



Review of Mexico’s Compliance with the ICESCR

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VIOLENCE AGAINST WOMEN AND GIRLS

CESCR Concerns with Violence against Women Generally and Comments Regarding This Issue in Mexico

The CESCR has recognized the relationship between violence against women and the fulfillment of women's human rights, most recently in its General Comment No. 16 on the implementation of article 3 of the ICESCR. Here the Committee notes: "Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality." In this connection, the Committee highlighted a state obligation springing from the ICESCR to "take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors" (E/C.12/2005/4, para. 27).

In 2000, in its General Comment No. 14 on health, the CESCR noted that a comprehensive strategy is needed to eliminate sex discrimination, and that such a strategy should include, as a major goal, "reducing women's health risks, particularly ... protecting women from domestic violence" (E/C.12/2000/4, para. 21).

The pervasive nature of violence against women in Mexico has on a number of occasions raised concern within the United Nations treaty bodies, including the CESCR. In 1999, the CESCR noted that it was alarmed about the high rate of domestic violence, and recommended that more effective measures be taken to combat this problem and to remedy its root causes. (E/C.12/1/Add.41, paras. 26 and 40).

Selected Human Rights Watch Findings on Violence against Women in Mexico

Inadequate Legal Framework on Violence against Women

Mexican law does not adequately protect women and girls against violence and abuse. The federal nature of the Mexican system of government gives the thirty-one states and the Federal District (Mexico City) relative autonomy on legal and policy responses to violence against women, though state laws have to comply with the national constitution, including human rights protections. Nevertheless, protections vary widely from one jurisdiction to another, often leaving women and girls unprotected.

Government surveys conclude that almost 10 percent of women and girls over age fifteen (the equivalent of almost 5 million women and girls) suffer physical violence annually at the hands of their current husband or partner. The government also

estimates that approximately 120-130,000 rapes (affecting the equivalent of 0.23-0.25 percent of the female population) occur annually in all of Mexico. While this rape estimate already is alarming, other surveys and global indicators on violence suggest the likelihood that it represents only a fraction of actual rapes committed against girls and women in Mexico on an annual basis. (See pp. 10-11 of “The Second Assault”).

However, Mexico’s policy and legal responses to this problem remain inadequate. Human Rights Watch identified three main problems with the legal provisions on violence against women in Mexico.

First, applicable laws in the majority of Mexico’s independent jurisdictions require women to suffer “repeated” violence in the family in order for the abusive behavior to qualify as criminal or to merit sanctions under the civil code. This legal requirement is in some states interpreted to require women to file three or more complaints against the perpetrator of family violence before the behavior is classified as such. “Lesions” and “assault” are criminalized under all state penal codes, but these provisions—though technically relevant—are seldom applied when women report unrepeatable domestic violence to the authorities. Human Rights Watch’s research suggests that specific legislation is needed to prevent and eradicate this form of violence, in particular in a society like Mexico where violence in the family is so prevalent.

Second, many states define sanctions for some sexual offenses with reference to the “chastity” or “honesty” of the victim, in contravention of international standards of universal protections against violence and abuse. Most states criminalize three types of sexual intercourse: rape (and statutory or “presumed” rape); incest (defined as “consensual” sex between parents and children or between siblings); and “estupro” (intercourse with an adolescent girl through seduction or deceit, as opposed to force). In thirteen states, “estupro” is only a crime when the underage victim is known to live “chastely” or “honestly,” and in at least eleven states “estupro” is not penalized if the perpetrator subsequently marries the underage victim.

“Incest” is typically not considered a crime against the physical or sexual integrity of the victim, but rather against the family. Because the crime is defined as an assault on the family unit and because the sexual intercourse is legally defined as consensual, both parties are subject to criminal penalties, including victims under eighteen. It should be noted that “incest” as defined in Mexican state laws may include situations that qualify as sexual exploitation or abuse under international law, even though the sexual relationship is considered consensual under Mexican law. In these situations, Mexican law decidedly does not provide the required protection against sexual abuse for all children.

