# ***Thematic report on rape as a grave and systematic human rights violation and a form of gender-based violence against women***

***Country: México***

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The Human Rights Commission in Mexico City (Comisión de Derechos Humanos de la Ciudad de México, CDHCM per its acronym in Spanish) is a public and autonomous institution, with the purpose of protecting, defending, monitoring, promoting, studying, educating and disseminating the human rights in Mexico City. In order to contribute to the study on standards and public policies on effective investigation responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and gender-based violence against women, the CDHCM answered the last query of the Questionnaire on criminalization and prosecution of rape, based on its daily investigations on human rights abuses in Mexico City.

**Questionnaire on criminalization and prosecution of rape**

The CDHCM provides information about criminal law provisions on rape, aggravating and mitigating circumstances, as well as its prosecution by comparing 8 local criminal codes and the Federal Criminal Code in the following tables.

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| **Based on the wording of those provisions, is the provided definition of rape:** |
| **Criminal Code** | **Gender specific, covering women only** | **Gender neutral, covering all persons** | **Based on the lack of consent of victim** | **Based on the use of force or threat** | **Some combination of the above** | **Does it cover only vaginal rape?** | **Does it cover all forms of penetration?** |
| **Federal** | NO | YES | NO | YES | YES | NO | YES |
| **Ciudad de México** | NO | YES | NO | YES | YES | NO | YES |
| **Chiapas** | NO | YES | NO | YES | YES | NO | YES |
| **Chihuahua** | NO | YES | NO | YES | YES | NO | YES |
| **Estado de México** | NO | YES | NO | YES | YES | NO | YES |
| **Guanajuato** | NO | YES | NO | NO | YES | NO | NO |
| **Puebla** | NO | YES | NO | YES | YES | NO | YES |
| **Oaxaca** | NO | YES | YES | YES | YES | NO | YES |
| **Veracruz** | NO | YES | NO | YES | YES | NO | YES |

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| **Criminal Code** | **Is marital rape in this provision explicitly included?** | **Is the law silent on marital rape?** | **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?** | **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?** | **Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.** |
| **Federal** | YES | NO | YES | NO | The Criminal Code establishes marital and cohabitation as legal assumptions for rape. (Art. 265 bis) |
| **Ciudad de México** | YES | NO | YES | NO | The Criminal Code establishes marital, cohabitation, and partnership, as legal assumptions for rape. (Art. 174 paragraph 4) |
| **Chiapas** | YES | NO | YES | NO | The Criminal Code establishes marital, cohabitation, and partnership, as legal assumptions for rape. (Art. 234) |
| **Chihuahua** | YES | NO | YES | NO | Yes. The Criminal Code establishes marital, cohabitation, and partnership, as legal assumptions for rape. (Art. 171) |
| **Estado de México** | YES | NO | YES | NO | Yes. The Criminal Code establishes marital, cohabitation, and partnership, as legal assumptions for rape. (Art. 274) |
| **Guanajuato** | NO | NO | YES | NO | The Criminal Code establishes marital and cohabitation as legal assumptions for rape. (Art. 183) |
| **Puebla** | YES | NO | YES | NO | The Criminal Code establishes marital and cohabitation as legal assumptions for rape. (Art 269 Fraction VII) |
| **Oaxaca** | YES | NO | YES | NO | The Criminal Code establishes marital and cohabitation as legal assumptions for rape. (Art. 248, fraction IV) |
| **Veracruz** | YES | NO | YES | NO | The Criminal Code establishes marital and cohabitation as legal assumptions for rape. (Art. 184, paragraph 3) |

