



MEXICO

PROTECTION GAPS IN SEXUAL VIOLENCE LAWS AND PRACTICES

A Country Factsheet

INTRODUCTION

Prevalence of sexual violence is extremely high in Mexico, as 41.3% of women above the age of 15 have reported facing at least one incident of sexual violence.¹ Despite this, gaps in the laws themselves deny access to justice for many survivors of sexual violence as they provide a number of opportunities for perpetrators to escape justice.

Mexico has ratified numerous international and regional human rights conventions including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Inter-American Convention on

the Prevention, Punishment, and Eradication of Violence against Women (the Belém do Pará Convention).

Since Mexico follows a federal legal structure, in addition to the federal laws (which are applicable only in limited circumstances), states are able to implement their own laws on sexual violence. For the purpose of our analysis, we examine the Federal Penal Code as well as the applicable laws on rape from the states of Aguas Calientes, Estado de Mexico, Nuevo Leon, San Luis Potosí and Tlaxcala. These states have been selected as examples to demonstrate legal gaps and shortcomings. The laws in the remaining states need to be reviewed and may also need reform.

¹ National Survey on the Dynamics of Household Relationships (ENDIREH) 2016, <https://www.inegi.org.mx/programas/endireh/2016/#Documentacion>

Note: The information in this factsheet is largely derived from the report titled *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas*, published by Equality Now in September 2021. Please refer to the report for further information on these laws as well as a full list of recommendations.

GAPS IN THE LAW

Force-Based Definition of Rape

What is the issue? Definitions of rape which are based on force or the threat of force, as opposed to lack of consent to the sexual intercourse, fail to meet international human rights standards² and are problematic for a number of reasons. Force-based definitions of rape risk leaving certain types of rape unpunished, contribute to rape myths and the perception that it is the responsibility of victims to protect themselves, significantly limit the extent to which crimes of rape can successfully be prosecuted, and leave room for significant impunity.

The Model Rape Law drafted by the UN Special Rapporteur on Violence against Women states that:

“Rape is an act of sexual nature committed without consent. Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent.”³

What does Mexican Law say?

- The definition of rape in the Federal Penal Code is based on force, requiring physical or moral violence, unless the victim is under the age of 15, is incapable of understanding the act, or is unable to resist.⁴
- The laws of all 5 Mexican states which were studied contain similar definitions of rape which require some form of force towards or helplessness on part of the victim, though the exact requirements of the rape definition varies across jurisdictions. For instance, the law in Tlaxcala specifically recognizes that sexual intercourse with a victim who is in the care or custody of the perpetrator amounts to rape, due to the coercive circumstances involved. However, none of these laws define rape as an act committed without consent, as required by international human rights standards.

What needs to change? The Mexican and state governments should:

- Ensure that the definition of rape is amended so that it is not based on a requirement to prove force, but rather covers all forms of sexual penetration with a body part or object committed without the victim's voluntary, genuine, and willing consent, and in a wide range of coercive circumstances.
- Ensure that the law recognizes there are circumstances where it is not possible to give voluntary, genuine and willing consent and that it must look more broadly at the issue of exploitation, including sexual violence in the context of family or other relationship where there is particular dependency and inequality of power relationships.

² See Inter-American Court of Human Rights, *Sentence in the Caso J. vs. Peru*, 27 November 2013, https://www.corteidh.or.cr/docs/casos/articulos/seriec_275_esp.pdf at para. 358; Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.

³ Report of the Special Rapporteur on violence against women, its causes and consequences, *A framework for legislation on rape (model rape law)*, A/HRC/47/26/Add.1, 15 June 2021, p. 6.

⁴ Article 265, Federal Penal Code of Mexico, https://www.sspc.chiapas.gob.mx/leyes/federal/LEY_ORGANICA_DEL_PODER_JUDICIAL_DE_LA_FEDERACION.pdf

What is the issue? The crime of *estupro* usually describes cases in which an adult has sexual relations with a minor above the legal age of consent by means of seduction or deceit. The penalties for *estupro* are normally far lower than applicable penalties for rape. The existence of this discriminatory offense in relation to teenage girls contributes to impunity for rapists, as the lesser offense of *estupro* is often used to circumvent application of the rape offense. The United Nations Special Rapporteur on Violence Against Women has recommended that *estupro* provisions, where they exist, should be abolished.⁵

What does Mexican Law say?

- The Federal Penal Code of Mexico contains an *estupro* provision, whereby sexual intercourse with a person between the ages of 15-18 with deceit is punished with a lower penalty of imprisonment of 3 months - 4 years (as compared to 8-20 years for rape).⁶
- The laws of all 5 Mexican states which were studied contain similar *estupro* provisions, with penalties much lower than the applicable penalty for rape.⁷
- Additionally, in the state of Aguas Calientes, forgiveness from the victim can extinguish criminal liability for the offense of *estupro*, which makes survivors vulnerable to community pressure to “forgive” the perpetrator and promotes further impunity.

What needs to change?

- The respective governments should repeal *estupro* provisions in both federal and state laws. Repeal of discriminatory *estupro* provisions must be accompanied by a complete overhaul of sexual violence laws including adopting consent-based definitions of rape (as discussed further above), to ensure that adolescent girls are protected from sexual violence in all circumstances.
- While existing *estupro* provisions remain in the statute books, prosecutors and judges should ensure that acts of sexual violence against adolescent girls which meet the threshold of the rape definition should always be prosecuted/ charged as rape and not *estupro*.

Lack of Effective Implementation of Existing Laws

Despite the high prevalence, there is a failure to effectively implement laws on sexual violence, and also a deprioritization by the Mexican government of efforts to combat violence against women. For instance, the Mexican Government is reducing funding to address gender inequality and gender-based violence, with only 2% of the 2021 budget being classified to promote equality.⁸ The reduction in funding has put many women's rights services including Indigenous and Afro-Mexican Women's Houses (CAMIs) at risk of closure, and some have already halted their services.

The respective governments should:

- Effectively implement laws on sexual violence, including by budgeting sufficient resources for programs to prevent and address sexual violence;
- Ensure that programs preventing and addressing sexual violence take a survivor-centered, holistic approach with a special focus on the needs of girls and adolescents; and
- Ensure that all forms of sexual violence offenses are treated as matters of public interest, which have to be investigated and prosecuted as a priority.

Statute of Limitations

Currently, the Federal Penal Code of Mexico has a limited statute of limitations for all offenses, including rape. In many cases, a rape victim may only be afforded 14 years to come forward and report the crime before prosecution is no longer possible. To ensure perpetrators are held accountable and victims have access to justice, the Mexican government and all the states should ensure that the prosecution of rape is not subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict.

⁵ Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, A/HRC/47/26, 19 April 2021, paras 84-85.

⁶ Article 262, Federal Penal Code of Mexico, https://www.sspc.chiapas.gob.mx/leyes/federal/LEY_ORGANICA_DEL_PODER_JUDICIAL_DE_LA_FEDERACION.pdf

⁷ For further details, please refer to Equality Now, *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls and Adolescents in the Americas*, 2021, <https://www.equalitynow.org/esvamericas> pp. 22-24

⁸ Only 2% of the Public Budget is labelled with a gender perspective in 2021, 8 March 2021, Yancuic, <http://yancuic.com/2021/03/08/solo-2-del-presupuesto-publico-esta-etiquetado-con-perspectiva-de-genero-en-2021/> See also, CEVI-Comunicado Mexico-2020-Presupuesto-EN.pdf (oas.org).

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