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Combined 2nd. and 3rd. reports to Mexico

Alternative report submitted to the Committee on the Rights of Persons with Disabilities

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The Information Group on Reproductive Choice (GIRE) is a feminist and human rights organization that, for almost 30 years, has been working in favor of reproductive rights of women and other people with the capacity to gestate. Through a comprehensive strategy that includes advocacy on legislation and public policies, case accompaniment, research and communication, GIRE seeks to achieve progress in matters of abortion, obstetric violence, maternal death, work and reproductive life balance, and assisted reproduction.

GIRE developed the present report regarding the combined 2nd. and 3rd. reports review to Mexico by the Instrumentation and Compliance Committee of the Convention in its 26th. session period, scheduled to be held in Geneva, Switzerland, from 7 to 25 March, 2022.

I. Obligation to Collect Data and Statistics

During the previous review by the CRPD Committee in 2014, Mexico received the recommendation to “**systematically collect data and statistics on the situation of women and girls with disabilities and establish indicators to assess intersectional discrimination**”.¹ However, there are still pending obstacles before concluding that the State has complied with the obligation considered in the CRPD’s article 31.

According to data from the National Institute of Statistics and Geography (INEGI) in the 2018 National Survey of Demographic Dynamics (ENADID), 124.9 million people lived in the country, 51.1% of which were women and 48.9% were men. Likewise, prevalence of disability in Mexico by 2018 was 6.3%, which means that 7,877,805 million people in the country declared “having great difficulty or not being able to carry out any of the following activities considered basic: walking, going up or down using their legs, see (even wearing glasses), move or use their arms or hands, learn, remember or concentrate, hear (even wearing a

¹ Final observations on the initial report to Mexico, paragraph 14, subparagraph b.

hearing aid), bathe, dress or eat, speak or communicate, and perform daily activities due to emotional or mental issues". Among the population with disabilities, 45.9% were men and 54.1% women.²

According to data from the 2020 Population and Housing Census, by March 15, 2020, a total of 126,014,024 people lived in Mexico; the nationwide prevalence of disability including those living with a mental condition is 5.69% (7,168,178). Among the people with disabilities and/or some mental condition aged 15 and over, 19% are illiterate.³

Despite current knowledge on some characteristics of the population with disabilities in Mexico, these have not been properly incorporated into issues such as, for example, gender violence.

The 2016 National Survey on the Dynamics of Household Relationships (ENDIREH) carried out by INEGI indicates that 66 out of every 100 women aged 15 or over living in Mexico have suffered at least one violent incident of any kind in their life.⁴ Despite the fact that the survey was improved to enable a more accurate enquiry on specific situations regarding physical and sexual violence faced by women in the country, **the number of women living with any disability who were not interviewed by the INEGI is unknown**, since this might one of the reasons to cancel an interview conducted by INEGI personnel, a judgement call left to the discretion of the interviewer.⁵

On the other hand, although the National Survey on Discrimination in Mexico (ENADIS) collects information on dynamics of discrimination and its various manifestations among vulnerable groups, such as women with disabilities, it **does not systematize specific information on sexual violence towards this population group**.

Even though there are no data that reveal the situation of violence faced by women with disabilities in Mexico, the CRPD acknowledges that women and girls with disabilities are usually exposed to a greater risk of domestic violence, injury or abuse, abandonment or neglect, mistreatment or exploitation, inside and

² INEGI. Encuesta Nacional de la Dinámica Demográfica, 2018. Base de datos. SNIEG, Información de Interés Nacional. Available at: https://www.inegi.org.mx/contenidos/programas/enadid/2018/doc/resultados_enadid18.pdf. Accessed: January 19, 2022.

³ INEGI, Estadísticas a propósito del día internacional de las personas con discapacidad (datos nacionales). Available at: https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2021/EAP_PersDiscap21.pdf. Accessed: January 25, 2022.

⁴ INEGI, Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares ENDIREH 2016, presentación de resultados. Available at: https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016_presentacion_ejecutiva.pdf. Accessed: January 19, 2022.