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| **Criminal Code** | **What is the legal age for sexual consent?** | **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.** | **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.** |
| **Federal** | 18 | NO | The penalty is 8 to 20 years of imprisionment plus forfeit of custody, or legal guardianship. |
| **Ciudad de México** | 18 | NO | -Penalty: between 8 and 17 years.-Forfeit the function of parent, guardian or custodian removed from office. -Suspended in the exercise of his work, employment, or profession. |
| **Chiapas** | 18 | NO | Penalty: between 8 and 20 years of imprisionment. |
| **Chihuahua** | 18 | NO | Penalty: between 8 and 20 years of imprisionment. |
| **Estado de México** | 18 | NO | Penalty: between 10 and 20 years of imprisionment. Fine: equivalent between 200 to 2000 days of salary.- Forfeit the function of parent, guardian or custodian. |
| **Guanajuato** | 18 | NO | - Penalty: between 8 and 15 years,- Fine: equivalent between 80 to 150 days of salary.- Forfeit the function of parent, guardian or custodian |
| **Puebla** | 18 | NO | - Penalty: between 8 and 20 years,- Fine: equivalent between 50 to 500 days of salary.- Forfeit the function of parent, guardian or custodian- removal from office or suspended activity for 5 years. |
| **Oaxaca** | 18 | NO | The penalty is 12 to 18 years of imprisonment, a fine of the equivalent of 500 or 1000 days of salary, forefeit of all family rights, removal or disqualification for office.  |
| **Veracruz** | 18 | NO | The penalty is 10 to 25 years of imprisonment, a fine up to the equivalent of 500 days of salary when the victim is a person with physical or mental disabilities and forfeit the function of parent, guardian or custodian, removal from office or disqualification for office up to 5 years.  |
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| **Criminal Code** | **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?** |
| **Federal** | Yes. These are: when commited by two or more people, when commited by an ascendant to a descendant or descendant to ascendant, brother against its equal, by a legal guardian towards its ward, or by a stepfather towards its stepson. when it is committed by someone who carries out a public job, position or commission using the means at dispose by this position. when commited by a guardian towards its ward, in advantage of the trust deposited in him. when commited prior the administration of  narcotics or psychotropics against its will or without its consent. |
| **Ciudad de México** | Yes. These are: 1. When de victim is under 12 years old.1.1 Use of any kind of physical or psychological force1.2 When commited bye two or more people.1.3 When relationships of consanguinity or affinity up.1.4 When the responsible has the function of parent, guardian or custodian.1.5 When it is committed by someone who carries out a public job.1.6 for work reasons, school, medical, domestic, religious or any otherthat involves trust or subordination or superiority.1.7 When the responsible lives occasionally or permanently at the same victim's home1.8 Taking advantage of the trust, friendship or gratitude. 1.9 When the victim is on board a particular or public vehicle.1.10 When is committed in a lonely place. |
| **Chiapas** | Yes. Use of any kind of physical or psychological force. |
| **Chihuahua** | Yes. 1. When the victim is under 14 years old. 2. when de victim cannot understand the criminal act or cannot resist.3. Use of any kind of physical or psychological force. |
| **Estado de México** | Yes. These are: 1. When de victim is under 15 years old or over than seventy.2 When commited bye two or more people.3 There are relationships of consanguinity or affinity up. 4 When the responsible has the function of parent, guardian or custodian.5 When it is committed by someone who carries out a public job. 6 for work reasons, school, medical, domestic, religious or any otherthat involves trust or subordination or superiority. 7. When the victim is on board a particula r or public vehicle.8. When the victim dies from de crime. 9. When the victim was unconscious or incapacitated, or suffers from a mental or physical disability. |
| **Criminal Code** | **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?** |
| **Guanajuato** | Yes.1. When de victim is under 14 years old.2. When de victim is not in a chance to conduct himself voluntarily.3. when commited bye two or more people.4. When the responsibley is ascendant, descendant, adopter, adopted, brother, sister, stepfather, stepmother or guardian of the victim5. When the responsible has the victim in his care and custody, when it is committed by someone who carries out a public job, and in the excersice of religious ministry or by the hierarchical upper against sub lower6. Between spouses or cohabitants. 7.When it's preceded by a forced entry to the victimn's abode. |
| **Puebla** | Yes.1. When de victim is under 12 years old, when younger than 18 years old and older than 70 years old.2. when commited bye two or more people.3. When the victim was unable to resist because he/she was unconscious or incapacitated, or suffers from a mental or physical disability, or for any other reason.4. When the responsibley is ascendant, descendant, adopter, adopted, brother, sister, stepfather, stepmother or guardian of the victim5. When the responsible has the victim in his care and custody, and when it is committed by someone who carries out a public job.6. Between spouses or cohabitants. |
| **Oaxaca** | Yes. These are: when the victim is under 12 years old, when younger than 18 years old, when older than 60 years old, when the victim is a person with physical or mental disabilities, when committed by two or more people, when committed by a relative of the victim without limitation of degree in ascending or descending straight line, or up to the fourth degree in collateral line; by the guardian against his ward, by the stepfather or stepmother against the stepson or stepdaughter, by the lover of the father or mother of the offended person or by the person who lives in concubinage with the father or mother, when it is committed by someone who carries out a public job, position or commission, or in the exercise of a profession, employment or religious ministry, or when committed by spouse or intimate partner. |
| **Criminal Code** | **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?** |
| **Veracruz** | Yes. These are: when committed by two or more people, when the person responsible is ascendant, descendant, adopter, adopted, brother, sister, stepfather, stepmother or guardian of the victim; was or has been a concubine, concubine, domestic partner, or sentimental partner of the father or mother of the victim, when the person responsible has the victim in his care and custody, or education, when it is committed by someone who carries out a public job, position or commission, or in the exercise of a profession, employment or religious ministry, using the means or circumstances that it provides; or when the victim was forced to consume, or was supplied without consent, drugs, narcotics, psychotropic or any other toxic substance that makes defense totally, partially, momentary or permanent impossible. |

