



Mexico

Submission to the UN Universal Periodic Review
44th Session of the UPR Working Group of the Human Rights Council

Date: 17 July 2023

Submitted by: Allied Coalition for Equality and Nonviolence

Introduction and Summary

1. **The Allied Coalition for Equality and Nonviolence (Aliadas por la Igualdad y la No Violencia, or "Allies")** is a coalition of Mexican and international organizations that, since 2020, have carried out advocacy and investigation actions on the compliance of the Mexican State with respect to its obligation to adopt policies aimed at preventing, eradicating and punishing violence against women.

The Allied Coalition for Equality and Nonviolence is made up of:ⁱ

- Colectiva Ciudad y Género
- Equality Now
- Mujeres Ideas Desarrollo Investigación A.C. (Mujeres Impulsando la Igualdad o MIDI)
- RAÍCES, Análisis de Género para el Desarrollo A.C.
- *Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional) (CEJIL) **CEJIL is part of the Allied Coalition but did not take part in the authorship of this submission.*

2. During the previous UPR cycle in 2018, Mexico received 64 recommendations to strengthen and improve measures regarding women's rights protection.ⁱⁱ Of these recommendations, 32 related to preventing and eliminating violence against women,ⁱⁱⁱ 14 concerned discrimination against women and girls in the legal system,^{iv} 5 addressed deep-rooted stereotypes regarding women,^v 2 dealt with sexual violence against children (not including trafficking),^{vi} 1 of them recommended the training of officials, such as law enforcement, medical personnel and jurists to ensure gender-sensitive treatment of women^{vii} and 11 of the recommendations related to aligning laws and criminal justice institutions

with international human rights standards.^{viii}

3. All of these recommendations were supported. And since the last Session Mexico has made advances on the issue of women's rights: From increased access to abortion to increased participation of women in government, these are notable achievements that have made the lives of millions of Mexican women better. But violence against women is, unfortunately, getting worse. According to official data, on average, ten women are killed a day.^{ix} From 2015-2021, the femicide rate shot up 137%^x nationwide and in some states it was higher. Sexual violence is on the increase as well, but victims aren't reporting.^{xi} According to official statistics, in a 2021 Report from the National Institute of Statistics and Geography (INEGI), 49.7^{xii} percent of women 15 and older report experiencing sexual violence, an increase from 41.3 percent in 2016.^{xiii} Sexual abuse against children and adolescents continues to climb, too.^{xiv} The State's budget cuts haven't helped. Even before the COVID pandemic, Mexico began slashing budgets earmarked for women's and children's rights protections, crippling critical programs such as the National Women's Institute (INMUJERES),^{xv} the Program for the Economic Strengthening of Indigenous Peoples and Communities,^{xvi} shuttering domestic violence shelters^{xvii} and reducing funding for childcare centers.^{xviii}
4. This submission outlines some of the continuing challenges in the criminal justice system and the legislation of Mexico in addressing sexual violence crimes. It provides recommendations for improving access to justice for sexual violence victims and survivors through improving legislation and criminal justice procedures. Developing effective criminal law mechanisms for the elimination of sexual violence is a fundamental step in achieving substantive and transformative equality for women and girls in Mexico.

Definitions of crimes of sexual violence and sentencing do not meet international and regional human rights standards

5. Mexico is a federated country, with a federal penal code and 31 state codes, plus the penal code of the Federal District (Mexico City). The federated states have their own penal codes, while the federal penal code governs only federal crimes. Rape (as defined in the country's Federal Penal Code, the Penal Code of the Federal District (Mexico City),^{xix} and the 31 different state penal codes) and other analogous crimes that should by their nature be regarded as rape are defined as requiring force, deception, seduction or the helplessness of the victim, They should instead be based on **the lack of free and voluntary consent of the victim** assessed in the context of surrounding circumstances, as required by international human rights standards, including the Istanbul Convention,^{xx} the Inter-American Court of Human Rights,^{xxi} the jurisprudence of the Committee on the Elimination of Discrimination against Women (CEDAW),^{xxii} the International Criminal Court (ICC),^{xxiii} the Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI),^{xxiv} and the Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights of the Organization of American States.^{xxv} UN Women guidelines also underscore that rape and sexual assault laws should not require evidence of additional force as rape itself is a violent act and that additional violence should be considered an aggravating factor.^{xxvi}
6. Legislation on sexual violence across the above-mentioned 33 penal codes of the federative entities does not uniformly, consistently, or adequately provide the necessary range of

