Abortion in Mexico Year 2000

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A symbolic protest at the doors of Mexico City's Legislative Assembly; the crosses and shoes represent women who have died in back-street abortions.

The objective of this article is to present an overview of abortion in Mexico, particularly the 2000 debate.[1] In addition I would like to show that this is an extremely complicated social issue that therefore cannot be solved from extreme or radical positions.

Legal Status

In Mexico, abortion is legally defined as "the death of the product of conception at any moment during pregnancy."[2] Abortion[3] is legally considered a crime, with the penalties varying from state to state. Despite this variation, criminal codes penalize it with from one month to five or six years in prison for a woman who has had one or consented to having one; from one month to six years in prison to whoever performs an abortion with the woman's consent; and from three to eight years in prison for anyone who performs one without the woman's consent.

Despite the fact that abortion is classified as a crime, different states recognize six grounds which make it not punishable:

a) When the pregnancy is the result of a rape;
b) When it is actually a miscarriage caused by an accident;
c) When the fetus is congenitally deformed (eugenic);
d) When the pregnancy could seriously threaten the mother's health (therapeutic);
e) When the pregnancy endangers the woman's life;
f) Cases of economic hardship when the woman has at least three children already.[4]

Every state decides autonomously the cases in which abortion is not punishable, but the grounds of rape, accident or mishap and danger to the mother's life are included in all the penal codes (see table).

Abortion as a Public Health Problem

The second important dimension that we should consider is that abortion has become a serious public health problem in Mexico, just as in the rest of the

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world, which affects the living conditions and the health of millions of women. Even though in our country it is considered a crime, this has not stopped it being practiced, but has only forced it onto the back streets where it is carried out clandestinely outside any legal or sanitary regulations.

This is why it is very difficult to have appropriate investigative and analytical tools that would allow us to bring out all its implications and consequences; the underground nature of its practice makes it difficult to obtain reliable statistical data about it. Nevertheless, there is very revealing data about the impact of abortion on women's health.

The figures about the frequency of abortions, the kinds of women who practice them and the number of deaths produced each year because of them vary considerably depending on the source. For many years, government institutions and civic organizations have cited different figures. This was even clearer during recent debates on the issue. Nevertheless, groups and institutions agree that abortion is a serious public health problem and has become the third or fourth cause of maternal mortality, which comes to 1,500 deaths a year (see box, p. 21).

Background[5]

The abortion debate is not new in our country and, even though different events in 2000 intensified it, it has been part of public discussion since the 1970s as one of the banners of the Mexican feminist movement.[6] In 1972, Women in Solidarity Action (MAS) organized the first public talks on the issue and proposed changing existing legislation. In that same year the government wrote a bill to change the General Population Law recognizing abortion as a social, not a private, question. This same document established the precedents for the 1974 amendment to article 4 of the Constitution that stipulated that every individual has the right "to decide in a free, responsible and informed manner on the number and spacing of his/her children."

From 1976 to 1978, Annual Days of Struggle for Free Abortion (meetings, lectures and other activities) were held to generate a public debate. Feminists proposed not only the decriminalization of abortion and respect for women's choice, but that women have the right to have abortions in state hospitals as part of the public health service.

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In 1978, 50 civic and religious organizations founded the National Pro-Life Committee. Since then, this group, with close ties to the Catholic Church, has used quite questionable methods to express its absolute rejection of abortion in any of its forms and its belief in what it calls "the defense of life."

In 1979, the National Front for Women's Liberation and Rights was founded and worked to support the "Voluntary Maternity Bill" presented to Congress in 1980.

In the 1980s, the efforts to decriminalize abortion declined considerably. Nevertheless, the Sixth Annual Days of Struggle for Free Abortion were organized in 1981. In 1982, the Interior Ministry's National Population Council (Conapo) wrote the Draft Plan of Action for Integrating Women into Development, a document which requested the legalization of abortion and that women's right to voluntary maternity be recognized. In 1983, President Miguel de la Madrid presented a bill to change penal code stipulations about abortion and adultery. The bill had been prepared by the Attorney General's Office, the Mexico City District Attorney's Office and the National Institute of Criminology, but it was not approved.

In 1989, a great deal of debate arose when an abortion clinic was closed by police in Mexico City. Not only were the medical staff and the women who had just aborted violently arrested, but they were also tortured by judicial police while under arrest. After one of the detainees publicly denounced the fact and the news became public, an important debate took place about the serious problems caused by back-street abortions, the need for their decriminalization and the gravity of human rights violations in Mexico.