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| **Criminal Code** |  **Is rape by more than one perpetrator an aggravating circumstance?** | **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference** | **Is rape by spouse or intimate partner an aggravating circumstance?** | **Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify** |
| **Federal** | YES | YES | NO | NO |
| **Ciudad de México** | YES. These are: when de victim is under 12 years old and when physical or moral violence is enforced. | YES | NO | NO |
| **Chiapas** | NO | NO | NO | NO |
| **Chihuahua** | NO | YES | NO | NO |
| **Estado de México** | YES | YES | YES | NO |
| **Guanajuato** | YES | YES | NO | NO |
| **Puebla** | YES | YES | YES | NO |
| **Oaxaca** | YES | YES | YES | NO |
| **Veracruz** | YES | YES | NO | NO |

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| **Criminal Code** | **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?** | **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?** | **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.** | **if the perpetrator marries the victim of rape? YES/NO** | **if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO** |
| **Federal** | NO | NO | Unimputability due to anomalies, psychic alteration, under age and those with addictions to narcotic or psychotropic drugs.  | NO | NO |
| **Ciudad de México** | NO | NO | Unimputability due to delayed intellectual development or mental disorder. (Art 62) | NO | NO |
| **Chiapas** | NO | NO | Unimputability due to anomalies, psychic alteration and under age circumstances. | NO | NO |
| **Chihuahua** | NO | NO | When the person does not have the ability to understand the illegal nature and for having the mental disorder agent o delayed intellectual development. | NO | NO |
| **Estado de México** | There's no legal exclusion of the possibility of reconciliation. | NO | 1. When the person does not have the ability to understand the illegal nature and for having the mental disorder agent o retarded intellectual development. 2. When the victim is under the age of fifteen and over the age of thirteen, has consented to the copulation and there is no amendment, there is an affective relationship with the accused and the age difference is not more than five years between them. | NO | NO |
| **Criminal Code** | **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?** | **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?** | **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.** | **if the perpetrator marries the victim of rape? YES/NO** | **if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO** |
| **Guanajuato** | There's no legal exclusion of the possibility of reconciliation. | NO | By mental illness that disturbshis conscience, perturbation of consciousness without pathological basis, the agent does not have the ability tocompose the illegal nature. | NO | NO |
| **Puebla** | There's no legal exclusion of the possibility of reconciliation. | NO | When the person does not have the abilityto understand the illegal nature and for having the mental disorder agento retarded intellectual development | NO | NO |
| **Oaxaca** | NO | NO | Unimputability due to anomalies, psychic alteration, under age | NO | NO |
| **Veracruz** | NO | NO | Unimputability due to anomalies, psychic alteration, under age | NO | NO |