coercive circumstances through which sexual violence crimes are considered to have been committed, as required by the aforementioned international human rights norms.

7. The definitions of and punishments for rape and sexual violence against adolescents run noticeably afoul of international human rights standards, including those outlined above. An example of this is the case of the law of *estupro*,^{xxvii} commonly used to bypass justice by prosecutors who classify the rape of an adolescent as *estupro* instead of rape based on notions of the "promiscuity" of adolescent girls.^{xxviii} *Estupro* persists in 28 federal entities (87.5%) according to the National Human Rights Commission (CNDH).^{xxix} *Estupro* carries a much lower penalty than rape. And according to the CNDH, "Currently, this criminal classification also indicates that, if children result from the commission of this crime, the payment of alimony and child support for the mother and for the offspring is established as a form of reparation for the damage caused by the crime, a provision that can oblige the minor to follow through with an unwanted pregnancy, violating their rights, restricting their personal development and limiting their right to personal determination."^{xxx}
8. The law needs to be updated to reflect current international legal human rights law and standardized throughout the Republic. Mexico has obligations under international law and it cannot allow its federative domestic legal system to circumvent these, which would render many of them meaningless. Laws against sexual violence must guarantee that people who commit rape of adolescents are always held accountable, highlighting the need to repeal the crime of *estupro* since it does not examine the unequal power dynamics between adults and adolescents to determine, for instance, whether there could be free, willing and voluntary consent. *Estupro* also creates a hierarchy of rape, perpetuates harmful myths and stereotypes about adolescent girls^{xxxi} and allows adults who rape adolescents to easily avoid the consequences of their crime.
9. Furthermore, the law should provide that rape of a minor should be an aggravating condition of itself and courts should consider other factors too, such as if the rape occurred in a family setting or other situations where there was exploitation of trust. Examining the lack of consent is especially important, but is not limited to, situations where sexual violence is committed within the context of an unequal power relationship or in a coercive environment where violence is ongoing (including domestic violence), where even if the victim "consents", the consent may not be free and voluntary, as indicated by the CEDAW, Inter-American Court of Human Rights, Istanbul Convention, and other standards outlined above.

Failure to provide mandatory prosecution and dropping of charges based on "reconciliation" or "forgiveness"

10. The lack of mandatory (ex officio) prosecution for sexual violence in the law also denies justice to survivors and is contrary to international human rights standards. As noted by the CEDAW Committee in its General Recommendation 35, states should "ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties."^{xxxii}
11. Victims of rape and other crimes of sexual violence rarely report, and many estimates put the number of crimes of sexual violence in Mexico that go unreported near or above

99%.^{xxxiii} Aside from an individual's personal choice about whether to report or not, several systemic obstacles could and do prevent victims from reporting. Several states stipulate that rape or proceedings related to sexual violence shall proceed only upon the initiation of the victim, or in the case of a minor, their legal guardians or legal representatives.^{xxxiv} Such legal provisions deny justice to survivors because the survivor, rather than the state, is required to bear the burden of the criminal proceeding, including when it comes to the collection of evidence required to prove the circumstances of the crime. Significantly, such provisions provide law enforcement authorities with ample opportunity to discourage women and girls from filing such claims from the outset, put pressure on victims to withdraw the complaint if they have managed to file it, and postpone the initiation of an investigation, anticipating (based on experience) that eventually, a woman, adolescent or child victim is likely to withdraw their claim. Moreover, because of cultural, social and economic factors, including lack of trust in police and other authorities,^{xxxv} threats from organized crime, deeply entrenched *machismo* culture, and the prohibitive financial burdens of seeking legal assistance (especially for women and girls who are often already engaged as unpaid caretakers for their children and other family members), victims face significant indirect, informal pressure to either withdraw their complaint or to refrain from filing a complaint at all. For these same reasons, pressure is also exerted expressly by victims' close relatives, influential acquaintances, representatives of authorized state bodies working to protect the rights of women and children, and doctors and lawyers.

