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Motherhood or Punishment

Criminalizing Abortion in Mexico





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Table of Contents

1 / Introduction

2 / Legal Framework

2.1	GROUNDS FOR ABORTION _____	13
2.2	SANCTIONS FOR THE CRIME OF ABORTION _____	15
2.3	STATE CONSTITUTIONS THAT PROTECT LIFE _____	25

3 / Human Rights Standards

3.1	THE RIGHT TO EQUALITY AND NON-DISCRIMINATION _____	29
3.2	THE RIGHT TO HEALTH _____	33
3.3	THE RIGHT TO BE FREE FROM VIOLENCE _____	40
3.4	THE RIGHT TO DUE PROCESS OF LAW _____	42
	COMPARATIVE EXPERIENCE: ABSOLUTE PROHIBITION OF ABORTION IN EL SALVADOR _____	53

4 / Criminalization of Abortion

4.1	CRIMINAL PROCEEDINGS _____	62
4.2	SENTENCES _____	64
4.3	PEOPLE IN PRISON _____	68
4.4	CASES REGISTERED, DOCUMENTED AND ACCOMPANIED BY GIRE _____	70

5 / Criminalization for Related Offences

5.1	LEGAL FRAMEWORK _____	84
5.2	CRIMINAL PROCEEDINGS _____	85
5.3	SENTENCES _____	87
5.4	PEOPLE IN PRISON _____	92
5.5	CASES DOCUMENTED AND ACCOMPANIED BY OTHER ORGANIZATIONS _____	94

6 / Conclusions

106

7 / Recommendations

109



1 / Introduction

Criminalizing abortion materializes the idea that motherhood is a woman's obligatory function. This notion continues to permeate not only in Mexican culture, but in State agencies, and represents a human rights violation.

Criminalization not only sends a strong message from the State regarding reproductive decisions corresponding to the private sphere, but also directly affects women —generally those who live in violent contexts, and/or experience economic marginalization and lack of access to reproductive health information —condemned to lose years of their lives in prison, sentenced without sufficient evidence to prove any responsibility for the alleged crime. In some cases, stereotypes surrounding motherhood influence judges' reasoning who then condemn women for homicide, when in fact their newborns died shortly after premature births in patios or bathrooms; the women were not able to help their newborns just as there was no one to help them.

For over 25 years GIRE has worked to increase access to safe and legal abortion and has accompanied several cases of criminalization of abortion.¹ This report seeks to demonstrate the impact and reach of abortion criminalization in the lives of Mexican women, whether or not they were directly involved in criminal proceedings. For the preparation of this report, more than 900 requests for access to public information were made, which were then systematized and analyzed in relation to other public sources and information collected by GIRE from previous years. Through this mechanism, 56 public judicial sentences related to reproductive processes were collected. In the Spanish version (available at criminalizacionporaborto.gire.org.mx) we offer each state's current penal code articles related to abortion.

Motherhood or Punishment also includes abortion criminalization cases documented and accompanied by GIRE, as well as testimonies of other women deprived of their liberty due to abortion and related crimes compiled by AsiLegal and Las Libres. The findings were analyzed using human rights standards that the Mexican State is obliged to comply with, and as a result, recommendations were developed for various public authorities.

The stories of those who are criminalized for abortion in Mexico are testimony to the lack of reproductive justice in the country, the great inequality that persists and the human rights violations that women face on a daily basis. As long as these rights are not guaranteed and legal and social criminalization of abortion persists, we will continue to document stories such as those reflected in this report. GIRE hopes that this document will contribute to a better understanding of the patterns perpetuated by abortion criminalization in Mexico in order to combat it and guarantee that Mexican women and girls can make decisions about their own lives within a framework of liberty and justice.

¹ To learn more, the documentary *Viva México*, produced by GIRE (2013), is available at https://www.youtube.com/watch?v=tACx_Ehoe2w. See also *Omission and Indifference: Reproductive Rights in Mexico* (2013) and *Girls and Women without Justice* (2015), both available at gire.org.mx.



2 / Legal framework

2.1 GROUNDS FOR ABORTION

In Mexico, abortion is regulated at the state level and is generally considered a crime, although there are certain legal grounds under which it is not punished, or in other words, is allowed.²

The penal codes in each Mexican state establish what these grounds, indications or causes of non-punishment are, which, in practice, translates to legal discrimination, since a woman's access to legal abortion varies depending on where she resides. For example, a woman, whose pregnancy poses a risk to her health and life in a state where this indication is not allowed, will be forced to travel (assuming she has the economic resources to do so) to a state that does allow it or to Mexico City, which has the least restrictive legal framework. To the contrary, she must carry the pregnancy to term or resort to an illegal abortion, and risk being subjected to criminal charges as well as potentially risking her life and health.

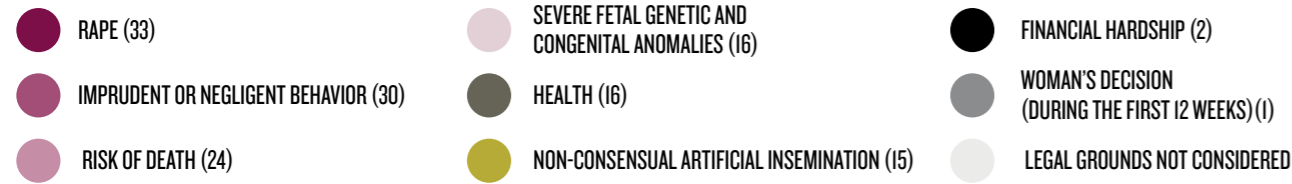
In general, abortion regulations in Mexico are restrictive. The only grounds for legal abortion in the entire country is when the pregnancy is the result of rape. According to the General Law for Victims and the Official Mexican Norm NOM-046 (Domestic and sexual violence against women; Criteria for prevention and attention), access to this service should be guaranteed to any woman, with no additional requirement other than a declaration under oath that the pregnancy is the result of rape. Women are not required to report the rape to the police or obtain any kind of judicial authorization, and girls aged 12 or older do not need to be accompanied by their mother, father or guardian. However, in practice, authorities create obstacles or deny access to this service, requesting additional requirements, such as the reporting of the rape or authorization from the public prosecutor. This reveals authorities' ignorance regarding their legal obligations, as well as outdated or simply nonexistent protocols, administrative guidelines, and penal codes that have not been harmonized with current federal legislation regarding victims of sexual violence.

In Mexico, states establish varying legal abortion grounds: 29 states consider miscarriages caused by imprudent or negligent behavior, 23 allow abortion when there is a threat to the woman's life, 16 consider health risks for the pregnant woman, 16 allow abortion when there are severe fetal genetic or congenital anomalies, 15 when the pregnancy is the result of non-consensual artificial insemination and two consider financial hardship as grounds to terminate the pregnancy.³ The Federal Penal Code considers miscarriages, rape and risk of death as grounds for legal abortion.

² The legal grounds for abortion are regulated under two types of penal categories: 1) liability exclusion, which implies that abortion, in these cases, is not considered a crime, and 2) non-punishment which implies that abortion is considered a crime but, in these cases, is not punished.

³ The establishment of a Sole Penal Code, which would imply reassessing current regulations on abortion as a crime at the state level, is currently being discussed.

Grounds for abortion in penal codes



AGS _{LE}		NAY _{NP}	
BC _{NP}		NL _{NP}	
BCS _{LE}		OAX _{NP}	
CAMP _{LE}		PUE _{NP}	
CHIS _{NP}		QRO _{NP}	
CHIH _{LE}		QROO _{NP}	
CDMX _{LE}		SLP _{LE}	
COAH _{NP}		SIN _{NP}	
COL _{NP}		SON _{NP}	
DUR _{LE}		TAB _{NP}	
GTO _{NP}		TAMPS _{NP}	
GRO _{LE}		TLAX _{LE}	
HGO _{NP}		VER _{NP}	
JAL _{NP}		YUC _{NP}	
MEX _{NP}		ZAC _{NP}	
MICH _{LE}			
MOR _{NP}		FED _{NP}	

Developed by GIRE based on state and federal penal codes. Last revision, July 2019.

LE - Liability Exclusion NP - Non-Punishment

2.2 SANCTIONS FOR THE CRIME OF ABORTION

Since the Federal Penal Procedures Code entered into effect in 2014, the crime of abortion in Mexico is classified as a misdemeanor,⁴ which allows the accused parties to remain free with the payment of a bond or bail and continue the penal process outside of prison, as established in Article 19 of the Constitution. Although this constitutes a positive change, we must consider that said payment represents a significant burden for most women who face legal procedures, especially those who come from contexts of economic marginalization and may not have the sufficient funds to cover it.

A. SANCTIONS

The sanctions for the crime of abortion are classified as incarceration penalties —ranging from 15 days to six years—, fines —from 20 to 300 Units of Measurement (UMA, in Spanish)⁵ —, community service and different forms of medical and psychological treatment.⁶ In the state of Aguascalientes, the inclusion of a penalty involving compensation for damages stands out, a questionable sanction that considers that an abortion can affect people other than the woman herself.

In general, although the crime of abortion in penal codes refers to the death of the fetus at any stage of the pregnancy, in certain cases, the penal codes sanction not only completed abortions, but also attempted ones. In the penal codes of Coahuila and Veracruz, through the crime of injuries to the conceived child and, in the case of Zacatecas, expressly through the penalization of an attempted abortion that causes injuries to the fetus.