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| **Prosecution** |
| **Criminal Code** | **Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO** | **Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**  | **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO** | **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/N** |
| **Federal**  | YES, except if the parties involved are married or live in cohabitation. (Art. 265bis) | Only in the following scenarios: -rape of a minor younger than 18 but older than 15, and -rape of the spouse or cohabitant partner. (Arts. 263 and 265bis). | NO | NO |
| **Ciudad de México** | YES, except if the parties involved are married, live in cohabitation or are "parters". (Art. 174, paragraph 4) | Only in the following scenarios: -rape of the spouse, cohabitant or partner. (Art. 174). | NO |  NO \*See article 264 CPPDF |
| **Chiapas** | YES, except if the parties involved were married, cohabiting, or permanent partner (Art. 234) | YES, except if the parties involved were married, cohabiting, or permanent partner (Art. 234) | NO | NO |
| **Chihuahua** | YES, except if the parties involved are married, live in cohabitation or are "parters". (Art. 171 paragraph 3) | Only in the following scenarios: -rape of the spouse, cohabitant or partner. (Art.171) | NO | NO  |
| **Estado de México** | YES | NO | NO | NO  |
| **Guanajuato** | YES, except if the parties involved were married or cohabiting. (Art. 183) | YES, only when the parties involved were married or cohabiting. (Art. 183) | There's no legal exclusion of the possibility of friendly settlement.  | There's no legal exclusion of the possibility of friendly settlement.  |
| **Criminal Code** | **Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO** | **Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**  | **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO** | **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/N** |
| **Puebla** | YES, except if the parties involved were married or cohabiting. (Art. 267 paragraph 4) | YES, only when the parties involved were married or cohabiting. (Art. 267 paragraph 4) | There's no legal exclusion of the possibility of friendly settlement.  | There's no legal exclusion of the possibility of friendly settlement.  |
| **Oaxaca** | YES | NO | NO | NO  |
| **Veracruz**  | YES | NO | NO | NO |

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| **Criminal Code** | **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO** | **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.** | **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO**  | **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.** |
| **Federal**  | YES ART. 107 bis Criminal Code  | NO | YES | NO |
| **Ciudad de México** | NO | NO | NO | NO |
| **Chiapas** | NO | NO | NO | NO |
| **Chihuahua** | YES ( Art. 105) | NO | YES ( Código Nacional de Procedimientos Penales, art. 15, Código de Procedimientos Penales art.9) | NO |
| **Criminal Code** | **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO** | **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.** | **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO**  | **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.** |
| **Estado de México** | NO | NO | YES (art 150. fraction X Código de procedimientos penales) | NO |
| **Guanajuato** | NO | NO  | NO | NO |
| **Puebla** | NO | NO | YES | NO |
| **Oaxaca** | NO | NO | YES | NO |
| **Veracruz**  | NO | NO | YES | NO |

**7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

The Political Constitution of the United States of Mexico foresees the right of all victims to obtain reparation (redress) of the damage in the prosecution process. (Article 20, paragraph C, fraction IV).

Moreover, the crime known as “rape” in Mexico’s legislative framework is established in both, Federal and local Criminal Code (see table 1). In terms of reparation, this regulatory framework is expanded with the legal provisions inserted by special laws that have a human rights-based approach. Accordingly, rape is not only a crime punished with imprisonment, but also a human rights violation.

The Federal Criminal Code provides the minimum terms of reparation for every crime.

“Article 30.- Reparation of harm must adequate, effective, prompt, appropriate effective, and proportional to the damage caused and the affection suffered. It will embrace at the very least:

1. Restitution of all things obtained as a consequence of the punishable act. If it weren’t possible the payment of its cost at their net present values;
2. Compensation of the material injury and moral damage caused, including medical and psychological attention, social services, and rehabilitation or remedial treatments required to restore the victim’s health as a consequence of the crime. For crimes committed against the free development of personality, against freedom and normal psychosocial development and family violence, payment for the psychotherapeutic treatment needed by the victim will likewise be paid together with compensation for the injury caused;
3. Redress for harm caused;
4. Payment of loss of earnings, including loss of earning potential. To calculate the exact amount it will be taken into account the salary of the victim at the moment of the commitment of the crime and in the scenario in which that’s not possible, it will be according to the current minimum wage;
5. The costs of employment, educational, and social benefits opportunities that were missed, according to its circumstances;
6. A declaration that restores the dignity and reputation of the victim through an electronic or a written media.
7. A public apology, the acceptance of responsibility, just as guarantees of non-repetition, when the crime is committed by public servers.

The means for rehabilitation must be as complete as possible and must allow the victim to participate fully in public, private, and social life.”

Reparation of the damages caused by a crime, in the terms described, is set by the judges. They take into consideration the damage, the proof obtained throughout the process as well as the concern caused to the victim. (See article 31 of the Criminal Federal Code).