12. Several federal entities provide for the "forgiveness" of sexual violence crimes where criminal proceedings can be terminated upon request of the victim or their legal guardian.^{xxxvi} "Forgiveness" by the victim is only available in matters of the recently reformed criminal justice system's accusatory criminal process (inspired by common law adversarial processes where victims and defendants have the right to present evidence and state their case in court) and is provided as an alternative mechanism for dispute resolution. In practice, the "forgiveness" by the victim in cases of rape or sexual violence matters is commonly not spontaneous, voluntary and willful, rather it is likely due to the same types of pressure, threat and/or coercion described in the paragraph above. The act of granting forgiveness through a judge fails to protect survivors from such pressures, rather reinforcing the use of coercion and continuing harmful cycles of impunity.

Discriminatory corroboration rules to prove sexual violence

13. Despite the Mexican Supreme Court's ruling in "Amparo directo en revisión 3186/2016"^{xxxvii} on the issue of assessing evidence from a gender-based perspective in crimes of sexual violence, the justice system applies overly burdensome and discriminatory evidence requirements in addition to corroboration rules for bringing perpetrators to justice for sexual violence. Such practice leaves many forms of sexual violence unpunished and runs contrary to the CEDAW, the Inter-American Court of Human Rights,^{xxxviii} Istanbul Convention and international human rights standards, including the jurisprudence of the European Court of Human Rights which underlined that any "rigid" approach to the prosecution of sexual offenses "risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy."^{xxxix}
14. In the overwhelming majority of cases sexual violence crimes are prosecuted and perpetrators are convicted only when physical injuries are found on the body of the victim, as well as biological materials associated with a sexual act. In practice, such requirements leave the vast number of sexual violence acts unpunished because the authorities are solely

investigating sexual violence crimes where the perpetrator used physical force and the victim physically resisted (and reported immediately). This is contrary to international human rights standards, but even where the definition of rape is based on the use of force, proper investigations could identify where force has been used even where there is no physical evidence of it. These rarely happen.

Recommendations:

Amend the definition of rape and ensure its mandatory prosecution by the State:

- Amend and standardize the definitions of rape and other acts of sexual violence across the respective penal codes in order for these definitions to be based on **free, genuine and voluntary** consent, in the context of the surrounding circumstances and include a wide range of coercive circumstances where consent cannot be considered to have been given, in accordance with international human rights law;
- Modify and standardize all the penal codes of the federal entities with the Federal Penal Code regarding repeal of the period of limitations for the crime of rape, including the rape of minors and ensure that these crimes can be sanctioned without the risk of criminal responsibility being extinguished by the passage of time and that the aggressors are investigated, prosecuted and, where appropriate, convicted;
- Ensure that force is not a required element of the crime of rape but rather an aggravating factor;
- Eliminate the crime of *estupro* once the definition of rape has been amended to one based on free and voluntary consent in line with international human rights standards;
- Take all necessary steps to ensure that all crimes of sexual violence are punished based on their gravity and remove the possibility of solely imposing fines, conditional sentences, community service, or other possibilities to escape responsibility under the law;
- Amend all criminal codes to ensure that forgiveness is not a viable legal pathway for those accused of sexual violence;
- Amend criminal codes to ensure ex officio (public) prosecution of all sexual violence crimes and that proceedings may continue even if the victim or their legal guardian has withdrawn their accusation or statement; and abolish the requirement that a victim or their legal guardian has to initiate criminal proceedings (private-public prosecution).

