



Salud. Acceso. Derechos.

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**Members of the CEDAW Committee  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson  
52 rue des Pâquis  
CH-1201 Geneva, Switzerland**

**RE: List of Issues to the Committee on the Elimination of Discrimination against  
Women (CEDAW), Pre-Sessional Working Group, 70<sup>th</sup> session, 2017.  
State party: Mexico**

Dear Committee Members:

Ipas is an organization that works around the world to increase women's ability to exercise their sexual and reproductive rights.<sup>1</sup>

Our aim with this letter is to provide questions to be asked to the Mexican state to comply with its international human rights obligations and protect women's human right to health established in Article 12 and right to equality and non-discrimination established in Article 16 (1) (e) from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

### **Unsafe abortion: major public health and human rights issue**

Worldwide, 25 million unsafe abortions occurred every year between 2010 and 2014. The majority (97%) of these abortions, occurred in developing countries in Africa, Asia and Latin America.<sup>2</sup>

The World Health Organization has found that high rates of maternal mortality and morbidity are correlated with restrictive abortion laws.<sup>3</sup> Nearly 25% of the world's women live where abortion is prohibited except on the grounds of rape, incest or to save a woman's life. Where access to safe and legal abortion is limited, women resort to unsafe abortion, with devastating consequences for their health, lives, and families.

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<sup>1</sup> [www.ipas.org](http://www.ipas.org)

<sup>2</sup> <https://www.guttmacher.org/news-release/2017/worldwide-estimated-25-million-unsafe-abortion-occur-each-year>

<sup>3</sup> World Health Organization, Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated with mortality in 2008. Online:  
<[http://apps.who.int/iris/bitstream/10665/44529/1/9789241501118\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44529/1/9789241501118_eng.pdf)>

Studies have long demonstrated the correlation between a country's restrictive abortion law and high rates of maternal mortality and morbidity.<sup>4</sup> Restrictive abortion laws, combined with cultural barriers, conscientious objection and stigma, continue to deny women in many countries access to safe abortion even in cases that are permitted and not penalized, such as in cases of rape, incest or sexual violence. Mexico is not the exemption.

### **Panorama of women and adolescent girls' reproductive health and human rights in Mexico: lack of prevention of unwanted pregnancies and lack of equal access to safe abortion care**

In Mexico, while abortion services are available on demand during the first 12 weeks of gestation in Mexico City, at the state level legal abortion causes vary from state to state, including states where abortion is forbidden even when women's life is at danger.<sup>5</sup> Rape is the only legal circumstance nationwide, however, access to these services is far from being fully available and guaranteed demonstrating Mexican state's failure to comply with its international human rights obligation established in CEDAW Convention.

Mexico ranks first in adolescent pregnancy among the member countries of the OCDE.<sup>6</sup> In 2015, Mexico reported 417,847 births to adolescents less than 19 years of age. Of these, 12,230 (2.92%) births were to girls younger than 14.<sup>7</sup> This means that 1,000 girls under 14 become mothers every month in Mexico. As a result of the teenage pregnancy "epidemic,"<sup>8</sup> the Mexican government created the National Strategy to Prevent Adolescent Pregnancy (ENAPEA) which, in accordance with the State Development Plan and State Health Program, is limited to prevention and

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<sup>4</sup> Jewkes, Rachel, Heather Brown, Kim Dickson-Tetteh, Jonathan Levin and Helen Rees. 2002. Prevalence of morbidity associated with abortion before and after legalization in South Africa. *British Medical Journal* 234 (1252).

<sup>5</sup> Queretaro, article 142 Penal Code; Guanajuato, article 163 Penal Code.

<sup>6</sup> Ver: Morales, Alberto. "México ocupa el primer lugar en embarazo adolescente entre países de la OCDE2, en *El Universal*, México, 27 de julio de 2017, sección Sociedad, disponible en: <<http://www.eluniversal.com.mx/articulo/nacion/sociedad/2017/06/27/mexico-ocupa-primer-lugar-en-embarazos-adolescentes-entre-paises>>

<sup>7</sup> Dirección General de Información en Salud (DGIS). Base de datos de Certificado de Nacimiento-Nacimientos ocurridos en 2015. [en línea]: Sistema Nacional de Información en Salud (SINAIS). [México]: Secretaría de Salud. <<http://www.sinais.salud.gob.mx>>

<sup>8</sup> Ver: Gómez Quintero, Natalia, "México con 'epidemia' de embarazo adolescente", en *El Universal*, México, 8 de marzo de 2016, sección Sociedad, disponible en: <<http://www.eluniversal.com.mx/articulo/nacion/sociedad/2016/03/8/mexico-con-epidemia-de-embarazos-adolescentes>>

sexual education for adolescents, without considering cases of pregnancy that are products of sexual violence.

