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**Information for the preparation of the List of Issues in the framework of the 10th review period of Mexico before the Committee for the Elimination of Discrimination against Women (CEDAW)**

**Mexico, 11 of September 2023**

**Introduction and Summary**

1. We respectfully present this report for your consideration during the 10th periodic review of the Republic of Mexico by the Committee for the Elimination of Discrimination against Women (“the Committee”) during its 88th Pre-Session Working Group (30 October - 3 November 2023). We request that this report be used to complement the process of review of the tenth periodic report of the State of Mexico to the Committee.
2. The legal provisions and practices detailed in our report highlight the failure by the State of its duty to develop and comply with its obligations under the Convention, namely to adopt legislative measures and other measures, such as policies, to address and combat all forms of discrimination against women; development of programs aimed at preventing and addressing violence against women, the arbitrary allocation of adequate resources and funding to institutions that address issues of equality, prevention and combating of violence against women [Art. 2 (b), (c), (d) and (f), Art. 3 and Art. 14(1) of the CEDAW Convention].
3. We also detail in this report the non-compliance of the State in relation to equal protection under the law to survivors of sexual violence (Article 2 (c) of CEDAW); the inability of law enforcement to protect women from sexual violence (Article 2 (c) and (e)); that the decisions and faults of the authorities and their agents constitute demonstrable direct and indirect discrimination against women, children and adolescents, (article 2(d)); as well as the lack of recognition and identification of the gender dimension of sexual violence during the prosecution of the accused and in the punishment of this crime (article 2 (e)). We argue that the root causes of the failures of

the State are due to the failure to comply with the obligation to transform gender hierarchies and deeply rooted stereotyped attitudes towards women, which violate articles 2 (f) and 5 (a) of the Convention since the State has the obligation to combat violence against women, girls and adolescents and provide survivors with access to justice, as indicated in General Recommendations 19, 33 and 35 of the CEDAW Committee. The foregoing, so that the Committee can have updated and detailed information for the preparation of the list of prior issues.

### **Information about the authors of the report**

4. **Allies for Equality and Nonviolence "Allies"** is a coalition of Mexican and international organizations that, since 2020, have carried out advocacy and research 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 Allies for Equality and Nonviolence is made up of:
5. **Collective City and Gender A.C.**, is a feminist organization that works to influence the planning and design of Mexico's cities, from an intersectional and gender perspective.
6. **Equality Now** is an international human rights NGO with ECOSOC status with a mission to bring about legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organization with partners and supporters in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of work for Equality Now.
7. **RAÍCES, Gender Analysis for Development A.C.**, is a feminist organization specialized in the analysis and proposal of policies and actions from an intersectional, rights and gender perspective.
8. **Women Ideas Development Research S.C. (Women Driving Equality or MIDI)** is a feminist organization that promotes leadership in the political-social field through the training and strengthening of capacities, qualities and aptitudes.
9. **Center for Justice and International Law (CEJIL)** is an organization focused on the strategic alliance through the use of the different international mechanisms on human rights, made up of human rights defenders who work to reduce inequality, discrimination and violence in the Latin American region.

## Context Summary

10. Mexico continues to rank as one of the most violent countries in Latin America.<sup>1</sup> Homicides, since 1990, have risen significantly according to the National Institute of Statistics and Geography (INEGI).<sup>2</sup> Added to this damage is the number of missing persons, accounting for more than 111,000 missing persons according to official data.<sup>3</sup>
11. In matters of gender violence, the figures continue to be high. The situation continues to worsen for women and girls, as well as for groups in highly vulnerable situations, such as the indigenous and Afro-Mexican population. According to official data, during the year 2022, on average ten women are murdered per day.<sup>4</sup> From 2015 to 2021 the femicide rate shot up to 137%<sup>5</sup> nationwide and in some states, was even higher.<sup>6</sup> Sexual violence, including rape, sexual abuse and rape of children and adolescents, is also on the rise. According to México Evalúa, almost 5 million women were victims of sexual crimes.<sup>7</sup> However, 99.7% of the cases of sexual violence suffered by women, girls and adolescents, from July to December 2021 were not reported.<sup>8</sup> According to official statistics, in a 2021 National Institute of Statistics and Geography (INEGI) report, 49.7%<sup>9</sup> of women aged 15 and over reported experiencing sexual violence, a significant increase from 41.3% in 2016.<sup>10</sup> Sexual abuse against children and adolescents has also been on the rise. It stands out that during the pandemic in 2021, 83% of reported crimes of sexual abuse were committed against girls and adolescents.<sup>11</sup>