⁵ INEGI. Encuesta Nacional Sobre la Dinámica de las Relaciones en los Hogares, ENDIREH 2016. Cuestionario General. Available at: https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016_cuestionario_general.pdf

outside the household. The absence of data revealing the situation of girls and women living with some sort of disability prevents the State from developing and implementing public policies that ensure a non-discrimination framework that considers the existing barriers they face in relation to their reproductive rights.

II. Barriers to Counseling People with Disabilities. Article 25 of the Convention

In Mexico there is a regulatory framework that protects the rights of those who have a disability; however, effective harmonization of the Mexican legal system with the CRPD is necessary, in order to ensure that places, services, materials and information on contraceptives and reproductive health are friendly and accessible to people with disabilities, so that they can exercise their reproductive rights in a full, free and informed way.

The guarantee of the rights of people with some sort of disability supposes, among other things, that counseling services and access to contraceptive methods consider their needs and features. As there is no statistical information on the subject, through requests for access to information, GIRE learned that, at the federal level, no health institution reported having trained personnel on the subject or specialized material for people with disabilities. At the local level, 91% of the health ministries do not have this kind of staff. Some authorities answered that they do not have specialized personnel, but “they are trained to care for this population to the best of their ability”; or, in the case of people with hearing disabilities, orientation is carried out with the support of their companion.⁶

Therefore, it is safe to say that health institutions do not have the necessary personnel or supplies to care for people with disabilities. Access to contraceptive methods is an essential component to exercise human rights. It is not only crucial that no one is forced to adopt permanent or temporary contraceptive methods, but also that access to them is guaranteed without discrimination, in particular for historically discriminated groups, such as disabled girls, women and people with the capacity to gestate.

Given the absence of trained personnel in health institutions to care for people living with some sort of disability, there will hardly exist support systems to guarantee their rights and respect their autonomy in making decisions about life and personal freedom, under equal conditions with other people.

III. Legal and Safe Abortion

In Mexico, criminal codes of each federal entity regulate abortion and establish under what grounds or circumstances it is considered a crime or not, and if it will not be punished: some consider it an offense exempt from criminal liability, others with non-punishable causes. Rape is the only cause considered legal in

⁶ GIRE, *The Missing Piece: Reproductive Justice*, 2018, p.33-35. Available at: <https://justiciareproductiva.gire.org.mx/#/>

all the states and only in Baja California, Colima, Hidalgo, Mexico City, Oaxaca and Veracruz, elective abortion is decriminalized during the first 12 weeks of gestation.

The Committee on Economic, Social and Cultural Rights examined the progress of the Mexican State in compliance with the International Covenant on Economic, Social and Cultural Rights in March 2018. One of the concerns expressed by the Committee is women's access to abortion according to the causes of the federal state where they live, as well as the persisting barriers in accessing this service under the causes established in the criminal codes.⁷

In cases of rape, despite what is established by federal and local regulations, health authorities continue to impose requirements on the victims, contrary to general legislation. Jessica's case, accompanied by GIRE, shows the discrimination faced by people with disabilities and reflects implications of a legislation that limits abortion after rape to a certain number of weeks.

Case: Jessica.⁸

Jessica⁹ was born with cerebral palsy and has severe limitations in her ability to carry out daily essential activities, a situation that is aggravated by her precarious economic environment. In 2018, as a result of a convulsive crisis when Jessica was 17 years old, her family took her to the General Hospital of Tapachula, Chiapas, where medical staff informed them that she was pregnant. The pregnancy was product of a rape. Upon learning this, they requested the hospital director to resort to the legal termination of the pregnancy, but this request was denied because it exceeded the ninety days of gestation limit established by the local criminal code.

With the accompaniment of GIRE, Marta —Jessica's mother— promoted a legal stay (amparo) as a means of accessing comprehensive reparation for both of them for the violations of their rights. In September 2019, the District Judge denied the amparo, considering that article 181 of the Criminal Code of the State of Chiapas did not place Jessica on unequal footing, nor did it violate her human rights.

A judicial appeal was filed against this decision, alleging that the ruling generated grievances such as: 1) it is based on a lack of knowledge of the constitutional and conventional standards on abortion; 2) it lacks assessment of the applicable regulatory framework in cases of abortion after rape; 3) it is contrary to the duty

⁷ United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the combined fifth and sixth periodic reports of Mexico, [E/C.12/MEX/CO/5-6], 28th meeting, 2018, paragraph 62.