⁴ Before this, two states still considered abortion a felony: Jalisco and San Luis Potosi.

⁵ The Unit of Measurement (UMA) is an economically approved reference in effect since January 27, 2016. Its value for 2018, established by the National Institute for Statistics and Geography (INEGI), is 80.6 Mexican pesos daily.

⁶ Community service and alternative measures are substitutions for the prison sentence.

Criminalization for abortion

	PRISON SENTENCE		MONETARY FINE	COMMUNITY SERVICE	ALTERNATIVE MEASURES	COMPENSATION FOR DAMAGES
	MINIMUM	MAXIMUM				
FED [•]	1 YEAR	5 YEARS				
AGS ^I	6 MONTHS 1 YEAR	1 YEAR 3 YEARS	40 TO 90 DAYS FINE			YES
BC	1 YEAR	5 YEARS				
BCS	6 MONTHS	2 YEARS		UP TO 200 DAYS		
CAMP ^{III}	6 MONTHS	2 YEARS		24 TO 72 DAYS		
CHIS	NO PENALTY	NO PENALTY			YES, VOLUNTARY	
CHIH	6 MONTHS	3 YEARS				
COAH	1 YEAR	3 YEARS				
COL	2 YEARS	4 YEARS	50 TO 60 UMA			
CDMX ^{III}	3 MONTHS	6 MONTHS		100 TO 300 DAYS		
DUR	1 YEAR	3 YEARS	72 TO 216 UMA			
GTO	6 MONTHS	3 YEARS	5 TO 30 DAYS FINE			
GRO ^{IV}	1 YEAR	3 YEARS				
HGO ^V	1 YEAR	3 YEARS	10 TO 40 DAYS FINE			
JAL ^{VI}	4 MONTHS 8 MONTHS	1 YEAR 2 YEARS			YES	
MEX [•]	1 YEAR	3 YEARS				
MICH	NO PENALTY	NO PENALTY		6 MONTHS TO A YEAR		
MOR	1 YEAR	5 YEARS	20 TO 200 DAYS FINE		YES	
NAY ^{VII}	4 MONTHS 1 YEAR	1 YEAR 3 YEARS	UP TO 20 DAYS FINE/ 20 TO 50 DAYS FINE			
NL	6 MONTHS	1 YEAR				

Note: "Days fine" refers to the daily wage of the sentenced individual when the crime was committed, taking into account all income.

	PRISON SENTENCE		MONETARY FINE	COMMUNITY SERVICE	ALTERNATIVE MEASURES	COMPENSATION FOR DAMAGES
	MINIMUM	MAXIMUM				
OAX [•]	1 YEAR	5 YEARS				
PUE [•]	1 YEAR	5 YEARS				
QRO ^{VIII}	1 YEAR	3 YEARS				
QROO ^{IX}	6 MONTHS	2 YEARS				
SLP	1 YEAR	3 YEARS	100 TO 300 UMA			
SIN	6 MONTHS	3 YEARS				
SON	1 YEAR	6 YEARS	20 TO 200 UMA			
TAB ^X	6 MONTHS 1 YEAR	3 YEARS				
TAMPS ^{XI} [•]	1 YEAR	5 YEARS			YES	
TLAX	15 DAYS	2 MONTHS	18 TO 36 DAYS OF MINIMUM WAGE			
VER	NO PENALTY	NO PENALTY			YES	
YUC ^{XII}	3 MONTHS	1 YEAR			YES	
ZAC [•]	8 MONTHS	2 YEARS				

Developed by GIRE based on state and federal penal codes. Last revision, July 2018.

• **CONTAINS EXTENUATING CIRCUMSTANCES BASED ON GENDER STEREOTYPES.**

- I. The lesser sentence corresponds to a woman who consents to someone else performing an abortion on her. The higher sentence applies when the woman induces an abortion herself.
- II. Before 12 weeks of conception, the woman is sanctioned with community service and in later trimesters the sanction is prison.
- III. These penalties correspond to abortions performed after the first trimester of pregnancy that do not fall under one of the legal grounds.
- IV. The judge may consider the woman's conditions and lighten the sentence by one third.
- V. When the woman has performed an abortion to avoid social exclusion or extreme poverty, the prison sentence will be reduced.
- VI. The penalty is doubled if the abortion takes place after the first five months of pregnancy. The judge can substitute prison for comprehensive medical treatment, as long as the woman is a first-time offender.
- VII. The highest penalty corresponds to abortions practiced after the first trimester.
- VIII. The judge can consider the woman's conditions and mitigate the penalties by one third.
- IX. The judge can consider the woman's conditions and mitigate the penalties by one third.
- X. The lesser sentence corresponds to a woman who consents to someone else performing an abortion on her. The higher sentence is when the woman induces an abortion herself.
- XI. Upon the woman's request and depending on the judge's decision, prison can be substituted with comprehensive medical treatment, as long as she is a first-time offender.
- XII. Upon the woman's request and depending on the judge's decision, prison can be substituted with comprehensive medical treatment, as long as she is a first-time offender.

Most states contemplate prison sentences for the crime of abortion. Only three do not consider this penalty: Chiapas, Michoacan and Veracruz. In the case of Chiapas, the application of an alternative penalty consisting of comprehensive health education with a gender perspective is established upon the woman's request. In Veracruz, treatment is imposed without incarceration that consists of educational and health measures. In Michoacan, the sanction is community service. Despite the positive fact that incarceration is not considered in these cases, the objective of this type of sanction is unclear, as well as the benefit that it can represent for the woman or the community, what kind of information the personnel in charge of providing this service are equipped with, as well as their training in human rights and awareness of gender issues. Even in the case of Chiapas, where comprehensive attention is provided upon the woman's request, the criminalization of abortion implies that the accused women are subject to a penal process that, albeit not culminating in a sanction as such, does have social and economic repercussions in women's lives.

Some other states that contemplate incarceration include alternative sanctions such as the ones previously mentioned as well. For example, Morelos considers the application of a treatment provided by the state's health institutions, without specifying further details. The penal codes of Jalisco, Tamaulipas and Yucatan point out that the objective of these treatments is to "help women overcome the effects and consequences caused by the induced abortion". Jalisco and Tamaulipas add that this has the goal of reaffirming the "human values of motherhood" and "strengthening of families". In the three cases, the judge will decide on the substitution of prison for a comprehensive medical treatment, as long as the woman had not previously been accused of the crime of abortion.

These measures also suggest that women who have abortions do it because of lack of education, which may include a high degree of stigma in addition to the stereotypes and prejudice that already exist around abortion and motherhood.

Alternative measures to incarceration, while admittedly less onerous for women, are problematic as a way to mitigate the criminalization of women who terminate their pregnancies, especially if they only apply for women who meet certain criteria based on gender stereotypes, or depend on the subjectivity of a judge, who may or may not act with a gender perspective.⁷

On the other hand, the discriminatory nature of the extenuating circumstances contemplated in several penal codes is worth pointing out: the Federal Penal Code as well as the penal codes of Oaxaca, Puebla, Tamaulipas and Zacatecas establish that if the woman who had an abortion does not have a bad reputation, hid her pregnancy, or if the pregnancy was the result of an extramarital union, the sanction will be reduced. Moreover, the State of Mexico's Penal Code considers an extenuating circumstance to include when an abortion is induced to hide a woman's "dishonor", in which case the sentence is reduced in half. In the case of Queretaro and Quintana Roo's penal codes, the penalty can be reduced by one third when the other progenitor consents to the abortion, or when he lives with the woman in some type of union. Considering attributes such as honor in penal legislation is indicative of how gender stereotypes operate with regard to women's behavior, as well as the fact that the man's consent is considered to lighten the sanction. Third-party consent with regard to decisions that involve abortions should not be contemplated in penal legislation as women are the only ones entitled to make the decision to terminate their pregnancy. The requirements around hiding a pregnancy or considering whether the conception was a result of an extramarital union suggest the persistence of the prejudice that the only acceptable way to reproduce is within a formal State-sanctioned union.

Despite the fact that a woman processed for the crime of abortion can receive a lesser sentence in any of the cases established in these codes, we can observe the degree in which gender stereotypes permeate laws, which in practice, determine a lower or higher sentence depending on how closely the woman's decision to terminate her pregnancy corresponds with the behaviors expected of women. In this particular context, subjective and ambiguous concepts such as a woman's reputation will depend on the personal criteria of the judge regarding private aspects of women's lives, such as how they decide to exercise their sexuality.

B. SANCTIONS FOR HEALTH PROVIDERS

Penal codes also criminalize those who help a woman terminate her pregnancy, a situation that not only contributes to stigma surrounding abortion, but also to the lack of safe abortion access in health facilities. Such penalties include prison sentences, monetary fines and community service. In the case of medical practitioners, penal legislation also considers the suspension of their medical license.

⁷ The recommendations proposed by the Working Group created to follow-up on the request of a violence alert against women in the state of Veracruz is interesting in this regard, as they propose decriminalizing abortion within the first trimester of pregnancy. For abortions outside of those cases permitted by law, it contemplates that under no circumstance should an incarceration penalty be established, but that community service measures or even the payment of a fine could be considered.