According to the Victims Act, reparation for rape victims covers access to emergency contraception services and voluntary interruption of pregnancy in those cases where abortion is legally permitted, always respecting the victim’s wishes; furthermore, periodic examinations and specialized treatment will be carried out during the time necessary and until full recovery, this in accordance with the diagnosis and medical treatment; the follow-up of possible contagions of sexually transmitted diseases and the Human Immunodeficiency Virus will be considered a priority for its treatment.

Services, assistance, and attention to victims will be carried out by trained personnel in the treatment of sexual violence with a cross-cutting gender perspective (gender mainstreaming). (See article 35)

In this regard, the Law of Access for Women to a Life Free Of Violence for the Federal District enunciates a set of duties for the Public Prosecutor in order to seek redress for the harm done to women victims of violence. These duties are:

1. To inform the offended party or victim of the crime, including beneficiaries, of their right to obtain redress for material and moral damages result of the illicit act and of the procedure and extent of the reparation of the damage.
2. To request that the judge orders a precautionary seizure of the assets from the probable perpetrator when there is a well-founded fear that the person obliged to repair the damage hides or transfers the assets in order to make the reparation effective.
3. To inform the victim about the right to go to the Human Rights Commission of the Federal District when the facts that constitute a crime also reveal the violation of human rights, and to guide him or her in considering the option of filing a complaint with the Public Servants Prosecutor's Office or the internal comptroller of the corresponding state agency.

The equivalent of the Children's Rights Protection Act of Mexico City devotes a whole Title to the Protection and Integral Restitution of the rights of boys, girls, and adolescents. The terms and conditions of reparation apply in order to fulfill a local policy on the rights of children and adolescents. Specifically, in the adoption of special protection measures to boys, girls, and adolescents in vulnerable situations such as specific circumstances of socioeconomic, psychological, physical, disability, cultural identity, ethnic or national origin, migration situation or, related to gender aspects, sexual preference, religious beliefs or cultural practices, and others that constrain or restrict their rights. (See Title Four, article 99, paragraph IV).

**16. Please provide information on the statute of limitations for prosecuting rape.**

The Federal Criminal Code sets the statute of limitations for every crime, in the following matter:

“Article 105.-The prosecution shall be barred within a period equal to the arithmetical average of the term of imprisonment prescribed by law for the offense in question but in no case less than three years.

Article 106.- The criminal action will prescribe in two years, if the crime only merits dismissal, suspension, deprivation of rights or disqualification, except as provided in other regulations.

Article 107.-If the law does not provide otherwise, criminal proceedings arising from a crime that can only be prosecuted ex parte or some other equivalent act shall be time-barred in one year, counted from the day on which those who can file the complaint or the equivalent act have knowledge of the crime and the offender, and in three years, outside this circumstance. But once the procedural requirement has been met within the above-mentioned time limit, the statute of limitations will continue to run according to the rules for offenses prosecuted ex officio.

Article 107 Bis.- The statute of limitations for the crimes provided for in Title Eight of Book Two of this Code committed against a minor victim shall begin to run from the time the victim reaches the age of majority. In the case of persons who do not have the capacity to understand the meaning of the act or persons who do not have the capacity to resist it, it will run from the moment that there is evidence of the commission of those crimes before the Public Prosecutor's Office.”

In the case of rape, the arithmetical average between 8 and 20 is 14. This meaning, the statute of limitations for prosecuting rape in Mexico is 14 years since its commission.

**25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

In accordance with the information provided by Mexico City’s government[[1]](#footnote-1) between the years of 2015 and (April) 2020, 4,095 cases of rape were (reported) denounced[[2]](#footnote-2). From which 4,746 investigations were initiated in today’s Attorney General's Office of the City of Mexico[[3]](#footnote-3).

The data mentioned above breaks down as follows:



In conformity to statistical information in charge of the Judiciary, in the year of 2017, only 25 reports were presented to a judge[[4]](#footnote-4), whereas in 2018 only 6 reports were submitted[[5]](#footnote-5). In November 2019, just 2 had been formally presented before a judge[[6]](#footnote-6). Finally, the official information related to the prosecution of rape indicates that between 2018 and 2019, only 35 people have been convicted for this crime in Mexico City[[7]](#footnote-7).