⁸ SCJN. First Chamber. Legal stay under review 438/2020. Speaker: Justice Jorge Mario Pardo Rebolledo, 2021. Available in Spanish at: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=275054>

⁹ The name has been changed out of respect for her privacy.



of reinforced protection in cases where a person with a disability is involved, and 4) it ignores applicable criteria in terms of indirect discrimination.

The Collegiate Court that heard the matter decided to request Mexico's Supreme Court (SCJN) to attract the case considering that it was both important and transcendent.

The case was discussed and unanimously approved by the justices within the First Chamber of the SCJN, on July 7, 2021. The sentence analyzes the obligations that the District Judge failed to observe, as well as article 181 of the Criminal Code of the State of Chiapas. The ruling states that Jessica's distinctive features place her in a situation of intersectional vulnerability and that, in this sense, her case be studied from a gender perspective, considering the rights of people with disabilities and the best interests of children.

The Court's decision stipulates that establishing a temporary limitation for abortion after rape implies ignoring the nature of sexual assaults and their effects on women's health. It also concludes that the State cannot force a victim of rape to undertake personal sacrifices —such as continuing the pregnancy— and that the challenged article constitutes a form of violence against women, in addition to affecting their psychological health.

It also states that the norm affects the rights of people with disabilities, since it fails to acknowledge there will be cases in which women might not know that they are pregnant and, therefore, cannot resort to health services in due course. Consequently, the Court considered the fraction of article 181 of the Criminal Code of the State of Chiapas that introduces the time limit as invalid and noted that denying access to abortion services in Jessica's case resulted in a series of violations to her human rights and those of her mother.

The resolution in Jessica's case establishes an important precedent, not only regarding the existence of time limitations to access abortion services after rape —currently contemplated in eight local criminal codes—, but also the particular forms of discrimination faced by people with disabilities, who are commonly restricted in the exercise of their sexual and reproductive rights, as a result of prejudices and stereotypes based on the belief that they are not capable of making decisions about their sexual and reproductive lives.¹⁰

Since 2013, GIRE has used access to information requests (SAI) to complement the scarce information included in available public statistics, which, despite some advancements, continues to be insufficient. Presenting SAIs, together with the follow-up, compilation and analysis of responses obtained, is a lengthy process with diverse obstacles, and sometimes it is the only way to obtain disaggregated and complete information. However, very few states in Mexico systematize their information in a disaggregated manner and on very few occasions the information is disaggregated by disability.

¹⁰ GIRE, *El camino hacia la Justicia Reproductiva: Una década de avances y pendientes*, 2021, page 41. Available at: <https://unadecadajusticiareproductiva.gire.org.mx/>

The availability of disaggregated information would facilitate the elaboration of more accurate diagnoses on access to legal abortion services and, in particular, access for disabled women and people with the capacity to gestate.

IV. Obstetric Violence

People with disabilities also face greater barriers in the access of other reproductive health services. For example, it is common for women with intellectual and psychosocial disabilities to suffer obstetric violence; on many occasions, they are even forced to interrupt their pregnancies —because they are considered incapable of being mothers—, obliged to use a temporary or permanent contraception method, and subjected to forced sterilization procedures.¹¹

In 2016, the ENDIREH included, for the first time, questions focused on aspects of the experience of women during their last childbirth. According to this survey, out of 8.7 million women who had given birth at least once between 2011 and 2016 in Mexico, 33.4 percent reported some kind of mistreatment from the personnel that attended the delivery.¹² However, since these data are not disaggregated, there is no information to whether any of these women live with some kind of disability.

