

VIOLENCE WITHOUT END

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Violence without End

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INTRODUCTION

In 2000, the case of Paulina Ramírez Jacinto from Baja California received a flurry of media attention.¹ Paulina, a young girl from a low-income family, was denied access to abortion services to terminate a pregnancy resulting from rape.

Although rape is a legal abortion indication in Baja California and the rest of the country, public officials, acting on personal beliefs rather than according to the law, resorted to manipulation and psychological pressure to deny Paulina access to the procedure. Therefore, in view of a lack of appropriate legal resources to access justice and the unwillingness of Mexican authorities, her case was brought before the Inter-American Commission on Human Rights (IACHR) in 2002.²

For years, the Mexican State refused to assume responsibility for the violations of Paulina's human rights. This situation remained unchanged until Paulina and her family and the Mexican government signed a Friendly Settlement Agreement with the mediation of the Mexican Foreign Relations Ministry and the IACHR.

Paulina's case is emblematic not only because it sheds light on the reality faced by girls and women in Mexico and Latin America but also because of the significance and implications of her struggle for justice. Among the reparations included in the Agreement was recognition by the government of Baja California that it lacked an appropriate legal framework to enable women to exercise their right to terminate a pregnancy resulting from rape. This paved the way for the passage of legal reforms that would promote significant progress in the field of women's reproductive rights.³

Sixteen years after the Paulina case and ten years after the Friendly Settlement, obstacles have not decreased. Every year, in Mexico, at least 600,000 sexual crimes are committed. Nine in ten of the victims of such offenses are women, with four out of ten aged less than 15 years old. Appallingly, 50% of the sexual crimes occur in the home—the place where they should feel the safest— and 60% of the crimes are perpetrated by relatives or acquaintances.⁴ Mexican authorities receive more than 1,640 reports of sexual violence every day. Nonetheless, of greatest concern is the fact that this high number represents only 10% of the actual cases.⁵

1. For more information about Paulina's case, see GIRE's publications *Paulina, Five Years Later* and *Paulina, Justice through International Mechanisms*, both available at GIRE's digital library at <http://gire.org.mx/biblioteca/>

2. Paulina's case was submitted by three organizations—the Center for Reproductive Law and Policy (today, the Center for Reproductive Rights), Alaíde Foppa, and Epikieia.

3. The reforms included an amendment to Article 79 of the Regulations of the Organic Law of the Baja California Attorney General's Office, which allows rape victims to receive legal abortion. It also stipulated that the Baja California Ministry of Health would release a policy containing guidelines for health service providers to terminate pregnancies resulting from rape. In addition, the federal Ministry of Health committed itself to updating the Official Mexican Norm on medical care for victims of domestic violence (NOM-190-SSA1-1999), which was subsequently replaced with NOM-046-SSA2-2005 to include sexual violence occurring outside the family and to establish legal abortion service procedures.

4. Executive Commission for Victims, Booklet on the Rights of Child Victims of Sexual Violence. Available in Spanish at <<http://www.ceav.gob.mx/wp-content/uploads/2016/06/cartilla.pdf>>

5. *Ibid.*

Through requests for public information, GIRE learned that the federal and state Public Prosecutor's offices received 70,630 reports of sexual violence between January 2009 and June 30, 2016.⁶ This figure is in sharp contrast with the number of abortions in cases of rape that state health ministries, the Mexican Social Security Institute (IMSS), and the Institute for Social Security and Services for State Workers (ISSSTE) report having performed during the same period—only 61.

Among Mexican girls and adolescents, factors such as sexual violence and forced marriage are associated with a high rate of pregnancies. According to the National Strategy for the Prevention of Adolescent Pregnancy (ENAPEA),⁷ victims of sexual violence are at risk not only of unwanted pregnancies but also of physical and psychological harm and sexually transmitted infections (STIs). Among adolescents, pregnancy cuts short their childhood and education, further worsening the potential poverty and marginalization in which they live.

In 2013, the General Law for Victims (LGV) came into effect and eliminated the requirements that victims of sex crimes and violations of human rights had to meet to have access to legal abortion. The Regulations of the General Health Law in Matters of Health Service Provision and the Official Mexican Norm on Domestic and Sexual Violence and Violence against Women (NOM 046-SSA2-2005) were amended in 2014 and 2016, respectively. The amendments to the latter norm (NOM 046) were harmonized in accordance with the LGV. Consequently, in theory and throughout the country, women and girls over 12 years of age who are victims of a sexual assault and become pregnant as a result of the crime have the right to request the legal termination of pregnancy (LTP) at any public health facility. They can exercise this right without having to file a report of the rape or obtain authorization for an abortion from relevant authorities (a judge or a Public Prosecutor's Office) or the consent of their mother, father, or guardian. Nonetheless, health providers who are unaware of their legal obligations or those who impose their personal beliefs at the expense of the health—and sometimes the life—of girls and women, continue to represent obstacles in exercising the basic rights that would enable women and girls to recover from a violent incident and a pregnancy that should have never happened in the first place.

All the names of the women and the girls mentioned in this report have been changed to protect their privacy. It is important to note, however, that even when the names are not real, their stories are.

6. For data disaggregated by state, see Annex, Table 1.

7. Federal Government, National Strategy for the Prevention and Care of Adolescent Pregnancy, Mexico, 2015, p 66. Available in Spanish at <<http://bit.ly/1FOMYI1>>

8. *Ibid*, p 63.

PALOMA, 10 YEARS OLD, TABASCO, 2015

Requirements for LTP services in cases of rape, as per the Tabasco Penal Code

“In these cases, a final ruling on the rape or unlawful insemination will not be required. Evidence of the facts will suffice...” Article 136.

Paloma was raped and became pregnant when she was 10 years old, but state health services in Tabasco refused to perform an abortion. The first health center that she visited denied her the service because “no gynecologist wanted to perform the procedure.” A regional hospital specialized in women’s health, *Hospital de Alta Especialidad de la Mujer*, in Tabasco admitted her for observation to allow time for the hospital’s bioethics committee to decide whether to perform the abortion. Neither this requirement nor that requiring a judge to rule in favor or against the abortion was stipulated in the state Penal Code or the then-current Code of Criminal Procedure. The health providers said that they would not perform the LTP, arguing that they needed authorization from a judge. Such behavior constituted a breach of the law.

Days passed and Paloma’s health began to deteriorate in the hospital. She experienced recurring emotional crises and severe pain and swelling that prevented her from walking. Nonetheless, she never received any medication to help her cope with her condition.

Further, despite efforts by GIRE and Catholics for the Right to Decide (Católicas por el Derecho a Decidir), the Tabasco Public Prosecutor’s Office tried to hinder Paloma’s rights by reclassifying the crime of rape to one of pedophilia. Thus, based on an erroneous and restrictive interpretation, Paloma had no other choice but to carry her pregnancy to term because she was no longer deemed a rape victim.

With regard to Paloma’s case, the hospital’s bioethics committee concluded, “She is not sick. All she has is the normal ailments brought about by any pregnancy. In her case, the discomfort is worse because she is only 10 years old.” The committee also said that the fetus was viable and since the hospital had received cases of nine-year-old girls who “give birth uneventfully,” in their opinion, Paloma was not in any danger.

Throughout this time, the State Public Prosecutor’s Office and the state health services gave Paloma’s parents contradicting information about the LTP procedure. They did not take into account that Paloma had been sexually assaulted and that they were forcing the girl to carry her pregnancy to term despite the risk to her life and her physical and emotional health. Once more, this was a violation of her rights as a victim of a crime.

Time passed and Paloma and her family felt deeply uncertain as to whether the abortion would be performed. Eventually, the decision was made to urgently file an *amparo* suit, or legal stay, with the First District Judge for the Tenth Circuit to obtain authorization to terminate Paloma’s pregnancy immediately, as with the passing of the weeks her health had further deteriorated.

The following day, the abortion was performed without any complications for Paloma’s health.

1 /

**ACCESS TO ABORTION
IN CASES OF RAPE:
LAWS, PROGRAMS
AND RULINGS**

I. GENERAL LAW FOR VICTIMS AND NOM 046-SSA2-2005 ON DOMESTIC AND SEXUAL VIOLENCE AND VIOLENCE AGAINST WOMEN

The General Law for Victims (LGV) is mandatory for all federal and state authorities involved in actions relating to victims of rape and human rights violations throughout Mexico. The Law emphasizes that these survivors are entitled to assistance, protection, treatment, the truth, justice, comprehensive reparations, and due diligence processes.

Article 29 of the LGV stipulates that all public hospitals will provide immediate emergency care to victims of crimes or human rights violations. The victims will be admitted for care unconditionally and regardless of their economic status and nationality.

According to Article 4 of the LGV, direct victims are:

Article 4 individuals who have suffered harm or economic, physical, mental, or emotional injury or, in general, when their legal rights are at risk or injured as the result of a crime or violations of the human rights acknowledged by the Constitution and the international treaties to which the Mexican State is a party.

The LGV, in Article 30, lists a number of health services. These include emergency, dentistry, surgical, and hospital care. Specifically, in paragraph IX, the Law mentions the provision of “voluntary termination of pregnancy services in the cases stipulated in the law, with absolute respect for the will of the victim.” In addition, the chapter on Measures for Immediate Assistance, paragraph IX (35), contains express provisions for the care of rape victims.

Artículo 35 All victims of sexual violence or any other behavior that undermines their physical or psychological integrity will be guaranteed access to emergency contraception and voluntary termination of pregnancy in the cases stipulated in the law, with absolute respect for the victim’s will. In addition, the victims will undergo tests and specialized treatment for as long as it is necessary to make a full recovery, in accordance with the diagnosis and the recommended medical treatment. In particular, for their treatment, a priority will be to monitor the victims for sexually transmitted diseases and the Human Immunodeficiency Virus.

Each public health institution that provides victims with services, assistance, or treatment will have personnel trained in the treatment of sexual violence from a cross-cutting gender perspective.

The above will be carried out in accordance with principles that the LGV establishes for public servants participating in the treatment of victims. The principles include the following:

GOOD FAITH. Public officials will not criminalize or hold the victims accountable for their situation. On the contrary, they will assume that the victims are acting on good faith and will provide the required services.

DUE DILIGENCE. The authorities will provide all the services that the victim requires within a reasonable period of time to help the victim recover as a subject in full exercise of their rights.

NO CRIMINALIZATION. The authorities will not regard the victim as a suspect or hold them responsible for the acts that they have reported. It is forbidden to publicly speculate about the victim's likely involvement with organized crime or any criminal activity. Stigma and prejudice will be avoided.

SECONDARY VICTIMIZATION. The specific characteristics and conditions of the victims will not be grounds to deny them their status as such. Authorities will not demand the use of mechanisms or proceedings that may aggravate their condition nor will they establish requirements that may hinder or prevent the exercise of their rights or leave them exposed to further damage.

The LGV created the National System for Victims to create and coordinate public policies that protect, help, and provide access to justice and comprehensive reparations to victims of crimes and human rights violations committed at the federal, local, and municipal level. The operating body of the National System for Victims, the Executive Commission for Victims (CEAV), has nine specialized committees, including one on sexual violence.

Number of LTP procedures for rape victims accompanied by the CEAV and state commissions from 2014 to June 30, 2016:	Information unavailable
Number of LTP procedures for rape victims registered by the CEAV and state commissions on behalf of sexual violence victims from 2014 to June 30, 2016:	Information unavailable

The Mexico City and the state Executive Commissions are obligated to address the cases of victims of common law offences and human rights violations committed by public officials in the states or municipalities where the victims live.

A POSITIVE EXPERIENCE RELATED TO ACCESS TO ABORTION FOR RAPE IN ACCORDANCE WITH THE LGV IN SONORA

Azucena, a 12-year-old girl, lives in Cananea, in the state of Sonora. She was raped by a relative, who then threatened to hurt her mother if Azucena talked about it. Months later, after telling her mother that she was not feeling well, they visited a doctor who told them that she was eight weeks pregnant—a consequence of having been raped. Thus, Azucena and her mother filed a report with the Public Prosecutor's Office.

Azucena and her mother sought help and information about available options to deal with the pregnancy. Accompanied by GIRE and RADAR 4th, a request for legal abortion services for Azucena was filed with the state Ministry of Health, in accordance with the Sonora Penal Code, the LGV, and the General Health Law Regulations in Matters of Health Care Service Provision.

In response to the request, the Sonora Ministry of Health and the state Public Prosecutor's Office through the General Directorate for Victims of Crimes attended to Azucena in a timely manner. She was transferred from Cananea to Hermosillo, where in late October 2014, she received an LTP procedure at the Hospital for Women's Comprehensive Care—Hospital Integral de la Mujer. Thus, within a week, Azucena had access to a legal abortion.

A POSITIVE EXPERIENCE REGARDING ACCESS TO ABORTION FOR RAPE IN ACCORDANCE WITH THE LGV IN YUCATÁN

Marta is 31 and has been diagnosed with epilepsy and schizophrenia. She lives in the municipality of Temozón, in Yucatán. She was raped by a man from her community. When she realized that there was something wrong with her body (that she was pregnant), she tried to commit suicide twice. Worried, her mother asked her what the matter was, and Marta told her about the rape. After undergoing an ultrasound examination that showed her pregnancy at 6.6 weeks, Marta and her mother decided to seek an abortion at the Agustín O'Horán General Hospital, where they were told that they would perform it only with an authorization from a judge.

Accompanied by GIRE, UNASSE, Humanitarian Services in Sexual and Reproductive Health, and Amelia Ojeda—a lawyer with RADAR 4th—, a request for a legal abortion for Marta was filed with the state Ministry of Health, in accordance with the Yucatán Penal Code, the LGV, and the General Health Law, Regulations in Matters of Health Care Service Provision.

In response to the request, the state Ministry of Health, through the Department of Attention to Violence and the Director's Office of the Agustín O'Horán General Hospital, attended to Marta in a timely manner. In early July 2015, Marta was admitted to the General Hospital, where she received a LTP procedure. Thus, within ten days, Marta had access to a legal abortion.

The above cases have set an important precedent among state authorities. The cases show that, based on the Penal Code, the LGV, and the General Health Law Regulations in Matters of Health Care Service Provision, access to LTP in cases of rape can be guaranteed without imposing such requirements as filing a report and obtaining judicial authorization.

Based on the LGV, NOM 046-SSA2-2005, paragraph 6.4.1, establishes,

"cases of rape are medical emergencies and require immediate care."

Paragraph
6.4.1

NOM 046 specifies the minimum criteria to provide emergency care to victims of rape, as stipulated by the LGV. The criteria are mandatory for all institutions, agencies and organizations within the National Health System that offer health services for women who have been victims of sexual violence. Non-compliance may result in criminal, civil, or administrative penalties.⁹

The aforementioned medical care will be provided from a gender perspective. It will stabilize and heal the victim and prevent complications derived from their injuries.

OBLIGATIONS OF HEALTH SERVICE PROVIDERS TO RAPE VICTIMS, AS STATED IN NOM 046

NOM 046 states both general and specific obligations.

GENERAL OBLIGATIONS

NOM 046 obligates all institutions and organizations that form part of the National Health System (both public, social, and private institutions) to provide care to victims of sexual violence. The provisions include the following:

9. For example, the Federal Law on Metrology and Standardization, in Article 112, establishes administrative penalties: fines; temporary or definitive closure (partial or total); administrative arrest for up to 36 hours; suspension or revocation of authorization, approval, or registration; and suspension or cancellation of the certificate with the evaluation results.

All institutions that provide medical care in the public, social, and private sectors will have the necessary internal mechanisms and an appropriate manual of procedures to ensure the adequate application of a critical path for victims of sexual violence, in compliance with this Norm.	Paragraph 5.7
Health institutions will foster agreement and coordination with other public, social, and private institutions, agencies, and organizations to refer the users to receive care as needed, including psychological, legal, and social welfare services, among others. They will also refer them, when needed, to services, medical centers, and institutions that have larger resolution capacity to provide an accurate diagnosis and continuity in treatment or rehabilitation.	Paragraph 5.5, 5.6
Users who are victims of sexual violence will receive care from trained personnel that are sensitive to their needs. To that end, health institutions may take into account the contributions of civil society organizations specialized in the subject matter, provided they do not contravene this Norm or other applicable provisions.	Paragraph 5.8, 5.11
All service providers will meet the following criteria when attending to users that are victims of sexual violence: timeliness, technical and interpersonal quality, confidentiality, honesty, and respect for the user's dignity and human rights.	Paragraph 5.9
For notifications to the Public Prosecutor's Office, the form included in this Norm will be used. Each case will be recorded and notified to the Ministry of Health.	Paragraph 5.10, 5.11
<p>Number of reports of possible cases of sexual violence received by the Public Prosecutor's Office between January 1, 2009 and June 30, 2016: »</p> <p>Number of reports of cases of underage girls: »</p> <p>Number of reports of cases of women with disabilities: »</p>	<p>163, 368</p> <p>12,642</p> <p>467</p>

For GIRE, it is essential that the obligation to train and update the skills of health personnel, as stated in NOM 046, include explicitly the use of better evidence-based surgical and medical methods to perform safe abortions and, thus, contribute to ensuring the well-being of girls and women. For example, it is important to ensure the replacement of obsolete surgical abortion methods, such as Dilation and Curettage (D&C), with Manual or Electric Vacuum Aspiration (MVA and EVA, respectively).¹⁰ In that regard, the World Health Organization (WHO) has developed technical guides to provide safe abortion care.

Through a request for public information, GIRE asked the Ministry of Health about compliance with paragraphs 6.7.2.9 and 6.7.2.10 of NOM 046 regarding the training and upgrading of skills for health personnel.