**26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

Some of the barriers are located in the investigations that precede the formulation of the accusation in the hands of the Prosecution Office. One of them being the lack of gender mainstreaming (perspective) in the criminal investigation.

On this note, the Supreme Court of Justice of the Nation (SCJN) has stated that there is a close relationship between violence, discrimination and subordination, recognizing that violence directed against women, by the mere fact of being so, affects them disproportionately and includes acts that inflict damage or suffering of a physical, mental or sexual nature, threats to commit such acts, coercion and other forms of deprivation of liberty.[[8]](#footnote-8)

The relationship between violence and discrimination stems from the fact that both are manifestations of the historically unequal power relations between women and men, which prevent and severely nullify the enjoyment of rights in comparison with the other gender[[9]](#footnote-9).

Gender-based violence is built upon "the socially constructed roles, behaviours, activities, and attributes that a particular society considers being proper for women or men.”[[10]](#footnote-10) It derives from a distinction, exclusion or restriction which, by act or omission, is not objective, rational nor proportional, and has the purpose to restrict or jeopardize the enjoyment or exercise of human rights and freedoms.[[11]](#footnote-11)

From a broader point of view, the State has the obligation to eradicate institutional violence in all its forms, which means that all representatives of the State who are in charge and in a situation of power have a reinforced obligation to eliminate the conditions of violence against women and to consider all situations, according to a specific context, that seek to avoid the proliferation of violence exercised by the State itself;

On this subject, the Inter-American Court of Human Rights has established:

“The influence of discriminatory socio-cultural patterns can result in a disqualification of the victim's credibility during the criminal process in cases of violence and an implicit assumption of responsibility by the victim for the acts […], which translates into inaction on the part of prosecutors, police, and judges in response to reports of violence. This influence can also negatively affect the investigation of cases and the assessment of subsequent evidence, which may be marked by stereotypical notions of how women should behave in their interpersonal relationships.[…] In this regard, it is generally necessary to insist on the need to disqualify the practice of devaluing the victim on the basis of any negative stereotype, suitable for blaming a victim, and to neutralize the devaluation of possible perpetrators. […] The Court recognizes that personal prejudices and gender stereotypes affect the objectivity of State officials responsible for investigating the complaints submitted to them, influencing their perception of whether or not an act of violence occurred, their assessment of the credibility of witnesses, and of the victim. Stereotypes "distort perceptions and lead to decisions based on preconceived beliefs and myths, rather than facts", which in turn can lead to the denial of justice, including the revictimization of complainants. When stereotypes become guidelines for the investigations in violence against women, the right to a life free of violence is affected, furthermore in cases in which the gender stereotypes of the legal operators block the development of these investigations, denying the right to access justice of each woman. At the same time, when the State doesn’t promote concrete actions to eradicate these prejudices prior mentioned, it reinforces and institutionalizes the same, which causes and reproduces violence against women.”[[12]](#footnote-12)

Following the criteria established by the SCJN: there may be practices of authority that are apparently neutral, but, “[…]by virtue of its content or application, have a disproportionate impact on historically disadvantaged individuals or groups without objective and reasonable justification” which involves causing an unreasonable, unfair or unjustifiable difference in treatment according to the situation people occupy within the social structure. According to the Court, it is imperative the introduction of contextual or structural factors, including relationships of subordination based on gender, social and cultural practices that assign different value to certain activities as they are carried out by historically disadvantaged groups, as well as socio-economic conditions.”[[13]](#footnote-13)

Hence, the burden of the proof falls on the victim most of the time. This is because the dynamics of the plea vs. the evidence once the case is in judicial headquarters plays out in prejudice of the victim in the vast majority of the rape crimes. Although not having enough evidence to sentence the alleged perpetrator for rape can also be a complication in the criminal investigation in charge of the Prosecution Office. On that logic, the victim is put in a position in which every statement has to be backed up by “material” evidence for judges to assess.

Another massive barrier that exists to properly report and prosecute rape is impunity. On this regard, we must note that 93.4% of women who have experienced physical and/or sexual violence in the community did not file a complaint or report with any authority mainly because it was minor (49.5%); they did not know how or where to report it (15.2%); they were ashamed (8.9%); they were afraid of the consequences or threats (7.3%), and because they would be made to believe that it was their fault.[[14]](#footnote-14). This commission insists, impunity must be studied as a systematic barrier, because it is the consequence of an ongoing flawed fixed order of things. This meaning, impunity feeds back on rape conducts socially accepted.