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<sup>1</sup> CNN. These are the most violent cities in the world, according to a ranking. 9 of the first 10 are in Mexico. February 22, 2023. Available at: <https://cnnespanol.cnn.com/video/violencia-ciudades-mas-colima-mundo-lista-perspectivas-mexico/>

<sup>2</sup> INEGI. Press release no. 418/23 of July 25, 2023. Deaths by Homicide January to December 2022 (preliminary). Available in: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2023/DH/DH2022.pdf>.

<sup>3</sup> National Search Commission. What is the National Search Commission? Available in: <https://comisionacionaldebusqueda.gob.mx/>.

<sup>4</sup> National Institute of Geography and Statistics (INEGI). Statistics of registered deaths. 2022. Deaths classified as presumed homicide. Available in: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2023/EDR/EDR2022.pdf>

<sup>5</sup> Excelsior. Despite the alert, femicides increase 137%; in some states the increase is 2,100%. April 24, 2022. Available at: <https://www.excelsior.com.mx/nacional/pese-a-alerta-femicidios-aumentan-137-en-algunos-estados-el-alza-es-de-2100/1511449>.

<sup>6</sup> Ibid.

<sup>7</sup> México Evalúa. The dark figure of sexual violence grows: in 2021, 99.7% of cases were not reported. March 8, 2022. Available at: <https://www.mexicoevalua.org/crece-la-cifra-negra-de-la-violencia-sexual-en-2021-el-99-7-de-los-casos-no-se-d-enunciaron/>.

<sup>8</sup> Ibid.

<sup>9</sup> INEGI. National survey on the dynamics of household relationships (ENDIREH) 2021. Available in: [https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/endireh/Endireh2021\\_Nal.pdf](https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/endireh/Endireh2021_Nal.pdf).

<sup>10</sup> INEGI. National survey on the dynamics of household relationships (ENDIREH) 2016. Available at: [https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016\\_presentacion\\_ejecutiva.pdf](https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016_presentacion_ejecutiva.pdf).

<sup>11</sup> Alumbra. Statistical overview of sexual violence against girls, boys and adolescents in Mexico 2023. Page 24. Available at: <https://alumbramx.org/wp-content/uploads/2023/05/Panorama-estadistico-VSI-Mexico.pdf>.

12. However, instead of instigating measures to address the concerning prevalence of sexual violence against women and girls, the State has instead cut the budget to address this phenomenon and other problems that affect women and girls. Even before the pandemic, Mexico began to cut budgets for the protection of the rights of women and children and paralyzing critical programs such as the National Institute for Women (INMUJERES),<sup>12</sup> the Program for the Economic Strengthening of Indigenous Peoples and Communities,<sup>13</sup> closing shelters for victims of domestic violence<sup>14</sup> and reducing financial support for children's daycare centers<sup>15</sup> walking back international standards that Mexico had incorporated in previous years. This has had a detrimental impact on women and girls' ability to effectively access justice and holistic support as a result of their experience of sexual violence. Mexico is also in breach of its international obligations to address impunity for sexual violence crimes and ensure that women and girls have access to substantive equality.

**Allocation of resources for attention to violence against women** [(art. 2 (b), (c), (d) y (f), art. 3 y art. 14 (1) ]

13. Having a gender-focused budget is part of Mexico's international obligations according to the instruments of CEDAW, the Universal System and the Inter-American Human Rights System.