Births in girls and adolescents in México*		
Women's age at birth	2008-2016	Annual average
< 14 years	103,742	11,526
15-19 years	3,508,316	389,812
Total < 20 years	3,612,058	401,339
Total of Births	19,557,352	2,173,039
% of births girls and adolescents	18.5%	

\* Analysis from Iпас Mexico from official data of the *Sistema de Información Académica (SINAC)*<sup>9</sup>

Despite the existence of legal indications that permit safe abortion service provision in both the public and private health sector, women's access to legal abortion is precarious or null in the majority of Mexican states, representing an enormous gap between the existing legal framework and the effective exercise of this right. Between 2007 and 2013, government authorities reported just 51 registered<sup>10</sup> procedures according to the rape indication,<sup>11</sup> while official estimates state that more than 14,000 women and girls are victims of sexual violence<sup>12</sup> each year with a great number resulting in unwanted pregnancy. While attending pregnant girls from less than 14 years, Mexican authorities does not investigate if those pregnancies are a result of rape and, as a result, legal abortion services are not offered systematically.

Restrictive laws that penalize abortion have resulted in clandestine conditions that contribute to the stigma and fear that many adolescents and girls face, leading them to postpone seeking medical attention.<sup>13</sup> Other barriers for adolescents and girls seeking safe abortion services include the impossibility of paying for a safe procedure, lack of social support, service denial, health-care personnel's negative attitudes and inferior quality of health services.

<sup>9</sup> Sistema de Información Académica SINAC. Available at: <http://sinac.cinvestav.mx/index.php/proyecto-sinac>

<sup>10</sup> This information is not desegregated by age of the pregnant woman/ girl.

<sup>11</sup> Grupo de Información en Reproducción Elegida (GIRE) Informe: Niñas y Mujeres sin Justicia, México. 2015

<sup>12</sup> Amnistía Internacional, Informe Amnistía Internacional 2013: El Estado de los Derechos Humanos en el Mundo

<sup>13</sup> [http://www.huffingtonpost.co.uk/araceli-lopez-nava-vazquez/global-gag-rule-safer-abortion-day\\_b\\_18119418.html](http://www.huffingtonpost.co.uk/araceli-lopez-nava-vazquez/global-gag-rule-safer-abortion-day_b_18119418.html)

The Ministry of Health (MOH) in Mexico City publishes service provision statistics for the Legal Abortion Program (ILE). Between April 2007 and April 2017, the program carried out 176,355 legal abortion procedures. These statistics also include information about the age of women who underwent a procedure: 0.7% were girls between 11 and 14 years old and 4.9% of patients were adolescents between 15 and 17.

Compared to adult women who have unsafe abortions, female adolescents and girls are more likely to undergo unsafe abortions, especially during the second trimester.<sup>14</sup> For each woman requesting care at a hospital after an abortion, there are others who underwent an unsafe procedure and do not seek care for lack of economic resources, fear of abuse, mistreatment or other legal repercussions.<sup>15</sup>

CEDAW Committee, in line with other treaty-monitoring bodies, have already analyzed the consequences of restrictive abortion laws to women's human rights in different countries through its concluding observations, considering restrictive abortion laws as threats to women's rights to health and life.<sup>16</sup> In concluding observations these committees draw the direct link between the criminalization of abortion and use of clandestine abortion services putting women's lives and life at risk.

CEDAW Committee's concluding observations on Mexico from 2006, urged the state to "expand the coverage of health services, including reproductive health care and family planning services" recommended "that sex education be widely promoted and provided, targeting men and women and adolescent boys and girls." The Committee also urged "to implement a comprehensive strategy which should include the provision of effective access to safe abortion in situations provided for under the law and a wide range of contraceptive measures, including emergency contraception..."<sup>17</sup>

Later on 2012, The Committee urged Mexico to "harmonize the federal and state legislations relating to abortion with a view to eliminating the obstacles faced by women seeking legal abortions and also to extend access to legal abortion in the light

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<sup>14</sup> World Health Organization, *Safe Abortion: technical and policy guidance for health systems*, 2<sup>nd</sup> Edition, 2012. P. 24.

<sup>15</sup> *Ídem*, P. 20.