Criminalization of health providers for abortion

	PRISON SENTENCES		SUSPENSION OF LICENSE		MONETARY FINE	COMPENSATION FOR DAMAGES	COMMUNITY SERVICE
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM			
FED	1 YEAR	3 YEARS	2 YEARS	5 YEARS			
AGS	1 YEAR	3 YEARS	2 YEARS	5 YEARS	40 TO 80 DAYS FINE	YES	
BC	3 YEARS	10 YEARS	2 YEARS	5 YEARS			
BCS	6 MONTHS	2 YEARS	DOUBLE THE PRISON SENTENCE				UP TO 200 DAYS
CAMP^I	6 MONTHS	2 YEARS	SAME AS PRISON SENTENCE				24 TO 72 WORK DAYS
CHIS	1 YEAR	3 YEARS	SAME AS PRISON SENTENCE				
CHIH	6 MONTHS	3 YEARS	SAME AS PRISON SENTENCE				
COAH^{II}	1 YEAR	3 YEARS	6 MONTHS 2 YEARS	2 YEARS 6 YEARS			
COL	3 YEARS	5 YEARS	3 YEARS	7 YEARS	400 TO 700 UMA		
CDMX^{III}	1 YEAR	3 YEARS					
DUR	1 YEAR	5 YEARS	3 YEARS	5 YEARS	72 TO 360 UMA		
GTO	1 YEAR	3 YEARS	SAME AS PRISON SENTENCE		10 TO 30 DAYS FINE		
GRO	1 YEAR	3 YEARS	SAME AS PRISON SENTENCE				
HGO	1 YEAR	3 YEARS	1 YEAR	3 YEARS	10 TO 40 DAYS FINE		
JAL^{IV}	4 MONTHS 8 MONTHS	1 YEAR 2 YEARS	1 YEAR	5 YEARS			
MEX^V	1 YEAR	5 YEARS	3 YEARS	6 YEARS	30 TO 200 DAYS FINE		
MICH	6 MONTHS	2 YEARS	DOUBLE PRISON SENTENCE				
MOR^{VI}	1 YEAR	5 YEARS	2 YEARS	5 YEARS	20 TO 200 DAYS FINE		

Developed by GIRE based on state and federal penal codes. Last revision, July 2018.

- I. If the abortion is practiced before 12 weeks of gestation, the sanction is community service. If the abortion is carried out after this time, sanctions include prison and suspension of the medical license.
- II. The longer suspension of medical license corresponds to the medical personnel who directly carry out the abortion; the shorter suspension corresponds to personnel who help to carry it out.

	PRISON SENTENCE		SUSPENSION OF LICENSE		MONETARY FINE	COMPENSATION FOR DAMAGES	COMMUNITY SERVICE
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM			
NAY^{VII}	4 MONTHS 1 YEAR	1 YEAR 3 YEARS	4 YEARS	10 YEARS	UP TO 20 DAYS 20 TO 50 DAYS		
NL	1 YEAR	3 YEARS	2 YEARS	5 YEARS			
OAX	1 YEAR	6 YEARS	2 YEARS	5 YEARS			
PUE	1 YEAR	3 YEARS	2 YEARS	5 YEARS			
QRO^{VIII}	1 YEAR	3 YEARS	1 YEAR	5 YEARS			
QROO	6 MONTHS	2 YEARS	2 YEARS	5 YEARS			
SLP	1 YEAR	3 YEARS		5 YEARS	100 TO 300 UMA		
SIN	1 YEAR	3 YEARS	2 YEARS	5 YEARS			
SON	1 YEAR	6 YEARS	2 YEARS	5 YEARS	20 TO 200 UMA		
TAB	1 YEAR	3 YEARS	2 YEARS	5 YEARS			
TAMPS^{IX}	4 YEARS	6 YEARS	3 YEARS	6 YEARS		YES	
TLAX^X	15 DAYS	2 MONTHS	1 YEAR	3 YEARS	18 TO 36 DAYS OF SALARY		
VER	6 MONTHS	2 YEARS	2 YEARS	5 YEARS	UP TO 75 DAYS OF SALARY		
YUC^{XI}	1 YEAR	5 YEARS	2 YEARS	5 YEARS			
ZAC^{XII}	8 MONTHS	2 YEARS	2 YEARS	5 YEARS			

III. These penalties correspond to abortions practiced after the first trimester that do not fall into any of the legal grounds.

IV. If the abortion is performed after the fifth month of pregnancy, the highest penalty applies. In the case of repeat offenders or someone who performs "habitual" abortions, the penalty will be two to five years in prison.

V. In reoccurring cases, medical license will be suspended 20 years.

VI. In the case of health professionals who habitually perform abortions, the sanction will be six to eight years in prison, as well as suspension of medical profession.

VII. The higher sentence corresponds to abortions performed after the first trimester; the shortest, before the first three months. In the case of "abortionists" by trade or repeat offenders, the sanction will be one to four years in prison and a fine of up to 50 days.

VIII. The penalties will go up 50% if the pregnant woman is underage or incapable of understanding the procedure.

IX. If the woman is under age, the prison penalty will be four to eight years.

X. In the case of "abortionists" by trade or repeat offenders, the sanction will be two to three years.

XI. Practitioners who habitually perform abortions will be permanently denied their license to practice their profession or trade.

XII. Prison sentence will be reduced in half if they comply with the four circumstances established in article 311. If the practitioner is an "abortionist by trade" or has already been convicted, the penalty will be one to four years in prison.

The inclusion of the concept of reparation for damages stands out in the previous graph as a sanction on health practitioners in the cases of Aguascalientes and Tamaulipas; a penalty that supposes damage or perjury caused by an abortion that a pregnant woman consented to. In general, the codes establish a higher penalty for the health practitioners that “habitually practice abortions”, as well as repeat offenders, even to the extent of contemplating definitive suspension of their professional practice. The former places health professionals in a situation of considerable legal insecurity with regard to their obligations, which can dissuade them from practicing legal abortions, attending abortions that are already in process, and even preventing the training of personnel in the relevant procedures.

In this sense, it is important to highlight that most abortion accusations come from health providers themselves, who immediately report—or threaten to report—women who, in their opinion, arrive at a health center with an induced abortion. This situation results in hospital personnel worrying more about waiving their responsibility than protecting the health of a woman with an obstetric emergency, without considering the protection that professional confidentiality grants them. In some cases, this atmosphere of criminalization, as well as the stigma surrounding abortion, affects women who have spontaneous miscarriages or who request legal abortions and face mistreatment on behalf of hospital staff, as we can observe in the following cases:

Patricia⁸

JALISCO, 2016

Patricia was 16 years old in January 2016, when she was a victim of rape. She filed a police report and expressed her desire to terminate the pregnancy that was the result of the rape. The public prosecutor requested the service from the state Health Ministry and, one week later, they handed her misoprostol pills and the number of a doctor who could follow-up on her case. They requested “absolute discretion” and told her to be careful because if someone “caught her” with the pills, “she wouldn’t see the end of it”.

Patricia followed the instructions they gave her at the hospital and, with the first dose, was overcome with vomiting, dizziness, nausea and abdominal pain, as well as heavy bleeding. Her mother called the doctor who, after making her wait a long time, discovered through an ultrasound that the abortion was not successful.

Her mother went back to the hospital to express her dissatisfaction with the treatment they received. Since the medical abortion had not been successful, Patricia requested a Manual Vacuum Aspiration (MVA). The hospital’s response was that in the state of Jalisco they did not have the “baby bulldozers” that exist in Mexico City. They also added that the hospital doctors did not want to offer that service because “they had a conscience”.

A few days later, Health Ministry personnel called Patricia to offer her a different treatment for the abortion. They argued that they did not know how to proceed as it was the first time they had a case of this nature. They checked her in to the hospital, where she faced discrimination from the medical and nursing staff who said things like “it’s not the baby’s fault”. In the midst of a hostile atmosphere, they forced Patricia to give birth, with no pain medication and accompanied by a psychologist from the Public Prosecutor’s Office that was present upon her mother’s request, because she was not allowed to enter. After the abortion, Patricia bled for a month and a half and her mother had to pay for private follow-up check-ups because the clinic refused to examine her. They claimed not to know the case.

Maria Isaura⁹

CHIAPAS, 2015

When Maria Isaura was treated at the Pascasio Gamboa Hospital in Chiapas for the delivery of her second child, they insisted she use a contraceptive device. Although she had not planned on using an Intrauterine Device (IUD), she accepted.

A year and a half went by and in September 2015, she fell down while cleaning the sandwich shop where she worked. She felt a lot of pain, accompanied by vaginal bleeding. Maria Isaura was sure that she was not pregnant because she had the IUD. Despite this, the pain increased and she felt the need to push. She did not know that she was pregnant, the IUD had failed, and she was experiencing a miscarriage.

Her mother called an ambulance from the Red Cross. The hospital staff, while typing up her medical history, asked insistently what she had done to induce the abortion. Less than four hours later, an agent from the Public Prosecutor’s Office showed up to interview her. According to the nurse, Maria Isaura had requested an interview. While she was still in a hospital bed, she clarified that she had not requested anything.

Regardless, the agent began interrogating her. The questioning lasted close to three hours, in which Maria Isaura was pressured to confess that she induced the abortion. The agent told her that he would come back the next day so that she could sign her declaration and a nurse warned her to be careful about signing because she had seen how they “change the conversation... read back everything you say... if not, you’re in trouble and they can send you to jail”. In the morning, the public agents made her sign her declaration, which now included testimonies from her mother, sister and husband. With no respect or confidentiality, they located her by calling out “who is Maria Isaura, the abortion lady”.