Thirdly, the criminalization of children's sexual behavior—even where the child may be victim of abuse—is the more troubling because of a generally low age of consent in Mexico. In two jurisdictions, children are considered capable of consenting to sexual relationships once they reach puberty with no age specified. In twenty-one of Mexico's thirty-two jurisdictions, children are considered capable of consenting to sexual intercourse at the age of twelve, in one jurisdiction the age of consent is thirteen, in seven jurisdiction it is fourteen, and in only one it is fifteen.

Lax Implementation of Existing Legal Framework

Even the existing inadequate Mexican laws for the prevention and punishment of violence against women are often not properly implemented. Human Rights Watch identified three main reasons for this:

1. A pervasive distrust of rape victims' testimony;
2. The inaccessibility of attorneys general's specialized agencies on sexual crimes; and
3. Lack of training on gender-based violence for public prosecutors, forensic doctors, and other expert witnesses.

In addition, many victims of violence fear retribution from the perpetrator, especially if he is a family member. As a consequence, the vast majority of rape victims do not file a report at all. Generous estimates suggest 10 percent of rape victims file an official complaint. The real proportion is likely even less.

The pervasive distrust of rape victim testimony is related to a generalized notion in Mexican society that rape is not really involuntary. A 2005 government survey concluded that one in four Mexican men believes women are raped because they provoke the assault. This context of generalized distrust is in most places not countered by sustained training and support for public prosecutors, police officers, and health personnel who deal directly with rape victims. The result is the perpetuation of impunity for gender-based violence.

Mexico's Fourth Periodic Report and the Issue of Violence against Women

Mexico's fourth periodic report to the CESCER mentions several positive steps taken by the government with a view to addressing the pervasive issue of violence against women.

These steps include the work carried out by the National Human Rights Commission and the National Institute for Women.

The government's report, however, does not assess the success of these measures with regard to bringing down the incidence of domestic and sexual violence and punishing those responsible for the violence. Moreover, the report does not address the government's actions to overcome the deep-seated attitudes that impede women's access to justice and health services to the detriment of their health and rights.

Questions for the Government of Mexico on Violence against Women

Mexico's fourth periodic report to the CESCR fails to address key health and equality concerns pertaining to its ICESCR obligations, notably vis-à-vis victims of gender-based violence. Mexico should clarify the following issues during its upcoming presentation to the CESCR:

1. How does the Mexican government address the root causes of domestic and sexual violence against women and girls? In particular, what steps have been taken to ensure that prevailing prejudices regarding rape victims as ultimately responsible for the rape do not obstruct women's and girls' access to justice and health services?
2. Given the generally low age of sexual consent in Mexican state laws, what steps has the Mexican government taken to protect all children under eighteen against all forms of sexual abuse?
3. In the case of sexual abuse against children, what steps have been taken to ensure unimpeded access to health counseling and services for all children, including those abandoned by their families?

ACCESS TO LEGAL ABORTION AFTER RAPE

CESCR Concerns with Abortion Generally and Comments Regarding This Issue in Mexico

Since 1994, U.N. treaty bodies, including the CESCR, have consistently linked a pregnant woman's right to decide about abortion without interference with her right to nondiscrimination and to equal enjoyment of other human rights such as the right to health. (See "The Second Assault," pp. 78-84, and "International Human Rights Law and Abortion").

In concluding observations on periodic reports, the CESCR has on a number of occasions recommended that states legalize abortion in some circumstances, such as when the pregnancy is the result of rape or incest, and when the life of the pregnant woman is endangered. In 1999 the CESCR expressed concern with the health consequences of unsafe abortion in Mexico.

Selected Human Rights Watch Findings on Legal Abortion after Rape in Mexico

Though generally criminalized, abortion in Mexico is legal after rape. Nevertheless, Human Rights Watch identified substantial obstacles to rape victims' access to safe legal abortion. These obstacles include:

- a) Aggressive questioning and mistrust of all rape victims, thus discouraging them from filing a legal complaint (see above);
- b) Lack of clear guidelines for public officials on how to facilitate access to legal abortion;
- c) Obstructive and abusive behavior specifically directed at pregnant rape victims;
- d) Blatant misinformation, including withholding information about the health risks regarding early pregnancies and gross exaggeration of health risks related to abortion procedures; and
- e) Legal impediments to access to abortion after rape by a family member (incest).