All of the above in addition to the existence of regulations in the national legal framework such as Mexican Official Regulation NOM-005-SSA2-1993, on family planning services (NOM 005), which refers to “mental retardation” as an instruction to use a method of permanent sterilization known as Bilateral Tubal Occlusion. Stating that intellectual or psychosocial disabilities are an “indicator” for sterilization is assuming that women with disabilities should not reproduce, which is clearly contrary to the Mexican Constitution and the CRPD.¹³

The above-mentioned regulation, modified for the last time in 2004, is pending updating. It is necessary that its update adopts an intersectional perspective respecting the rights of people with disabilities, expressly

¹¹ DRI and Colectivo Chucán, *Abusos y Negación de Derechos Sexuales y Reproductivos a Mujeres con Discapacidad Psicosocial en México*. 2015, page 13. Available at: <https://www.driadvocacy.org/wp-content/uploads/Informe-M%C3%A9xico-Mujeres-FINAL-Feb2415.pdf>

¹² GIRE, *El camino hacia la Justicia Reproductiva: Una década de avances y pendientes*, 2021, page 106. Available at: <https://unadecadajusticiareproductiva.gire.org.mx/>

¹³ Informe alternativo de organizaciones de la sociedad civil de México al Comité sobre los Derechos de las personas con discapacidad 2014 – 2019, page 19. Available at: https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/MEX/INT_CRPD_ICO_MEX_35705_S.pdf

considering accessibility and autonomy in decision-making and, of course, eliminating the instruction to carry out Bilateral Tubal Occlusion in cases of women with disabilities, currently in force.¹⁴

The Special Rapporteur on Violence against Women, from the Human Rights Council, in her report *A human rights-based approach to mistreatment and violence against women in reproductive health services, with a special focus on childbirth and obstetric violence*, identifies obstetric violence as a widespread and rooted practice in health systems. In this report, she acknowledges that forced sterilizations and forced abortion are medical treatments practiced throughout the world without informed consent and for various reasons, including, for example, the argument that they are in the best interest of women or based on the belief that certain people belonging to minority groups, such as indigenous women, women with disabilities or women living with HIV, are not “worthy” of procreation, are incapable of making responsible decisions regarding contraception, are not in a position to be “good mothers”, or it is not advisable for them to have offspring.¹⁵

At the universal level, recommendations have been issued to the Mexican State by bodies in charge of monitoring treaties, for example, those issued in 2018 by the UN Committee on Economic, Social and Cultural Rights (CESCR) and by the Committee on the Elimination of Discrimination Against Women (CEDAW), which are also related to obstetric violence.

The **CEDAW**, in its report on the compliance of the Mexican State with its obligations derived from the CEDAW Convention, expressed its concern about: **Reports of forced sterilization of women and girls, and limited access to reproductive health services, particularly by women and girls with mental disabilities and others.**¹⁶

The Committee recommended that the State:

Ensures that medical personnel seek fully informed consent before performing sterilizations, that professionals who perform sterilizations without such consent are sanctioned, and that reparations and monetary compensations are offered to women victims of non-consensual sterilizations.

GIRE submits the following recommendations for the Committee in the framework of the next review of the combined 2nd. and 3rd. periodic reports to Mexico:

¹⁴ GIRE, *El camino hacia la Justicia Reproductiva: Una década de avances y pendientes*, 2021, page 129. Available at: <https://unadecadajusticiareproductiva.gire.org.mx/>

¹⁵ United Nations, Human Rights Council, Special Rapporteur on Violence against Women, , *A human rights-based approach to mistreatment and violence against women in reproductive health services, with a special focus on childbirth and obstetric violence*, [A/74/137], seventy-fourth session Issue 26 a) from the preliminary list, 2019, paragraph 21. Available at: <https://digitallibrary.un.org/record/3823698?ln=es>

¹⁶ GIRE, *El camino hacia la Justicia Reproductiva: Una década de avances y pendientes*, 2021, page 93. Available at: <https://unadecadajusticiareproductiva.gire.org.mx/>

- Collecting and systematizing information on sexual violence and other human rights violations against girls and women with disabilities.
- Ensuring that places, services, materials and information on contraceptives and reproductive health are friendly and accessible to people living with some sort of disability.
- Eliminating from the informative Appendix “A” of NOM 005, the assumption of “mental retardation” as an indicator to be a candidate for the Bilateral Tubal Occlusion procedure.
- Reconciling criminal legislation and administrative instruments on abortion after rape, with the General Law of Victims and NOM 046, eliminating requirements of term, complaint and prior authorization, and ensure access without discrimination for people with disabilities to the mentioned service.
- Guaranteeing emergency medical care in cases of sexual violence for people with disabilities, consisting of emergency contraception, prophylaxis to prevent sexually transmitted infections and termination of pregnancy.