During the 1990s, the debate gradually became more intense. In 1990, the then-governor of Chiapas, Patrocinio González Garrido, and the state Congress considered a bill changing the local penal code to make abortion non-punishable on three new grounds: when the couple requested it as a family planning measure; for economic reasons; and on the request of a single mother. This caused a furious polemic, but the bill was not approved due, in large part, to the pressure exerted by the

Abortion, a Public Health Problem

* The Mexican Gynecological and Obstetrics Council has stated that between 600,000 and 850,000 abortions are practiced every year in Mexico. International institutions and nongovernmental organizations, however, put the figure between 500,000 and a million. Of every 100 women who have an abortion, between 30 and 45 have severe complications (*Excélsior* [Mexico City], 9 May 2000).
* Gregorio Pérez Palacios, the Health Ministry's general director of reproductive health, reports that Mexico sees 220,000 hospital stays a year for miscarriages and abortions (*La Jornada* [Mexico City], 11 August 2000). At the same time, the Ministry of the Interior's National Population Council estimates that the Health Ministry gave care to 65,977 women who had had abortions in 1999 (*La Jornada* [Mexico City], 16 August 2000).
* Official spokespersons from the Health Ministry estimate that approximately four women die daily from complications from botched abortions, coming to 1,500 per year. They also estimate that 500,000 women abort annually and that abortion has become the fourth cause of maternity-related deaths (*La Jornada* [Mexico, City], 16 August 2000).
* The Information Group for Reproductive Choice (GIRE) estimates that the number of abortions performed annually in Mexico ranges from 110,000 to 850,000 and that the figures vary so widely because the illegal nature of the practice makes it impossible to have exact data. They cite the Ministry of the Interior's National Population Council 1995 estimate of 110,000 abortions, the Alan Guttmacher Institute 1990 estimate of 533,110 and Doctor Raúl López García's 1992 study which put the figure at 850,000 (*Reforma* [Mexico City], 18 August 2000).

Catholic Church, the Pro-Life Group and the National Action Party (PAN).[7]

In 1993, the PAN deputies in the Chihuahua state Congress presented a bill to amend the state Constitution to introduce the idea of "the right to the legal protection of life from the moment of conception." This reform would have eliminated all the grounds under which abortion was not punishable, but it did not pass. The PAN tried to promote the same kind of reform in the states of Baja California in 1998 and Nuevo León in 1999, but without success.

In 1998, the debate heated up when then-Minister of Health Juan Ramón de la Fuente said there was need for a public discussion on the issue.[8] In early 1999, 40 civic organizations joined together to campaign for "Women's Access to Justice" and presented a proposal to amend Mexico City's penal code to increase the number of grounds for non-punishable abortion, but the bill was not approved.

The 2000 Polemic

As we have seen, current struggles and controversies over abortion have at least 30 years of precedents in Mexico. However, in 2000 the debate escalated significantly, and presented new features.

I should point out that this debate has been developing in an economic, political, social and cultural context marked by many conflicts and changes, outstanding among which are Mexico's new political playing field and the greater pluralism that the ideological and party system has developed in the last 15 years. I would add to this the increase in the presence and participation of society in public issues via social movements, opinion groups, civic organizations, political parties and electoral participation, among other means.

The Case of Paulina

The first case that revived the debate and had a major impact on public opinion nationwide occurred in early 2000 when it became known that in Mexicali, Baja California, Paulina, a young girl of 13 who had been impregnated by a rapist (who had entered her house high on heroin to commit robbery) was prevented by public officials from having an abortion. The state penal code does not stipulate punishment for abortions in rape cases, but when Paulina

went to the Mexicali General Hospital, a public institution run by the state government, with a court order authorizing her abortion, the doctors in charge refused to carry it out.

Matters became more complicated when hospital Director Ismael Ávila "tried to convince the child's [Paulina's] mother with threats saying that her daughter would be made sterile or would die if she had an abortion."[9] In addition, a group of women who supposedly worked for the government's Department of Integral Family Development (DIF) went to the hospital to show Paulina videos of abortions to try to persuade her not to terminate her pregnancy. A Catholic priest also visited her there to council her and many presume that he threatened excommunication if she decided to have the abortion.