When they finally took her to the operating room, they pressured her to sign accepting another IUD. She voiced her concern about the previous one failing, saying she preferred another method. The doctors responded, “You have to use it. Either you use it, or we do something else to you and you definitely won’t come out”. She got scared and signed the authorization.

The next day, the nurse told her that before being discharged, she had to go “look at her fetus”. They took her in a wheelchair to a dark room, turned on a red light and placed her in front of a table with jars of fetuses inside. They left her alone several minutes in front of them.

They showed her other fetuses and narrated stories of women who “got rid of their babies”. After that, the nurse put on some gloves and opened the black bag with the remains with which she had arrived at the hospital. She placed the fetal remains in a jar, filled it with liquid and wrote her full name in big letters on a label that she stuck to the jar. While she placed the remains in the jar, the nurse said, “this stays here, you can’t take it anymore, it will be used as an experiment”.

⁸ This case was documented and followed up on by GIRE. The name has been changed to respect her privacy.

⁹ This case was presented before the *Tribunal Simbólico sobre Muerte Materna y Violencia Obstétrica* (Symbolic Court on Maternal Mortality and Obstetric Violence) that took place in Mexico City in May 2016. Court records can be reviewed at <http://tribunal-simbolico.gire.org.mx>.

Though neither of these women faced a penal process, the fact that the medical staff acted under their personal beliefs encouraged by the criminalization of abortion resulted in mistreatment and misinformation. In Patricia's case, the malpractice put her health at risk and re-victimized her without considering that she was an underage rape victim. In Maria Isaura's case, the health practitioners assumed her culpability, conditioned her medical attention and made her face unacceptable stigmatizing processes.

Despite the fact that legislation in Mexico establishes legal grounds to terminate a pregnancy, the criminalization of abortion and, in particular, that of health practitioners who practice abortions, encourage a situation in which said staff denies or places obstacles to legal services through fear or misinformation in regard to their obligations. Health service providers have the obligation to provide quality medical care when women request abortion in cases of rape, as well as attend women who arrive mid-abortion. The State must guarantee these services, educate staff in regard to their obligations, and create complaint mechanisms for women who face these situations. However, while abortion is still considered a crime and not a health service, a powerful message will continue to be sent on behalf of the State that can permeate the beliefs, prejudice and fears of health practitioners, and at the same time, provide tools to exercise power over women when they suspect that they have induced an abortion.

CONSCIENTIOUS OBJECTION AND ABORTION

Conscientious objection implies the recognition of the right to freedom of conscience and it means that medical and nursing staff can abstain from performing activities they consider contrary to their personal beliefs, including religious ones. Conscientious objection is an individual right, which is why only the staff that directly participate in the abortion procedure can object, and not administrative staff. Likewise, health institutions cannot declare themselves objectors. On the contrary, they are under the obligation to have non-objecting staff available at all times to guarantee abortion services under the grounds established by law. If for some justifiable reason, they cannot provide the service, the institution has the obligation to immediately refer the woman to a health unit that can receive her.

In April 2018, the Mexican Supreme Court granted two legal stays,¹⁰ one to Marimar and another to Fernanda, both of whom were accompanied by GIRE. Marimar and Fernanda, both survivors of sexual assault, were denied access to abortion by public health services, even though it is a right held by all victims according to the General Law for Victims and the NOM-046. The Supreme Court affirmed that the refusal constitutes a human rights violation and that health authorities are forced to comply with the following:

Women whose pregnancy is the result of rape who seek health services must be treated efficiently and immediately by health authorities, with the goal of preventing physical, psychological, etc. consequences derived from the sexual aggression that continue over time, which implies not only providing the necessary medical attention and observation, but also providing the legal termination of the pregnancy.

...
The former implies that the corresponding health authorities cannot implement mechanisms —or internal policies—that prevent the fulfillment of the rights of women who have been victims of rape and who willingly terminate a pregnancy that is the result of that crime.¹¹

Through these resolutions, the highest court in this country cleared all doubts that could exist with respect to the legal obligation of health practitioners in guaranteeing access to abortion in the case of rape and, by extension, in all other cases that fall under the established grounds in penal codes. Thus, conscientious objection cannot be employed if it compromises women's reproductive rights.

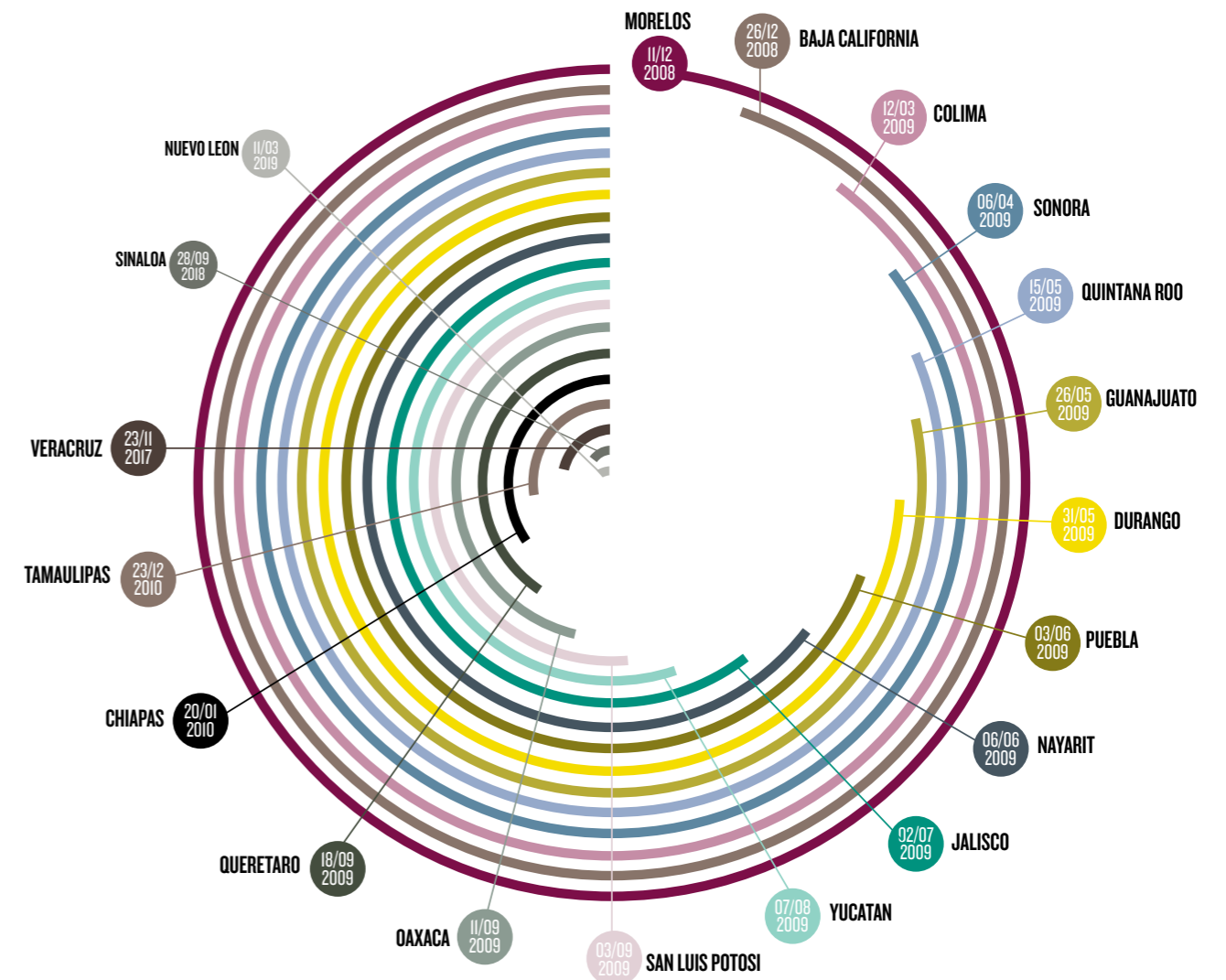
¹⁰ Legal stays under review 601/2017 and 1170/2017.

¹¹ Statement 48/2018 by the Supreme Court. Available in Spanish at: <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=4692>.

2.3 STATE CONSTITUTIONS THAT "PROTECT LIFE"

Since 2008, and in response to the decriminalization of abortion in Mexico City, conservative groups drove an important wave of reforms to local state constitutions to "protect life from the moment of conception". These amendments were created with the intention of limiting women's reproductive rights and preventing access to safe and legal abortion, as well as serving as an obstacle for future attempts to extend the legal grounds or decriminalize abortion.

Local constitutions that "protect life from conception", 2008–2019



*Chihuahua amended its constitution in October 1994. It is not included in the wave of amendments between 2008 and 2019.

The *Artavia Murillo et al. v. Costa Rica* sentence, emitted by the Inter-American Court of Human Rights in 2012, resolved definitively the interpretation that must be made of the protection of prenatal life considered in the American Convention of Human Rights: to redefine said protection as one that necessarily requires protecting women's reproductive rights.

Therefore, the Court determined that:

- A) Conception refers to implantation, when the fertilized egg adheres to the endometrial wall.
- B) The fetus cannot be considered a person.
- C) The protection of prenatal life is gradual and incremental.
- D) Only through the exercise of women's rights can protection of prenatal life be granted.