As noted before, social and cultural aspects play a huge role in violence against women normalization, this includes rape as a form of sexual violence towards women. Patriarchal structures, androcentric values, gender stereotypes, and discriminatory laws uplift gender-based violence against women, a situation accepted and tolerated by law enforcement officials[[15]](#footnote-15). These situations of violence against women have in common certain characteristics, such as; they are "a culture of violence and discrimination based on gender”[[16]](#footnote-16), which "has its roots in concepts concerning the inferiority and subordination of women"[[17]](#footnote-17); which are not "isolated, sporadic or episodic cases of violence, but a structural situation and a social and cultural phenomenon rooted in customs and mentalities.”[[18]](#footnote-18)

In the specific matter of sexual violence, this is the result of structural violence, which, based on the reproduction of socio-cultural patterns, justifies male domination, based on “[...] any act or omission that endangers, degrades or damages the freedom, security, integrity and psychosexual development of women, through lewd looks or words, harassment, non-voluntary sexual practices, stalking, rape, commercial sexual exploitation, trafficking in persons for sexual exploitation, the denigrating use of women's image, among many others”;[[19]](#footnote-19) which form an expression of abuse of power, through control messages that denigrate and objectify women.[[20]](#footnote-20)

On a historically note, rape is one of the most paradigmatic manifestations of sexual violence to which women are exposed. It causes the victim physical and psychological humiliation, and is often used as "[...] a symbolic mean of humiliating and denigrating the opposing party.” [[21]](#footnote-21)

On a prior occasion, this Commission stated that women who are victims of gender-based violence suffer from revictimization caused by mediatic purposes. This translates to poorly managed evidence that ends up being not of any help to present a file a formal accusation and to following investigations.[[22]](#footnote-22)

Therefore, for all the above-mentioned reasons, this Human Rights Commission considers it is fundamental to take up again what has been established by the Inter-American Court of Human Rights and, in general, by the jurisprudence that prevails in both international and comparative criminal law, based on which it is established that rape will be updated from any penetration, no matter how insignificant, via the vagina or the anus, without the consent of the victim, through the use of other parts of the aggressor's body or objects, as well as oral penetration with the virile member.[[23]](#footnote-23)And the established criteria, "given the nature of this form of violence, no graphic or documentary evidence can be expected and, therefore, the victim's statement constitutes fundamental evidence of the fact.” [[24]](#footnote-24)