For rape victims who become pregnant but do not report the rape, legal abortion is ruled out because most jurisdictions either *de jure* or *de facto* require that victims report the rape as an essential first step toward legal abortion.

When pregnant rape and incest victims do report the assault and insist that they want an abortion, they are sent on a veritable obstacle-course that materially diminishes their possibility of obtaining a legal abortion. Many rape victims are passed from one public agency to another as none want to authorize the abortion. Some are bounced back and forth until the pregnancy is too advanced to be interrupted safely and legally. Others are threatened with jail for procuring a legal abortion, and many are told, without cause, that an abortion at any time during the pregnancy could kill them.

Public officials at times aggressively discourage abortion, including for very young rape victims, and only in very limited cases are underage rape victims and their parents or guardians told about the health risks related to early pregnancy. Some underage rape victims lose access to legal abortion when prosecutors charge a perpetrator with incest instead of rape, because Mexican law does not allow abortion after incest.

The obstruction of access to legal abortion after rape often has serious adverse physical and mental health consequences. These consequences may be exacerbated for girls, not least because of demonstrable health risks related to early pregnancy. Underage rape victims further told Human Rights Watch that headmasters, teachers, or family members had pressured them to leave school without graduating due to their imposed pregnancy. Some underage victims were thrown out of their homes, or threatened with eviction, often with nowhere to turn for help. These consequences are directly related to women's and girls' ability to fully exercise a number of economic and social rights, including the right to education, the right to adequate housing, and the right to health.

Three of Mexico's thirty-two independent jurisdictions have promulgated guidelines to facilitate access to legal abortion for rape victims—the Federal District, Baja California Sur, and Morelos. Human Rights Watch found that these guidelines have succeeded in reassuring public officials, and that public authorities in the two jurisdictions with guidelines covered by our study—Morelos and the Federal District—showed a clear political will to take responsibility for guaranteeing access to abortion after rape.

Yet even where guidelines exist, serious obstacles remain. Despite explicit time limits for authorizing legal abortion in law and guidelines there are often delays, a fact acknowledged by public officials. Some public prosecutors continue to display a clear lack of understanding of the guidelines and—in particular—of rape victims' plight. Most troubling, harassment of rape victims seeking abortion and those who assist them continues, even in jurisdictions where guidelines for access to legal abortion exist.

One reason for this continued harassment is that the Mexican legal system which generally criminalizes abortion contributes directly to a particularly pronounced distrust of pregnant rape victim testimony. In fact, public prosecutors often feel compelled to question pregnant rape victims even more aggressively than others in order to reassure themselves that they are not authorizing an illegal abortion.

Ultimately, the remedy to this perverse dynamic is for Mexican authorities to de-link rape and abortion through laws providing broader access to abortion. The general criminalization of abortion falls short of authoritative interpretations of international legal standards on rights to equality, life, health, physical integrity, and the right to decide on the number and spacing of children.

Even under the current legal regime, however, it is incumbent on prosecutors and other judicial system personnel to give priority to ensuring that pregnant rape victims are able to exercise their right to a legal and safe abortion. The alternative is forcing victims to bear the often devastating mental and physical health consequences.

Mexico's Fourth Periodic Report and the Issue of Abortion

Mexico's fourth periodic report to the CESCR addresses the issue of illegal abortion, noting that Mexico has opted to prevent unplanned pregnancies to the exclusion of measures to combat the health consequences of unsafe clandestine abortions. The government's report does not document the consequences of women's and girls' limited access to safe abortion where it is permitted by current Mexican law.

Questions for the Government of Mexico on Legal Abortion

Mexico should clarify the following issues during its upcoming presentation to the CESCR:

1. What measures will the Mexican government take to ensure the full protection of rape victims' rights to nondiscrimination and health, in particular with regard to the equal access to legal abortion in all of Mexico?
2. What steps have been taken to monitor women's access to safe abortion where not currently prohibited under Mexican law?