Via the National Center for Gender Equality and Reproductive Health (CNEGSR), the Ministry of Health replied that since the publication of the modification to the NOM 046 in the Official Gazette of the Federation, a four-day workshop had been carried out to train medical staff in the provision of care for sexual violence victims and voluntary termination of pregnancy. The workshop covered the following: violence in Mexico, including violence against women, as a public health problem; raising awareness about stereotypes, stigma, and discrimination; legal framework on sexual violence, the LGV, changes in the NOM 046 regarding sexual violence, state-level health services as guarantors of the operational character of the NOM 046, responsibilities of public health providers, conscientious objection, request for voluntary pregnancy termination; state-level legal framework; care for victims of violence from a human rights perspective; comprehensive care for voluntary pregnancy termination; clinical protocol for victims of sexual violence (comprehensive and gender-sensitive health services, including chemoprophylaxis and emergency contraception); provision of voluntary pregnancy termination (procedure request, counseling, informed consent, clinical history, laboratory tests, ultrasound, procedure, contraceptive method, follow-up, clinical file, registration (SUIVE, SIS-I7P), notification to the Public Prosecutor's Office); registration of cases as medical evidence; and clinical model for safe abortion/voluntary pregnancy termination care (recommended technologies for voluntary pregnancy termination; post-abortion contraception, follow-up visit, management of complications and adverse events, care for adolescents and young people).

According to the reply to the information request, 90 health staff participated in the workshop. These included 36 men and 54 women from all states in the country, who will replicate the workshop in their states at least once, in the remainder of 2016.

10. World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems, 2nd edition, 2012, p. 65. Available at <http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf>

11. The states in gray did not identify administrative guidelines regarding abortion for rape victims.

The NOM 046 states that victims of rape aged 12 or older will have access to pregnancy termination services without having to meet any requirement other than submitting a written request under oath. Nevertheless, in various Mexican states, documents -such as guidelines that rule the provision of pregnancy termination services in cases of rape- have been found that expressly direct health personnel to require law enforcement authorization and/or a report of the crime to provide the services. In addition, other documents for Public Prosecutor's Offices, such as protocols to investigate and address crimes against sexual freedom, establish that the Public Prosecutor's Office will verify the facts before authorizing the LTP.

With regard to the guidelines for medical personnel and the protocols for law enforcement investigation, it is urgent that provisions be harmonized in accordance with the NOM 046 and the LGV, because they create confusion as to the obligations of health providers. Nonetheless, the framework that regulates the activities of medical staff is -according to the pro persona principle- the one stipulated in the LGV and the NOM 046, as it establishes fewer requirements for the victims and, hence, provides greater protection.

ADMINISTRATIVE STANDARDS (PROTOCOLS, GUIDELINES, AND/OR GUIDES) REGARDING ACCESS TO ABORTION IN CASES OF RAPE, BY STATE^{II}

STATE	STANDARD	REQUIREMENTS	COMMENTS
AGUASCALIENTES	No se identificó norma administrativa vigente.		
BAJA CALIFORNIA	Regulations of the Organic Law of the Baja California Public Prosecutor's Office	<ul style="list-style-type: none"> — Report of the rape; — Confirmation of pregnancy; — Elements that support the fact that the pregnancy is the result of rape; — Evidence that the pregnancy is 90 days or less. 	
BAJA CALIFORNIA SUR	No se identificó norma administrativa vigente.		
CHIAPAS	Protocol for investigation of cases of rape and crimes related to the disappearance of women	Once informed about her right to LTP, the victim is referred to a health institution to confirm pregnancy and gestational age. The gestational age and the date of the reported facts should match, and there should be enough elements to support that the pregnancy is the result of the rape.	

STATE	STANDARD	REQUIREMENTS	COMMENTS
CHIHUAHUA	Model/due diligence protocol. The crime of rape and Agreement 279 entered into by the Governor of the State, relating to the proceedings and measures to provide care and protection to victims of rape and non-consensual artificial insemination	<ul style="list-style-type: none"> — Having received the report of the rape and the LTP request, the Public Prosecutor's Office requests the participation of experts in medicine and psychology to issue the case reports; — The woman is referred to the Office of the Deputy Public Prosecutor for Human Rights and Care of Crime Victims, where she receives information about the effects of the request and available support and alternatives; — If she decides to terminate her pregnancy, her decision will be documented; — The woman is referred to health services for confirmation of pregnancy and gestational age; — The results of the above are sent to the Public Prosecutor's Office to corroborate if the gestational age is consistent with the reported date of the rape; — The Public Prosecutor's Office should have the necessary elements to support that the pregnancy was the result of the rape. 	
COAHUILA	No se identificó norma administrativa vigente.		
COLIMA	No se identificó norma administrativa vigente.		
DURANGO	No se identificó norma administrativa vigente.		
GUANAJUATO	No se identificó norma administrativa vigente.		
GUERRERO	Protocol and basic principles to investigate and address crimes against sexual freedom for Public Prosecutor's Agencies, specialized in sex crimes and domestic violence, of the state Public Prosecutor's Office.	<ul style="list-style-type: none"> — Corroboration of the facts by the Public Prosecutor's Office. 	

STATE	STANDARD	REQUIREMENTS	COMMENTS
GUERRERO (continued)	General organizational and operational guidelines for health services related to the legal termination of pregnancy in Guerrero.		
HIDALGO	Collaboration agreement for abortion care in Hidalgo.	— Request for pregnancy termination by women who report having been raped.	This document is consistent with NOM 046.
JALISCO	Protocol in cases of gender-based crimes against women for reasons of rape in Jalisco	— Confirmation of the pregnancy.	
MEXICO CITY	<p>Agreement A/004/06 by the Mexico City Public Prosecutor's Office that prescribes instructions to perform the legal termination of pregnancy and provide emergency contraception in cases of rape.</p> <p>Agreement that amends, adds, and eliminates several points of Circular/GDF-SSDF-01/06, which contains the general organizational and operational guidelines for health services related to the legal termination of pregnancy in Mexico City, published in the Mexico City Official Gazette on November 15, 2006</p>	<p>— After the rape has been reported, expert psychological and medical reports will be prepared;</p> <p>— The victim will be referred to a health institution for confirmation of pregnancy and gestational age;</p> <p>— The day of the LTP, an expert in genetics will attest to the victim's identity and collect biological material to perform the necessary biopsy or genetic tests to compile the preliminary investigation.</p> <p>— Authorization by the Public Prosecutor's Office to terminate the pregnancy.</p>	
MICHOACÁN	Investigation protocol for crimes related to the disappearance, rape, and murder of women for gender-based reasons	— Among the formalities carried out by the Public Prosecutor's Office during the investigation of a rape case when the likely perpetrator has not been detained is the authorization of the termination of pregnancy.	

STATE	STANDARD	REQUIREMENTS	COMMENTS
MORELOS	No se identificó norma administrativa vigente.		
NAYARIT	No se identificó norma administrativa vigente.		
NUEVO LEÓN	No se identificó norma administrativa vigente.		
OAXACA	Protocol by the Public Prosecutor's Office. Circular 09/2011 on rules and interpretation criteria for abortion services when a pregnancy is the result of rape	<ul style="list-style-type: none"> — Report of the rape; — Confirmation of pregnancy; — Enough elements to allow the Public Prosecutor's Office to provide evidence that the pregnancy is the result of rape, including <ul style="list-style-type: none"> a) the victim's statement; b) police report of injuries and physical constitution; c) police report of the victim's clothes; d) expert medical, gynecological, and psychological reports; — Written or in-person request by the woman or her representatives if she is underage or physically unfit. 	
PUEBLA	Protocol for the free and sovereign State of Puebla to investigate crimes related to the disappearance and rape of women and femicide, and provide care for women who are victims of a crime	Among the formalities carried out by the Public Prosecutor's Office during the investigation of a rape case when the likely perpetrator has not been detained is the authorization of the termination of the pregnancy.	
QUERÉTARO	No se identificó norma administrativa vigente.		
QUINTANA ROO	No se identificó norma administrativa vigente.		
SAN LUIS POTOSÍ	No se identificó norma administrativa vigente.		
SINALOA	No se identificó norma administrativa vigente.		
SONORA	No se identificó norma administrativa vigente.		

STATE	STANDARD	REQUIREMENTS	COMMENTS
STATE OF MEXICO	Protocol and basic principles to investigate and address crimes against sexual freedom	— Evidence of compliance with the requirements in Article 151 of the State of Mexico's Criminal Procedure Code will be submitted to the judicial authority.	The State of Mexico's Criminal Procedure Code is no longer in effect. It was superseded by the Federal Criminal Procedure Code in June 2016.
TABASCO	No se identificó norma administrativa vigente.		
TAMAULIPAS	No se identificó norma administrativa vigente.		
TLAXCALA	No se identificó norma administrativa vigente.		
VERACRUZ	Protocol for the care of victims of gender-based, domestic, and sexual violence; human trafficking, and femicide	It omits the right to the legal termination of pregnancy in cases of rape.	It states two options for women who are victims of sexual violence: keep the child conceived from the rape or give it up for adoption.
YUCATÁN	No se identificó norma administrativa vigente.		
ZACATECAS	No se identificó norma administrativa vigente.		
FEDERAL LEVEL	Comprehensive model to prevent and address domestic and sexual violence. Operations Manual.	— Report filed with the Public Prosecutor's Office; — Authorization by a criminal court judge who has ruled that a rape occurred.	

SPECIFIC OBLIGATIONS

The objectives of the provision of medical care in cases of sexual violence are to stabilize the victim, prevent complications derived from their injuries and cure any injuries. Specifically, for victims of rape, the following actions will be guaranteed:

Offer the victim emergency contraception immediately or no later than 120 hours after the incident. Before providing the medication, the user will receive detailed information on how to apply the method to allow her to make a free and informed decision.	Paragraph 6.4.2.3
Inform the user about the potential risk of sexually transmitted infections. After evaluating the risk and based on her perception of such risk, HIV/AIDS prophylaxis will be prescribed.	Paragraph 6.4.2.4
Guarantee crisis intervention and subsequent psychological care to promote the user's emotional stability.	Paragraph 6.4.2.2
<p>In the case of a pregnancy from rape, public institutions that provide health services will offer voluntary termination of pregnancy when it is legally permitted.</p> <p>Victims of rape aged 12 years or older will have access to pregnancy termination services without having to meet any requirement other than submitting a written request under oath stating that the pregnancy is the result of rape. For users younger than 12, the father, mother, or guardian will submit the request.</p> <p>The health care staff that participates in the pregnancy termination is under the obligation to act in accordance with the principle of good faith included the LGV. Therefore, the staff is not required to corroborate the user's account.</p> <p>Before the abortion, the user will receive detailed information about the potential risks and consequences to ensure that she makes an informed decision.</p>	Paragraph 6.4.2.7
Whenever possible, having obtained the user's consent, medical evidence of the rape will be recorded. The user will be informed about her right to file a report. She will also receive information about the Executive Commission for Victims and other available support centers, as well as public, social, and private institutions where she can seek other services.	Paragraph 6.4.2.5, 6.4.2.6, 6.6.1
From January 1, 2009 to June 30, 2016, emergency contraception was offered to 6,048 victims of rape at public health services in Mexico..	

THE RIGHTS OF NURSES AND MEDICAL STAFF REGARDING THE LEGAL TERMINATION OF PREGNANCY, IN ACCORDANCE WITH NOM 046

Conscientious objection among nurses and medical staff implies the recognition of the right to freedom of conscience and refers to the possibility of refusing to carry out activities that conflict with an individual's personal, including religious, beliefs.¹² Nonetheless, since it is an individual right, the possibility of being an objector is limited to personnel that participate directly in an activity; it does not include administrative staff, for example. In that regard, health institutions cannot be conscientious objectors, as they are under the obligation to have nurses and medical staff that are not objectors to ensure timely and appropriate provision of abortion services. If for justified reasons a user cannot receive the services at the institution where she seeks such care, the institution will immediately refer her to a health facility capable of providing the service that she needs. The NOM 046 includes the possibility of conscientious objection, which is on an equal basis with women's right to terminate a pregnancy from rape.

6.4.2.7

Conscientious objection of nurses and medical staff responsible for pregnancy termination will be respected..

6.4.2.8.

For the intents and purposes stated in paragraph 6.4.2.7, public health institutions will have trained physicians and nurses that are not conscientious objectors. If the service cannot be timely and appropriately provided when the request for care is submitted, the user will be immediately referred to a health facility that has personnel willing to provide the service and the infrastructure required for quality care.

12. The International Covenant on Civil and Political Rights, in Article 18.3, states: Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

EXAMPLES OF EFFECTIVE ACCESS TO ABORTION IN CASES OF RAPE: APPLICATION OF THE GENERAL LAW OF VICTIMS AND NOM 046

NANCY, 24 YEARS OLD, HIDALGO, 2016

Nancy, a supermarket cashier, was sexually assaulted by her boss while taking inventory one evening. He threatened to harm her family and fire her if she talked about it. When Nancy realized that she was pregnant, the perpetrator increased the threats and went to Nancy's house to intimidate her.

Although she presented a document of the facts to the managers, they refused to take measures against the offender.

Accompanied by GIRE, Nancy filed a request for LTP with the Hidalgo Ministry of Health. In the request, she stated under oath that her pregnancy was the result of rape. The LTP procedure was authorized but despite having reported the rape with the Public Prosecutor's Office, the investigation was shelved due to an alleged lack of evidence.

MINERVA, 18 YEARS OLD, HIDALGO, 2016

One afternoon, in the street, Minerva was approached by an acquaintance who asked to have a word with her. When she refused, the offender, aided by a friend of his, pushed her into an alley and raped her. He told her that he would be watching her and threatened to hurt her mother to keep Minerva from talking about the incident. Deeply affected by the assault and the resulting pregnancy, Minerva stopped eating. When her mother insisted on knowing what was wrong, Minerva told her what had happened.

Accompanied by GIRE, Minerva filed a request for LTP, under oath, with the state Ministry of Health, in accordance with NOM 046. The LTP was authorized.

The rape was reported with the Public Prosecutor's Office. Currently, efforts are underway to prevent the investigation from being shelved, as was the case with Nancy and many others in Hidalgo.

BOOKLET ON THE RIGHTS OF CHILD VICTIMS OF SEXUAL VIOLENCE

This tool, developed by the Sexual Violence Committee of the CEAV, helps parents and teachers identify cases of children and adolescents in their charge who are victims of sexual violence. The booklet includes, among other things, characteristics, potential harm, and prevalence of child sexual violence in Mexico, characteristics of cyber-harassment, and what to do when a child or adolescent has experienced sexual violence. Steps to follow in these cases expressly include:

“7. If the girl or adolescent is pregnant as the result of violence, she has the right to terminate the pregnancy. She should request the procedure at a public health institution. If the victim is older than 12 years of age, she will not be required to file a report or obtain authorization from her parents or guardian.”

Further, the booklet reiterates,

“In cases of sexual violence, access to emergency contraception, voluntary termination of pregnancy, and prevention of HIV and sexually transmitted infections will be guaranteed.”

1.2 GENERAL LAW ON THE RIGHTS OF CHILDREN AND ADOLESCENTS

This law, which applies to the entire country, establishes children and adolescents as holders of rights. The full exercise, respect, protection, and promotion of their human rights will be guaranteed in accordance with the provisions in the Constitution and the international treaties to which Mexico is a party.

Article 49 of this Law stipulates that when children and adolescents are victims of crimes, the provisions of the LGV will apply. Further, in Article 50(v), it expressly states the right of children and adolescents to the highest possible level of health and requires that federal and state authorities implement sexual and reproductive health services. In addition, the Law mandates that health services adopt the necessary measures to identify and address cases of victims of crime, human rights violations, and sexual violence.

The Law created the National System for Comprehensive Protection to implement policies, procedures, services, and actions to protect the rights of children and adolescents. Under the National System, federal and state Child Protection Authorities are tasked with the protection and restitution of children and adolescents' rights. To that end, they work in coordination with administrative authorities, including those at health services.

The Child Protection Authorities, as defined in Article 122, hold various responsibilities. They include the power to intervene in jurisdictional proceedings where children and adolescents participate; filing reports of incidents that may be crimes against children and adolescents with the Public Prosecutor's Office; and submission of requests to the Public Prosecutor's Office to implement urgent measures when a child's life, integrity, or freedom is at imminent risk. Protection Authorities have the power and responsibility to directly instruct the implementation of urgent measures, providing the foundation and motivation for the order and notifying the Public Prosecutor's Office and the jurisdictional authority. One of the urgent measures to protect children and adolescents is the immediate provision of medical care by an institution of the National Health System.

1.3 NATIONAL STRATEGY FOR THE PREVENTION OF ADOLESCENT PREGNANCY

On June 23, 2015, the Mexican President presented the National Strategy for the Prevention of Adolescent Pregnancy (ENAPEA) to decrease the number of adolescent pregnancies within a framework of respect for the human rights of the target population -girls aged 10 to 19- while ensuring the exercise of their sexual and reproductive rights.

To that end, the framework outlines the State’s obligations; the most significant of which include:

Guarantee pregnant girls and adolescents’ access to prenatal care -including identification of high-risk pregnancies, particularly among those under 15 years of age, that threaten their health and life- and pregnancy termination services.

Provide girls and adolescents who are victims of sexual violence with health care, including prophylaxis to prevent sexually transmitted infections, emergency contraception, and pregnancy termination services.

The Strategy establishes objectives and lines of action for access to pregnancy termination in cases of rape. These include the following:

OBJECTIVE	LINES OF ACTION
<p>2: Foster an enabling environment that favors free, responsible, and informed decisions among adolescents regarding the exercise of their sexuality and the prevention of pregnancy.</p> <p>“A modification of the environment includes changes in social, legal, and cultural norms to prevent and eradicate abuse and sexual violence against children and adolescents, especially among economically disadvantaged populations.”</p>	<p>4. Promote state-level legislation to harmonize penal codes with national and international regulations, particularly the articles on child sexual violence and abuse. For example, revise the laws on consensual underage sexual activity, kidnapping, statutory rape, rape of minors, and forced marriage.</p> <p>5. Strengthen actions to prevent and address violence and sexual abuse in children and adolescents, especially in rural, indigenous, and marginalized urban populations, as well as migrant contexts.</p> <p>Raise awareness about the consequences of sexual abuse through community-level meetings, programs, and recreational activities at schools.</p>

4: Increase demand and quality of sexual and reproductive health services for adolescents.