Ensure criminal justice response from a gender-based perspective and free from stereotypes:

- Make sure that all reports of rape or other acts of sexual violence are taken seriously and investigated promptly, thoroughly and impartially, from a gendered and child-based perspective and free from stereotypes;
- Ensure that all evidence is properly collected and that cases are decided for prosecution based on their merits rather than any prejudicial stereotypical views of the victim or any other reason which would effectively deny access to justice to victims;

- Require that all investigations have specific, written policies and procedures to recognize and address biases, assumptions and stereotypes about victims of sexual violence, as well as address gender inequality and structural discrimination. This is in order to avoid basing decisions and making rapid and case-altering judgments on the credibility of a victim's account and the "types" of people who can be victims or how victims "should" respond or behave.

Remove discriminatory corroboration practice:

- Repeal burdensome evidence and corroboration requirements and ensure that there are no rigid corroboration requirements for the testimony of a victim to be considered credible, reliable and sufficient as a basis for conviction, as the Mexican Supreme Court has established.^{x1}

Ensure data collection and training:

- Conduct regular trainings for law enforcement, medical and forensic personnel and judiciary on the specific nature of sexual violence crimes and interaction with victims, with a specific focus on eliminating gendered stereotypes and avoiding secondary victimization;
- Conduct regular trainings based on written policies and procedures to deal with the known gender-based violence biases, stereotypes and assumptions policies and procedures, with particular attention to how law enforcement, judges and prosecutors respond to victims based on biases about particular, vulnerable subgroups of victims, such as Afro-Mexican victims, victims who are migrants, indigenous victims who have limited Spanish proficiency, victims who are LGBTQI+, victims with criminal histories, or victims with disabilities;
- Collect, analyze and publish administrative data on sexual violence crimes, disaggregated based on sex, age, ethnic origin, nationality status, immigration status, disability, sexual orientation and gender identity, involvement in prostitution and other indicators of vulnerability;
- Collect, analyze and publish disaggregated data on the attrition rate of sexual violence crimes, which would involve researching the reasons why reported cases of sexual violence do not reach the stage of conviction;
- Collect, analyze and publish disaggregated data on the relationship between the perpetrator(s) and the victim and whether the sexual violence crime was linked to other forms of violence against women and girls, including but not limited to domestic or intimate partner violence, femicide, disappearance, forced pregnancy and the like;
- Collect, analyze and publish disaggregated data on the number of sexual violence cases reported, the time taken to conclude a case after its reported, the number of cases prosecuted, the number of convictions and the conviction rate, and the penalties given on conviction.

Addressing sexual violence against children, adolescents and women:

- Significantly increase and free up the government budget earmarked programs for sexual and gender-based violence, taking special care to allocate said funding and resources to vulnerable groups such as indigenous, Afro-Mexican, LGBTQ+ communities, women in situations of violence, children, adolescents, and women, children and adolescents with disabilities, among others;
- Maintain consistent statistics of underage and teenage pregnancies;
- Train general practitioners, family medicine doctors and pediatricians, as well as nurses and gynecologists in the identification of violence against girls and ensure appropriate services including counseling, and legal support, among others, are provided to victims;
- Conduct systematic training sessions with gynecology, family medicine, nursing, pediatrics, family and general medicine personnel on responding to cases of sexual and gender-based violence and eliminating discriminatory attitudes.

Guarantee free access to abortion, at a minimum, in cases of rape in states where there is still no legal access to abortion:

- Guarantee access to quality and expedited abortion services to women, girls and adolescents who became pregnant as a result of rape, in accordance with the provisions of NOM046-SSA2-2005 Family, sexual and violence against women. Criteria for prevention and care;^{xli}
- Guarantee that the state provides free emergency anti-contraception medication to victims of rape, as well as post-exposure prophylaxis for the prevention of STIs and HIV for rape victims.