14. For the year 2008, the feminist movement in Mexico consolidated the creation of the so-called "Annex 13" to the Federal Expenditure Budget Decree, consisting of resources for the promotion of gender equality through institutions and budgetary programs. These measures were an active step in the direction of gender equality, and were reinforced with the reforms carried out between 2011 and 2018. The reforms incorporated guiding principles of planning for equal rights between women and men, as well as the obligation of the public administration to plan and execute its actions with a gender-based perspective. The latest reform incorporated the express obligation to include the incorporation of a gender-based perspective in the development of the country's expenditure budgets at the time of budget formulation and evaluation.

15. Despite the advances through legislative measures to promote gender equality through the allocation of resources, at the beginning of the pandemic in 2020 budget cuts

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<sup>12</sup> Office of the United Nations High Commissioner for Human Rights. Mexico: Possible budget cuts could affect essential services for women. October 16, 2020. Available at: <https://www.ohchr.org/es/2020/10/mexico-un-experts-say-proposed-budget-cuts-could-hurt-vital-services-women>  
<sup>13</sup> See also: Ministry of Finance and Public Credit. Public Account 2020. Annex Transversal Programs. Available in: [https://www.cuentapublica.hacienda.gob.mx/work/models/CP/2020/tomo/III/E\\_PT.pdf](https://www.cuentapublica.hacienda.gob.mx/work/models/CP/2020/tomo/III/E_PT.pdf).

<sup>14</sup> Ibid.

<sup>15</sup> Expansión. Reductions for shelters for domestic violence opens new complaints against the government. February 22, 2019. Available at: <https://politica.expansion.mx/mexico/2019/02/22/recorte-a-albergues-para-mujeres-violentadas-abre-nuevo-frente-al-gobierno>.

<sup>16</sup> Americas Quarterly. Why Gender Violence in Mexico Persists—And How to Stop It. Disponible en: <https://americasquarterly.org/article/why-gender-violence-in-mexico-persists-and-how-to-stop-it/>.

intensified.<sup>16</sup> This especially affected the ability of the State to ensure it had the adequate financial resources to provide effective care for victims of violence. For example, for the first semester of 2020, only 64% of the budget was approved for the Program "Promoting Attention, Prevention of Violence against Women," which had among its priorities actions and public policies focused on addressing the different manifestations of gender violence. For the month of July of the same year, there was a drastic cut of almost 30% to the budget of the National Institute for Women (INMUJERES),<sup>17</sup> and women's opportunities to obtain personal independence and economic justice.

16. In addition to the above, the Support Program for Women's Institutions in the Federative Entities (PAIMEF), which allocates resources to address violence against women, only received 90% of your budget.<sup>18</sup> Similarly, the Program for the Economic Strengthening of Indigenous Peoples and Communities, which included projects to advance the integration of Indigenous women's rights, reported a cut of 96% – the largest cut of all the programs in Annex 13.
17. Between 2021 to 2023, the Mexican State continued with measures that, far from guaranteeing access to justice for women, jeopardized the rights to life, integrity and security of women – especially those who have historically been vulnerable, such as Indigenous women and Afro-descendants.
18. In 2021, a change was observed in the allocation of funds aimed at addressing inequalities and violence against women. These funds were redirected towards social programs considered "government priorities" with a welfare focus, such as: *Youth Building the Future*, *Sowing Life*, *he Benito Juárez Basic Education Scholarship Program for Well-being*, *Youth Writing the Future* and the *Pension for the Welfare of the Elderly*, being the last is the one that absorbed the greatest amount of resources<sup>19</sup>.
19. In that same year, the Ministry of Finance and Public Credit authorized 60% less budget for the program supported by the Executive Commission for Attention to Victims (CEAV), in contravention of what was approved by the Congress of the Union. In addition, it reduced to 30% the budget allocated to maternal, sexual and reproductive health programs, as well as the equipment of the Justice Centers for Women (CJM).<sup>20</sup>

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<sup>16</sup> Op. Cit. Secretariat of Finance and Public Credit.

<sup>17</sup> Ibid.