After a complaint was made and investigated, the Baja California Attorney General's Office for Human Rights and Protection of the Public sent its recommendation to the state government saying that the public authorities involved had committed irregularities. The recommendation also requested the government create a trust to cover the economic needs of Paulina and her child, given that she had been pressured to take to term a pregnancy that she had had the right to terminate.

Governor Alejandro González Alcocer refused to follow the recommendation, however, just as he refused to comply with the one from the local Human Rights Commission and the September one from the federal National Human Rights Commission. He said that Paulina's individual rights and guarantees had not been violated and, in June, absolved the hospital doctors for having refused to practice the abortion. In addition, some local PAN deputies, in coordination with the Catholic Church and the Pro-Life Group, announced that they were going to give the doctors involved an award.

The Guanajuato Case

The second time the polemic heated up was when, on August 3, the PAN majority in the local Congress of Guanajuato approved a bill eliminating rape as grounds for not punishing abortion.

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This meant that women who became pregnant after a rape would not be allowed to have an abortion, and if they did anyway, they could be given a sentence of from three months to six years in prison. The bill passed with the 17 PAN votes, while the 16 deputies from the other three parties voted against.

This was interpreted as a reaction to Paulina's case and a form of support for the Baja California government (particularly because both administrations are headed by the PAN). Matters became even more complex since the bill was passed after Vicente Fox and the PAN won the July presidential elections. Different currents of opinion formed inside the PAN: local Yucatán and Coahuila deputies and leaders expressed their support for their colleagues in Guanajuato, but many other federal and local deputies and senators expressed their disagreement with the bill. Local Baja California Sur deputy Víctor Martínez said that his Guanajuato colleagues were "backward, since their decision to approve the anti-abortion law is something only the ultra-right would do."[10]

The PAN National Executive Committee stated that it did not support the measure because it considered it "inopportune" and that neither the party nor Vicente Fox intended to promote reforms of this kind, reiterating its position against abortion but against punishing women who had been raped and terminated their pregnancies.

Other national parties (the Institutional Revolutionary Party —PRI— and the Party of the Democratic Revolution–PRD)[11] rejected the bill, calling it a grave historic step backward for women's rights, condemning it from different public fora and calling for its repeal. The federal government, on the other hand, maintained a non-interventionist stance vis-à-vis state affairs, making several calls for tolerance among the clashing groups and for respect for the existing legislation on abortion, reiterating that it is a public health problem, though not a family planning method.

The anti-abortion groups expressed their complete support for the Guanajuato reform and demanded it be applied in the rest of the country, prohibiting all grounds for not punishing abortion. The Catholic Church also supported the measure. Civic organizations and groups in favor of the right to voluntarily terminate pregnancies con-

Across the Nation

In Yucatán, local PRI deputies presented a bill for a totally new state penal code in March. It ratified the non-punishable character of abortion on the five grounds that already existed: in cases of rape, accident, danger to the mother's life, serious physical or genetic malformation of the fetus and for economic reasons when the mother already has three children (Yucatán is the only state that allows for the fifth provision). Although the bill's passage was denounced by PAN, religious and Pro-Life groups in the state, it was not withdrawn or challenged in court. Then, in June, the first public abortion clinic was established to deal with requests for abortion under the five provisions in the law. The clinic also provides physical and emotional care for women before and after their abortions, sex education and preventive medical care for sexually transmitted diseases.

In Morelos, local PRI deputies proposed amendments to the state penal code in August to increase sentences for sexual crimes. A few days later, then-governor Jorge García Rubí sent a bill to the local Congress to increase the number of grounds for non-punishable abortions. In addition to the already-existing grounds of rape, accident and danger to the mother's life, he proposed adding cases of non-consensual artificial insemination and serious malformations of the fetus. The bill was approved August 30 by the PRI and PRD deputies, with only the PAN votes against. Pressure from anti-abortion groups led the governor to announce that he would veto those articles of his own bill dealing with abortion, arguing that the PRI and PRD in the previous legislature had committed legal excesses and violations and that the reforms were immoderate "in all their forms" (*El Financiero* [Mexico, City], 7 September 2000).

In the State of Mexico in March 2000, PRI Governor Arturo Montiel sent a bill to the local Congress to add serious malformation of the fetus as grounds for non-punishment of abortion to the three existing ones (rape, accident and danger to the mother's life). The bill passed, but amidst severe pressure from Pro-Life groups and the intense national debate on the issue, this governor also announced in August that he would veto it. The state Chamber of Deputies agreed to repeal the article in question but a few days later local PAN deputies announced that they would postpone its repeal.

demned and rejected the Guanajuato reform and organized different protests in Mexico City, Guerrero, Guanajuato and other states demanding it be repealed. On August 8, a dozen feminist groups held a rally outside the national PAN headquarters to protest the reforms. The party leadership recognized that it was inopportune to penalize any kind of abortion and offered to establish a dialogue with their deputies in Guanajuato to find a way out.