ⁱ Please see addresses and websites for allied organizations in Annex I.

ⁱⁱ Liechtenstein (Rec. 132.210), New Zealand (Rec. 132.27), Qatar (Rec. 132.217), New Zealand (Rec. 132.193), Singapore (Rec. 132.196), Italy (Rec. 132.208), Bhutan (Rec. 132.18), Iceland (Rec. 132.206), Belgium (Rec. 132.66), Bahrain (Rec. 132.64), Djibouti (Rec. 132.142), Rwanda (Rec. 132.151), Philippines (Rec. 132.149), Lithuania (Rec. 132.211), Serbia (Rec. 132.195), Guyana (Rec. 132.192), Lithuania (Rec. 132.76), Slovenia (Rec. 132.178), Canada (Rec. 132.177), France (Rec. 132.179), Albania (Rec. 132.181), Japan (Rec. 132.209), Sri Lanka (Rec. 132.198), Tunisia (Rec. 132.199), Viet Nam (Rec. 132.191), Rwanda (Rec. 132.194), Slovenia (Rec. 132.197), Australia (Rec. 132.37), Spain (Rec. 132.221), Portugal (Rec. 132.216), Austria (Rec. 132.200), Canada (Rec. 132.67), Estonia (Rec. 132.204), France (Rec. 132.205), Nepal (Rec. 132.213), Norway (Rec. 132.214), Armenia (Rec. 132.218), Syrian Arab Republic (Rec. 132.222), Cuba (Rec. 132.202), Lithuania (Rec. 132.211), Cuba (Rec. 132.201), Republic of Moldova (Rec. 132.220), Liechtenstein (Rec. 132.45), Philippines (Rec. 132.215), Republic of Korea (Rec. 132.219), Malaysia (Rec. 132.212), Albania (Rec. 132.207), Ecuador (Rec. 132.203), China (Rec. 132.248), Nepal (Rec. 132.21), Holy See (Rec. 132.260), Sweden (Rec. 132.135), Iraq (Rec. 132.261), Sweden (Rec. 132.134), Argentina (Rec. 132.78), Iceland (Rec. 132.36), Lithuania (Rec. 132.124), Iraq (Rec. 132.160), Syrian Arab Republic (Rec. 132.162), India (Rec. 132.180), Azerbaijan (Rec. 132.175), Cameroon (Rec. 132.176), Bulgaria (Rec. 132.223), Denmark (Rec. 132.178), Georgia (Rec. 132.178), Liechtenstein (Rec. 132.45). The recommendations were supported or accepted by Mexico.

ⁱⁱⁱ Japan (Rec. 132.209), Sri Lanka (Rec. 132.198), Australia (Rec. 132.37), Spain (Rec. 132.221), Portugal (Rec. 132.216), Austria (Rec. 132.200), Canada (Rec. 132.67), Estonia (Rec. 132.204), France (Rec. 132.205), Nepal

(Rec. 132.213), Norway (Rec. 132.214), Armenia (Rec. 132.218), Syrian Arab Republic (Rec. 132.222), Cuba (Rec. 132.202), Lithuania (Rec. 132.211), Cuba (Rec. 132.201), Republic of Moldova (Rec. 132.220), Lichtenstein (Rec. 132.45), Philippines (Rec. 132.215), Republic of Korea (Rec. 132.219), Malaysia (Rec. 132.212), Albania (Rec. 132.207), Italy (Rec. 132.208), Ecuador (Rec. 132.203), Bahrain (Rec. 132.64), Belgium (Rec. 132.66), Lithuania (Rec. 132.76), Liechtenstein (Rec. 132.210), Guyana (Rec. 132.192), Rwanda (Rec. 132.194), Serbia (Rec. 132.195), Liechtenstein (Rec. 132.45). The recommendations were supported or accepted by Mexico.