<sup>18</sup> Official Journal of the Federation. Decree establishing austerity measures that the dependencies and entities of the Federal Public Administration must observe under the criteria indicated therein. dof: 04/23/2020. Available at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5592205&fecha=23/04/2020#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5592205&fecha=23/04/2020#gsc.tab=0)

<sup>19</sup> Allies. "Mexico: national and international organizations call on Congress to ensure progressivity and a gender perspective in the 2021 budget." November 10, 2020.

Available [https://cejil.org/comunicado-de-prensa/mexico-organizaciones-nacionales-e-internacionales-l](https://cejil.org/comunicado-de-prensa/mexico-organizaciones-nacionales-e-internacionales-)

<sup>20</sup> Equis Justicia. Violence awaiting attention: justice centers for women in the face of the COVID-19 crisis. October 2020. Available at:

<https://equis.org.mx/wp-content/uploads/2020/10/Informe-VIOLENCIA-EN-ESPERA-DE-ATENCION-LOS-CENTROS-DE-JUSTICIA-PARA-LAS-MUJERES-FRENTE-A-LA-CRISIS-POR-COVID-19.pdf>

20. In this sense, it was reported through mid-term reports on government expenditure, as well as through testimonials from women operators<sup>21</sup> of the CAMIS (Houses of Indigenous and Afro-Mexican Women) and of the Community Center installed in Ayutla, Guerrero as a result of the reparations ordered in the sentence handed down by the Inter-American Court of Human Rights (IACHR Court) in the *Fernández Ortega vs. Mexico*,<sup>22</sup> that the budget is frequently transferred with significant delays. This results in the indebtedness of the operators of the programs to provide their services, even being forced to make the working conditions of their collaborators more precarious.
21. Of particular concern was the 2021 earmarked budget for Indigenous women, which was merged into a single program: *The Program for the Well-being of Indigenous and Afro-Mexican Peoples*, which meant an approximate loss of 73% of the budget to strengthen the economic and physical autonomy of Indigenous women.<sup>23</sup>
22. The situation did not improve with respect to the budgets approved for the year 2022 and 2023. Despite the fact that between the years 2021 and 2022 there was a quantitative increase of 81.05% Annex 13, the resources were allocated to the assistance programs of the federal government. That is, for fiscal year 2022, 8.6 out of every 10 pesos of the budget from Annex 13. **It was NOT earmarked to promote gender equality**, prevention and care of violence against women.<sup>24</sup>
23. In 2022, some programs did not have the increases corresponding to inflation, and instead were reduced.<sup>25</sup> This was particularly evident in the case of the programs supporting the 35 Houses for Indigenous and Afro-Mexican Women (CAMIS) that are located around the country, as well as in the case of the Executive Commission for Attention to Victims (CEAV). Added to this was the elimination of daycare programs for daughters and sons of working mothers and the Full Time Schools Program (PETC), which even violates the rights to education and food for girls and boys in elementary (primary) school education.

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<sup>21</sup> Annex I. Investigation of Allies for Equality and Nonviolence. Page 5.

<sup>22</sup> Inter-American Court of Human Rights. Case of *Fernández Ortega v. Mexico*. Judgment of August 30, 2010. Preliminary objection, Merits, Reparations and Costs. para. 256, operative paragraph 21. Available at: <https://www.cndh.org.mx/sites/default/files/documentos/2019-01/2.pdf>

<sup>23</sup> Allies. "Mexico: national and international organizations call on Congress to ensure progressivity and a gender perspective in the 2021 budget." November 10, 2020. Available <https://cejil.org/comunicado-de-prensa/mexico-organizaciones-nacionales-e-internacionales-l>

<sup>24</sup> Allies. "Mexico: Legislative branch consolidates capture of the parties for equality and ignores claims in favor of women's rights in Budget 2022". November 16, 2021. Available <https://cejil.org/comunicado-de-prensa/mexico-poder-legislativo-consolida-captura-de-las-partidas-por-la-igualdad-e-ignora-reclamos-in-favor-of-the-rights-of-women-in-budget-2022/> See also: According to the publication of *Expansión Política*, it is highlighted that Annex 13 is directed to welfare programs, which do not address the perspective of gender. *Political Expansion*. #8M Public policies in favor of women are going backwards: specialists. March 8, 2022. Available at:

<https://politica.expansion.mx/mexico/2022/03/08/retroceso-politicas-publicas-en-favor-de-las-mujeres>

<sup>25</sup> *Ibid.*

24. In the Federation Expenditure Budget (PEF) for 2023,<sup>26</sup> the trend of concentrating resources on federal government assistance programs continues: *Pension Program for Older Adults and Public Education (Youth Building the Future and Scholarships)* which jointly concentrated 85.5% of the total amount in Annex 13, marking a massive reduction of resources for equality, non-violence and attention to victims – especially women – protection of human rights and access to justice. We'd like to highlight that the National Council for the Evaluation of Social Development Policy (Coneval), in its 2022 Social Development Policy Evaluation Report, warned that "gender gaps persist in the group historically classified as discriminated against and that have expanded in recent years",<sup>27</sup> emphasizing that the main social policy programs are aimed at addressing the social rights of the general population, rather than empowering women.

### **Definitions of crimes of sexual violence and sentencing do not meet international and regional human rights standards [(art. 2 (c) , (e) (f), 5(a)]**

25. Mexico is a federated country with a Federal Penal Code, 31 state codes, and the Penal Code of the Federal District (Mexico City). The states are free and sovereign in everything concerning their internal laws, but subject to the external sovereignty of the federation. Rape (as defined in the Federal Penal Code, the Penal Code of the Federal District<sup>28</sup>, the 31 state penal codes) – and other similar crimes that, by their nature, should be considered rape – are defined based on the use of force, deception, seduction or defenselessness of the victim. This, instead of being based on the lack of **free, genuine and voluntary consent**, should be assessed in the context of the surrounding circumstances, as required by international human rights law, such as the Inter-American Court of Human Rights,<sup>29</sup> and CEDAW General Recommendation 35<sup>30</sup> which establishes that States must guarantee that a "definition of sexual crimes,<sup>31</sup>

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<sup>26</sup> Center for Public Finance Studies of the Chamber of Deputies. Informative Note Annex 13: Expenditures for Equality between Women and Men 2018-2023. April 10, 2023. Available at: <https://www.cefp.gob.mx/publicaciones/nota/2023/notacefp0302023.pdf>

<sup>27</sup> Coneval. Social Development Policy Evaluation Report 2022. Available at: [https://www.coneval.org.mx/Evaluacion/Documents/Informes/IEPDS\\_2022.pdf](https://www.coneval.org.mx/Evaluacion/Documents/Informes/IEPDS_2022.pdf)

See also: Equis Justice. Violence awaiting attention: justice centers for women in the face of the COVID-19 crisis. October 2020. Available at:

<https://equis.org.mx/wp-content/uploads/2020/10/Informe-VIOLENCIA-EN-ESPERA-DE-ATENCION-LOS-CENTROS-DE-JUSTICIA-PARA-LAS-WOMEN-FACING-THE-COVID-19-CRISIS.pdf>

<sup>28</sup> Federal Penal Code Art. 265 – Commits the crime of rape who, through physical or moral violence, has intercourse with a person of any sex, will be imprisoned for eight to twenty years.

<sup>29</sup> Case of Angulo Losada v. Bolivia. Preliminary Exceptions, Merits and Reparations. Judgment of November 18, 2022. Series C No. 475. paragraphs 144 to 152 and paragraphs 154 to 155; Case of Fernández Ortega and others against Mexico, Judgment of May 15, 2011, Interpretation of the judgment preliminary objection, merits, reparations and costs.

<sup>30</sup> Committee for the Elimination of Discrimination against Women, general recommendation No. 35.

Committee for the Elimination of Discrimination against Women, Par 29(e) Vertido c. Philippines, Fund of the Nation, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); R.P.B. c. Philippines, communication No. 34/2011, UN document CEDAW/C/57/D/34/2011 (2014) Para. 3.4-3.7, 8.8-8.10, 9.