There is evidence that adolescents increase use of sexual and reproductive health services when health staff provide them with dignified, confidential, and non-discriminatory treatment and are trained and sensitive to their needs at friendly facilities. In addition, the adolescent population will use the services if they trust and are aware of them, and if messages targeting their parents are used.

14. Improve, expand, and adapt friendly services for adolescents, ensuring equal access to acceptable, affordable, and effective care, according to WHO criteria.

Gradually expand coverage of friendly sexual and reproductive health services for adolescents at primary care facilities of all health institutions until 2018. Friendly services will meet the established criteria.

Develop a mechanism to continuously train health providers within special National Health System agencies to raise quality care standards of friendly sexual and reproductive health services for adolescents. Importantly, provision of the services will be autonomous and independent, without intervention of the parents or guardians.

Train health providers to inform pregnant adolescent girls about legal indications for first-trimester abortions and accompany them in the process of requesting the termination, as needed.

Update and disseminate the legal framework for the obligation of health staff to provide sexual and reproductive health services to the adolescent population.

1.4 GENERAL LAW ON WOMEN'S ACCESS TO A LIFE FREE OF VIOLENCE

This Law establishes the basis for the coordination between the federal level, the states, and the municipalities to prevent, punish, and eradicate violence against women. It also lays down the guiding principles for the formulation and execution of the relevant federal and state public policies.

The Law stipulates measures that seek to guarantee a life free of violence for women, as well as promote their comprehensive development and full participation in all spheres. In addition, it defines types and modalities of violence against women, including institutional violence.

Article
18 Article 18. Institutional violence comprises acts or omissions by public servants at all levels of government that discriminate against women or are intended to delay, hinder, or prevent the enjoyment and exercise of their human rights and access to the enjoyment of the benefits of public policies designed to prevent, address, investigate, punish, and eradicate the different types of violence.

Therefore, institutional violence is denying, delaying, or hindering the access of girls and women to the legal termination of pregnancy in cases of rape. This right is clearly established in the Mexican legal framework and public policies.

1.5 HEALTH REGULATIONS

The General Health Law (LGS) governs the human right to the protection of health, as stated in Article 4 of the Constitution. Federal and state authorities have concurrent power to regulate provision of health services.

The General Health Law Regulations in Matters of Medical Care Provision stipulate the basis for health service provision in Mexico. The Ministry of Health and state-level governments are responsible for their application.

This instrument stipulates specifically that health providers are under the obligation to provide care for injuries, disease, and emotional trauma to victims of a crime or a violation of their human rights.

Article
215
Bis 3

The victims that have experienced, injuries, disease, and emotional trauma as the result of a crime or a violation of their human rights are entitled to the restoration of their physical and mental health. To that end, Public Health Facilities will provide them with medical services, including care for medical emergencies, as per the Law, the General Law of Victims, these Regulations, the provisions issued by all public institutions providing medical services, and other applicable legal instruments.

As stated in the Regulations, in cases of medical emergencies, public health facilities will provide the victim with a variety of services. These include voluntary termination of pregnancy in the cases stipulated in the law, including rape, with absolute respect for the victim's will.

Voluntary termination of pregnancy services will be provided to victims of sexual violence regardless of their nationality or economic status, without requiring the filing of a report or a complaint (Article 215 bis 6). In addition, the victims that are not beneficiaries or entitled to receive care at the institution to which the health facility belongs will be guaranteed the termination even when the facility is not able to provide the specialized services that they need (Article 215 bis 4).

Health providers will assess the general health status of the victim to identify any injury or ailment resulting from the crime or violation of her human rights. Subsequently, they will thoroughly treat any medical emergency¹³ or stabilize the general condition of the victim before referring her, if needed, to another health facility.

Of note, the Regulations also include provisions that govern the way health providers treat the victims. They will consider the main harm and consequences of the victimizing event and will provide care to women, girls, adolescents, and people with disabilities and from indigenous groups using a differentiated approach (Article 215 bis 4). Further, the Regulations stipulate that the head of the health facility will notify the Public Prosecutor's Office -and, if applicable, other relevant authorities- of the cases needing medical care for injuries or other ailments that allow presuming the commission of an unlawful act.¹⁴

Each state in the country has a health law. Three states (Baja California Sur, Colima, and Tlaxcala) require filing a report and obtaining authorization from the Public Prosecutor's Office to receive an abortion for rape.

13. A medical emergency will depend on the nature and consequences of the crime. Even if a victim does not seek immediate care, her case will still be regarded as a medical emergency.

14. Significantly, such notification will never be used by the authorities as a mechanism for coercing the victim or as a requirement to access the health services that she needs.

STATE	ARTICLE	REQUIREMENTS
AGUASCALIENTES	No provisions for LTP	
BAJA CALIFORNIA	No provisions for LTP	
BAJA CALIFORNIA SUR	62	Filing a report (implicit) Authorization by the Public Prosecutor's Office
CAMPECHE	No provisions for LTP	
CHIAPAS	No provisions for LTP	
CHIHUAHUA	No provisions for LTP	
COAHUILA	No provisions for LTP	
COLIMA	20 bis	Filing a report (implicit) Authorization by the Public Prosecutor's Office
DURANGO	No provisions for LTP	
GUANAJUATO	No provisions for LTP	
GUERRERO	No provisions for LTP	
HIDALGO	No provisions for LTP	
JALISCO	No provisions for LTP	
MEXICO CITY	58 59	
MICHOACÁN	No provisions for LTP	
MORELOS	No provisions for LTP	
NAYARIT	No provisions for LTP	
NUEVO LEÓN	No provisions for LTP	
OAXACA	No provisions for LTP	
PUEBLA	No provisions for LTP	
QUERÉTARO	No provisions for LTP	
QUINTANA ROO	No provisions for LTP	
SAN LUIS POTOSÍ	No provisions for LTP	
SINALOA	No provisions for LTP	
SONORA	No provisions for LTP	
STATE OF MEXICO	No provisions for LTP	
TABASCO	No provisions for LTP	
TAMAULIPAS	No provisions for LTP	
TLAXCALA	44 bis	Filing a report (implicit) Authorization by the Public Prosecutor's Office
VERACRUZ	No provisions for LTP	
YUCATÁN	No provisions for LTP	
ZACATECAS	No provisions for LTP	

1.6 CRIMINAL LEGISLATION

Mexico regulates abortion at the state level. In general, it is considered a crime however, there are certain cases that are exempt from criminal liability or where punishment is waived. In other words, there are indications under which abortion is not considered a crime.¹⁵

Each state-level penal code¹⁶ defines the grounds for exemption from criminal liability and for granting a waiver of punishment.¹⁷ In practice, this translates into legal discrimination because women have more or less rights to terminate their pregnancy depending on where they live. For example, a woman whose pregnancy threatens her health and lives in a state that does not regard this risk as a legal indication will have to travel to Mexico City to receive an abortion (provided she can afford it). Otherwise, she will have to carry the pregnancy to term at the expense of her health or receive a clandestine abortion, which carries the risk of not only facing criminal charges but also endangering her health and life. In general, state-level regulations are very restrictive. The only indication for legal abortion in all the states is when the pregnancy is the result of rape.

In contrast, only in Mexico City is elective abortion legal in the first 12 weeks of gestation.

Although it is recognized that the State has an interest in investigating events that may constitute a crime, under no circumstance will access to abortion for rape depend on whether the acts reported are consistent with the description of the crime of rape in the Penal Code. As shown in the cases reviewed in this report, the crime has been often reclassified (for example, from rape to consensual underage sexual activity) in an attempt to annul the rape victim's right to LTP. The investigation of the crime and the exercise of the rape victim's rights should consist of separate and independent processes.

ELSA, 12 YEARS OLD, MEXICO CITY, 2014

Elsa and her mother had to file a report with the Public Prosecutor's Office because her father had raped her. She was only 12.

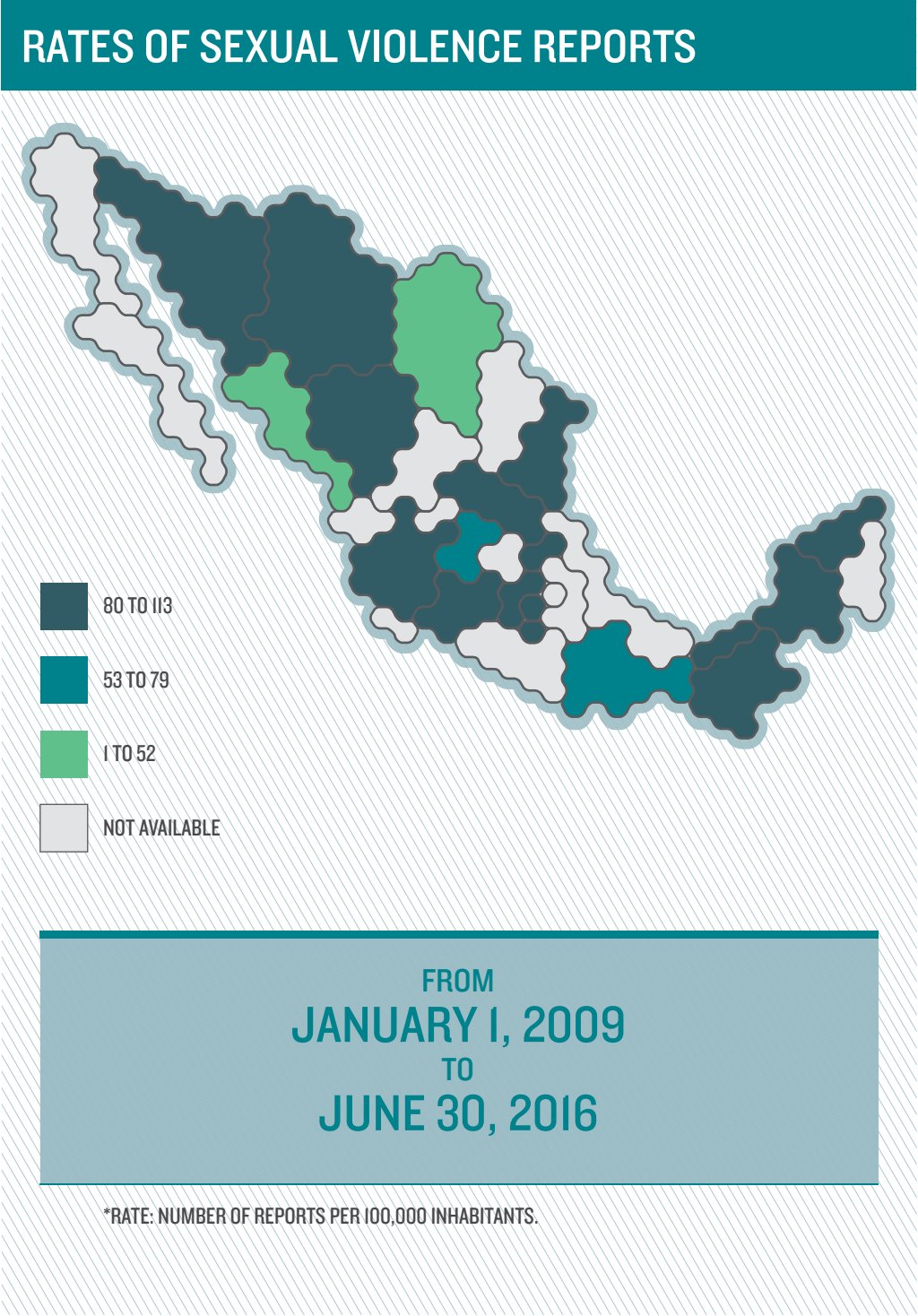
The following day, when Elsa found out that she was 13 weeks pregnant, she decided to have an abortion. The Public Prosecutor's Office, however, **classified the acts reported as corruption of a minor and not as rape**. This was a major obstacle because, according to the Public Prosecutor's Office, this crime does not justify granting the authorization to terminate a pregnancy. Finally, accompanied by GIRE, Elsa was able to receive an abortion. At her young age, the pregnancy constituted a threat to her health.

15. Exemption from criminal liability means that abortion is not deemed a crime under these indications. In contrast, grounds where punishment is waived means that the act is a crime but is not punished.

16. See Annex 1 for a list of indications for legal abortion found in state penal codes.

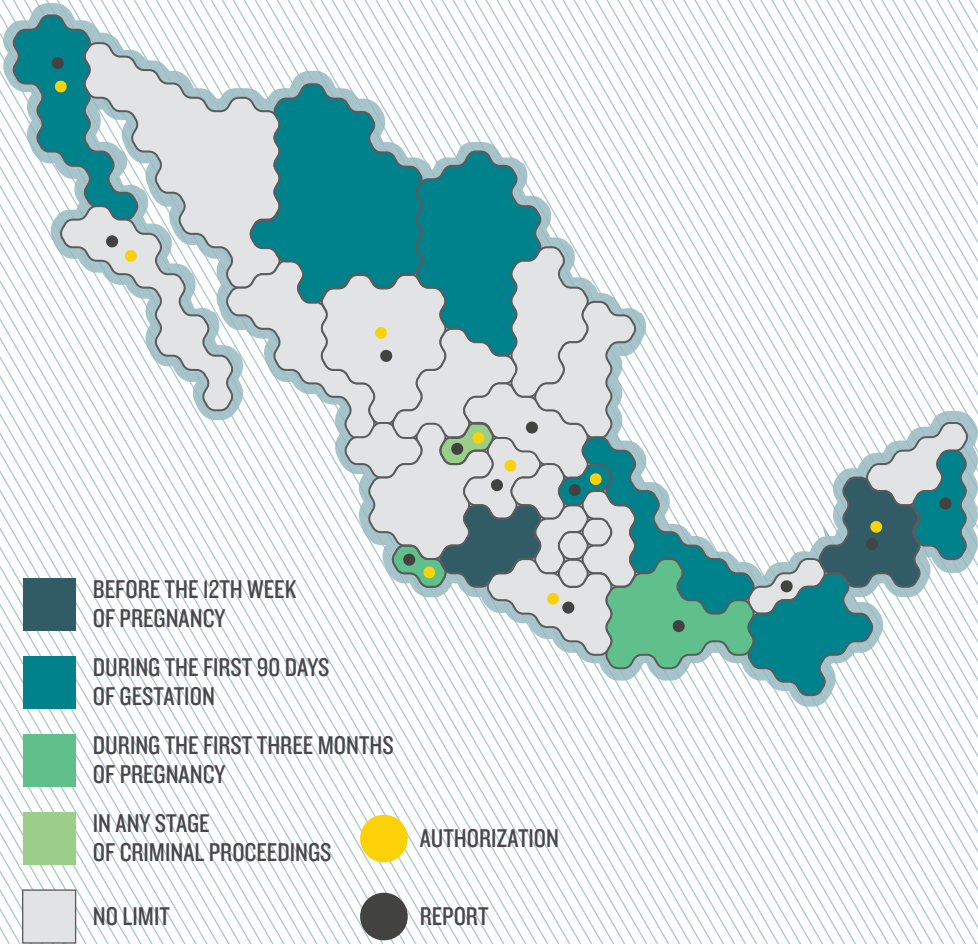
17. In nine states, the penal codes regard rape as grounds for exemption from criminal liability in cases of abortion: Aguascalientes, Baja California Sur, Campeche, Chihuahua, Durango, Guerrero, Michoacán, Mexico City, and San Luis Potosí. The Federal Penal Code and the penal codes of the remaining 23 states regard rape as grounds where punishment is waived.

The General Law of Victims, the General Health Law Regulations in Matters of Health Service Provision, and the NOM 046 stipulate that victims of rape will have access to an abortion without having to obtain judicial/law enforcement authorization or file a report. Nonetheless, in practice, the lack of harmonization between state criminal legislations that still stipulate these requirements usually translates into a denial of access to girls and women's rights.



