing a guardianship council, shall appoint another person to act as guardian.¹⁰⁹</p> <p>In the event of abandoned children and if the laws specifically provide for it, the state assumes guardianship.¹¹⁰ In the absence of such specific regulations, the child shall be placed in a designated institution by a civil judge and the director of the institution then becomes the child’s guardian.¹¹¹</p>	
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¹⁰⁶ Article 301 of the Civil Code of 1982.

¹⁰⁷ Article 305 of the Civil Code of 1982.

¹⁰⁸ Article 308 of the Civil Code of 1982

¹⁰⁹ Article 309 of the Civil Code of 1982.

¹¹⁰ Article 318 of the Civil Code of 1982.

¹¹¹ Articles 319 and 320 of the Civil Code of 1982.