<sup>31</sup> CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

including spousal and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances”,<sup>32</sup> and further defined in the jurisprudence of this Committee as in *Vertido v Philippines*<sup>33</sup> and *R.P.B. against the Philippines*, among others.<sup>34</sup> The legislation on sexual violence in the 33 criminal codes mentioned does not provide in a uniform, coherent or adequate way the necessary range of coercive circumstances through which crimes of a sexual nature are considered to have been committed, as required by international standards human previously mentioned.

26. The definitions and sanctions established for the crime of rape and sexual abuse against adolescents are notably contrary to international human rights standards. An example of this is the case of *estupro*,<sup>35</sup> which describes cases where an adult has sexual relations with a minor over the age of legal consent, and using "seduction" or "deceit." *Estupro* is used to evade justice when the prosecutors charge the aggressor with *estupro* instead of rape.<sup>36</sup> In 28 federal entities, the crime of rape is contemplated (87.5%) according to the National Human Rights Commission (CNDH).<sup>37</sup> The penalties prescribed in the rape provisions are much lower than the applicable penalties for rape.<sup>38</sup> This law is discriminatory and ignores the unequal power dynamics between teens and adults that make teens especially vulnerable to rape. Mexico should abolish its existing *estupro* laws and commit to robust protection of adolescents in accordance with international standards established by the Inter-American Court of Human Rights<sup>39</sup> and the United Nations Special Rapporteur on Violence Against Women and Girls.<sup>40</sup> Finally, the Inter-American Court leaves us with progressive and exact jurisprudence regarding the question of the crime of *estupro* when it declared in the 2023 case of *Brisa De Angulo Losada v. Bolivia*, "...in any hypothesis of sexual intercourse with a person between 14 and 18 years of age, without their consent or in a context in which their consent cannot be inferred due to

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<sup>32</sup> Ibid.

<sup>33</sup> Karen Tayag Dumping v. Philippines, CEDAW, Communication No. 18/2008, Doc. UN CEDAW/C/46/D/18/2008 (2010). Para. 8.9 (b) a

<sup>34</sup> *R.P.B. v The Philippines*, CEDAW/C/57/D/34/2011, Communication no. 34/2

<sup>35</sup> "*Estupro* is that sexual crime in which a person of legal age obtains consent for copulation with a minor person, through seduction or deception. This, as Amparo en Revision 114/93 points out, 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 are flawed precisely as a consequence of one of its material elements, such as seduction or deception, [as well as power relations]." Legislative Monitoring Report, The Legislative Panorama regarding the regulation of rape, June 23, 2020, <https://igualdaddegenero.cndh.org.mx/Content/doc/Observancia/Estupro.pdf>.

<sup>36</sup> "It is also extremely worrying that if the active subject commits the crime of rape, it could be reclassified as rape." CNDH. Ibid.

<sup>37</sup> In 4 entities this crime is not contemplated: Guerrero, Jalisco, Oaxaca and Zacatecas.6 (12.5 %). CNDH. Ibid.

<sup>38</sup> See report "Failure to protect: How discriminatory laws and practices in the area of sexual violence harm women, girls and adolescents in the Americas" (2021). Pgs.. 2-3, 16-17, 22-25, 51. Available at: [Failure\\_to\\_Protect\\_-\\_Equality\\_Now\\_2021\\_-\\_ESP-min.pdf](https://storage.googleapis.com/Storage.googleapis.com/Failure_to_Protect_-_Equality_Now_2021_-_ESP-min.pdf) (storage.googleapis.com).

<sup>39</sup> Op Cit. Corte IDH. Caso Angulo Losada Vs. Bolivia. Excepciones Preliminares, Fondo y Reparaciones. Sentencia de 18 de noviembre de 2022. Parás. 144 a 152; 154 a 155, 199.