The conflict became considerably polarized; the PAN deputies in Guanajuato refused to give up their proposal, counting on the support from different sectors of their party, the Catholic Church and the anti-abortion groups. All this had a profound impact on public opinion. The press, radio and television coverage showed that the different positions were very divided but that there was also growing disagreement with the reform. A telephone survey carried out in Guanajuato by the *Reforma* daily newspaper and published August 12 showed that 18 percent of those polled said they wholeheartedly supported the reform, while 48 percent said they strongly disagreed with it. When asked whether they agreed that a woman who had been raped should have the right to an abortion, regardless of the law, 38 percent of those surveyed said they agreed very strongly and 25 percent said they disagreed very strongly.

A few days later, the PAN National Executive Committee announced that it would not support the Guanajuato deputies' proposal and that it called on them to reconsider. President-elect Vicente Fox —a native of Guanajuato— also distanced himself from the bill, saying that his position was different and that he would not seek to change legislation on the federal level. Finally, Guanajuato Governor Ramón Martí Huerta stated that he would veto the bill, based on what the Guanajuato public decided in a consultation. The results of that survey showed that 68 percent of Guanajuato residents opposed the reform, and the governor announced August 29 that Article 123 of the penal code would be vetoed.

Grounds for Not Punishing Abortion in State Penal Codes

State	Rape	Accident	Danger to the mother's life	Serious malformation of the fetus	Serious danger to the mother's health	Other causes
Aguascalientes	*	*	*			
Baja California	*	*	*			* (a)
Baja California Sur	*	*	*	*		* (a)
Campeche	*	*	*			
Coahuila	*	*	*	*		
Colima	*	*	*	*		* (a)
Chiapas	*		*	*		
Chihuahua	*	*	*			* (a)
Distrito Federal ©	*	*	*	*	*	* (a)
Durango	*	*	*			
Guanajuato	*	*				
Guerrero	*	*		*		* (a)
Hidalgo	*	*			*	
Jalisco	*	*	*		*	
Mexico	*	*	*	*		
Michoacán	*	*	*		*	
Morelos ©	*	*	*	*	*	* (a)
Nayarit	*	*	*		*	
Nuevo León	*		*		*	
Oaxaca	*	*	*	*		
Puebla	*	*	*	*		
Querétaro	*	*				
Quintana Roo	*	*	*	*		
San Luis Potosí	*	*	*			
Sinaloa	*	*	*			
Sonora	*	*	*			
Tabasco	*		*			* (a)
Tamaulipas	*	*	*		*	
Tlaxcala	*	*	*		*	
Veracruz	*	*	*	*		
Yucatán	*	*	*	*		* (b)
Zacatecas	*	*	*		*	
Total	**32**	**29**	**28**	**13**	**10**	**9**

(a) Non-consensual artificial insemination.
(b) Economic hardship when the woman already has at least three children.
© Legislation changed in 2000.
Source: Information Group for Reproductive Choice (GIRE).

The Mexico City Case

The third event that fueled the debate in 2000 occurred in Mexico City simultaneously with the Guanajuato case. A week after the bill was presented in Guanajuato, Mexico City Mayor Rosario Robles Berlanga, from the PRD, announced that she would send a bill to the local Legislative Assembly to change the penal code. Robles proposed adding new grounds to the three already existing ones in the Mexico City legislation (rape, accident and danger to the mother's life). She argued that the grounds for permitting abortion under the law in the capital should be harmonized with legislation in other states, but above all that it was important to protect women's health and rights. The bill she sent, firmly supported by her party (the PRD) and different civic organizations, proposed decriminalizing abortion in cases in which the mother's health was at serious risk and in cases of grave physical or genetic malformations of the fetus.