<sup>16</sup> Center for Reproductive Rights, *Whose right to Life? Women's Rights and Prenatal Protections Under Human Rights and Comparative Law* 5 (2012).

<sup>17</sup> Committee on the Elimination of Discrimination against Women. Thirty-sixth session. 7-25 August 2006. P. 33

of the constitutional human rights reform and the Committee's general recommendation No. 24 (1999)" also, the Committee called the state to "ensure that in all states, women whose cases 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."<sup>18</sup>

- Human rights violations related to lack of equal access to safe abortion care in Mexico due to restrictive laws on abortion: Right to Life

Service denial in cases of legal abortion and the criminalization of abortion directly threaten women's right to life all over the world, as established in the Special Rapporteur's 2005 report against torture: "Unsafe abortion is the third leading cause of maternal death globally. Where access to abortion is restricted by law, maternal mortality increases as women are forced to undergo clandestine abortions in unsafe and unhygienic conditions."<sup>19</sup> In Mexico, maternal mortality due to abortion during the period of 2002-2014 was 1,092, 14% of those were adolescents.<sup>20, 21</sup>

### **State's insufficient efforts to provide access to abortion care for women and adolescents' victims of sexual violence fail to comply with its international human rights obligations**

- National policy and legal environment in Mexico

The legal framework related to care for survivors of sexual violence has been modified in recent years following the publication of the General Victims Law, which establishes in articles 29 and 30, section IX and X:

**Article 29.** Public hospitals belonging to the Federal, state, Federal District, and municipality governments have the obligation to provide immediate emergency care to victims in need, independently of their socioeconomic capability or nationality and shall not demand any other precondition to care.

<sup>18</sup> Committee on the Elimination of Discrimination against Women. Fifty-second session. 9-27 July 2012. P.33

<sup>19</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, available at: <http://www.refworld.org/docid/56c435714.html> [accessed 29 September 2017]

<sup>20</sup> Ipas México, *Salud Reproductiva, Información Básica Nacional*. Diciembre 2016.

<sup>21</sup> During the period of 2002- 2015, 16,222 women have died because of pregnancy and from that total, 2,121 (13%) were adolescents.<sup>21</sup>

**Article 30.** Emergency medical, dentist, surgical, or hospital services consist of:

I. a VIII. [...]

IX.- Voluntary termination of pregnancy in cases permitted by law, with absolute respect for the victim's will, and

X. Care for the sexual and reproductive rights of female victims.

In addition to the above, when reviewing the text contained in the NOM 046 Familiar, sexual and violence against women, criteria for prevention and care (NOM046)<sup>22</sup>, the MOH adopts the United Nations Committee on the Rights of the Child's 2015 recommendation which mentions the Committee's concern related to Mexico's restrictive abortion laws that force female adolescents and girls to resort to unsafe abortion and issues the recommendation to eliminate judicial or governmental authorization as a condition to access this health-care procedure.

According to this, the modifications to the NOM 046, eliminates the requirement of making a formal report of the rape to authorities and establishes that, in the case of girls between 12 and 18 years old, a statement in good faith is sufficient to move forward with the procedure:

*"In the case of pregnancy as a product of rape, public institutions offering medical care services must provide legal abortion services in cases permitted by law, as established in the legal provisions protecting victims' rights, upon request in good faith by the person affected by said pregnancy that is a product of rape; in the case of minors under 12 years of age, upon request from their father and/or mother, or in their absence, by the legal guardian or according to applicable legal provisions. Health-care personnel participating in the legal abortion care procedure will not be obligated to verify the patient's statement, understanding their actions, based on the good faith principle referenced in article 5 of the General Victims Law.<sup>23</sup>"*

<sup>22</sup> MODIFICACIÓN de los puntos 6.4.2.7, 6.4.2.8, 6.6.1 y 6.7.2.9 de la Norma Oficial Mexicana NOM-190-SSA1-1999, Prestación de servicios de salud. Criterios para la atención médica de la violencia familiar, para quedar como NOM-046-SSA2-2005. Violencia familiar, sexual y contra las mujeres. Criterios para la prevención y atención, publicada el 16 de abril de 2009. Publicada en el Diario Oficial de la Federación de fecha 24 de Marzo de 2016, Primera Sección.