^{iv} Bhutan (Rec. 132.18), Qatar (Rec. 132.217), Republic of Moldova (Rec. 132.230), Iceland (Rec. 132.206), Islamic Republic of Iran (Rec. 132.242), Colombia (Rec. 132.32), Bahrain (Rec. 132.64), Bulgaria (Rec. 132.223)

New Zealand (Rec. 132.27), Slovenia (Rec. 132.197), New Zealand (Rec. 132.193), Japan (Rec. 132.209), Cuba (Rec. 132.201), Rwanda (Rec. 132.194). The recommendations were supported or accepted by Mexico.

^v Guyana (Rec. 132.192), Rwanda (Rec. 132.194), Slovenia (Rec. 132.197), New Zealand (Rec. 132.193), Slovenia (Rec. 132.197). The recommendations were supported or accepted by Mexico.

^{vi} Syrian Arab Republic (Rec. 132.235), Trinidad and Tobago (Rec. 132.236). The recommendations were supported or accepted by Mexico.

^{vii} New Zealand (Rec. 132.27). The recommendations were supported or accepted by Mexico.

^{viii} Netherlands (Rec. 132.108), Spain (Rec. 32.92), France (Rec. 132.97), Bahrain (Rec. 132.64), Ukraine (Rec. 132.94), Brazil (Rec.132.41), New Zealand (Rec. 132.27), Germany (Rec. 132.49), New Zealand (Rec. 132.100), Peru (Rec. 132.104), Norway (Rec. 132.102). The recommendations were supported or accepted by Mexico.

^{ix} INEGI, "CARACTERÍSTICAS DE LAS DEFUNCIONES REGISTRADAS EN MÉXICO DURANTE 2020, PRELIMINAR", 3.2 Defunciones clasificadas como presunto homicidio. https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/EstSociodemo/DefuncionesRegistradas2020_Pre_07.pdf

^x Mendoza, Andrés. "Pese a alerta, feminicidios aumentan 137%; en algunos estados el alza es de 2,100%", Excelsior. <https://www.excelsior.com.mx/nacional/pese-a-alerta-feminicidios-aumentan-137-en-algunos-estados-el-alza-es-de-2100/1511449>.

^{xi} Civil society organization Mexico Evalua puts the figure of non-reported sexual violence incidents at 99.7%. Mexico Evalua, "Crece la cifra negra de la violencia sexual: en 2021, el 99.7% de los casos no se denunciaron", 8 March 2022. <https://www.mexicoevalua.org/crece-la-cifra-negra-de-la-violencia-sexual-en-2021-el-99-7-de-los-casos-no-se-denunciaron/>.

^{xii} INEGI, "ENCUESTA NACIONAL SOBRE LA DINÁMICA DE LAS RELACIONES EN LOS HOGARES (ENDIREH) 2021," https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/endireh/Endireh2021_Nal.pdf.

^{xiii} INEGI, "ENCUESTA NACIONAL SOBRE LA DINÁMICA DE LAS RELACIONES EN LOS HOGARES (ENDIREH) 2016", https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016_presentacion_ejecutiva.pdf.

^{xiv} Alumbra, "PANORAMA ESTADÍSTICO DE LA VIOLENCIA SEXUAL CONTRA NIÑAS, NIÑOS Y ADOLESCENTES EN MÉXICO 2023", <https://alumbramx.org/wp-content/uploads/2023/05/Panorama-estadistico-VSI-Mexico.pdf>.

^{xv} OHCHR, "México: Posibles recortes presupuestarios podrían afectar servicios esenciales para las mujeres" 16 Oct. 2020,

<https://www.ohchr.org/es/2020/10/mexico-un-experts-say-proposed-budget-cuts-could-hurt-vital-services-women>; Secretaría de Hacienda y Crédito Público. Cuenta Pública 2020. Anexo Programas Transversales. Disponible en: https://www.cuentapublica.hacienda.gob.mx/work/models/CP/2020/tomo/III/E_PT.pdf.