REQUIREMENTS FOR ABORTION AFTER RAPE

(PENAL CODES, CRIMINAL PROCEDURES CODES,
AND GUIDELINES OR PROTOCOLS)



<div>8</div> <div>STATES REQUIRE AUTHORIZATION</div>	<div>11</div> <div>STATES ESTABLISH A TIME LIMIT</div>	<div>12</div> <div>STATES REQUIRE PRIOR REPORT TO POLICE</div>
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REQUIREMENTS IN STATE PENAL CODES

STATE	GESTATIONAL AGE LIMIT	AUTHORIZATION	REPORT	ARTICLE
AGUASCALIENTES	Yes At any moment during the criminal proceedings	Yes A judge	Yes (Implicit)	103
BAJA CALIFORNIA	Yes Within 90 days of gestation	Yes Public Prosecutor's Office	Yes	136
BAJA CALIFORNIA SUR	No	Yes Public Prosecutor's Office	Yes	156
CAMPECHE	Yes Within 12 weeks of pregnancy	Yes Public Prosecutor's Office	Yes	159
CHIAPAS	Yes Within 90 days of gestation	No	No	181
CHIHUAHUA	Yes Within 90 days of gestation	No	No	146
COAHUILA	Yes Within 90 days of gestation	No	No	361
COLIMA	No Within 90 days of gestation	Yes Public Prosecutor's Office	Yes	141
DURANGO	No	Yes Public Prosecutor's Office	Yes (Implicit)	150
GUANAJUATO	No	No	No	163
GUERRERO	No	Yes Public Prosecutor's Office	Yes (Implicit)	159
HIDALGO	Yes Within 90 days of gestation	Yes Public Prosecutor's Office or judge	Yes	158
JALISCO	No	No	No	229
MEXICO CITY	No	No	No	148
MICHOACÁN	Yes Within 12 weeks of pregnancy	No	No	146
MORELOS	No	No	No	119
NAYARIT	No	No	No	371
NUEVO LEÓN	No	No	No	331
OAXACA	Yes Within 3 months of the rape	No	Yes	316
PUEBLA	No	No	No	343

QUERÉTARO	No	No	No	142
QUINTANA ROO	Yes Within 90 days of gestation	No	Yes	97
SAN LUIS POTOSÍ	No	No	Yes (Implicit)	150
SINALOA	No	No	No	158
SONORA	No	No	No	269
STATE OF MEXICO	No	No	No	251
TABASCO	No	No	Yes (Implicit)	136
TAMAULIPAS	No	No	No	361
TLAXCALA	No	No	No	243
VERACRUZ	Yes Within 90 days of gestation	No	No	154
YUCATÁN	No	No	No	393
ZACATECAS	No	No	No	312
FEDERAL PENAL CODE	No	No	No	333

NUMBER OF AUTHORIZATIONS FOR ABORTION FOR RAPE ISSUED BY FEDERAL AND STATE PUBLIC PROSECUTOR'S OFFICES	NUMBER OF AUTHORIZATIONS FOR ABORTION FOR RAPE RECEIVED BY THE IMSS, THE ISSSTE, AND STATE MINIS-TRIES OF HEALTH	NUMBER OF ABORTIONS FOR RAPE PERFORMED BY THE IMSS, THE ISSSTE, AND STATE MINISTRIES OF HEALTH
26	51	62

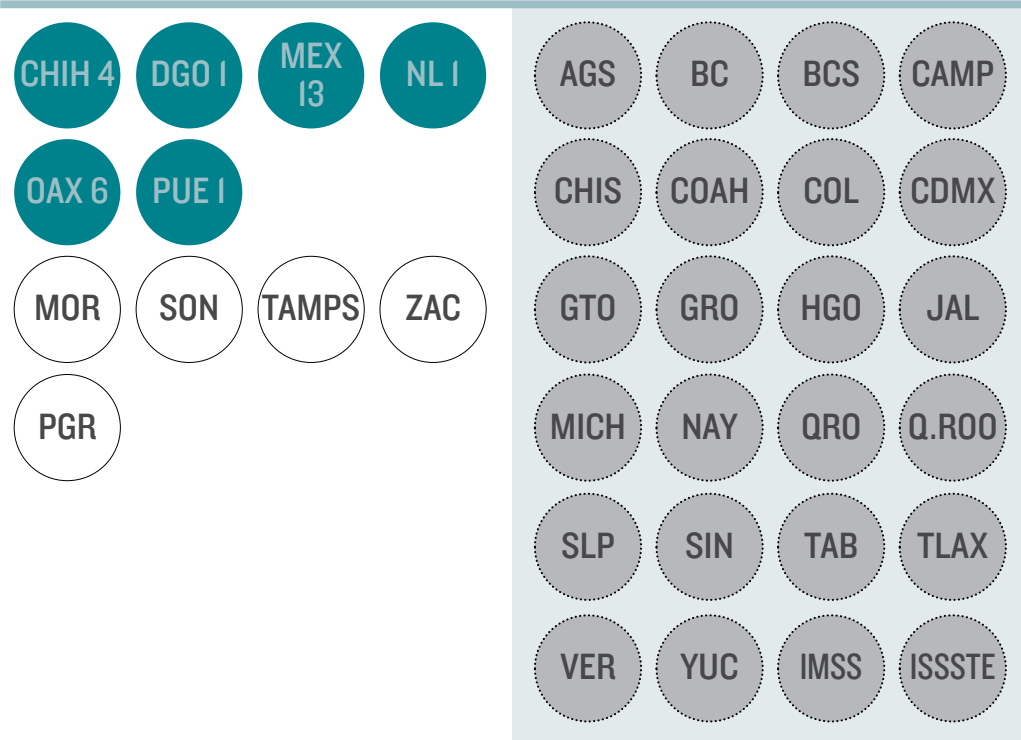
Source: An original GIRE table created with data between January 1, 2009 and June 30, 2016, obtained through requests for public information.

ABORTION AUTHORIZATIONS AFTER RAPE

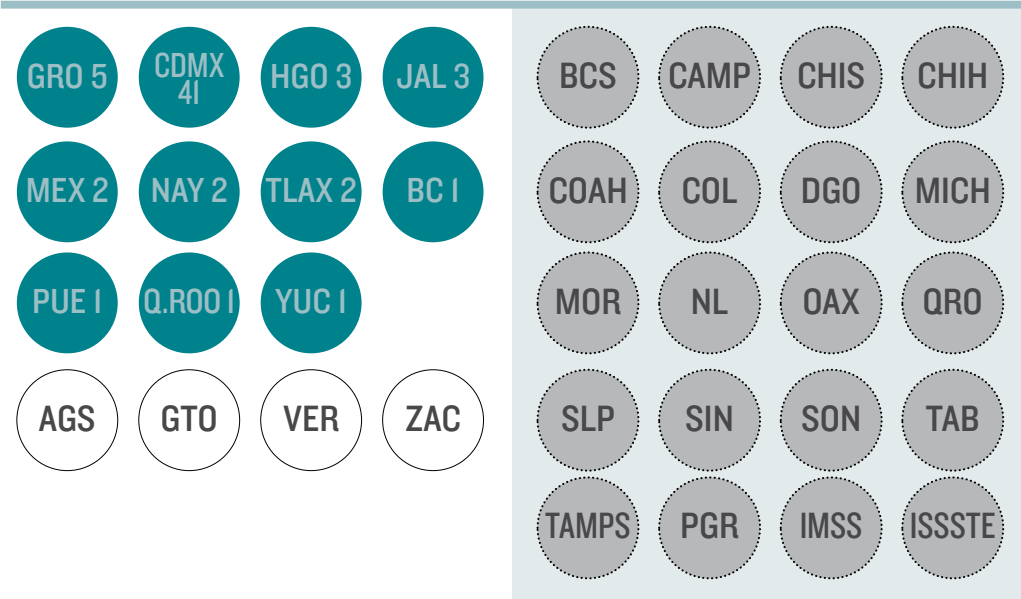
JANUARY 1, 2009 TO JUNE 30, 2016



26 ABORTIONS AUTHORIZED BY THE PUBLIC PROSECUTOR'S OFFICES



62 ABORTION AUTHORIZATIONS CARRIED OUT BY HEALTH MINISTRIES



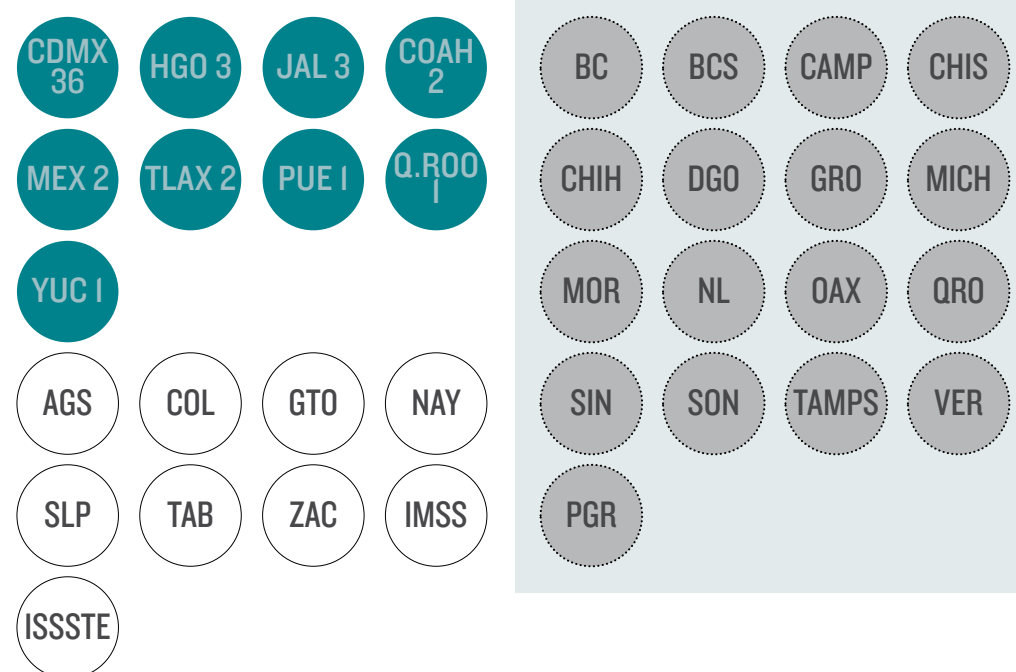
Source: GIRE developed the graphic based on data obtained through requests for public information.

AUTHORIZATIONS OF ABORTION IN THE CASE OF RAPE

JANUARY 1, 2009 - JUNE 30, 2016



51 ABORTION AUTHORIZATIONS ISSUED BY THE PUBLIC PROSECUTOR'S OFFICES REPORTED BY THE HEALTH MINISTRIES



Source: GIRE developed the graphic based on data obtained through requests for public information.

WHAT TO DO AFTER SEXUAL ASSAULT

1 Go to any public health facility. Remember that victims of crimes, such as sexual assault, have the right to receive immediate emergency attention without conditions or requirements.

2 Public health providers' obligation to treat you immediately derives from the Federal Law on Victims, the Federal Health Law Guide on Subject Matter of the Provision of Medical Care Services, as well as the NOM 046-SSA2-2005 on domestic and sexual violence against women.

3 If you are over 12 years old, you must to request abortion services under oath, stating that the pregnancy is the result of a rape. Health personnel cannot request that you meet any additional requirements, such as filing a police report or obtaining authorization from the Public Prosecutor's Office or a judge.

4 **ABORTION ACCESS IN THE CASE OF RAPE IS LEGAL IN THE ENTIRE COUNTRY**

Check the penal code of your state to see if there is a gestation time limit to access an abortion.

WHAT SHOULD HEALTH PROVIDERS DO?

- Evaluate the risks of sexually transmitted infections and, if appropriate, prescribe HIV / AIDS prophylaxis.
- Offer emergency contraception, immediately and up to a maximum of 120 hours after the assault occurred.
- In case of pregnancy after rape, they are obligated to provide an abortion if you request it.
- Crisis intervention and psychological care should be guaranteed to promote emotional stability.
- They should inform you of your right to report the crime, as well as about public, private and social institutions where you can go to other services.

Health personnel are obliged to provide you with these services, in accordance with Federal Health Law Guide on Subject Matter of the Provision of Medical Care Services, as well as the NOM 046-SSA2-2005 on domestic and sexual violence against women.

YOUR RIGHT TO REPORT SEXUAL VIOLENCE IS INDEPENDENT OF YOUR RIGHT TO ACCESS HEALTH SERVICES

1.7 ACCESS TO JUSTICE

LEGAL STAY

In 2015, Nadia, a 16-year-old adolescent from Jalisco, was raped and became pregnant. The incident was reported to the Public Prosecutor's Office. She visited a health center to request an abortion due to rape in accordance with the GLV and the Jalisco Law for the Care of Victims. The Ministry of Health, however, refused the request arguing that the Operations Manual "Comprehensive Model to Prevent and Address Domestic and Sexual Violence" required that the victim obtain authorization for an abortion from a criminal court judge.

In view of such response, accompanied by GIRE and Ángela García, a lawyer with RADAR 4TH, the parents of Nadia filed an indirect legal stay (*amparo*) on her behalf. The document addressed the following:

- The official letter where the Jalisco Ministry of Health denied Nadia the LTP;
- Paragraph 6.4.2.7 of NOM 046, in effect at the time, established the requirement of obtaining "authorization from the relevant authority" to receive an abortion, a demand that exceeds the requirements stated in the criminal legislation and lacks objective and reasonable justification. Consequently, the requirement was deemed unconstitutional and a violation of women's human rights;
- The demand for obtaining the authorization of a criminal court judge to receive the LTP, as stated in the Operations Manual "Comprehensive Model to Prevent and Address Domestic and Sexual Violence," was deemed unconstitutional as it included more requirements than NOM 046 did.
- "...if the reason to perform the abortion is the crime of rape, authorities with relevant powers -the Office of the Public Prosecutor or the Attorney General- will participate in the process to determine the existence of the unlawful act;"¹⁸
- "...only a criminal court judge, having determined the existence of a crime, according to the legislation applicable in each state, will authorize a medical abortion."¹⁹

The judge presiding over the legal stay proceedings decided that the requirement in paragraph 6.4.2.7 of NOM 046 was a reasonable and proportional measure. She also recognized, on the one hand, that a victim of rape has the right to request an abortion. On the other hand, she argued that the embryo has the right to life, allegedly recognized in international human rights treaties, thus disregarding the authorized interpretation of such right by the Inter-American Court of Human Rights, which does not recognize it.²⁰

With regard to the reasonability and proportionality of the measure, the judge argued that, although the state criminal legislation does not stipulate that a criminal court judge has to grant the authorization to perform a LTP procedure and NOM 046 requires the authorization of a "competent authority," the NOM does not state that it has to be a criminal court judge. The court decided that the authorization was to be granted by a health authority and that the victim's report that the pregnancy was the result of rape was not enough to authorize a legal abortion.

A mere assertion by a woman that she was a victim of rape is not enough to perform it [the abortion]. It is necessary to assess the wording of her request and the specific conditions surrounding the requester to enable the health authority to determine that the pregnancy was indeed the result of rape.

Elaborating on her decision, the judge explained that otherwise any person would “indiscriminately” report having been a victim of rape to terminate a pregnancy without meeting any other requirement or submitting proof. This argument is built on the assumption that women who request LTP services lie. It also ignores the high prevalence of sexual violence against girls and women in Mexico, according to official figures, and its devastating physical and emotional effects.

Regarding the Operations Manual, the decision recognizes that requiring the authorization of a criminal court judge to terminate a pregnancy is indeed unjustified and is not stated in the provisions in NOM 046. Further, such requirement contravenes the law, which stipulates that the health authority provide emergency care, including access to LTP, in cases of rape.

Hence, unquestionably, in such a case the health authority will not even wait for a preliminary inquiry or a final judgment to establish that a person was a victim of the above-mentioned unlawful act. Rather, the health authority will act immediately and notify, if needed, the social representative.

In this part of the decision, the court reiterated that the health authority is suitable to determine whether the woman requesting an abortion after rape is a candidate to access the service. Nevertheless, regarding the suitability of the health authority, the court claims that it has the medical knowledge and resources to assess the victim’s health status and hence can decide whether or not to perform the procedure.

In that regard, the judge did not make the fundamental distinction between things that are of different nature and purpose. One thing is to assess the victim’s health status to ensure that the abortion meets her specific health needs and quite another to perform an “evaluation” based on prejudice and the assumption that the victim may be lying to receive the service. Therefore, the court left the decision of whether the woman was a victim of rape in the hands of the health providers.

Of note, the Inter-American Court of Human Rights stated the following regarding the case of *Ortega et al. vs. Mexico*:

...the Court finds it evident that rape is a special type of violence, which is generally characterized as taking place in the absence of persons other than the victim and the aggressor or aggressors. In view of the nature of this type of violence, one cannot await graphic or documentary evidence, thus the victim’s statement becomes the fundamental proof of that which occurred.²¹

Thus, although the judge granted the legal stay by ruling that the Manual was unconstitutional, regrettably, the ruling as a whole lacked a gender perspective. Moreover, although the court said that the decision had been based on international human rights treaties, it ignored the authorized interpretation of the rights that those instruments recognize.²²

LEGAL STAYS FOR CASES OF DENIAL OF ABORTION AFTER RAPE LITIGATED BY GIRE

FILE DETAILS	CASE	OBSTACLES TO ACCESS JUSTICE	STATUS
AGUASCALIENTES Indirect legal stay 2137/2014 Second District Court	Complaint 99/2014 Second Collegial Court A woman with a high-risk pregnancy that threatened her health was denied an abortion because the health indication is not included in the local Penal Code. A legal stay was filed immediately.	Lack of recognition of the interest to allow the complainant to attend trial to challenge the local Penal Code's failure to include the health indication. The District Judge dismissed the complaint and the Collegial Court confirmed the dismissal.	Litigation ended
DURANGO Indirect legal stay 890/2016 Second District Court	The local Ministry of Health refused to provide LTP services to a rape victim because she was not enrolled in the National Registry of Victims.	The trial was dismissed because the reply of the local Ministry of Health was not deemed a refusal. Further, the decision invoked NOM 046 provisions that were no longer in effect.	An appeal is being compiled
HIDALGO Indirect legal stay 553/2014 Second District Court Legal Stay 216/2015 (under review) Second Collegial Court	The Public Prosecutor's Office refused to provide LTP services to a girl whose pregnancy resulted from rape, arguing that she did not meet the legal requirements.	The judge dismissed the trial because the legal stay was initiated when the pregnancy had already been terminated. He decided that there was no substance for trial and disregarded the consequences of the health authority's acts. An appeal was filed. The girl's family, however, decided not to move forward and GIRE, as the legal representative, abandoned the appeal.	Litigation ended

18. Operations Manual available in Spanish at <<http://www.gobernacion.gob.mx/work/models/SEGOB/Resource/689/1/imagenes/MODELOE.PDF>>, p. 51

19. *Ibid.*, p. 52

20. Inter-American Court of Human Rights, The case of Artavia Murillo et al (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C. No. 257, paragraph 147. Available at <http://www.corteidh.or.cr/docs/caso/s/articulos/seriec_257_ing.pdf>

21. Inter-American Court of Human Rights, The case of Fernández Ortega et al vs. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010, paragraph 100. Available at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf>

22. Alarming, the National Center for Gender Equality and Reproductive Health submitted an appeal of the decision but its resolution is still pending.