The reactions that this proposal sparked —at the opposite extreme from the PAN's Guanajuato proposal— were immediate. The PAN, the Catholic Church and the different anti-abortion groups rejected her proposal, accusing her of political opportunism, of taking an intransigent position in reaction to the Guanajuato case and of favoring the "culture of death." Different sectors of the PAN demanded that the bill be withdrawn, saying it was a threat to life and polarized the conflict around abortion in the extreme. Felipe Calderón Hinojosa, the federal congressional leader of the PAN caucus, argued that abortion was not a priority and that given its extreme complexity, it should not be discussed at that time. He said that the party did not agree with the bill passed in Guanajuato, but neither did it agree with "Rosario Robles' arbitrary attitude."[12]

The Catholic Church and the Pro-Life groups organized protests in Mexico City to express their disagreement, among them what they called a "March for Life" of 8,000 people. Despite this opposition, the Mexico City administration's bill enjoyed the support of different sectors and social groups.[13] The PRD threw its support to the bill, and the PRI national leadership said it agreed on the basis of defending a woman's constitutional right to decide when she should become pregnant and how many children she should have. On August 18, the bill was passed, 41 to seven.

> The debate revived in early 2000 when in Mexicali, Baja California, a young girl of 13 who had been impregnated by a rapist was prevented by public officials from having an abortion.

However, a few days later, local PAN and Green Ecologist Party of Mexico deputies challenged the bill before the Supreme Court, demanding that the amended article be declared unconstitutional. The court agreed to hear the case and thus began a procedure that will decide the legality of the reforms, a process that could take up to a year. In other states, other events also stepped up the debate (see box, p. 23).

Final Comments

As the reader can see, abortion in Mexico is a very complex social issue. The positions in favor and against its decriminalization are very polarized and seemingly have no middle ground. On the other hand, the federal government (both under this administration and during previous administrations under the PRI) has not fostered a serious political public debate on the issue, which transcends group or party interests, given that abortion is an extremely serious public health problem that affects millions of women and urgently needs to be discussed collectively.

In addition, the building of a democratic system requires actions and principles to jibe. If everyone has civil rights and the individual guarantee that their own judgement and will are to be respected, how is it possible that the ideological and religious views of certain groups supercede both that individual will and public issues? Or, worse yet, how is it possible that the power of the state can be used to impose a particular religious and moral ideology which contradicts individuals' civil and political rights? A political system that aspires to be legal and democratic must make responsible public decisions that benefit everyone and are not determined on the basis of vested interests and private consciences. VM

Notes

[1] I would like to thank the Interdisciplinary Women's Studies Program of the Mexican College for the information they gave me and especially Laura Téllez and Rosalba Martínez for their patience and help.

[2] Although this definition varies in different penal codes throughout the country, they all share the same general idea.

[3] Spanish has a single word, "aborto," for both abortion and miscarriage. Hence the definition, which includes any death of the fetus. To make the distinction that exists in English between abortion and miscarriage in Spanish, the adjective *inducido* or "induced" is added to mean abortion. [Translator's Note.]

[4] It should be pointed out that abortion is not permitted in Mexico: it is considered a crime, although in some cases it is not legally punished. This distinction is important to take into account because most people consider that "permitting" abortion and "decriminalizing" it are synonymous.

[5] The information in this section comes from the following sources: the web page of the Information Group for Reproductive Choice (www.gire.org.mx), a civic organization founded in 1992 that works on disseminating information, training and advocacy of reproductive rights; Alma Muñoz and Roberto Garduño, "Debate sobre el aborto en México," *La Jornada* (Mexico City), 28 August 2000; and Marta Lamas, "El feminismo mexicano y la lucha por legalizar el aborto," *Política y cultura. Mujeres y Política 1* (Mexico City: UAM-Xochimilco, 1992), pp. 9-22.

[6] And even before that: in 1936 and 1937, Drs. Matilde Rodríguez Cabo and Ofelia Domínguez Navarro publicly presented the first proposals to decriminalize abortion, made a crime by the 1931 penal code.

[7] The PAN is a center-right, social-Christian party founded in the 1940s.

[8] De la Fuente is currently rector of the UNAM.

[9] *Reforma* (Mexico City), 8 August 2000.

[10] *La Jornada* (Mexico City), 10 August 2000.

[11] The PRD was founded at the end of the 1980s by a coalition of different left parties.

[12] *La Jornada* (Mexico City), 16 August 2000.

[13] Another *Reforma* telephone survey carried out on August 13 showed that Mexico City residents were more inclined toward decriminalization of abortion than those of Guanajuato: 62 percent said it should be permitted under some circumstances and 12 percent that it should be permitted in all cases. In the rest of the country, the answers to this question are 60 percent and 4 percent, respectively. *Reforma* (Mexico City), 17 August 2000.