^{xvi} Secretaría de Hacienda y Crédito Público. Cuenta Pública 2020. Anexo Programas Transversales.

^{xvii} Expansion, "Recorte a albergues para mujeres violentadas abre nuevo frente al gobierno" 22 Feb. 2019, <https://politica.expansion.mx/mexico/2019/02/22/recorte-a-albergues-para-mujeres-violentadas-abre-nuevo-frente-al-gobierno>.

^{xviii} Farfán Méndez, Cecilia. "Why Gender Violence in Mexico Persists—And How to Stop It", Americas Quarterly. <https://americasquarterly.org/article/why-gender-violence-in-mexico-persists-and-how-to-stop-it/>.

^{xix} Federal Penal Code Art. 265 – Whoever commits the crime of rape by means of physical or moral violence has intercourse with a person of any sex, will be imprisoned for eight to twenty years.

^{xx} Article 36 of the Istanbul Convention.

^{xxi} Case of Angulo Losada Vs. Bolivia. Excepciones Preliminares, Fondo y Reparaciones. Sentencia de 18 de noviembre de 2022. Serie C No. 475. paras. 144-152, paras 154-155; Case of Fernandez Ortega et al v Mexico, Judgment of May 15, 2011, Interpretation of judgment on preliminary objection, merits, reparations and costs.

^{xxii} CEDAW Committee, General recommendation No. 35. CEDAW Committee, Vertido v Philippines, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); R.P.B. v Philippines, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

^{xxiii} ICC Rules of Procedure and Evidence; Articles 7(2) and 8(2) of the ICC Elements of the Offences; Article 7 (1) (g)-1, Elements of Crimes, International Criminal Court, 2011; Katanga ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, § 440; Bemba ICC-01/05-01/08-3343, 21 March 2016, §§ 105-106

^{xxiv} General Recommendation of the Committee of Experts of the MESECVI (No. 3): The Concept of Consent in cases of Gender-Based Sexual Violence Against Women;

^{xxv} OEA/Ser.L/11.710 MESECVI/CEVI/DEC.4/14 (19 Sept. 2014).

^{xxvi} UN Women, 'Handbook for legislation on violence against women', 2012, p. 24

^{xxvii} "Estupro is considered a sexual crime in which a person of legal age obtains "consent" for copulation with a minor through "seduction" or "deception". It is not legitimized by the fact that the offended party has given her "consent" for sexual intercourse to take place, given that in this crime the will or consent of the affected person is flawed precisely as a consequence of one of the material elements thereof, such as seduction or deceit, [as well as power dynamics]." National Commission on Human Rights (CNDH), "Legislative Monitoring Report, The Legislative Panorama regarding the regulation of rape," June 23, 2020, <https://igualdaddegenero.cndh.org.mx/Content/doc/Observancia/Estupro.pdf>.

^{xxviii} "It is also extremely worrying that if the accused commits the crime of rape, it could be reclassified as estupro." CNDH. Ibid.

^{xxix} Guerrero, Jalisco, Oaxaca and Zacatecas.6 (12.5 %). CNDH. Ibid.

^{xxx} CNDH. Ibid.

^{xxxi} "Estupro has been one of the crimes most heavily laden with gender-based stereotypes." CNDH. Ibid.