HIDALGO Indirect legal stay 358/2015 Second District Court Request for Review 216/2015 Second Collegial Court	The Public Prosecutor's Office refused to provide LTP services to a girl who had been raped, arguing that she did not meet the legal requirements in the local Penal Code. A legal stay was filed.	The judge denied the legal stay because he considered that the product of conception has the right to life, which would be undermined with the legal stay. He used a discriminatory interpretation of the right to life that contravened the one in human rights treaties and judgments by such courts as the I/A Court H. R.	The appeal is being processed
JALISCO Indirect legal stay 284/ 2016 Third District Criminal Court Request for Review 138/2016 Third Collegial Criminal Court	A public hospital denied an abortion to a girl who had been raped.	Having being notified of the lawsuit, the hospital agreed to provide the service. The judge decided to dismiss the trial because in his opinion there was no substance for trial and disregarded the consequences of the health authority's actions.	Litigation ended
MORELOS Indirect legal stay 178/2016 Third District Court Legal Stay 851/2016 (under review) First Collegial Criminal Court	A hospital denied LTP services to a girl who had been raped because its Bioethics Committee determined that she could carry the pregnancy to term.	The judge awarded a legal stay for effects whereby he ordered the Bioethics Committee to issue a new opinion, as it deemed appropriate, but this time with the underlying foundation and motivation. Hence, the legal stay would address issues other than the subject matter because the judge did not regard it as urgent.	The appeal is being processed
PUEBLA Indirect legal stay 1357/2015 First District Criminal Court Legal Stay 104/2016 (under review) Third Collegial Criminal Court	The local Ministry of Health refused to provide LTP services to a girl who had been raped because, in accordance with a provision in NOM 046, then in effect, she did not have the judge's authorization despite the fact that the local Penal Code did not state that requirement.	The judge dismissed the trial because the girl terminated her pregnancy during the proceedings. He decided that there was no substance for trial and disregarded the consequences of the health authority's actions.	Litigation ended

<p>STATE OF MEXICO</p> <p>Indirect legal stay I282/2014</p> <p>Thirteenth District Court</p> <p>Complaint I04/2014</p> <p>Fourth Collegial Criminal Court</p>	<p>The Public Prosecutor's Office refused to provide LTP services to a girl who had been raped because she did not meet the requirement of obtaining authorization within 12 weeks of pregnancy, as stipulated in the Criminal Procedures Code. A legal stay was filed immediately.</p>	<p>The judge dismissed the legal stay arguing that before initiating it, they should have appeared before a control judge. He did not consider that they were challenging the constitutionality of the law. The Collegial Court confirmed the dismissal.</p>	<p>Litigation ended</p>
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GIRE has accompanied numerous cases of abortion for rape. Between November 2013 and November 2016, 15 *amparos* were initiated due to denial of LTP services. Of the *amparos* initiated by GIRE, no legal ruling has yet addressed the denial of services in a comprehensive manner. Further, most of them, due to procedural issues, have not even discussed the root cause of the existence of obstacles to receive an abortion after rape, which constitutes a violation of women's human rights.

Consequently, we must question how effectively the *amparo* addresses these violations of women's human rights whose resolution requires access to a health service—abortion in cases of rape—that the LGV regards as a medical emergency.

The Mexican Supreme Court has not reviewed a single case that refers to standards that district judges or collegial courts can apply to resolve such trials, which means that every judge makes decisions at their own discretion, without any legal certainty for women.

Hence, rulings that are dismissed, *amparos that are rejected for lack of substance*, and denial of constitutional protection prevail. With the exception of one decision that thoroughly studies the problem and two *amparo* resolutions, the rest of the cases accompanied by GIRE did not even move past the stage of assessment of legality.

With regard to *amparos*, an analysis of procedural paths has identified two possible approaches to access constitutional justice and request a study of the obstacles to abortion for rape. The approaches relate to the sources of the obstacles: the norm that regulates the access of rape victims to abortion and the subjective discretion of the authority that has to provide the service.

In the cases litigated by GIRE, at least two months—and sometimes up to seven or nine—have elapsed between the filing of the *amparo* and the ruling. Following are the four types of rulings made so far:

- **Dismissal.** The judges decided that because of the time elapsed and the term of the pregnancy at the time the woman or girl filed the *amparo*, the pregnancy would have come to term and thus the *amparo* would have been of no benefit.
- **Denial of amparo.** The judge deemed that the restrictions to access abortion were constitutional in accordance with the right to life of the product of the pregnancy.

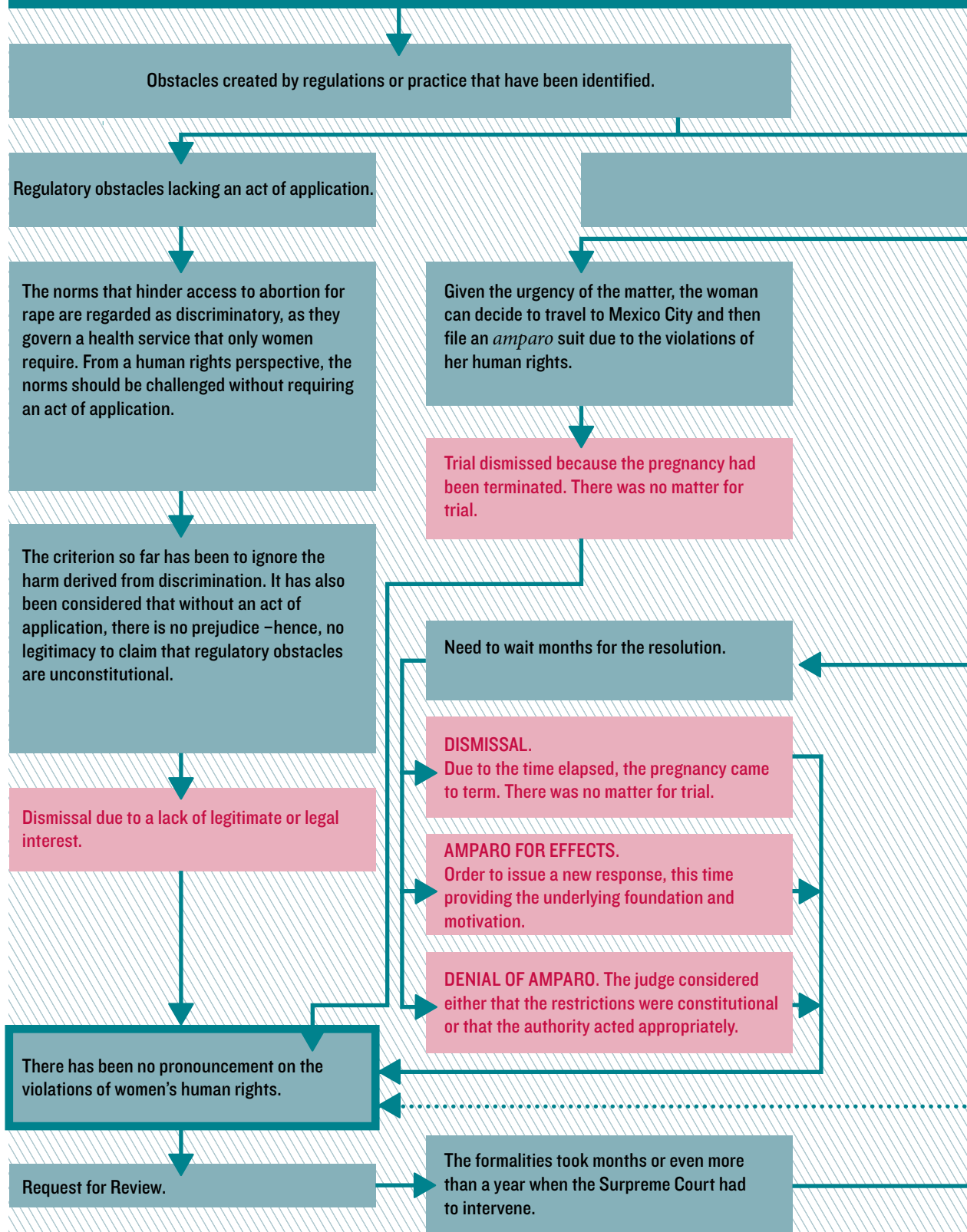
- **Granting of an amparo for effects.** The judge considered that the authority did not take into account some elements when it responded to the abortion request and thus ordered the issuance of a new response. This did not necessarily imply that the authority would provide the pregnancy termination because even after considering the elements that the judge had pointed out, it might still refuse to provide the service.
- **Granting of an amparo.** The judge was able to corroborate that denial of abortion services is a violation of women's human rights. Therefore, he awarded constitutional protection and ordered the provision of the requested health services. (Notably, this has not happened in any of the cases that GIRE has litigated and accompanied.)

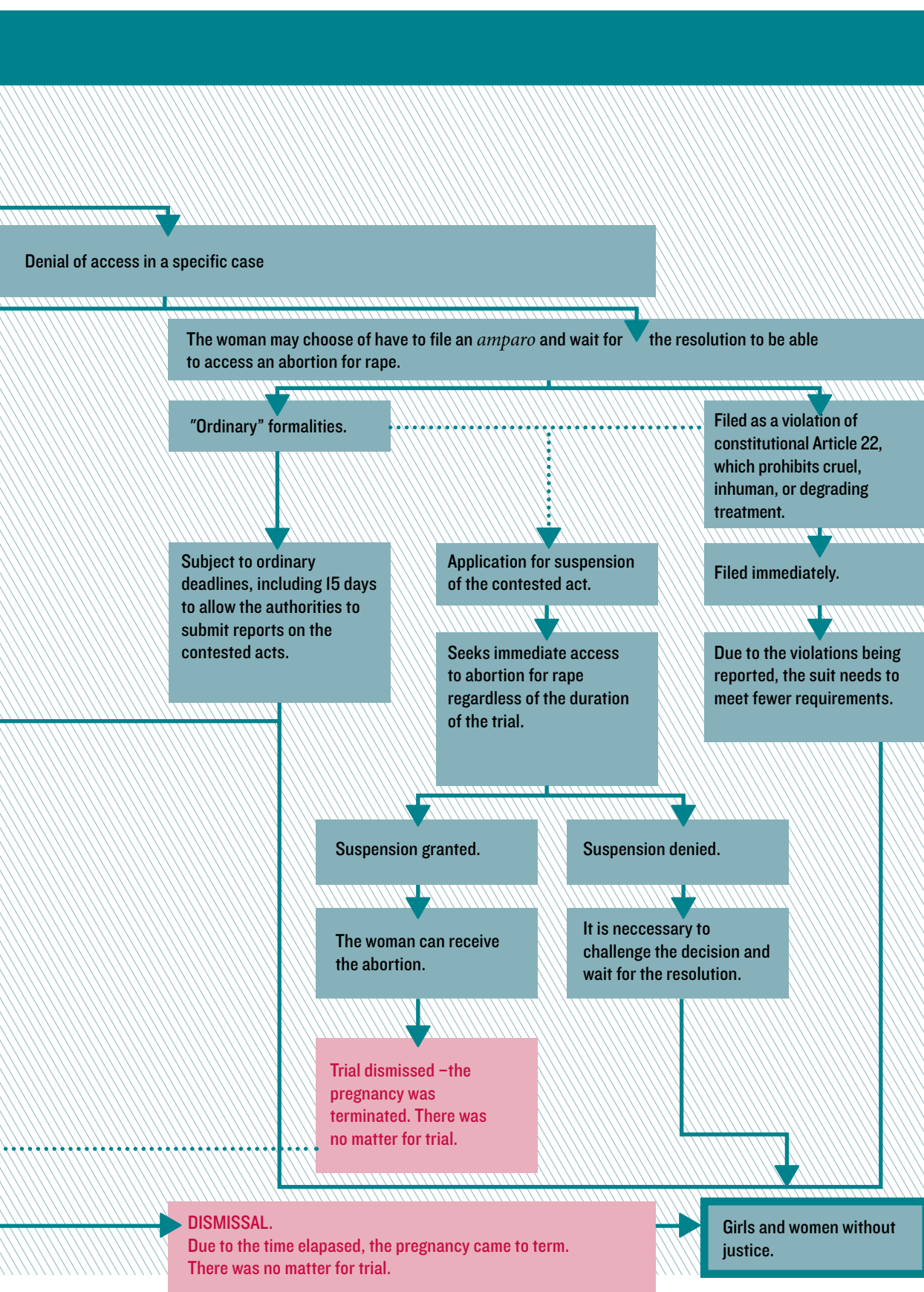
Nonetheless, there is still an unresolved issue. What happens if, during the trial, the woman decides to terminate the pregnancy because of excessive delays in the proceedings or a medical emergency resulting in harm to her health or a threat to her life?

The rulings and resolutions thus far have been inconsistent and none has fully addressed the real problem. In other words, to this day, no agency of the Federal Judicial Branch, including the Supreme Court, has made a pronouncement on the obstacles to access the legal termination of pregnancy.

The grounds to dismiss a trial have been established without considering their differential impact on abortion cases. It is time that legislators take into account such effects and amend the *Amparo* Law or that constitutional judges, including Supreme Court Justices, make a pronouncement on the need for a constitutional interpretation with a gender perspective. Until that happens, constitutional justice will continue to owe a debt to women and girls.

ABORTION AFTER RAPE





CITLALLI, 13 YEARS OLD, SONORA, 2016

Requirements for LTP services in cases of rape, as per the Sonora Criminal Code

Non-existent

Citlalli, a Huichol girl from Sonora, was raped in her own house by her father's co-worker. The day of the rape, Citlalli and her father filed a report with the Public Prosecutor's Office. The girl, however, was denied the rights to which any rape victim is entitled, such as receiving information about her rights and having access to emergency contraception. Since the authorities did not provide her with emergency contraception pills, Citlalli became pregnant.

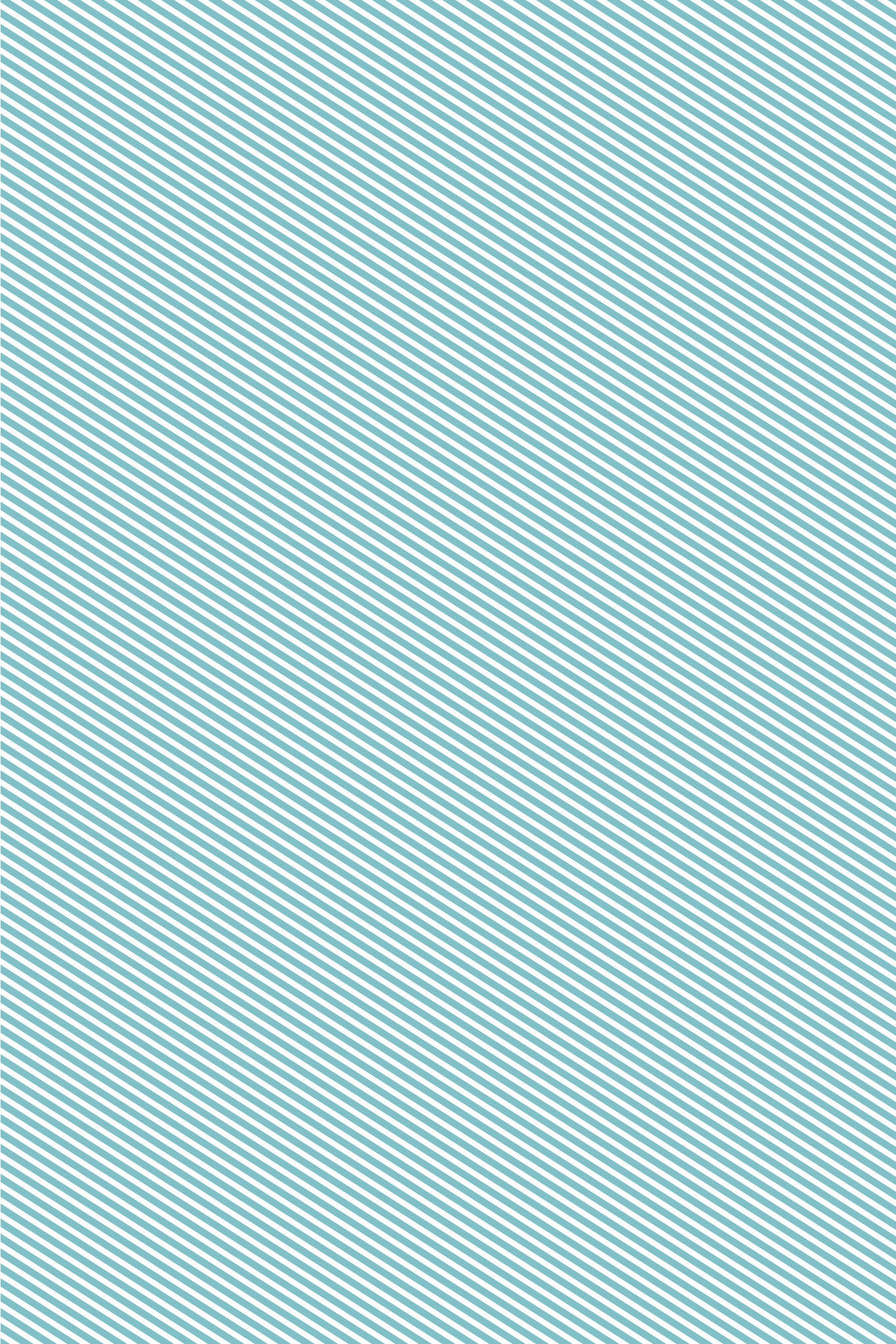
Her case was filed as aggravated rape but days later it was reclassified as consensual underage sexual activity. Thus, the authorities used this reclassification as the reason for denying Citlalli access to the rights, including abortion, which the law establishes for all victims of a sexual assault that results in pregnancy. The Public Prosecutor's Office appealed the reclassification. Weeks passed and Citlalli's pregnancy advanced. Importantly, despite the reclassification of the crime, as a victim of rape, Citlalli had the right to abortion services because the investigation of crimes by the State is separate from the process to which any victim of a crime or a human rights violation is entitled, as stated in the LGV.

The local health services determined that Citlalli's was a high-risk pregnancy due to her young age. Nonetheless, the Sonora Hospital for Comprehensive Women's Care rejected her request for pregnancy termination on three occasions. In view of this, an *amparo* was filed and its resolution, at the closing of this report, is pending.

With the support of a number of organizations, including GIRE and ddeser, Citlalli travelled to Mexico City to receive the services that she had been denied and to which she was entitled.

In addition to the *amparo* formalities, reparations were agreed upon with the Sonora government, in accordance with petitions submitted by Citlalli and her father, including:

- **Psychological care.** Accepted and ongoing.
- **Financial compensation.** Accepted and awarded.
- **Adjustment of school hours for Citlalli's brothers.** Accepted and implemented.
- **Improvements to the family home.** Accepted and ongoing.