<sup>23</sup> MODIFICACIÓN de los puntos 6.4.2.7, 6.4.2.8, 6.6.1 y 6.7.2.9 de la Norma Oficial Mexicana NOM-190-SSA1-1999, Prestación de servicios de salud. Criterios para la atención médica de la violencia

Despite these modifications, women's and girls' access to abortion care for rape through the country is still far from a reality. Some state health authorities argue that the NOM 046 contradicts their state penal code, or providers declare themselves conscientious objectors, failing to comply with their duty to refer rape survivors to another facility so they can exercise their legal right to a legal abortion, and do not suffer any type of sanction or consequence as a result. In the General Recommendation 35, the CEDAW has established that "violations of women's sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.<sup>24</sup> Moreover, the Rapporteur on Torture, in its special report on Torture and other cruel, inhuman or degrading treatment or punishment signaled that, "women and girls face significant difficulties in accessing legal abortion services due to administrative and bureaucratic hurdles, refusal on the part of health-care workers to adhere to medical protocols that guarantee legal rights, negative attitudes, official incompetence or disinterest (A/HRC/22/53). The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill treatment."<sup>25</sup>

On the other hand, the State party, according to the report presented to this Committee, notifies that the federal MOH via the *Program for the Prevention and Care of Familial and Gender-Based Violence* carries out actions to limit the harm that violence has on one's health through the *Integrated Model for the Prevention and Care of Familial and Sexual Violence* that offers medical and psychological care [...] Additionally, the *Integrated Model Operational Manual* contains a chapter that mentions the *Health-Care Personnel's Substantive Obligations for Care for Victims of Violence* which operate according to the following criteria: opportunity, honesty, quality of care, respect to

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familiar, para quedar como NOM-046-SSA2-2005. Violencia familiar, sexual y contra las mujeres. Criterios para la prevención y atención, publicada el 16 de abril de 2009. Publicada en el Diario Oficial de la Federación de fecha 24 de Marzo de 2016, Primera Sección.

<sup>24</sup> CEDAW Committee. General Recommendation 35. Paragraph 18

<sup>25</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Human Rights Council, Thirty first session, January 2016. UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, available at:

<http://www.refworld.org/docid/56c435714.html> [accessed 29 September 2017]

dignity, and confidentiality. Medical personnel are subject to these obligations that cover service provision as well as avoiding obstruction of the same.<sup>26</sup>

It is important to note that the *Integrated Model Operational Manual* emphasize legal abortion service provision; however, the instruction to report the crime at the Public Prosecutor's Office to receive authorization for the procedure is found throughout.<sup>27</sup> This demonstrates a clear barrier for women and adolescent's access to safe abortion care and a legal conflict between official documents published by federal health authorities and international human rights treaties ratified by Mexican state.

In the same report, the State Party informs that the *Guidelines for Care for Women Victims of Violence* establishes that legal abortion services can be carried out under the following criteria and techniques:

a) Legal abortion before 12 weeks of gestation:

- Manual or electric vacuum aspiration
- Medical abortion (administration of misoprostol only or metrotexate and misoprostol)
- Dilation and curettage (D&C)

b) Legal abortion after 12 weeks of gestation:

- Dilation and curettage (D&C)

Despite the aforementioned, to date the State party has not included the necessary medications and new technologies to provide abortion services according to the terms outlined in the Guidelines, the Essential Reproductive Health Supplies list, nor in the *Universal Catalogue for Health Services (CAUSES)*.

As described throughout this document, Mexican authorities have taken some steps toward eliminating some of the existing barriers to safe and legal abortion. However, it seems like no sufficient efforts have been made to guarantee such access and there are no clear efforts to implement these policies and oversight the quality of care provided to women in public health services by health providers. Availability of and

<sup>26</sup> Noveno Informe Periódico. México, CEDAW/C/MEX/9 disponible en [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/CEDAW\\_C\\_MEX\\_9\\_5977\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/CEDAW_C_MEX_9_5977_S.pdf)

<sup>27</sup> "Modelo integrado para la prevención y atención de la violencia familiar y sexual: Manual de Operación" del Centro Nacional de Género y Salud Reproductiva de la Secretaría de Salud, Capítulo 3: Atención para Mujeres con Requerimientos de Aborto Médico Bajo el Contexto Legal. Pp. 52 Available at: [http://www.inm.gob.mx/static/Autorizacion\\_Protocolos/SSA/ModeloIntegrado\\_para\\_Prevenccion\\_Atn\\_Violencia\\_familiar\\_y\\_se.pdf](http://www.inm.gob.mx/static/Autorizacion_Protocolos/SSA/ModeloIntegrado_para_Prevenccion_Atn_Violencia_familiar_y_se.pdf)

access to abortion services also require the State's will to guarantee the best and new technologies to perform good quality of care, safe procedures, train health providers, and eliminate abortion stigma.