Thus, despite their initial objective, the above-mentioned amendments do not constitute a legal obstacle for access to abortion under legal grounds or for future amendments that could decriminalize abortion in other states. Nonetheless, these amendments have contributed to promoting an atmosphere of confusion and legal uncertainty between health providers and legal officials, and among women about the legality of abortion in the events established by law.





3 / Human Rights Standards

In accordance with Article 1 of the Mexican Constitution, all human rights norms contained in international treaties have constitutional status, that is, they are of the highest legal hierarchy. According to these treaties and their authorized interpretations, it is clear that the criminalization of women who have abortions is a human rights violation. The following human rights are those most transgressed in such cases.

3.1 THE RIGHT TO EQUALITY AND NON-DISCRIMINATION

Equality and non-discrimination are fundamental principles present throughout international human rights law. Their relevance is such that they form part of *jus cogens*, that is, they are peremptory norms of international law that do not admit any derogations and entail binding obligations of protection for all States, generating effects for individuals as well.¹²

¹² Daniel O'Donnell, *Derecho Internacional de los Derechos Humanos: normativa, jurisprudencia y doctrina de los Sistemas Universal e Interamericano*, Superior Court of Justice of the Federal District, Mexico, 2012, page 944.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) developed the scope of this right and the meaning of discrimination in general. Discrimination against women is understood as:¹³

[...] any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁴

This Convention, also known as “the Magna Carta for Women,” recognizes rights already contained in other treaties, but addressed from a gender perspective. In this way, it facilitates the understanding of why women can face discrimination in the right to health, for example, and that this right must be guaranteed in the same way for all individuals, ignoring characteristics such as sex, socioeconomic status, life cycle and others.

The fulfillment of State obligations with respect to equality and non-discrimination is not only completed by their recognition in laws —legal or formal equality— but with various measures aimed at achieving substantive equality, that is to say: on one hand, recognizing that men and women have different needs, and therefore identical treatment would be discriminatory; and, on the other hand, considering that the obstacles faced by certain groups and individuals make it necessary to establish measures to achieve an equal opportunities context for access to certain goods and rights.

Understanding the concept of gender equality in the framework of the right to reproductive health implies starting with the recognition that women experience discrimination and systematic violence¹⁵, as well as considering women’s specific health needs, and, for example, those related to reproduction. The exercise of these rights is an indispensable condition for women’s autonomy and their decision-making around life goals and health.¹⁶

The Committee on Economic, Social, and Cultural Rights (CESCR) has pointed out, with respect to the State’s obligations in matters of reproductive health, that it is mandatory to adopt necessary measures to eliminate contexts of discrimination against women within societies:

States must recognize and take measures to rectify entrenched social norms and power structures that impair the equal exercise of that right, such as the impact that gender roles have on the social determinants of health. Such measures must address and eliminate discriminatory stereotypes, assumptions and norms concerning sexuality and reproduction, which underlie restrictive laws and undermine the realization of sexual and reproductive health.¹⁷

In this sense, a health care system that lacks services focused on women’s needs would not meet the standards established by the human rights treaty bodies. According to these standards, the State’s refusal to provide quality services for pregnancy, delivery and postpartum care, as well as safe abortion services, is a violation of the principle of equality and non-discrimination.¹⁸ At the same time, the establishment of additional requirements to access abortion, such as consent of a father, mother, spouse or authorities, is restrictive and States have the obligation to eliminate them.

Stereotypes around motherhood permeate the penal system and perpetuate, among other things, the criminalization of abortion, which punishes women who defy established norms with respect to reproduction.¹⁹ Likewise, mortality and morbidity caused by lack of access to reproductive health services, including safe and legal abortion, “are manifestations of rights violations for which there is no parallel violation that men experience directly”.²⁰ Eradicating discrimination against women in the context of reproductive health implies a comprehensive approach that guarantees access to other rights, such as education, access to information on contraceptive methods, the elimination of discrimination within the family²¹ and, in general, all forms of violence against women.

The Working Group on the Issue of Discrimination against Women in Law and Practice has exposed the way in which the submission of women’s biological functions to political, economic and social purposes is rooted in patriarchal traditions in order to perpetuate the subordination of women.²² Prohibiting women from making decisions autonomously, penalizing them, or preventing them from accessing health services that only they need, are intrinsically discriminatory acts.²³

In the words of the Working Group, the criminalization of abortion:

[...] does grave harm to women’s health and human rights by stigmatizing a safe and needed medical procedure. In countries where induced termination of pregnancy is restricted by law and/or otherwise unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers and practices. This results in severe discrimination against economically disadvantaged women [...]²⁴

When access to safe abortion is denied, women are forced to become mothers, or to seek methods to terminate a pregnancy that can put their health and personal liberty in danger. In addition, women who seek health services due to obstetric complications are sometimes “punished” by staff, and reported to the police immediately, without having received the necessary treatment and without respecting the presumption of innocence. The Working Group asserts that “In some countries, as a result of retrogressive anti-abortion laws, women are imprisoned for having had a miscarriage, imposing an intolerable cost on the women, their families and their societies.”²⁵ This is the case of Mexico, because even if a woman is acquitted for lack of evidence against her, the criminalization of abortion means that every woman who seeks health care services with an abortion in process is treated as a suspect. This causes many women to be subject to criminal proceedings, which impacts their lives, even if they do not face a criminal sanction.

13 The most recent General Recommendation issued by the CEDAW Committee explains that the structural nature of discrimination, which finds its basis in prejudices, customs and practices based on the idea of the inferiority/superiority of the sexes and stereotyped roles for each. In that sense, it establishes the obligation to adopt measures tending to the transformation of institutions and systems that are not based on the paradigms of male power and patterns. United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 36* on the right of girls and women to education, [CEDAW / C / GC / 36], (2017) paragraph 26. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/36&Lang=en.

14 United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, Article 1. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

15 United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016), on the right to health, sexual and reproductive rights* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), [E / C12 / GC / 22], paragraph 26.

16 *Ibid*, paragraph 25.

17 *Ibid*, paragraph 35.

18 United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24 Women and health*, (1999), paragraph 11.

19 United Nations, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, [A / 66/254], *op. cit.*, paragraph 16.

20 United Nations, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, [A / HRC / 17/26], seventeenth session, 2011, paragraph 77.

21 United Nations, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, [A / 66/254], *op. cit.*, paragraph 7.

22 United Nations, Human Rights Council, *Report of the Working Group on the question of discrimination against women in law and in practice*, [A / HRC / 32/44], 32nd session, paragraph 18.

23 *Ibid*, paragraph 14.

24 *Ibid*, paragraph 80.

25 *Ibid*, paragraph 79.

By virtue of the obligations derived from CEDAW, States not only have the duty to establish measures aimed at eliminating structural discrimination, but also to provide results. Following this provision, achieving equality in the field of reproductive health must have as its starting point the eradication of all social and cultural factors that feed and perpetuate the stereotype that women are mere agents of reproduction. For example, the Working Group has pointed out that it is common for public health policies targeted at women to be limited to maternal health issues, without including abortion or contraception services.²⁶

The demand by international human rights protection organisms for States to decriminalize abortion and guarantee women's access to safe services is unanimous:

Treaty bodies, including the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, have requested States, through their jurisprudence, their general comments/recommendations and their concluding observations, to review national legislation with a view to decriminalizing termination of pregnancy [...].

The Committee against Torture and the Human Rights Committee have determined that, in some cases, being forced to carry an unwanted pregnancy to term amounts to cruel and inhuman treatment.²⁷

The classification of abortion as a crime and the criminalization of women for abortion are contrary to the right to health, as recognized in various human rights treaties to which Mexico is a party. The high price that women pay for the criminalization of abortion is a result of the State's lack of political will to fulfill its human rights obligations.

3.2 THE RIGHT TO HEALTH

The World Health Organization (WHO) states in the preamble of its constitution that it understands health as “a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.” The human right to health includes freedoms and rights. Among these is the control of health and body, including sexual and reproductive freedom, as well as the right to not suffer interference, such as being subjected to torture, or medical treatments or experiments without consent. Among State obligations is the establishment of a health protection system that gives individuals equal opportunities for enjoying the highest possible level of health.²⁸

The guarantee of the human right to health depends on the fulfillment of its four elements: accessibility, both in physical and economic terms; acceptability, that is, that health services comply with medical ethics standards and are respectful of the culture, gender and age of each person; quality, that is, that they comply with medical and scientific standards, and non-discrimination in access to any person.²⁹

The concept of health is not limited to its physical manifestations. Mental health is also a component, and its scope extends to individuals' emotional state and their social environment: “Firstly, there is no health without mental health. Secondly, good mental health means much more than the absence of a mental impairment. The modern understanding of mental health includes good emotional and social well-being, healthy non-violent relationships between individuals and groups...”³⁰

The United Nations Rapporteur for the Right to Health has pointed out the close link between the criminalization of abortion and women's mental health. In this sense, he has exposed that the stigma surrounding abortion procedures causes some women to make the decision to seek clandestine abortions, which, combined with the latent possibility of having to face the persecution by the justice system, often causes severe anguish. At the same time, women who are forced to carry out unwanted pregnancies can also suffer serious impacts on their emotional health. Moreover, the Rapporteur states that there is no evidence regarding alleged consequences in the mental health of women as a result from having chosen to undergo an abortion.³¹

3.2.1 REPRODUCTIVE HEALTH

The right to reproductive health, which is part of the right to health, has experienced notable developments since the 1990s.