1. Available on: <https://datos.cdmx.gob.mx/explore/dataset/carpetas-de-investigacion-pgj-de-la-ciudad-de-mexico/table/?disjunctive.ao_hechos&disjunctive.delito&q=violaci%C3%B3n&refine.ao_inicio=2020> [↑](#footnote-ref-1)
2. Comparable rape, attempted rape, rape by acquaintances, tumult rape, tumult rape by acquaintances are also considered here. [↑](#footnote-ref-2)
3. Criminal investigations were not only initiated in the specialized prosecutor's office for sexual crimes, there are also records in the Children's Prosecutor's office and the Attorney General's offices. [↑](#footnote-ref-3)
4. Tribunal Superior de Justicia de la Ciudad de México, Dirección de Estadística de la Presidencia. Informe Anual 2017. [↑](#footnote-ref-4)
5. Tribunal Superior de Justicia de la Ciudad de México, Dirección de Estadística de la Presidencia. Informe Anual 2018. [↑](#footnote-ref-5)
6. The total number of reports indicated is related to 4 child victims, while the rest cannot know how many are women. [↑](#footnote-ref-6)
7. Tribunal Superior de Justicia de la Ciudad de México, Dirección de Estadística de la Presidencia. Informe Mensual 2019. [↑](#footnote-ref-7)
8. SCJN, Primera Sala, “Delitos contra las mujeres. Estrecha relación entre violencia, discriminación y subordinación por motivos de género”, tesis aislada 1a. CLXIII/2015 (10a.) en materia constitucional, en *Semanario Judicial de la Federación y su Gaceta*, décima época, libro 18, tomo I, mayo de 2015, p. 422. [↑](#footnote-ref-8)
9. Corte IDH, Caso Velásquez Paiz y otros Vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 19 de noviembre de 2015, párr. 175; y Caso Rosendo Cantú y Otra vs. México, Excepción Preliminar, Fondo, Reparaciones y Costas, Sentencia del 31 de agosto de 2010, párr. 120. [↑](#footnote-ref-9)
10. UE, Convenio del Consejo de Europa para prevenir y combatir la violencia contra las mujeres y la violencia doméstica, Artículo 3, inciso c. [↑](#footnote-ref-10)
11. Ley Federal para Prevenir y Eliminar la Discriminación, publicada en el Diario Oficial de la Federación el 11 de junio de 2003, Artículo 1, fracción III. [↑](#footnote-ref-11)
12. Corte IDH, Caso Gutiérrez Hernández y otros Vs. Guatemala., párr. 170, 172 y 173. [↑](#footnote-ref-12)
13. SCJN. Tesis: 1ª. CXXI/2018 (10ª.) Gaceta del Semanario Judicial de la Federación Décima época, 2017989. Primera sala, libro 58, septiembre de 2018 Tomo I. Pág. 841. Tesis Aislada (Constitucional). [↑](#footnote-ref-13)
14. Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH) 2016. [↑](#footnote-ref-14)
15. ONU, Declaración de Dubravka Simonovic, Relatora especial de las Naciones Unidas sobre la violencia contra la mujer en la 61ª sesión ordinaria de la Comisión Africana de Derechos Humanos y de los Pueblos, 4 de noviembre de 2017. [↑](#footnote-ref-15)
16. Corte IDH. Caso González y Otras (Campo Algodonero) vs. México, *Óp. Cit*., párr. 133 [↑](#footnote-ref-16)
17. CIDH, Situación de los derechos de la mujer en Ciudad Juárez (citando carta del Secretario de Gobierno de Chihuahua a la Relatora Especial de 11 de febrero de 2002), OEA/Ser.L/V/II.117, Doc. 1 rev. 1, 7 de marzo de 2003. [↑](#footnote-ref-17)
18. ONU, CEDAW, Informe de México producido por el Comité CEDAW bajo el Artículo 8 del Protocolo Facultativo de la Convención y respuesta del Gobierno de México, CEDAW/C/2005/OP.8/MEXICO, párr. 159 [↑](#footnote-ref-18)
19. Ley General de Acceso de las Mujeres a una vida libre de Violencia, artículo 6, fracción V y ONU, CEDAW, Observación general No. 19 La violencia contra la mujer*, Óp. Cit*., párr. 14. [↑](#footnote-ref-19)
20. CIDH, Acceso a la justicia para mujeres víctimas de violencia sexual en Mesoamérica, *Óp. Cit*., párr. 45. [↑](#footnote-ref-20)
21. ONU, CEDAW, Recomendación general 19, *Óp. Cit*., párr. 16; Comisión de Derechos Humanos, Informe de la Sra. Radica Coomaraswamy, Relatora Especial sobre la Violencia contra la mujer, con inclusión de sus causas y consecuencias, presentado de conformidad con la resolución 2000/45 de la Comisión de Derechos Humanos, “La violencia contra la mujer perpetrada y/o condonada por el Estado en tiempos de conflicto armado (1997- 2000)”, 57° período de sesiones de 2001, E/CN.4/2001/73, párr. 44; Defensoría del Pueblo del Perú. Informe Defensorial No. 80, Violencia Política en el Perú: 1980-1986 un acercamiento desde la perspectiva de género, capítulo IV, págs. 34, 35 y 45. [↑](#footnote-ref-21)
22. Informe sobre las violencias de género en la procuración de justicia en la Ciudad de México, 2019, CDHCM. Available on: <https://cdhcm.org.mx/wp-content/uploads/2019/09/Informe_violencia_de_genero.pdf> [↑](#footnote-ref-22)
23. Corte IDH, Caso J. Vs. Perú. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 27 de noviembre de 2013, párr. 359. [↑](#footnote-ref-23)
24. Corte IDH, Caso Favela Nova Brasília Vs. Brasil. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 16 de febrero de 2017. Serie C No. 333, párr. 248. [↑](#footnote-ref-24)