The background is a solid teal color, divided by a diagonal line that runs from the top-left corner towards the bottom-right corner. The line is slightly darker than the background, creating a subtle geometric design.

2 /

LEGAL FOUNDATION
FOR THE PROVISION OF ABORTION
AFTER RAPE,
ACCORDING TO THE HIGHEST
HUMAN RIGHTS STANDARDS

From the perspective of human rights treaties ratified by the Mexican State, the case law emanating from treaty bodies, and criteria used in special UN proceedings, hindrance or denial of abortion services for girls and women who are victims of rape is a clear case of non-compliance by Mexico with its legal obligations concerning their rights. As described below, there are strong arguments in that regard in international human rights law.

2.1 THE RIGHT TO EQUALITY AND NON-DISCRIMINATION

Specifically, the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) is the international instrument that recognizes the human rights of women, who have historically experienced inequality and discrimination. The CEDAW and the case law made by the CEDAW Committee, the body tasked with monitoring the Convention’s compliance, have become the reference to understand the nature of the obligations and responsibilities of the States regarding the eradication of any sex and gender-based discrimination against women.

The CEDAW defines discrimination against women as

TREATY	International treaties that protect the right: The right to equality and non-discrimination is a cross-cutting principle of international human rights law.
CONSTITUTION	Constitutional articles that guarantee the right: Articles 1° and 4°.

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²³

The above definition is relevant. It considers the fact that discrimination against women can occur when a legal framework does not recognize their rights or when conditions are not conducive to their enjoyment and exercise.

According to the CEDAW, a country fails to comply with its obligation of non-discrimination when its legal framework and public policies do not consider medical services that only women require. These include some reproductive health services.²⁴

One of the most relevant aspects of the CEDAW is how it highlights, in Article 5, the impact that customs, stereotypes, religion, and traditions have on women's access and exercise of their rights. In addition, it establishes that States are under the obligation to take the necessary measures to eradicate those that translate into obstacles to the exercise and enjoyment of women's rights.

This obligation becomes especially relevant in the field of reproductive rights. Specifically, the underlying reason for the lack of access to safe abortion services for women, even when the law prescribes it in cases of rape, includes a number of prejudices and ideas about motherhood as a mandatory and inevitable function of women. This allows health providers to favor their beliefs and personal morality over a woman's right that is recognized by the law and, in so doing, they clearly violate Article 5 of the CEDAW.

The United Nations Working Group on the issue of discrimination against women in law and in practice has recently developed more arguments regarding women's right to non-discrimination in matters of health and safety.

In keeping with the interpretation by the CEDAW Committee, the Working Group believes that to achieve gender equality in the field of health, it is essential to provide differentiated treatment to men and women. The reason is that, throughout their life, women have specific health needs and are vulnerable to distinctly different factors: "Women have specific biological functions, are exposed to health problems that affect only women, are victims of pervasive gender-based violence..."²⁵ The Group also highlights the humiliating treatment that women seeking health services receive "... sometimes expressly in the name of morality or religion, as a way of punishing what is considered 'immoral' behavior."²⁶

Furthermore, the Working Group recognizes, as has the CEDAW Committee, that States have to address the social, religious, and cultural factors that contribute to the alleged inferiority of women.²⁷ The Group acknowledges that under no circumstance the right to freedom of religion or belief will be an excuse to justify gender-based discrimination or hinder women's access to the highest possible level of health.²⁸

In addition, the Working Group discusses the relationship between the right to equality and to non-discrimination of women and their autonomous access to sexual and reproductive health services without coercion or violence.

Autonomy means that a woman seeking services in relation to her health, fertility or sexuality is entitled to be treated as an individual in her own right, the sole beneficiary of the service provided by the health-care practitioner and fully competent to make decisions concerning her own health. This is a matter of, among other things, a woman's right to equality before the law.²⁹

23. United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Article 1. Available at <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>

24. United Nations, CEDAW Committee, General Recommendation No. 24. Women and health, 20th Session (1999), paragraph 11. Available at <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>

25. United Nations, Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice. Available at <<http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/HRC/32/44&Lang=E&Type=DOC>>

26. *Ibid*, paragraph 17.

27. *Ibid*, paragraph 27.

28. *Ibid*, paragraph 94.

29. *Ibid*, paragraph 86.

L.C. V. PERU

A thirteen-year-old Peruvian girl, L.C. became pregnant after repeated episodes of sexual abuse. Depressed, she tried to take her own life by jumping off a building. Her suicide attempt seriously injured her spine and without immediate care, she would be permanently paralyzed. The attending physicians refused to perform the surgery that she needed because she was pregnant. In Peru, therapeutic abortion is legal but despite requests for an abortion by L.C. and her mother, the authorities ignored the medical opinions that certified that L.C.'s life and health would be at risk if she carried the pregnancy to term. Although L.C. miscarried some time later, it was too late for her. She was paraplegic.

In 2009, her case was brought before the CEDAW Committee. It concluded that the Peruvian State had violated her rights, specifically those protected by Article 12 of the CEDAW (access to medical care on a non-discriminatory basis) and Article 5 (regarding gender stereotypes that grant greater protection to the fetus than to the woman's life). The CEDAW Committee recommended that the Peruvian State decriminalize abortion when the pregnancy results from rape, ensure women's access to therapeutic abortion in the cases stipulated in the law, and guarantee that health facilities act as per the Committee's Recommendation No. 24 regarding women's health.

Of note, in 2012, the CEDAW Committee issued a number of recommendations for Mexico. These include the following:

- a) Harmonize federal and state legislation related to abortion to eliminate the obstacles faced by women seeking legal abortion and also to extend access to legal abortion, in light of the Constitutional Human Rights Reform and the Committee's General Recommendation No. 24 (1999);
- b) Inform medical care providers and social workers that the local constitutional amendments have not repealed the grounds for legal abortion and also inform them of their responsibilities;
- c) Ensure that in all states, women whose case fall under any of the legal grounds for abortion have access to safe health care services, and ensure the proper implementation of the Mexican Official Standard NOM-046-SSA2-2005, particularly access of women victims of rape to emergency contraception, abortion and treatment of sexually transmitted diseases and HIV/AIDS.³⁰

30. CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women-Mexico, 52nd Session (2012), paragraph 32, [CEDAW/C/MEX/CO/7-8]. Available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMEX%2fCO%2f7-8&Lang=en>

31. I/A Court H. R., González et al ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009, Series C. No. 205, paragraph 450. Available at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf>

32. *Ibid*, paragraph 258.

33. GIRE, *Girls and Women without Justice*, Op. Cit., p. 69.

2.2 WOMEN’S RIGHT TO A LIFE FREE OF VIOLENCE

TREATY	International treaties that protect the rights: Convention of Belém do Pará, CEDAW
CONSTITUTION	Constitutional articles that guarantee the rights: Articles 1 and 4

With regard to access to abortion in cases of rape, the high prevalence of violence against women, specifically sexual violence, cannot be overlooked. The persistence of the problem and the failure by the Mexican State to take the necessary measures to eradicate it have led to non-compliance with its human rights obligations as a State Party to a number of international and regional human rights treaties.

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) defines violence against women in Article 1. It establishes that such violence shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

In the case of *Cotton Field v. Mexico*, the I/A Court H. R. issued one of the six judgments where Mexico was declared responsible for human rights violations. Specifically, the Court addressed violations of women’s human rights resulting from Mexico’s failure to comply with its obligation to prevent, punish, and investigate cases of violence against women. Moreover, the Court observed that the State should adopt the necessary measures to act with due diligence in such cases.³¹

The foregoing reveals that States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. This should take into account that, in cases of violence against women, the States also have the general obligation established in the American Convention, an obligation reinforced since the Convention of Belém do Pará came into force.³²

Comprehensive care—including access to legal abortion in cases of rape—for victims of sexual violence in Mexico is an essential component to ensure the right to a life free of violence.³³

Under the Universal System, the CEDAW Committee has stated that the protection of women's rights to non-discrimination also includes the protection of women against all forms of violence. In other words,

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.³⁴

In addition to defining gender-based violence, the Committee establishes a series of specific obligations. These consist of appropriate and effective measures to eradicate it from the public and the private spheres. Particularly, regarding sexual violence and to ensure the effective application of the Convention, the Committee urges States to establish and ensure that their legal frameworks provide adequate protection to the victims, that protection and support services are available to them, and that judicial and other law enforcement officers receive training.

In like manner, the CEDAW Committee, in General Recommendation No. 19 (on violence against women), has established obligations for States Parties. They should provide appropriate protection and support to victims of rape. Judicial and law enforcement officers and other public officials should receive training in the application of the CEDAW. The States should ensure that measures are taken to prevent coercion concerning reproduction so that women are not forced to seek unsafe abortions due to a lack of abortion services at health institutions. Lastly, it recommends that the States ensure that services for victims of violence are accessible in rural areas.³⁵

34. United Nations, CEDAW Committee, General Recommendation No. 19. Violence against Women, 11th Session (1992), paragraph 19. Available at <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>

35. United Nations, CEDAW Committee, General Recommendation No. 19, *Op. Cit.*

2.3 THE RIGHT TO LIFE

TREATY	International human rights treaties that protect the right: International Covenant on Civil and Political Rights, American Convention on Human Rights, CEDAW, CRC.
CONSTITUTION	Constitutional articles that protect the right: Articles I and 29.

The I/A Court H.R. has established that the holders of the right to life are persons that are born.³⁶ It has also stated that inherent in the right to life are both negative and positive obligations on the State. Thus, to guarantee the right to life, not only does the State need to make sure that no one is arbitrarily deprived of their life but also that the conditions necessary for the protection and preservation of life exist.³⁷ Moreover, the Mexican Supreme Court has ruled that a positive obligation on the State regarding the right to life includes legislative, executive, and judicial actions to ensure compliance.

The obstacles to the right to a safe legal abortion after rape may lead women to seek an unsafe abortion and thus risk their life. In Mexico, there were 2,186 deaths from obstetric causes between 1990 and 2013;³⁸ in 2014, unsafe abortion was the fourth leading cause of maternal mortality, accounting for 9.2% of all maternal deaths.³⁹ Denial of a legal abortion to girls or adolescents who have been raped and impregnated entails a greater risk to their life. According to the WHO, compared to women aged 20 to 30, the risk of maternal and infant mortality is four times and 50% higher, respectively, among pregnant girls under 16.⁴⁰

Data from the WHO reveals that every year roughly 22 million unsafe abortions are performed worldwide and an estimated 47,000 women die from unsafe abortion complications. Hence, unsafe abortion is a leading cause of maternal mortality and morbidity.⁴¹

36. I/A Court H.R., The case of Artavia Murillo et al v. Costa Rica. Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C. No. 257, paragraph 253. Available at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf>
37. I/A Court H. R., The case of the 19 Merchants v. Colombia. Merits, Reparations, and Costs. Judgment of July 5, 2004. Series C. No. 109, paragraph 153. Available at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_109_ing.pdf>
38. Schiavon, Raffaella. "Mortalidad Materna: un Problema de Salud Pública y de Derechos Humanos," In Derechos sexuales y reproductivos de las mujeres: Avances y retos a 20 años de las Conferencias Mundiales de El Cairo y Beijing. In press.
39. Freyermuth, Graciela et. al., Numeralia 2014: Mortalidad materna en México. Mexico, Centro de Investigaciones y Estudios Superiores en Antropología Social (CIESAS), Observatorio de Mortalidad Materna en México (OMM), 2016, page 12. Available at <http://www.omm.org.mx/images/stories/Documentos%20grandes/Numeralia_2014_Web.pdf>
40. WHO, "Adolescent pregnancy: a culturally complex issue," In Bulletin of the World Health Organization, Vol. 87, June 2009, pp. 405-484. Available at <<http://www.who.int/bulletin/volumes/87/6/09-020609/en/> [accessed on October 13, 2016]>
41. WHO, *Safe abortion, Op. Cit.*, p. 1.

2.4 THE RIGHT TO HEALTH

TREATY	International human rights treaties that protect it: ICESCR, San Salvador Protocol, CEDAW, CRC
CONSTITUTION	Constitutional article that protects the right: Article 4

According to the WHO, health is a “state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.” The human right to health entails freedoms and rights, among which are the rights to control one’s health and body, including sexual and reproductive rights, and to be free from interference, for example, free from torture and from non-consensual medical treatment and experimentation. Thus, every State should have a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.⁴²

The guarantee of the right to health depends on four elements, which are: accessibility, both physical and economic; *acceptability*, that is, health services are to comply with standards of medical ethics and be respectful of the culture of individuals and sensitive to gender and age; quality, that is, health facilities must meet medical and scientific standards; and non-discrimination or accessible to all.⁴³

Reproductive health is an element of the right to health. It is defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”⁴⁴

Health is much more than a physical aspect or manifestation. It comprises mental health, which relates to the emotional state and social environment of the individual. “There is no health without mental health. Good mental health means much more than the absence of mental impairment. Modern understanding of mental health includes good emotional and social well-being and healthy non-violent relations between individuals and groups...”⁴⁵

42. United Nations, Committee on Economic, Social, and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health (Article 12, International Covenant on Economic, Social, and Cultural Rights) [E/C.12/2000/4], 22nd Session (2000), paragraph 8. Available at <<http://www.refworld.org/pdfid/4538838d0.pdf>>

43. *Ibid*, paragraph 12.

44. UNFPA, Report of the International Conference on Population and Development, Cairo, Egypt, September 5 to 13, 1994, paragraph 7.2. Available at <<http://www.un.org/popin/icpd/conference/offeng/poa.html>>

45. United Nations, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, [A/HRC/29/33], 29th Session (2015), paragraph 122(k). Available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_33_ENG.DOCX>

46. *Ibid*, paragraph 101.

47. United Nations, Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, [A/HRC/32/44], 32nd Session (2016), paragraphs 26 and 35. Available at <http://www.ohchr.org/Documents/Issues/Women/WG/A_HRC_32_44_WithFootnotes.doc>

48. *Ibid*, paragraph 34.

In the above statement, the UN Special Rapporteur on the right to health emphasizes the relationship between violence and the human right to health, placing an emphasis on the protection against all forms of violence—considered a public health problem—and must be regarded as cross-sectional to all the elements that are key to the exercise of the right. In particular, the UN Working Group on the issue of discrimination against women in law and in practice has pointed out that it is necessary to protect girls and women against gender-based violence because of its impact on their physical integrity and mental health.⁴⁷

From the perspective of the authorized interpretation of the right to health, the State violates this right when it denies or hinders access to legal abortion, disregarding the ensuing harm to the mental and emotional health of girls and women who are victims of sexual violence and are forced to carry their pregnancies to term. The situation is worse when the victims are girls and adolescents because pregnancy and labor pose a greater threat to their physical and mental health and even their life.⁴⁸

The case law of the Committee on the Rights of the Child has expressly established that the States are to ensure that their health systems meet the reproductive health needs of adolescents, including safe abortion.⁴⁹ It also stipulates that adolescents will receive all available information on sexual and reproductive health so that they can make decisions freely and responsibly.⁵⁰ Particularly, the Committee recommended that Mexico, in 2015,

Review and harmonize the federal and state legislations with a view to decriminalizing abortion and ensuring access to legal abortion at least in cases of rape, incest and danger to the life and health of the girl, and ensure that gaining access to legal abortion does not require special authorization from a judge or prosecutor.⁵¹

In 2014, Mexico accepted the recommendation that the UN Human Rights Council issued after the second evaluation of the Universal Periodic Review. The recommendation stated the following:

Strengthen sexual and reproductive health services to ensure that women who qualify for legal abortion services are able to access safe, timely, quality and free services in all Mexican states.⁵²

49. United Nations, Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), [CRC/C/GC/15], _ Session (2013), paragraph 55. Available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11>

50. *Ibid*, paragraph 65.

51. United Nations, Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Mexico [CRC/C/MEX/CO/4-5], 69th Session (2015), paragraph 50 (c). Available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2fCO%2f4-5&Lang=en>

52. GIRE submitted a shadow report to the UN Human Rights Council on the situation of reproductive rights in Mexico. The report underscored that the State has to guarantee access to abortion in the cases stipulated in the law. United Nations, Human Rights Council, Summary prepared by the Office of the High Commissioner of Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Human Rights Council resolution 16/21 [A/HRC/WG.6/17/MEX/3], 17th Session (2013), paragraphs 77 and 78. Available at <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G13/160/14/PDF/G1316014.pdf?OpenElement>>

2.5 THE RIGHT TO PERSONAL INTEGRITY AND TO BE FREE FROM TORTURE OR MISTREATMENT

TREATY	International human rights treaties that protect the right: International Covenant on Civil and Political Rights, Article 7; American Convention on Human Rights, Article 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Inter-American Convention to Prevent and Punish Torture.
CONSTITUTION	Constitutional articles that guarantee the right: Articles 20 (section B), 22, and 29.

The right to personal integrity includes the protection and the preservation of the core dimensions of an individual. That is, the physical, psychological, and moral dimensions. The right to personal integrity includes both the right to protect one’s body against an assault that causes destruction, physical pain, or harm to health, and the right to preserve unscathed the individual’s mental and moral faculties.⁵⁴ The right to personal integrity entails the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment.

Traditionally, the prohibition of torture and ill treatment had been closely associated with such settings as imprisonment, detention, and interrogation. Today, however, there are universal and regional provisions regarding behaviors that may amount to mistreatment and even torture in the context of health services.

From the perspective of the right to personal integrity, the I/A Court H.R. has analyzed the lack of access to reproductive health procedures and the subsequent states of anguish and anxiety that it produces. The Court concludes, “Therefore, there is a connection between personal autonomy, reproductive freedom, and physical and mental integrity.”⁵⁵

In addition, the Court has approached cases of rape from the standpoint of the right to personal integrity. In general terms, it considers that rape, together with torture, “...pursues the objective of intimidating, degrading, humiliating, punishing or controlling the victim.”⁵⁶

53. These articles do not expressly refer to the right to personal integrity. They mention, however, the contexts of criminal procedure. Article 1 of the Mexican Constitution states that all human rights standards will be construed in accordance with the human right treaties to which Mexico is a party, that is, according to the authorized interpretation by the bodies tasked with monitoring the application of the treaties.