<sup>40</sup> ONU- Consejo de Derechos Humanos. Informe de la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias \* A framework for legislation on rape (model rape law) Doc. A/HRC/47/26/Add.1. Disponible en: <https://digitallibrary.un.org/record/3929055?ln=en>.

seduction, deception, abuse of power, coercion, intimidation or other reason, becomes covered by the crime of rape (supra paras. 145 to 149)."<sup>41</sup>

27. Likewise, the law must provide that the rape of a child or adolescent must be an aggravating condition in itself and the courts must also consider other factors, including whether the violation occurred in a family environment or another situation in which there was an exploitation of trust. In these cases, the lack of consent is especially important and an examination of consent must go beyond considering situations where sexual violence is committed in the context of an unequal power relationship or in a coercive environment where violence is continuous (including violence domestic), where even if the victim "consents", the consent may not be free and voluntary, as indicated by the Committee for the Elimination of Discrimination against Women, the Inter-American Court of Human Rights, the Istanbul Convention and other standards described above.

28. We reiterate the CEDAW recommendation of your ninth periodic report of Mexico that "Repeal all legislative provisions that discriminate against women and girls, and harmonize legal definitions and sanctions relating to acts of discrimination and violence against women."<sup>42</sup>

### **Failing to provide mandatory prosecution and withdrawal of charges based on "conciliation" or the granting of "pardons"**

29. The lack of mandatory (ex officio) prosecution for sexual violence in the law also denies justice for survivors and is contrary to international human rights standards and norms. As noted by the CEDAW Committee in its General Recommendation 35, States must "guarantee effective access for victims to courts and tribunals; ensure that authorities respond adequately to all cases of gender-based violence against women, including through the application of criminal law and, as appropriate, ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and prompt manner and imposing appropriate penalties".<sup>43</sup>

30. Victims of rape and other crimes of sexual violence rarely report, and it is estimated that the number of unreported cases in Mexico is close to or above 99%.<sup>44</sup> Several states stipulate that cases of rape or those related to sexual violence will only be initiated upon complaint by the victim, or in the case of a person under the age of 18,

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<sup>41</sup> Op Cit. Corte IDH. Caso Angulo Losada Vs. Bolivia. Para. 155.

<sup>42</sup> CEDAW/C/MEX/CO/9, Concluding observations on the ninth periodic report of Mexico, 25 July 2018, Recommendation 12(a), CEDAW\_C\_MEX\_CO\_9-ES.pdf.

<sup>43</sup> CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, Update of general recommendation No. 19.

<sup>44</sup> Mexico Evalua, Press Release "The dark figure of sexual violence grows: in 2021, 99.7% of cases were not reported" (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%20SESNSP%20del,anterior%20para%20el%20mismo%20periodo.>

by their legal guardians or legal representatives.<sup>45</sup> Such legal provisions deny justice to survivors because the survivor, rather than the State, must bear the burden of the criminal process, including when it comes to the collection of evidence to prove the crime. Significantly, these provisions provide law enforcement authorities with ample opportunities to discourage women and girls from filing complaints after their rights have been violated, pressure victims to withdraw the complaint if they have succeeded in filing it, and postpone the initiation of an investigation anticipating that the victim will withdraw their complaint.

31. Numerous federal entities also provide for the "forgiveness" of crimes of sexual violence in which criminal proceedings can be terminated at the request of the victim or their legal guardian.<sup>46</sup> Victim "forgiveness" is only available in cases under an adversarial criminal process and is provided as an alternative dispute resolution mechanism. In practice, "forgiveness" by the victim in cases of rape or sexual violence is usually not spontaneous, voluntary and deliberate, but is often due to the same types of pressure, threat and/or coercion described in the previous paragraph. The act of granting a pardon through a judge does not protect survivors from such pressures, but instead reinforces the use of coercion and continues harmful cycles of impunity.

### **Discriminatory corroboration rules for proving sexual violence**

32. Despite what it says in the Direct Amparo under review 3186/2016<sup>47</sup> concerning the judicial standard of evidentiary assessment with a gender perspective, we see that local justice systems continue to apply discriminatory and excessively onerous evidentiary requirements, in addition to corroboration rules to bring perpetrators to justice for sexual violence. Such practices leave many forms of sexual violence unpunished and goes against CEDAW, among other international and regional human rights instruments and jurisprudence.<sup>48</sup>
33. In particular, in the vast majority of cases of crimes of sexual violence are only investigated and result in a conviction when physical injuries are found on the victim's body, as well as biological materials associated with a sexual act. In practice, these requirements leave a large number of acts of sexual violence unpunished because authorities only investigate crimes of sexual violence in which the perpetrator used physical force and the victim physically resisted, which is contrary to CEDAW, among

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<sup>45</sup> Federal Penal Code Art. 259 Bis., Lower California Penal Code Art. 176, Criminal Code of Chiapas Art. 273, Criminal Code of Coahuila 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.