In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) —a United Nations organism that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights— issued *General Comment number 22*, which focuses exclusively on developing the components of the right to sexual and reproductive health and establishes legal obligations for State parties. This *General Comment* is, therefore, an obligatory starting point and a roadmap for progress in guaranteeing this right. Concretely, it allows us to clearly identify the human rights framework from which we can understand why establishing the criminalization of women for abortion is contrary to international human rights standards.

²⁸ United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* [E / C.12 / 2000/4], 22nd session (2000), paragraph 8. Available at: <http://bit.ly/1Tem8RK>.

²⁹ *Ibid*, paragraph 12.

³⁰ United Nations, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, [A / HRC / 29/33], twenty-ninth session (2015)*, paragraph 122, subsection k). Available at: <http://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx>.

³¹ United Nations, Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, [A / 66/254], 66th session (2011)*, paragraph 36. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/61/PDF/N1144361.pdf?OpenElement>

²⁶ *Ibid*, paragraph 29.

²⁷ *Ibid*, paragraph 83.

The CESCR defines the right to sexual and reproductive health in this way:

The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.³²

It is important to consider that the degree of access for people to exercise their reproductive rights is determined by social factors such as inequality, poverty, systemic discrimination and marginalization.³³ The CESCR emphasizes that these “social determinants of health” must be addressed by States in order for these rights to be effective. Along the same lines, the Special Rapporteur on the Right to Health has affirmed that this right not only implies access to health care services, but also to the guarantee that social determinants are not obstacles to the enjoyment of the human right to health.³⁴

General Comment number 22 is very explicit in pointing out the minimum requirements that must be met in order to affirm that basic obligations regarding the right to reproductive health are met. As a reference to the essential elements of the right to health developed in *General Comment number 14*, the CESCR establishes the following contents:

AVAILABILITY

There must be sufficient facilities, services, programs, trained and qualified staff and access to a wide range of contraceptives. Although conscientious objection must be respected, its use is prohibited as a justification to obstruct sexual and reproductive health services. It is mandatory to have enough personnel that can provide such services at all times, both in public and private hospitals, and at reasonable geographical distances.

Ensuring the presence of trained medical and professional personnel and skilled providers who are trained to perform the full range of sexual and reproductive health-care services is a critical component of ensuring availability. Essential medicines should also be available, including a wide range of contraceptive methods, such as condoms and emergency contraception, medicines for abortion for and post-abortion care [...]³⁵

³² United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016)*, *op. cit.*, paragraph 5.

³³ According to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, other social determinants of health are racial prejudice, access to education, legal barriers to sexual and reproductive health services, and absence of education on sexual health. United Nations, [A / HRC / 32/32], 32nd session, (2016), paragraph 35. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/067/56/PDF/G1606756.pdf?OpenElement>.

³⁴ *Ibid*, paragraph 35.

³⁵ United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 22, op. cit.*, paragraph 13.

ACCESSIBILITY

All individuals must have access to goods, services and information regarding sexual and reproductive health without discrimination. This implies that special attention must be paid to ensuring that people belonging to disadvantaged and marginalized groups, such as those living in rural and remote areas or those with disabilities, have physical access to services. In addition, these services should not represent a disproportionate economic burden to individuals and families, whether they are public or private services.

Accessibility also refers to the right of every person to seek, receive and disseminate information related to sexual and reproductive health issues, and specifically, about the state of their own health. It is the duty of the State to have empirically based information on matters such as contraceptives, abortion and post-abortion care. The former is without prejudice to the confidentiality of personal data relating to these matters.

Accessibility also refers to guaranteeing access to safe abortion services. Cases documented by GIRE and those obtained from transparency mechanisms show that in Mexico, women sometimes resort to abortions without the information and accompaniment necessary to protect their health. This risk could be eliminated if safe abortion services were guaranteed and through measures aimed at promoting extensive and complete information, so that no woman was forced to undergo an abortion with scarce information available in contexts wrought with the rejection of women's exercise of reproductive rights.

On the other hand, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health has emphasized the difficulties faced by adolescents in terms of accessibility: restrictive laws, long distances, costs, as well as scarce possibilities of accessing reproductive health goods and services in a context of privacy, without relying on authorization and support from their parents.³⁶ In this sense, the Rapporteur notes that States should develop a basic health interventions package for adolescents, whose services are provided free of charge, according to their evolving capacities, needs and interests and with full respect of their privacy.³⁷

³⁶ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, [A / HRC / 32/32], *op. cit.*, paragraphs 16, 30 and 31.

³⁷ *Ibid*, paragraph 32.

ACCEPTABILITY

This concept refers to the fact that the facilities, services and goods related to sexual and reproductive health must be adequate, according to the characteristics of individuals and communities: their culture, age, gender, disability, sexual diversity and life cycle.

QUALITY

The services, goods, facilities and information on sexual and reproductive health must meet quality standards, be evidence-based and be up-to-date in medical and scientific terms. According to the CESCR, “[t]he failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as medication for abortion [...] jeopardizes the quality of care”.³⁸

The essential elements of the right to reproductive health must also include the legal obligations for the State Parties that, according to the *General Observation number 22*, are:

Respect

The State must refrain from impeding or hindering the exercise and decisions of people in matters of sexual and reproductive health. According to the CESCR, in order to fulfill this obligation, the State must refrain from:

- Promoting and enforcing laws that criminalize sexual and reproductive health services and information;
- Promoting and applying laws that criminalize abortion;
- Establishing policies that hinder access to sexual and reproductive health services, for example, the authorization requirements of parents or courts to access services, in particular for abortion and contraception;
- Misrepresenting or disseminating misinformation about sexual and reproductive health, or establishing censorship.

Protect

The State must adopt measures to prevent third parties from directly or indirectly impeding the enjoyment of the right to sexual and reproductive health. According to the CESCR, States must:

- Prohibit and prevent private agents from hindering access to health services, for example, by physically obstructing clinics or disseminating misinformation;
- Properly regulate conscientious objection so that, in practice, it does not prevent any person from accessing sexual and reproductive health services;
- Ensure that adolescents have full access to information on sexual and reproductive health, regardless of the consent of their parents or guardians or their marital status, and respecting their privacy and confidentiality.

Comply

It refers to the duty of the States to implement the necessary measures —legislative, administrative, budgetary, judicial— to give full effect to the right to sexual and reproductive health, for example:

- Ensure universal access to a range of quality services, particularly maternal health care, contraceptive services and safe abortion care;
- Guarantee physical and mental healthcare to victims of sexual violence, especially emergency contraceptives and safe abortion services;
- Adopt measures to eliminate obstacles such as high costs and lack of physical or geographical access to sexual and reproductive health facilities.
- Develop standards and guidelines for the provision of sexual and reproductive health services, which must be constantly updated to incorporate medical advances;
- Provide an adequate sexual and reproductive health education based on age, with an empirical and scientifically accurate foundation.

³⁸ *Ibid*, paragraph 21.



3.3 THE RIGHT TO BE FREE FROM VIOLENCE

The development of standards on women's right to be free from violence is abundant, both at the Inter-American and universal levels. At the universal level, the CEDAW Committee's approach is based on the consideration of gender-based violence as a form of discrimination against women. Factors such as social norms related to masculinity, the reinforcement of gender roles, and the punishment of any behavior of women that is deemed unacceptable, contribute to gender violence against women being normalized and remaining unpunished.³⁹ At the same time, this violence is one of the fundamental social, political and economic means to preserve the condition of women's subordination to men.⁴⁰

Rashida Manjoo, United Nations Special Rapporteur on Violence against Women, explains gender violence against women as a structural situation and a continuum: it permeates the private and public spheres, ranging from interpersonal violence in private spheres, to structural, systematic and institutional violence — such as laws and norms that allow one group to maintain an advantage over another— that are not mutually exclusive or occupy a certain hierarchical order.⁴¹ In this way, a survivor of sexual violence who is denied access to abortion by the State faces interpersonal and structural violence, while at the same time, is stigmatized, targeted, and subject to a criminal prosecution.

Laws, policies and practices that generate and perpetuate the disadvantage of women with respect to men, such as the criminalization of abortion, must be eliminated in light of the State's obligations regarding the eradication of gender-based violence. Specifically, the CEDAW Committee has established that:

Violations of women's sexual and reproductive health and rights, such as [...] forced pregnancy, criminalisation of abortion, [...] 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.⁴²

This statement allows us to identify the most serious forms of the violence continuum, which, on certain occasions, could amount to torture or cruel, inhuman or degrading treatment. In this vein, the States' obligations regarding the elimination of gender-based violence against women includes addressing all forms of structural inequality that keep women in positions of subordination and that can lead to serious violations of their human rights: from beliefs and stereotypes that allow subtle and daily forms of violence to its most serious manifestations. These legal obligations of the States are of immediate nature, and delays cannot be justified on any grounds.⁴³

The obligations derived from CEDAW are not limited to the State and its agents, since the actions of private agents can generate international responsibility: when women live in contexts of violence and the authorities know or should know about it, and fail to investigate, prosecute and punish the perpetrators, or provide reparations to victims, such omissions “imply the permission or encouragement of acts of gender-based violence against women”. The same occurs when dealing with acts or omissions of private agents that the State has authorized to exercise power, including public health services.⁴⁴ These obligations imply a responsibility when women who present complications after having an abortion, a miscarriage or a premature birth, go to

public or private health centers seeking urgent medical attention and receive derogatory treatment, verbal violence, conditioning of attention, or curettage⁴⁵ without anesthesia as a punishment, or are reported to the public prosecutor, placing their health as the last priority.