54. Afanador, María Isabel, “El derecho a la integridad personal, elementos para su análisis,” In *Convergencia: Revista de Ciencias Sociales*, vol. 9, No. 30, September-December, 2002, p. 148. Available at <<http://bit.ly/1Mnu1Pc>>

55. I/A Court H.R., The case of Artavia Murillo et al v. Costa Rica, *Op. Cit.* paragraph 147.

56. *Ibid*, paragraph 101.

Specifically regarding rape, a paradigmatic form of violence against women, the Court observed that it is an extremely traumatic experience “that can have severe consequences and cause significant physical and psychological damage, leaving the victim ‘physically and emotionally humiliated,’ a situation that, unlike other traumatic experiences, is difficult to overcome with the passage of time. This reveals that severe suffering of the victim is inherent to rape...”⁵⁷

Juan E. Méndez, the Special Rapporteur on torture and other cruel, inhuman, and degrading treatment or punishment, has investigated behaviors in health care settings that may qualify as ill treatment or even torture.⁵⁸ Moreover, he has explained how international human rights law has increasingly recognized the depth of the physical and emotional suffering of women seeking medical services such as abortion.

Explicitly, he stresses, “Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women’s right to be free from torture and ill-treatment.”⁵⁹ He also points out that even when abortion is legal, administrative obstacles, non-compliance with medical protocols, incompetence, and negative attitudes on the part of authorities hinder access of girls and women to this recognized right. Thus, according to the Rapporteur, denial of access to safe abortion and subjecting girls and women to humiliation at a moment when they are especially vulnerable and access to medical assistance is time-sensitive is tantamount to torture and ill treatment.⁶⁰

Furthermore, the Special Rapporteur has recognized the severe and long-lasting mental and physical pain of victims of rape. He observed, “It is well established that rape and other forms of sexual violence can amount to torture and ill-treatment.”⁶¹ The Rapporteur goes on to stress that the State is responsible for the acts of private actors when they fail to exercise due diligence to prevent sexual violence, investigate and punish the offenders, or provide reparations to victims.⁶²

The UN Human Rights Committee has observed that in many cases, denying women safe abortion services when their life is in danger, when the pregnancy is the result of rape, or when there is a serious fetal malformation that makes life outside the womb unviable may amount to torture or cruel, inhuman, and degrading treatment.⁶³

Hence, access to the legal termination of pregnancy in cases of rape is clearly based on the legal framework of the right to personal integrity.

57. I/A Court H.R., The case of Rosendo Cantú et al v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010, paragraph 117. Available at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf>

58. *Ibid*, paragraph 114.

59. United Nations, Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, [A/HRC/22/53], 22nd Session (2013), paragraph 15. Available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf>

60. United Nations, Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, [A/HRC/31/57], 31st Session (2016), paragraph 43. Available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_57_E.doc>

61. *Ibid*, paragraph 44.

62. *Ibid*, paragraph 51.

63. *Ibid*.

2.6 THE RIGHT TO A PRIVATE LIFE (REPRODUCTIVE AUTONOMY)

TREATY	International treaties that protect the right: American Convention on Human Rights, Article II; International Covenant on Civil and Political Rights, Article 17.
CONSTITUTION	Constitutional article that guarantees the right: Article 16.

The right to a private life entails an obligation on the State to protect individuals against any arbitrary and abusive interference with their life from public officials and institutions.

The I/A Court H.R. has indicated that the right to a private life includes the liberty of people “to do and not do all that is lawfully permitted. In other words, every person has the right to organize, in keeping with the law, his or her individual and social life according to his or her own choices and beliefs.”⁶⁴ Such is the scope and significance of this liberty, which the Court defines as a basic human right—evident throughout the American Convention—as it is inherent in the attributes of the person.⁶⁵

Further, the Court explains that this right encompasses a series of factors associated with the ability of the individual to develop their own personality and aspirations and determine their identity. The concept of private life comprises aspects of physical and social identity, including the right to personal autonomy. The Court also observes, “The effective exercise of the right to private life is decisive for the possibility of exercising personal autonomy on the future course of relevant events for a person’s quality of life [...] Based on the foregoing, the Court considers that the decision of whether or not to become a parent is part of the right to private life.”⁶⁶

In particular, the Court has pointed out that the right to private life is related to (i) reproductive autonomy, and (ii) access to reproductive health services, which includes the right to have access to the medical technology necessary to exercise this right.⁶⁷

64. United Nations Human Rights Committee, Report on violations of women’s human rights due to the complete criminalization of abortion. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JointSubmission_ElSalvador100.pdf>

65. *Ibid.*

66. *Ibid.*, paragraph 143.

67. *Ibid.*, paragraph 146.

Within the universal human rights protection system, the Committee on the Rights of the Child has interpreted the rights of children to health and a private life. It considers that children, in accordance with their evolving capacities, have the right to receive confidential counseling and therapy without parental consent, where this is assessed by health professionals who believe this to be in the child's best interests. It also establishes unequivocally, "States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion."⁶⁸

Given the high rates of adolescent pregnancy globally and the risks of associated mortality and morbidity, the Committee has established that the States should ensure that public health systems meet the sexual and reproductive health needs of adolescents. This includes providing "family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health."⁶⁹

Speaking within the framework of International Safe Abortion Day, a group of United Nations experts called on States to repeal restrictive abortion laws and policies. The experts argued that they "do not meet the international human rights law requirements and that have discriminatory and public health impacts [...] These laws and policies violate women's human right to health and negate their autonomy in decision-making about their own bodies."⁷⁰

Before the publication of the LGV, some states in Mexico required that victims of rape seeking abortion services file a report and/or obtain authorization from a Public Prosecutor's Office or a judge. These requirements were a legal barrier to an emergency medical service and an unjustified invasion of women's privacy. They also failed to consider that the violent environments where victims of sexual assault often find themselves complicate the reporting of an incident.⁷¹

Today, women aged 12 and older no longer have to satisfy the above requirements to legally terminate a pregnancy resulting from rape. Nonetheless, health providers often deny or hinder access to this lawful service, violating women's right to a private life. It is, therefore, urgent to harmonize the local penal codes that still establish the above requirements with women's human rights standards (e.g., the LGV and NOM 046-SSA2-2005 on domestic and sexual violence and violence against women). Although health providers are under the obligation to apply the norm that imposes fewer requirements on women, it may create confusion or it may be purposefully used to deny women legal abortion services.

68. United Nations, Committee on the Rights of the Child, General Comment No. 15, *Op. Cit.*, paragraph 31. Available at <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqIkRQZLK2M58RF-%2F5F0vHCIs1B9k1r3x0aA7FYrehlNUfw4dHmlOxmFtmhaiMOKLtSgrVtnef30M4IcQLIV6ws0g0EYTKvfl%2FYQkggEvQ%2F>>

69. *Ibid*, paragraph 55.

70. Office of the United Nations High Commissioner for Human Rights, "Unsafe abortion is still killing tens of thousands of women around the world—UN rights experts warn," Available at <<http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>>

71. GIRE, Girls and Women without Justice. Reproductive Rights in Mexico, Mexico, Grupo de Información en Reproducción Elegida, 2015, p. 72. Available at <<http://informe2015.gire.org.mx/en/#/Home>>

FRIDA, 18 YEARS OLD, BAJA CALIFORNIA SUR, 2016

Legal abortion requirements in cases of rape in the Penal Code for the Free and Sovereign State of Baja California Sur

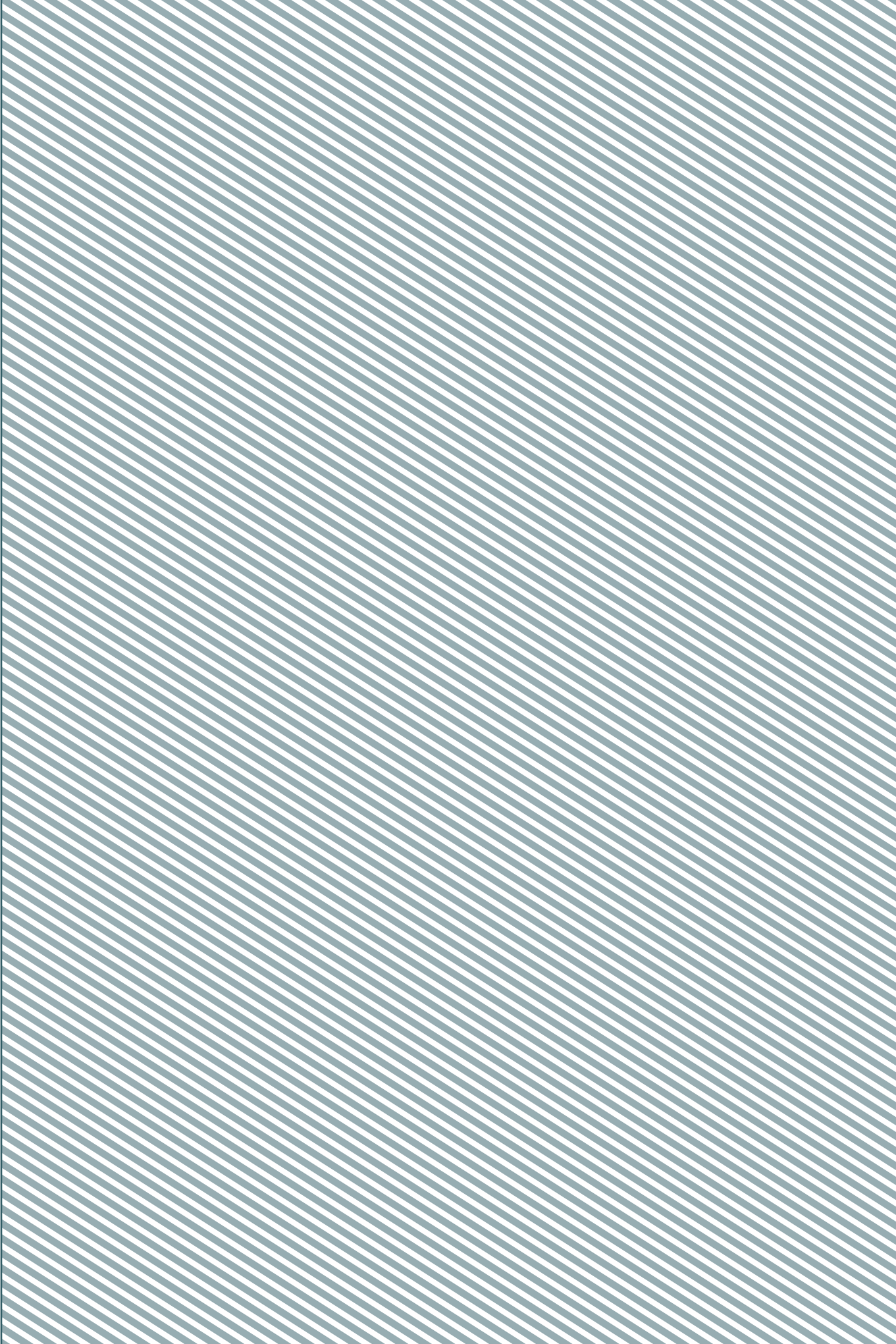
“...the Public Prosecutor’s Office will authorize the procedure as per the victim’s request. If the woman does not report the rape or the artificial insemination and the abortion is performed, and proof of this circumstance is produced during the criminal proceedings, the abortion will carry no legal penalty.” Article 156.

Frida, an indigenous eighteen-year-old agricultural worker, was kidnapped and raped after having been harassed by the perpetrator for six months. He threatened Frida to stop her from fleeing or asking for help. A week after the incident, however, she managed to contact her family using a mobile phone and was eventually released.

Subsequently, far from receiving assistance from the authorities, her attempt to access justice and terminate her pregnancy—that resulted from the several times she had been raped—was thwarted. She had to travel to La Paz after three agencies had refused to receive her report, arguing that the case did not fall within their jurisdiction. The La Paz Public Prosecutor’s Office took her statement without a translator or an interpreter and forced her to sign a document whose contents were not disclosed to her. Despite the fact that abortion is a right recognized by law and that she had requested it, she was told, “Abortion is a crime because it is an attack against a child.” She never received information about her rights, prophylactic medication, or emergency contraception.

Further, at the Baja California Sur Women’s Institute, a woman lawyer recommended that Frida do nothing to terminate her pregnancy because “she knew that indigenous women use herbal teas to have abortions.” The lawyer also warned Frida that if she decided to have an abortion, she would end up in prison.

The local health services ignored Frida’s request for an abortion. Nevertheless, with the support of Fondo María, she traveled to Mexico City to undergo the procedure.



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3 /

CASES LITIGATED,
DOCUMENTED AND
REGISTERED BY GIRE

Following are the cases of girls and women whose access to legal and safe abortion after rape was denied or hindered. From June 2011 to September 2016, GIRE litigated or was litigating 19 cases, and documented and recorded four. The names have been changed to protect confidentiality.

3.1 CASES LITIGATED OR UNDER LITIGATION⁷²

(2011 - 2013)

ADRIANA, 28 YEARS OLD, DURANGO

Adriana was kidnapped and raped by her former partner and became pregnant. The State Prosecutor's Office rescued her and arrested the aggressor. Adriana filed a report but the Office did not give her information about emergency contraception, prophylactic medication for STIs, or her right to legally terminate her pregnancy.

She, nevertheless, filed a request for a legal abortion with the Office, and had to overcome a number of obstacles to receive the procedure—several tests to confirm the pregnancy and unjustified delays in the ministerial formalities. Having obtained the authorization, she had to wait ten more days to undergo the abortion at local health services due to a lack of trained and available medical staff. In the meantime, Adriana received death threats from her former partner but the Prosecutor's Office did nothing to protect her.

Months later, because of the perpetrator's threats and pressure from his lawyer, Adriana dropped the charges so that "he could be released." The Durango Prosecutor's Office, rather than investigating the threats and granting her protective measures, filed charges against her for having an abortion and making false statements.

MONICA, 12 YEARS OLD, OAXACA

A Mazatec girl who does not speak Spanish and lives in a community far from the city of Oaxaca, Monica was raped and impregnated by an unknown individual. When she filed the respective report with the Public Prosecutor's Office, she requested the legal termination of her pregnancy in accordance with the local criminal law. Although the authorization was awarded, Monica faced a series of barriers to receive the abortion: insufficient financial resources to travel to the public hospital and pay accommodation in Oaxaca City and no expert interpreters available during the criminal procedure and before, during, and after the abortion. In the end, her pregnancy was terminated. In this case, GIRE's participation included providing legal advisory to the Public Prosecutor's Office to comply with its obligation of guaranteeing Monica's reproductive rights; supporting Monica during the abortion; and ensuring that the abortion would be performed by trained health providers.

72. These are cases where GIRE initiated a legal action in support of the victim or her family.

LOURDES, 13 YEARS OLD, MORELOS

Lourdes became pregnant after having been raped by a relative. She reported the incident with the Public Prosecutor's Office and requested a legal abortion despite not having been informed by the authorities about this right. Since the Office did not respond to her request, using money that was given to her, she traveled to Mexico City to undergo the pregnancy termination. In this case, GIRE's participation including submitting a document to the Morelos Public Prosecutor's Office to obtain information about the failure of the Office to respond to the abortion request. The Public Prosecutor's Office informed GIRE that the Morelos criminal legislation does not expressly stipulate that the Office will authorize an abortion for rape, and that the victim never filed such request.

ESMERALDA, 12 YEARS OLD, SONORA

Esmeralda became pregnant after having been raped by her stepfather. She filed a report and an abortion request that was turned down by the Public Prosecutor's Office. While Esmeralda's family was looking for legal counsel to obtain authorization for the abortion, she had a miscarriage. Subsequently, the Sonora Public Prosecutor's Office informed GIRE that criminal legislation does not expressly stipulate that the Office will authorize an abortion for rape and, therefore, referred the request to the control judge, who never issued a response.

(2013)

CLAUDIA, 17 YEARS OLD, VERACRUZ

Claudia was raped by her stepfather. To terminate her pregnancy at a public hospital in Veracruz, she had to overcome several obstacles. The Public Prosecutor's Office subjected her to ill treatment and did not believe her account or gave her information about STI prevention or her right to an abortion. Her stepfather was arrested and her case brought to court. Claudia and her mother sought help at the Veracruz Women's Institute, where they told them that it was possible to obtain the legal termination of pregnancy. With GIRE's support, Claudia filed an abortion request with a judge. Although she received his response more than two weeks later, the judge awarded the authorization in accordance with the Constitution and international human rights law.

MARCELA, 32 YEARS OLD, GUERRERO

While looking for a job in Mexico City, Marcela was raped. Frightened, she returned to Guerrero and after some weeks, she realized that she was pregnant. She sought an abortion at a hospital but it was denied. She then traveled to the State of Mexico to request the abortion. At the time, she was about 16 weeks along, that is, her pregnancy had exceeded the limit established in the local penal code. With GIRE's legal counseling, Marcela filed a report and a request for termination of pregnancy in Mexico City. After three days of paperwork at the Public Prosecutor's Office, she obtained authorization to receive an abortion. For the procedure, she was accompanied by ddeser.

(2014)

ROSA, 14 YEARS OLD, STATE OF MEXICO

Rosa was repeatedly raped by her father for almost a year. He threatened to harm her mother if she told her about it. Realizing that Rosa's behavior was changing and that she was no longer interested in attending school or going out with friends, her mother asked what was happening. Rosa's god-mother took her to see a doctor, who told the girl that she was pregnant. Together, Rosa and her mother filed a report with the Public Prosecutor's Office. Nevertheless, since she was more than 12 weeks pregnant, she did not obtain authorization to terminate the pregnancy because it had exceeded the limit for a legal abortion established in the Criminal Procedures Code of the State of Mexico.