<sup>46</sup> Colima Penal Code Art. 151, Guerrero Penal Code Art. 145, Nayarit Penal Code Art. 293.

<sup>47</sup> Direct protection under review 3186/2016. First Chamber of the Supreme Court of Justice of the Nation, Speaker: José Ramón Díaz. "RULES TO EVALUATE TESTIMONIES FROM WOMEN VICTIMS OF CRIMES OF SEXUAL VIOLENCE WITH A GENDER PERSPECTIVE (SEXUAL HARASSMENT)"

<sup>48</sup> M.C.c. Bulgaria, paragraph 166; See also Explanatory Report to the Istanbul Convention, paragraph 191. See also: Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia, Equality Now, 2019, p.11

other legal instruments, international and regional jurisprudence and human rights standards.

### **Suggested questions for Mexico:**

Thus, we respectfully request the Committee to request the following information from the State of Mexico within the framework of the information provided:

### **Earmarking and delivering resources to attend to the issue of violence against women**

- a. The measures the State has implemented to reverse the defunding and to ensure the progressive budget increase of the programs and instances for the prevention, care, eradication, punishment and reparation of violence against women.
- b. The actions Mexico has taken to comply with the final observations issued by the CEDAW Committee on budget matters.
- c. The specific measures has Mexico adopted to prevent budget cuts in terms of prevention and attention to violence against women, as well as ensuring said budgets?
- d. Public policies and programs with a gender, intercultural and intersectional focus and with sufficient resources have been incorporated into Annex 13 for the prevention, care, eradication, punishment and reparation of violence against women.
- e. The actions carried out to convene Indigenous and Afro-Mexican women, human rights defenders and civil society organizations to reach a consensus on the components and differentiated actions of cultural relevance that are part of the intersectional public policy for the prevention, care, eradication, sanction and reparation of violence against women.
- f. The measures it has adopted to enforce and respect the exclusive power of the Chamber of Deputies to determine the amounts established in the federation budget, especially in relation to the items for equality and prevention and combating violence against women; and the accountability mechanisms that the federal executive branch has adopted over the different agencies to ensure the integration of budgetary criteria and programs in Annex 13.

### **Sexual violence**

34. What are the governments plans and is there a timeline for them to ensure that the

definitions of rape and other acts of sexual violence in the respective penal codes are standardized so that such definitions are based on free, genuine and voluntary consent, considered in its entirety, the surrounding circumstances, and include a wide range of coercive circumstances in which consent becomes null and void, in accordance with international and regional human rights law? And that it includes eliminating the crime of *estupro*, to the extent that a new definition of rape would already include coercive circumstances in power relations covered by *estupro*.

35. Please specifically indicate what efforts have been made to amend penal codes to ensure ex officio (public) prosecution of all crimes of sexual violence and that proceedings can continue even if the victim or her legal guardian have withdrawn their accusation or declaration and abolish the requirement that the victim or his legal guardian have to initiate criminal proceedings (private public accusation).
36. What steps has the federal government taken to ensure that investigations of crimes of sexual violence take into account with an intersectional and gender perspective?
37. Please indicate the measures that have been adopted or are being developed to harmonize the relevant federal and state laws with the General Law of Victims and the Official Mexican Standard NOM-046-SSA2-2005, on family, sexual and violence against women, and adequately inform and train the medical personnel so that they can offer specialized care to women and girls victims of sexual violence, which includes the provision of essential services of emergency contraception, prophylaxis and abortion.

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[1] UN. Final Observations on the Ninth Periodic Report of Mexico, 2018. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMEX%2fCO%2f9&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMEX%2fCO%2f9&Lang=en)