Specifically, the CEDAW Committee recommends that State Parties:

Repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous law. In particular, it is recommended to repeal the following:

...

(a) Provisions that allow, tolerate or condone forms of gender-based violence against women [...] as well as legislation that criminalises abortion [...]⁴⁶

In the Inter-American context, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as the Belem do Para Convention, was the first binding human rights instrument that recognized violence against women as a human rights violation. The Belem do Para Convention defines violence against women as the following:

Article 1. For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

In general, this Convention is a reference for countries from the region in the elaboration of legislative frameworks aimed at eradicating violence against women.⁴⁷ Despite being the Inter-American convention with the highest number of ratifications,⁴⁸ levels of violence against girls and women in the region reflect the lack of political will to fulfill its implementation.

Similar to treaty monitoring bodies in the universal system, the Follow-up Mechanism to the Belem do Para Convention (MESECVI) monitors the implementation of this convention.⁴⁹ The MESECVI Expert Committee has expressed its concern about the impact of unsafe abortions on the lives of poor women⁵⁰ and the persistence of restrictive laws, pointing out the serious violations of girls and women's human rights when access to their sexual and reproductive rights is restricted.⁵¹

⁴⁴ *Ibid*, paragraph 24.

⁴⁵ The WHO considers that curettage should be discontinued in the face of the wide variety of techniques that offer greater safety to the user and less pain, for example, vacuum aspiration or medical abortion. *World Health Organization, Safe Abortion: Technical and Policy Guide for Health Systems*, 2012, p. 38 and 41.

⁴⁶ United Nations, Committee for the Elimination of Discrimination against Women, *General Recommendation No. 35, opp. cit.*, paragraph 29.

⁴⁷ OAS, *Follow-up Mechanism of the Convention of Belem do Para (MESECVI), Second Follow-up Report on the Implementation of the Recommendations of the Committee of Experts of the MESECVI*, Washington, 2015, p. 15.

⁴⁸ *Ibid*, page 16.

⁴⁹ This Mechanism is constituted by the Committee of Experts (CEVI) and the Conference of States Party. See: *Ibid*, p. 16.

⁵⁰ *Ibid*, paragraph 111.

⁵¹ *Ibid*, paragraph 118.

³⁹ United Nations, Committee for the Elimination of Discrimination against Women, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation no. 19, [CEDAW / C / GC / 35], (2017)*, paragraph 19.

⁴⁰ *Ibid*, paragraph 10.

⁴¹ United Nations, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, op. cit.*, paragraphs 25-27.

⁴² United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35, op. cit.*, paragraph 18.

⁴³ *Ibid*, paragraph 21.

On the other hand, it is illustrative that, of the six decisions against Mexico by the Inter-American Court of Human Rights (IACHR), three are due to serious acts of gender violence committed against women, whether perpetrated by state agents or others, in which the State has failed to take the necessary measures to eradicate contexts of systematic violence against women. In November 2009, the IACHR condemned the Mexican State for the femicide that occurred in Ciudad Juarez, Chihuahua. This sentence —Gonzalez *et al.* (“Cotton Field”) v. Mexico— has been emblematic as it is the first time that the IACHR examined a structural case of violence against women due to gender, generating a precedent of great relevance in terms of developing jurisprudence of the Inter-American Human Rights System.⁵² The facts of the Cotton Field case were examined, independently from the particular circumstances around the disappearances of the victims, but rather analyzing their membership to a wider group⁵³ traversed by violence and inequality both structurally and historically. In this way, the scope of obligations of respect, guarantee and protection on the part of the Mexican State were able to be defined.⁵⁴

Although this sentence corresponds to the feminicide perpetrated in Ciudad Juarez, its content contributes significantly to the analysis of all forms of gender-based violence,⁵⁵ including the consideration of abortion as a crime and the subsequent reporting and prosecution of women who have an abortion.

3.4 THE RIGHT TO DUE PROCESS OF LAW

The Universal Declaration of Human Rights synthesizes the essence of the right to due process of law as that where everyone “is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them.”⁵⁶ In summary: it contains the minimum guarantees in favor of individuals in any legal matter concerning them, even in processes initiated by the State against them.⁵⁷

This right, mainly protected by Article 14 of the International Covenant on Civil and Political Rights and Article 8 of the American Convention on Human Rights, implies the obligation for courts to be independent and impartial, that the process be public and that there be equality between the parties in the process. In other words, all the conditions that must be met to guarantee the defense of those who are in a judicial process.⁵⁸ For example, the Inter-American Commission on Human Rights has decided that:

These acts in which the investigated subject appears, without the assistance of a lawyer, to an interrogation based on a file that she does not know, without knowing what criminal acts are imputed to her, do not constitute in the judgment of the Commission the exercise of the right to be heard by a court, enshrined in Article 8 (1) of the Convention. Hearing an investigated person implies allowing them to defend themselves properly, assisted by a lawyer, with knowledge of all the elements that may work against them in the file; to hear them is to allow their presence in the interrogations of witnesses who may testify against them, to allow them to counter their testimony, to cross-examine them with the aim of distorting their incriminating statements as contradictory or false; To hear a defendant is to give them the opportunity to ignore, to detract from the documents that are intended to be used against them.⁵⁹

Impartiality refers both to the decision made by a judge, and to the process by which this decision is made. In this way, a judge must know and resolve cases without favoritism, predisposition or prejudice.⁶⁰ On the other hand, impartiality is closely linked to the presumption of innocence: the judge must review the criminal accusation without prejudice and under no circumstances assume that the accused is responsible.⁶¹ Furthermore, the IACHR has warned that the presence of prejudices in judicial proceedings may be linked to prohibited grounds of discrimination —such as sex and gender—, which may violate the principle of equality.⁶² The Human Rights Committee has also expressed that the principle of impartiality extends to the media, which should refrain from expressing opinions in demerit of the presumption of innocence of accused persons or under process.⁶³ In the specific case of women criminalized for abortion, the requirement of impartiality of judges is particularly important.

The CEDAW Committee has produced criteria regarding the prevalence of gender biases in the judicial system, which have the potential to profoundly affect women’s human rights. It states that it is common for judges to adopt rigid rules about what they consider appropriate behavior for women, punishing those who do not conform to such a stereotype.⁶⁴ These prejudices are the same ones that determine that the behavior of women must revolve around motherhood and, in general, the care of other people. Likewise, these same ideas are the basis for the punishment of women who decide to abort or reject motherhood. Thus, gender stereotypes are incompatible with human rights standards related to due process.

For its part, the principle of presumption of innocence is composed of three dimensions: the manner in which criminal responsibility is determined and the burden of proof; the imputation of criminal responsibility, and the treatment given to persons under investigation and to prisoners without conviction.⁶⁵ In this way, the burden of proof falls on the accusing party; the determination of criminal responsibility implies that the accusation has been proved beyond a reasonable doubt (in case the evidence is insufficient or incomplete, he/she must be absolved), and every person under investigation must be treated with the benefit of the doubt as long as the judge does not fully resolve on the criminal responsibility.⁶⁶ It is important to emphasize that the fundamental principles of a fair trial, and in particular, the presumption of innocence, are recognized as a peremptory norm of general international law, or *jus cogens* norm, that is to say: these principles are of such importance, that they do not admit agreement to the contrary and their suspension is prohibited, even in exceptional situations.⁶⁷

52 Victor Abramovich, Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” in Inter-American Court of Human Rights, *Human Rights Yearbook 2010*, p. 167. Available at: <https://anuariocdh.uchile.cl/index.php/ADH/article/view/11491>.

53 According to Victor Abramovich, “Among the sectors mentioned by the IACHR as discriminated or excluded groups that require special protection or differentiated treatment are indigenous people or the Afro-descendant population and women in relation to the exercise of certain rights, such as protection against violence and political participation.” *Ibid*, page 169.

54 *Ibid*, page 168.

55 Karla Michel Salas, “Forum of access to justice. Sentences with a gender perspective” February 8, 2018.

56 Organization of the United Nations, Universal Declaration of Human Rights, article 10.

57 Daniel O’Donnell, *op. cit.*, page 370.

58 *Ibid*, page 371.

59 OAS, Inter-American Commission on Human Rights, Figueredo Planchart case v. Venezuela, paragraphs. 33-34 (1999), in O’Donnell, *op. cit.*, page 375.

60 “Bangalore Principles on Judicial Conduct”, in O’Donnell, *op. cit.* page 399.

61 OAS, Inter-American Commission on Human Rights, Case of Martin de Mejia v. Peru, page 209 (1996), in O’Donnell, *op. cit.*, page 404.

62 OAS, Inter-American Commission on Human Rights, Roberto Moreno Ramos Case v. United States, January 28, 2005, paragraph. 66, in O’Donnell, *op. cit.*, page 405.

63 *Ibid*, paragraph 30.

64 United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33, on women’s access to justice*, [CEDAW / C / GC / 33], Sixty-first session (2015), paragraph 26.