^{xxxii} CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

^{xxxiii} Mexico Evalua, Press Release "Crece la cifra negra de la violencia sexual: en 2021, el 99.7% de los casos no se denunciaron" (March 8, 2022). <https://www.mexicoevalua.org/crece-la-cifra-negra-de-la-violencia-sexual-en-2021-el-99-7-de-los-casos-no-se-denunciaron/#:~:text=Los%20datos%20del%20SESNP%20del,anterior%20para%20el%20mismo%20periodo.>

^{xxxiv} Federal Penal Code Art. 259 Bis., Baja California Penal Code Art. 176, Chiapas Penal Code Art. 273, Coahuila Penal Code Art. 235, Colima Penal Code Art. 148 and Art. 151, Guerrero Penal Code Art. 145, Nayarit Penal Code Art. 290 and 293, Oaxaca Penal Code 241 Ter., Puebla Penal Code Art. 267, Sonora Penal Code 212 Bis. Tamaulipas Penal Code Art. 272, Yucatan Penal Code Art. 308 Bis., Zacatecas Penal Code Art. 232 Bis.

^{xxxv} INEGI "Estadísticas judiciales en el marco del nuevo sistema de justicia penal en México," Pp. 116-120, <https://www.cdeunodc.inegi.org.mx/unodc/articulos/doc/20.pdf>.

^{xxxvi} Colima Penal Code Art. 151, Guerrero Penal Code Art. 145, Nayarit Penal Code Art. 293.

^{xxxvii} Amparo directo en revisión 3186/2016. Primera Sala de la Suprema Corte de Justicia de la Nación, Ponente: José Ramón Díaz. "REGLAS PARA VALORAR TESTIMONIOS DE MUJERES VÍCTIMAS DE DELITOS DE VIOLENCIA SEXUAL CON UNA PERSPECTIVA DE GÉNERO (HOSTIGAMIENTO SEXUAL)".

^{xxxviii} Caso Fernández Ortega y otros contra México, Sentencia de 15 de mayo de 2011, Excepción preliminar, fondo, reparaciones y costas. Serie C No. 215. párr. 100; Rosendo Cantú y otra Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2010. Serie C No. 216, párr. 95 Caso Espinoza Gonzáles Vs. Perú. (Excepciones Preliminares, Fondo, Reparaciones y Costas). 20 de Noviembre de 2014. Serie C párr. 150; Caso del Penal Miguel Castro Castro Vs. Perú. Fondo, Reparaciones y Costas, Sentencia de 25 de noviembre de 2006, Serie C No. 160, párr. 313. Et al.

^{xxxix} M.C. v. Bulgaria, para. 166; See also Explanatory Report of the Istanbul Convention, para. 191. See also: Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia, Equality Now, 2019, p.11

^{xl} Amparo directo en revisión 3186/2016. Primera Sala de la Suprema Corte de Justicia de la Nación, Ponente: José Ramón Díaz. “REGLAS PARA VALORAR TESTIMONIOS DE MUJERES VÍCTIMAS DE DELITOS DE VIOLENCIA SEXUAL CON UNA PERSPECTIVA DE GÉNERO (HOSTIGAMIENTO SEXUAL; y Amparo directo en revisión 1412/2017, Primera Sala de la Suprema Corte de Justicia de la Nación, Ponente: Arturo Zaldívar Lelo de Larrea Asunto, 15 de noviembre de 2017. “EL DEBER DE JUZGAR CON PERSPECTIVA DE GÉNERO EXIGE QUE EN LOS CASOS DE VIOLENCIA SEXUAL, SE DE UN VALOR PREPONDERANTE A LA DECLARACIÓN DE LA VÍCTIMA”.

^{xlii} NOM046-SSA2-2005. Sec. 6.4.2.7. "In case of pregnancy due to rape, and prior authorization from the competent authority, under the terms of the applicable legislation, the public institutions that provide medical care services must provide medical abortion services at the request of the victim concerned, if necessary. minor, at the request of his father and/or his mother, or in their absence, of his guardian or in accordance with the applicable legal provisions.

In all cases, the victim must be provided, prior to the medical intervention, complete information on the possible risks and consequences of abortion, in order to guarantee that the victim's decision is an informed decision in accordance with the applicable provisions.

The conscientious objection of the medical and nursing staff in charge of the procedure must be respected.

Public institutions that provide federal health care services must be subject to the applicable federal provisions."