3. What steps have been taken to ensure that all women have equal access to safe abortion procedures where such procedures are legal?
4. How does the government evaluate decisions made by parents or guardians regarding the health of their children to ensure the protection of the best interests of the child?
5. Where girls have become pregnant as the result of rape or incest, what steps have been taken to convey all pertinent information to the child and her parents or guardians, including information regarding the health risks of early pregnancy?

WORKER'S RIGHTS TO ORGANIZE, STRIKE, AND BARGAIN COLLECTIVELY

CESCR Concerns with Worker's Rights Generally and Comments Regarding This Issue in Mexico

The right to work and rights at work are clearly established in the ICESCR. Mexican law impedes the full implementation of these rights, in particular the rights to organize, strike, and bargain collectively. In 1999, the CESCR called upon Mexico "to comply with its obligations under article 8 of the Covenant and to withdraw its reservation made under that article."

Selected Human Rights Watch Findings on Workers' Rights to Organize, Strike, and Bargain in Mexico

In Mexico, a lack of independent unions impedes the full implementation of the labor rights provisions in the ICESCR. According to some estimates, roughly 90 percent of all Mexico's collective bargaining agreements are negotiated by non-independent, pro-government, pro-company unions. These "protection contracts" are generally negotiated without the consent, or even the knowledge, of the majority of workers. Mexican law only requires that twenty workers belong to the negotiating union. The agreements also inhibit the formation of truly independent unions, since new unions must later win an election in which at least half the workforce participates in order to take control of the collective agreements away from the non-independent union.

Another key obstacle to the full protection of workers' rights in Mexico is that trade union elections to supplant pre-existing unions are often open ballot elections. Workers must publicly declare their union preference in the presence of numerous employer and non-independent union representatives and even, on occasion, hostile hired thugs. Intimidation by these parties has frequently prevented free and fair elections. Mexico has recognized this problem, and in its May 18, 2000, joint declaration with the United States under the North American Agreement on Labor Cooperation (NAALC), the government agreed to "promote the use of . . . secret ballot elections in disputes over the right to hold the collective bargaining contract."

The 2003 U.N. High Commissioner for Human Rights report on Mexico recommended the creation of an "independent and autonomous" institution to "keep the registry of union organizations and collective contracts." Similarly, in its May 18, 2000, joint declaration with the United States under the NAALC, Mexico agreed to "continue promoting the registry of collective bargaining contracts in conformity with established labor legislation."

The continued lack of such a public registry is a problem when workers seek to form an independent union, following one of two paths for doing so under Mexican law. If there is a pre-existing union, as is often the case, they must call for a union election to gain representational rights for their workplace by filing a petition with the local or federal Board that contains, among other information, the legal name and address of the pre-existing union. Because workers are unable to check with a public registry to determine whether a union exists, they often either follow the wrong procedure or file a petition without the union's correct name and address. Authorities then dismiss the petition, but through the petition process, the employer and any pre-existing union become aware that independent union organizing is underway and often retaliate against suspected independent union supporters.

Mexico's Fourth Periodic Report and the Issue of Workers' Rights

In response to the CESCR's call for more specific information on this issue in 1999, Mexico's fourth periodic report refers to a draft labor law reform. This reform, in Human Rights Watch's analysis, fails to remedy key shortcomings in Mexico's labor law and would further weaken existing provisions. The problems mentioned above continue to exist and would not be eliminated by the proposed labor law reform (See above and open letter from Human Rights Watch to Mexico's Chamber of Deputies dated February 9, 2005).

Questions for the Government of Mexico on Workers' Rights

With regard to the compliance with ICESCR provisions on workers' rights, the Mexican government should clarify to the CESCR the following questions:

1. How does the government plan to ensure workers' right to form free and independent trade unions? In particular:
 - a. What steps have been taken to curb the widespread use of protection contracts?
 - b. What has been done to ensure the use of secret ballots in trade union elections and generally prevent mandatory public disclosure of union supporters' identities at any time during the exercise of their right to freedom of association?
 - c. What steps have been taken to create a public registry for collective accords and union registrations?
2. What steps is the government taking to ensure that state authorities conduct thorough, proactive, and independent investigations of alleged workers' rights

violations, especially those involving violations of the right to freedom of association?

3. What steps have been taken to ensure that workers and job seekers know where and how to file a complaint regarding workers' rights violations?