- Human rights violations related to lack of effective policy implementation

### Right to Health

Article 12 of the ICESCR guarantees every individual the right to "the highest attainable standard of physical and mental health" and creates the obligation of States Parties to "[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases; [and t]he *creation of conditions which would assure to all medical service and medical attention in the event of sickness;*" (emphasis added) among others. Similarly, Article 12 of the CEDAW requires that all States Parties "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, *access to health care services, including those related to family planning*" (emphasis added). The Convention on the Rights of the Child protects the right to health, as enshrined in the ICESCR, of those below the age of 18 as enshrined under the ICESCR.

The CEDAW Committee has also provided guidance on the content of the right to health, as enshrined under the CEDAW. It has clearly stated that "[i]t is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."

The CEDAW Committee has also contributed to our understanding of women's right to health under CEDAW through General Recommendation No. 24 which established that states are required "to provide access to abortion in cases where the life or health of the woman is threatened and in cases of rape, incest, or fetal impairment.<sup>28</sup> CEDAW treats the denial to safe abortions as a threat to the woman's rights to life and health. This interpretation on state's obligation to protect the right to health can also be extended to state's measures to implement and ensure that in some states abortion is legal when the pregnancy represents a risk to the woman's

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<sup>28</sup> U.N. Doc. HRI/GEN/1/Rev.5 (1999).

health and that the necessary supplies and personnel are available to provide abortion services.

### Right to equality and non-discrimination in health care

CEDAW recalled that States Parties have the obligation to “eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning” and that the refusal to provide certain reproductive health services is discriminatory.<sup>29</sup> The Committee underscored that Article 12 of CEDAW requires states to “respect, protect and fulfil women’s rights to health care”.

### Recommended questions:

1. **What strategies does the federal MOH carry out to harmonize internal provisions with the modifications to the NOM 046, particularly related to the rights of women who are victims of sexual violence, and to monitor state-level MOH implementation of the NOM 046?**
2. **What measures is the Mexican State taking to eliminate existing barriers to safe and legal abortion access in the states – barriers such as conscientious objection?**
3. **What measures is the Mexican State taking to address lack of women’s access to good quality of care including health-care supplies and new technologies – to ensure safe abortion service provision?**
4. **What measures is the State taking to establish monitoring, accountability and oversight procedures to guarantee states agents compliance with international human rights obligations and women and girls’ access to legal abortion in cases of sexual violence and other legal indications already established by national law?**

As described throughout this document, unequal access to abortion services under legal circumstances due to several barriers women face while asking for services - such as contentious objection, contradictions among different policies and programs, legal requirements, lack of trained professionals and lack of access to new and appropriate technologies- are in frank violation to women’s human rights. Also,

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<sup>29</sup> CEDAW Committee, *General Recommendation 24*, U.N. Doc. HRI/GEN/1/Rev.5 (1999).

the different circumstances under which abortion is considered legal among Mexican states, causes discrimination to women living nationwide.

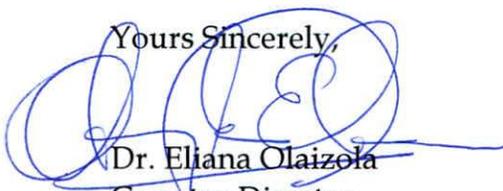
In addition to this access denial, girls' and adolescents' human rights are at constant stake due to the failure of the State party to prevent early pregnancies. It is urgent that the Mexican state undertake clear strategies to guarantee those girls and adolescents with safe and legal abortion services, not only considering that most of these pregnancies could be a consequence of rape, but because of the risk early pregnancies poses to their lives and health.

### **Suggested Recommendations to the Mexican government:**

- Review all public policies, programs, and guidelines from the federal Ministry of Health to remove legal and policy barriers to increase access to safe and legal abortion services in accordance to the NOM 046 for women, female adolescents, and girls.
- Incorporate new technologies to provide safe abortion services according to the World Health Organization's guidelines; take action to ensure that all medical facilities have these technologies available and that health professionals are trained in the legal framework and the use of these technologies.
- Include an effective sexual violence detection strategy in the National Strategy to Prevent Adolescent Pregnancy (ENAPEA) and the obligation for health-care providers to detect, inform, and provide abortion services or referral to adolescents and girls.

We hope the information contained in this submission letter contributes to an informed debate on the situation of women's, adolescents' and girls' reproductive rights in Mexico.

Yours Sincerely,



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Ipas Mexico