With support from ddeser and GIRE, Rosa traveled to Mexico City, where she received an abortion because her pregnancy posed a high risk to her health. Although her aggressor has not been arrested, Rosa has managed to overcome her fear of going out alone thanks to psychological therapies and support from her school, which allowed her to resume and complete her middle school studies. Currently, she is studying to finish high school.

CARMEN, 13 YEARS OLD, HIDALGO

Carmen was raped by her stepfather but could not talk about it because he threatened to harm her mother if she did. Sometime later, Carmen started feeling unwell and went to see a doctor with her mother. The diagnosis was that she was pregnant. Carmen told her mother about the rape, and together they filed a report. Although the Public Prosecutor's Office did not inform Carmen that she was entitled to terminate her pregnancy, she requested a legal abortion weeks after filing the report. The Office, however, told her that her request had been rejected because her pregnancy exceeded the 90-day limit established in the Hidalgo Penal Code.

GIRE accompanied Carmen and her family to file an *amparo* against the Public Prosecutor's Office and Article 158 of the Penal Code. Establishing a limit to receive an LTP procedure after rape is unconstitutional because it violates women's rights to health and a private life (reproductive autonomy). The *amparo* was dismissed because, according to the authorities, if there was no pregnancy, then there was no substance for trial. An appeal was submitted and due to the significance of the request, the case was referred to the Supreme Court. May 2015 marked one year of the filing of the *amparo* suit. Both the slow progress of the criminal proceedings and the little interest from the State in cases such as Carmen's have made it difficult for Carmen and her family to resume a normal life. They have therefore expressed their wish to abandon all legal actions that keep them from leaving the incidents behind. As their legal representative, GIRE filed a request to dismiss the *amparo* with the Supreme Court.

JUDIT, 13 YEARS OLD, MEXICO CITY

Judit was in the second year of middle school when her grandfather raped her. After receiving a call from the school telling her that Judit was vomiting, her mother took her to see a doctor, who told them that she was 18 weeks pregnant. Judit had to tell her mother then about the rape and, together, they filed a complaint and a request for an LTP procedure with the Public Prosecutor's Office. Nevertheless, they were told that her pregnancy was too far along for an abortion despite the fact that in Mexico City the limit is 20 weeks in cases of rape.

Judit and her mother sought abortion services at a number of health facilities, which refused to provide them because she did not have the authorization from the Public Prosecutor's Office. With GIRE's support, they drafted and submitted a document to the Mexico City Public Prosecutor's Office and the Special Prosecutor's Office for the Investigation of Sex Crimes requesting a legal abortion in accordance with the LGV. After days of ill treatment and negligence, having overcome a series of obstacles, Judit finally received an abortion at a private health facility.

MINERVA, 20 YEARS OLD, STATE OF MEXICO

Minerva went to the Public Prosecutor's Office to report that her father had raped her. She was 14 weeks pregnant at the time. Since her pregnancy exceeded the limit established for a legal abortion in cases of rape in the Criminal Procedures Code of the State of Mexico, she decided to travel to Mexico City to terminate her pregnancy because it posed serious threats to her health. With GIRE's support, she received the abortion.

(2015)

CARLOTA, 16 YEARS OLD, HIDALGO

Carlota sought to terminate a pregnancy that resulted from rape. Drawing on the experience of Carmen's case, whose trial was dismissed because it had been initiated when she was no longer pregnant, GIRE decided to use a different strategy with Carlota. GIRE filed an *amparo* with a federal judge to obtain the authorization for the abortion.

GIRE wanted the judge to decide that the termination was a matter of urgency, a cautionary measure to protect the girl. Nonetheless, contravening the national and international rights framework related to women and girls, he refused to grant it, arguing that otherwise, he would violate "the product's right to life." He also considered that the local penal code did not violate her human rights even when it established disproportionate requirements to terminate a pregnancy from rape.

3.2 DOCUMENTED CASES⁷³

(2013)

ISADORA, 14 YEARS OLD, HIDALGO

Isadora was raped by her stepfather and became pregnant. Although Isadora and her mother filed a report with the Public Prosecutor's Office and she was less than 12 weeks pregnant, she did not obtain the authorization to terminate her pregnancy in Hidalgo. She had to travel to Mexico City to receive abortion services.

73. For the cases classified as *documented*, GIRE established direct contact and carried out at least one interview—either by telephone or in the home—with the victim or her family. In the cases where a legal action had been initiated, GIRE reviewed the files to collect more information about the case but did not undertake any legal action.

(2016)

FERNANDA, 12 YEARS OLD, OAXACA

Accompanied by her mother, Feranda saw a doctor because her period was several months late. When the doctor confirmed that Monica was pregnant, her mother asked her if her stepfather had raped her. With great difficulty, Monica admitted that, indeed, that was the case.

Monica and her mother filed a report for rape with the Public Prosecutor's Office and requested an abortion, which was denied because the pregnancy exceeded the three-month limit established in the local penal code. Therefore, they decided to travel to Mexico City where they contacted ddeser and obtained the authorization.

RENATA, 21 YEARS OLD, DURANGO

Renata was raped in a bar. She did not take an emergency contraception pill because at the time of the assault she was using an IUD. When she realized that she was late, she had a blood test and discovered that she was pregnant. She immediately decided to buy medicine to have a medical abortion but since she did not use it correctly, her pregnancy continued. Renata had an ultrasound that showed that she was four weeks along. That same day, she contacted Julieta Hernández, a lawyer with RADAR 4TH, to help her have an LTP. They submitted a request with the Durango Ministry of Health in accordance with the LGV and NOM 046. In response, they received a telephone call informing them that a van was available to take Renata to Mexico City to receive the abortion there. Renata and her lawyer declined the offer and asked for a response in writing. Days later, they were summoned and informed by the Ministry of Health that the LTP had been authorized, but no document was given to them. Further, by telephone again, they were asked to submit a new request but this time addressed to the Durango Mother and Child Hospital. A sworn statement would accompany the request stating that Renata understood that if she had lied about the rape, she would be found liable for a crime and punished accordingly. Renata and Julieta also rejected this proposal because it was against the LGV and NOM 046. Finally, the abortion request was turned down because according to the legal department of the Ministry of Health and the Durango Penal Code, the authorization was to come from the Public Prosecutor's Office.

Consequently, Renata sought GIRE's support to receive the termination in Mexico City.

BERENICE, 15 YEARS OLD, PUEBLA

Berenice, a girl from Teziutlán, Puebla, became pregnant after her uncle raped her. She and her mother filed a report with the Public Prosecutor's Office in Mexico City, where they were told that she could have an abortion after filing a report where the rape had taken place. They went to the Public Prosecutor's Office in Teziutlán but the prosecutor refused to authorize it arguing that it was against the law. Therefore, Berenice and her mother requested the termination at a public health facility in Mexico City, which also denied the service because of the size of the product although the pregnancy did not exceed the limit stated by law. Due to this new refusal, they went to a private facility where she finally received the abortion. Nevertheless, a complaint was filed with the Puebla Human Rights Commission, but the resolution is still pending.

3.3 REGISTERED CASES⁷⁴

JIMENA, 13 YEARS OLD, HIDALGO, 2013

ROSAURA, 13 YEARS OLD, OAXACA, 2013

MAGDALENA, 15 YEARS OLD, MÉXICO, 2013

SANDRA, JALISCO, 2014

MYRTA, GUERRERO, 2014

TRINIDAD, GUERRERO, 2014

MATILDE, 16 YEARS OLD, TLAXCALA, 2015

74. These cases have not been fully *documented* because it was impossible to contact the victim or her family. GIRE recorded the cases using information from various sources, including press reports and data provided by authorities or members of civil organizations in Mexico.



4 / CONCLUSIONS

Access to safe and legal abortion is essential to the exercise of women's human rights.

But, in cases of rape, access is still restricted in Mexico despite being recognized in national and international legal frameworks. Girls and women often face obstacles to exercise their human rights because medical staff is unaware of the legal framework according to which they are to conduct their professional practice. They usually believe that providing a girl or a woman who is a victim of rape with abortion services is a crime and, thus, they deny or hinder their provision. This behavior, however, not only re-victimizes girls or women but also violates their human rights and the law.

Further, knowing that they are under the legal obligation to provide safe abortion services in cases of rape without imposing any requirement, some health providers put their religious or moral beliefs before the human rights of girls and women, thus infringing the law. In the cases that GIRE has supported, both the health and the law enforcement authorities have subjected the victims to ill treatment—victimizing them again. They believe that they have the power to punish and humiliate the women who, in their opinion, disobey the gender imperative that women have to be mothers above all.

Health, judicial, and law enforcement officers should urgently apply current regulations regarding access to legal termination of pregnancy services in cases of rape to guarantee women's human rights to life, health, a private life, personal integrity, equality and non-discrimination, and a life free of violence.



5 /

RECOMMENDATIONS

REGULATIONS

TO THE LOCAL LEGISLATURES OF AGUASCALIENTES, BAJA CALIFORNIA, CAMPECHE, CHIAPAS, CHIHUAHUA, COAHUILA, COLIMA, HIDALGO, MICHOACÁN, OAXACA, QUINTANA ROO, AND VERACRUZ: Reform penal codes to remove the requirement of complying with a gestational age limit to access abortion services in cases of rape, in accordance with the General Law of Victims.

TO THE LOCAL LEGISLATURES OF AGUASCALIENTES, BAJA CALIFORNIA, BAJA CALIFORNIA SUR, CAMPECHE, COLIMA, DURANGO, GUERRERO, HIDALGO, AND QUINTANA ROO: Reform penal codes to eliminate the requirement of obtaining the authorization to access abortion services in cases of rape, in accordance with the General Law of Victims.

TO THE LOCAL LEGISLATURES OF AGUASCALIENTES, BAJA CALIFORNIA, BAJA CALIFORNIA SUR, CAMPECHE, COLIMA, DURANGO, GUERRERO, HIDALGO, QUINTANA ROO, SAN LUIS POTOSÍ, AND TABASCO: Reform penal codes to remove the requirement of filing a report to access abortion services in cases of rape, in accordance with the General Law of Victims.

TO THE FEDERAL MINISTRY OF HEALTH: Reform the Comprehensive Model to Prevent and Address Domestic and Sexual Violence manual to remove the requirements of filing a report and obtaining the authorization from a criminal court judge to access legal abortion services in cases of rape.

TO THE MEXICO CITY MINISTRY OF HEALTH: Reform the General Organization and Operation Guidelines for Health Services related to the legal termination of pregnancy in Mexico City to eliminate the requirement of complying with the 20-week gestational age limit to access legal abortion services.

TO THE EXECUTIVE BRANCHES OF BAJA CALIFORNIA, CHIAPAS, CHIHUAHUA, MEXICO CITY, GUERRERO, JALISCO, STATE OF MEXICO, MICHOACÁN, OAXACA, PUEBLA, AND VERACRUZ: Reform the administrative rules that establish requirements such as complying with a gestational age limit, filing a report, and/or obtaining an authorization to access legal abortion services in cases of rape.

IMPLEMENTATION OF REGULATIONS

TO THE FEDERAL MINISTRY OF HEALTH, THE IMSS, THE ISSSTE, AND THE LOCAL MINISTRIES OF HEALTH AND PUBLIC PROSECUTOR'S OFFICES: Implement the General Law of Victims, the Regulations of the General Health Law in Matters of the Provision of Medical Services, and the NOM 046-SSA2-2005 on Domestic and Sexual Violence and Violence against Women to guarantee immediate access to abortion in cases of rape, without imposing such requirements as filing reports, obtaining authorizations, or complying with gestational age limits.

TO THE FEDERAL MINISTRY OF HEALTH, THE IMSS, THE ISSSTE, AND THE LOCAL MINISTRIES OF HEALTH: Ensure that health providers receive appropriate training in the legal framework that establishes their obligation to provide immediate care to victims of sexual violence and in the use of techniques to perform safe abortions, in accordance with scientific evidence and technological advances.

ACCESS TO JUSTICE

TO THE FEDERAL JUDICIAL BRANCH: Ensure that victims of sexual violence have access to their rights, specifically legal abortion, in accordance with national and international human rights standards.

TO THE COURTS OF JUSTICE AND THE NATIONAL AND LOCAL HUMAN RIGHTS COMMISSIONS: Ensure that the victims of human rights violations receive full reparation when access to legal abortion is denied.



6 / ANNEX

INDICATIONS FOR ABORTION ACCORDING TO THE PENAL CODE



Source: GIRE, December 2016.

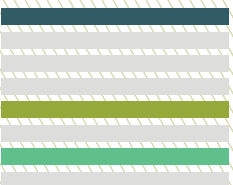
FEDERAL PENAL CODE



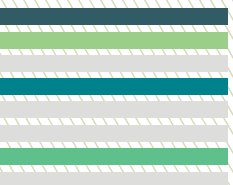
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NUEVO LEÓN



OAXACA



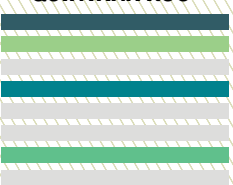
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QUERÉTARO



QUINTANA ROO



SAN LUIS POTOSÍ



SINALOA



SONORA



STATE OF MEXICO



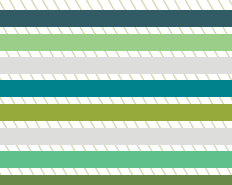
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TAMAULIPAS



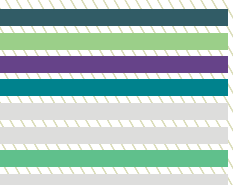
TLAXCALA



VERACRUZ



YUCATÁN



ZACATECAS



I. INDICATIONS FOR LEGAL ABORTION ACCORDING TO THE PENAL CODE, BY STATE

PENAL CODE	INDICATIONS			
	RESULT OF A CRIME	THERAPEUTIC REASONS	SOCIAL REASONS	LACK OF INTENT
AGUASCALIENTES Arts. 103 and 106	Rape (Exculpatory)	Life threatening		Accidental abortion
BAJA CALIFORNIA Art. 136	Rape (Exculpatory)	Life threatening		Accidental abortion
	Non-consensual artificial insemination			
BAJA CALIFORNIA SUR Art.156	Rape (Exculpatory)	Life threatening		Accidental abortion
		Serious health damage		
	Non-consensual artificial insemination	Fetal genetic/ congenital malformations		
CAMPECHE Art. 159	Rape (Exculpatory)	Risk of serious health damage		Accidental abortion
CHIAPAS Art. 181	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations		
CHIHUAHUA Art. 146	Rape (Exculpatory)	Risk of serious health damage		Accidental abortion
	Non-consensual artificial insemination			

COAHUILA DE ZARAGOZA Art. 36I	Rape (Abortion is not punishable)	Life threatening Serious genetic/ congenital malformations		Accidental abortion
COLIMA Art.14I	Rape (Abortion is not punishable) Unduly performed assisted reproductive treatment	Life threatening Serious health damage Genetic/congenital malformations		Accidental abortion
DURANGO Art. 150	Rape (Exculpatory)	Life threatening		Accidental abortion
GUANAJUATO Art. 163	Rape (Abortion is not punishable)			Accidental abortion
GUERRERO Art. 159	Rape (Exculpatory) Non-consensual artificial insemination	Risk of serious health damage Genetic/congenital malformations		Accidental abortion
HIDALGO Art. 158	Rape (Abortion is not punishable)	Risk of serious health damage Genetic/congenital malformations		Accidental abortion
JALISCO Art. 229	Rape (Abortion is not punishable)	Life threatening Serious health damage		Accidental abortion
MEXICO CITY Art. 148	Rape (Exculpatory) Non-consensual artificial insemination	Risk of serious health damage Genetic/congenital malformations		Accidental abortion

MICHOACÁN Art. 146	Rape (Exculpatory) Non-consensual artificial insemination Non-consensual assisted procreation	Risk of serious health damage Serious malformation	Precarious economic situation	Accidental abortion
MORELOS Art. 119	Rape (Abortion is not punishable) Non-consensual artificial insemination	Life threatening Genetic/congenital malformations		Accidental abortion
NAYARIT Arts. 371 and 372	Rape (Abortion is not punishable)	Life threatening Serious health damage		Accidental abortion
NUEVO LEÓN Art. 331	Rape (Abortion is not punishable)	Life threatening Serious health damage		
OAXACA Art. 316	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations		Accidental abortion
PUEBLA Art. 343	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations		Accidental abortion
QUERÉTARO Art. 142	Rape (Abortion is not punishable)			Accidental abortion
QUINTANA ROO Art. 97	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations		Accidental abortion

SAN LUIS POTOSÍ Art. 150	Rape (Exculpatory)	Life threatening Non-consensual artificial insemination		Accidental abortion
SINALOA Art. 158	Rape (Abortion is not punishable)	Life threatening		Accidental abortion
SONORA Arts. 269 and 270	Rape (Abortion is not punishable)	Life threatening		Accidental abortion
STATE OF MEXICO Art. 251	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations		Accidental abortion
TABASCO Art.136	(Abortion is not punishable) Non-consensual artificial insemination	Life threatening		
TAMAULIPAS Art. 361	(Abortion is not punishable)	Life threatening Serious health damage		Accidental abortion
TLAXCALA Art. 243	Rape (Exculpatory) Non-consensual artificial insemination	Life threatening Serious health damage Genetic/congenital malformations		Accidental abortion
VERACRUZ Art. 154	Rape (Abortion is not punishable) Non-consensual artificial insemination	Life threatening Genetic/congenital malformations		Accidental abortion

YUCATÁN Art. 393	Rape (Abortion is not punishable)	Life threatening Genetic/congenital malformations	Serious economic situation, provided the woman already has three children or more	Accidental abortion
ZACATECAS Arts. 312 and 313	Rape (Abortion is not punishable)	Life threatening Serious health damage		Accidental abortion
FEDERAL PENAL CODE Arts. 333 and 334	Rape (Abortion is not punishable)	Life threatening		Accidental abortion

Violence without End

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