65 Daniel O’Donnell, *op. cit.*, page 420.

66 United Nations, Human Rights Committee, *General Comment No. 32. Article 14. The right to a fair trial and equality before courts and tribunals*, [CCPR / C / GC / 32], 90th session (2007), paragraph 30.

67 United Nations, Human Rights Committee, *General Comment No. 29. States of emergency (article 4)*, [CCPR / C / 21 / Rev.1 / Add.11], August 31, 2001, paragraph 11.



Another guarantee closely related to impartiality is the right to be tried without undue delay or within a reasonable time. The Human Rights Committee has indicated that this right is not only intended to prevent people from a prolonged state of unawareness or uncertainty about their fate (especially those who are denied bail), but also to optimize the processes of the justice system.⁶⁸

On the other hand, the right to not declare against oneself is an integral part of the right to due process and very important when referring to the criminalization of abortion, where the majority of cases are based on self-incriminating confessions made in contexts of medical emergencies. This guarantee implies that there must be no direct or indirect physical or psychological pressure on the part of the authorities in order for the accused person to confess guilt.⁶⁹ In those cases in which it is proven that the statement given by the accused has been extracted through torture or other cruel, inhuman or degrading treatment or punishment, it cannot be used as evidence against the person involved.⁷⁰ The confession of the accused person is valid only when it has occurred without any type of coercion.

In the specific case of women reported when seeking medical care for abortions, the Committee against Torture has been emphatic in pointing out the violations to the Convention against Torture in relation to certain practices. As an example, the case of the Chilean Government is cited, to which the Committee recommended to:

Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortions; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence and take remedial measures including nullifying convictions which are not in conformity with the Convention.⁷¹

To avoid forced confessions, it is essential to ensure that the accused person has legal advice and assistance throughout the process, especially when giving statements or being questioned.⁷² Such advice and assistance should include a fundamental gender perspective.⁷³ In the same way, it must be guaranteed that those who do not have sufficient management of the language in which the process is carried out, have access to an interpreter or translator. According to the IACHR, declarations made by defendants who do not master the respective language, in the absence of an interpreter or translator, are invalid.⁷⁴

Finally, we must highlight a specific set of obstacles regarding women and their access to justice. The CEDAW Committee has considered that factors such as gender stereotypes in the justice system, discriminatory laws, and certain evidential practices and requirements are persistent violations of women's human rights,⁷⁵ which may be more serious in the cases of women in whom intersectional factors such as ethnicity, a precarious socioeconomic situation or a disability concur.⁷⁶

⁶⁸ *Ibid*, paragraph 35.

⁶⁹ United Nations, Human Rights Committee, *General Comment No. 32*, *op. cit.*, paragraph 41.

⁷⁰ United Nations, Declaration against Torture, art 12.

⁷¹ United Nations, Committee against Torture, *Conclusions and Recommendations of the Committee against Torture, Chile*, [CAT / C / CR / 32/5], 32nd session, (2004), subparagraph m), number 7, letter E.

⁷² Daniel O'Donnell, *op. cit.*, page 433.

⁷³ United Nations, Committee for the Elimination of Discrimination against Women, *General Recommendation No. 33*, *op. cit.*, paragraph 13.

⁷⁴ IACHR, *Miskito Report*, pages. 110-111 (1981), in O'Donnell, *op. cit.*, page 460.

⁷⁵ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33*, *op. cit.*, paragraph 3.

⁷⁶ *Ibid*, paragraph 8.

The quality of justice systems in relation to women's rights requires, among other things, that norms, investigations and evidentiary procedures be impartial and not affected by prejudices or gender stereotypes; and that women complainants, witnesses or prisoners are protected against threats or harassment during and after judicial proceedings. Women must be protected from discrimination in the context of the mechanisms of criminal law, either as victims or as perpetrators of criminal acts.

Explicitly, the Committee refers to:

Some criminal codes or acts and/or criminal procedure codes discriminate against women: [...] b) by criminalizing behaviors that can only be performed by women such as abortion, [...] d) by jailing women for petty offenses and/or inability to pay bail for such offenses.⁷⁷

In the opinion of the CEDAW Committee, it is necessary for State parties to consider the particularly discriminatory effects that certain provisions and procedures in the criminal sphere may have on women in pre-trial detention, for example.⁷⁸ Considering the profound effects that deprivation of liberty has for both women and their immediate circle, and that the everyday care-related work continue to be carried out mainly by women, it would be necessary for State parties to explore other alternatives, in the light of the interpretation of the obligations derived from the CEDAW.

⁷⁷ *Ibid*, paragraph 47.

⁷⁸ *Ibid*, paragraph 48.

RECOMMENDATIONS OF THE CESCR TO THE MEXICAN STATE IN THE MATTER OF ACCESS TO ABORTION

In March 2018, the CESCR examined the progress of the Mexican State in complying with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

One of the concerns expressed by the Committee is the differentiated access of women to abortion according to the legal grounds of the state in which they reside, a situation that disproportionately affects those that come from more disadvantaged groups. It is also concerned about the difficulties that persist in accessing abortion under the grounds established in the penal codes.⁷⁹

The Committee recommended that the Mexican State:

- a) Harmonize legislation on the voluntary termination of pregnancy and do away with the criminalization of women in the federative entities where abortion is a crime in order to make the legislation compatible with other women's rights, including the right to health, with a view to ensuring that all women have equal access to sexual and reproductive health services, particularly the voluntary termination of pregnancy;
- b) Adopt the necessary measures to guarantee access to the voluntary termination of pregnancy in permitted circumstances, including through the adoption of appropriate medical protocols;
- c) Intensify its efforts to ensure that appropriate high-quality sexual and reproductive health information and services, including family planning, are available to all women and adolescents in all the federative entities, especially in remote rural areas;
- d) Redouble its efforts to prevent teenage pregnancy by, inter alia, ensuring that school programs on sexual and reproductive health are age-appropriate and properly implemented and conducting campaigns to raise awareness among the general public of the negative impact of teenage pregnancy.⁸⁰

⁷⁹ United Nations, Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined fifth and sixth periodic reports of Mexico*, [E/C.12/MEX/CO/5-6], 28th meeting, 2018, paragraph 62.

⁸⁰ *Ibid*, paragraph 63.

The following cases are a selection of public versions of abortion sentences obtained by GIRE through requests for access to public information to the judicial branch in Mexico. Although the whole of the cases and the information contained in the authorities' responses will be described in the following section, GIRE considers that these cases are representative of criminalization patterns faced by women and, in particular, of the human rights violated before and during the criminal proceedings they face; rights protected by the human rights standards with which Mexico is obliged to comply.

Araceli

ZACATECAS

WHAT RIGHTS WERE VIOLATED?

Araceli was victim of violence from her ex-partner and father of her first daughter. Even though she separated from him, the violence continued. Even when Araceli met a new partner and became pregnant, her ex-partner was violent with her: he beat her during the pregnancy and stopped contributing child support for their daughter. These circumstances caused her to suffer depression and made her decide it was not a good time to have a second child, so she decided to buy misoprostol pills to abort when she was 11 weeks pregnant.

According to her statement: "In that place they sell every medicine and very cheap [...] and a person whose name I do not know, but he was a man, came close and told me he could offer me some medicine, I said yes, I wanted something to abort, so he told me that there were some pills and I told him I wanted two, I asked the person if those pills were dangerous and that person told me that the pills were not, I do not remember how much I paid."

Hours after administering the medication, Araceli suffered a fall on the stairs of her house and began to have complications, so she called her partner to seek medical help. He agreed to take her to the hospital, but then disengaged from her health status. According to his statement, upon arrival at the hospital, he was asked to sign a document in which he stated that he was aware of Araceli's poor health upon entering the hospital: "they made me sign a piece of paper saying that I knew she was bad [...], she was very pale, but she had not lost consciousness. I told the doctor that I could not take responsibility for her. She did what she did because she wanted to, so she would have to handle it, I dropped her off at the hospital and left."

Araceli was reported and, subsequently, prosecuted and sentenced to eight months in prison for abortion.

Right to be free
from violence

Right to equality
and non-discrimination

Right to health, including sexual
and reproductive health

Sonia

YUCATAN

WHAT RIGHTS WERE VIOLATED?

Sonia worked in a mill and received a weekly income of 600 pesos. For two months she experienced bleeding that made her think she was still having her menstrual period on a regular basis. However, upon noticing the absence of fluid in the third month, she carried out a pregnancy test and it came back positive.

Later, she learned that the man with whom she became pregnant was now in prison. At that time, she was 18-weeks pregnant. She already had a daughter who she supported financially by herself, a situation that seriously hampered her economy. Therefore, she made the decision to interrupt her pregnancy.

On the recommendation of a friend, Sonia got misoprostol. Several hours after taking the pills, she began to feel pain, for which she asked for help from her aunt, who, after scolding her for trying to have an abortion, took her to seek medical help. The hospital staff told her that they would have to notify the public prosecutor.

Sonia was prosecuted for the crime of abortion. The judge imposed a sentence of six months in prison, which could be replaced by comprehensive medical treatment, offered by the health institutions of Yucatan that aim to provide a "comprehensive care for the consequences generated by the practice of induced abortion".

Right to equality
and non-discrimination

Marisa

CHIAPAS

WHAT RIGHTS WERE VIOLATED?

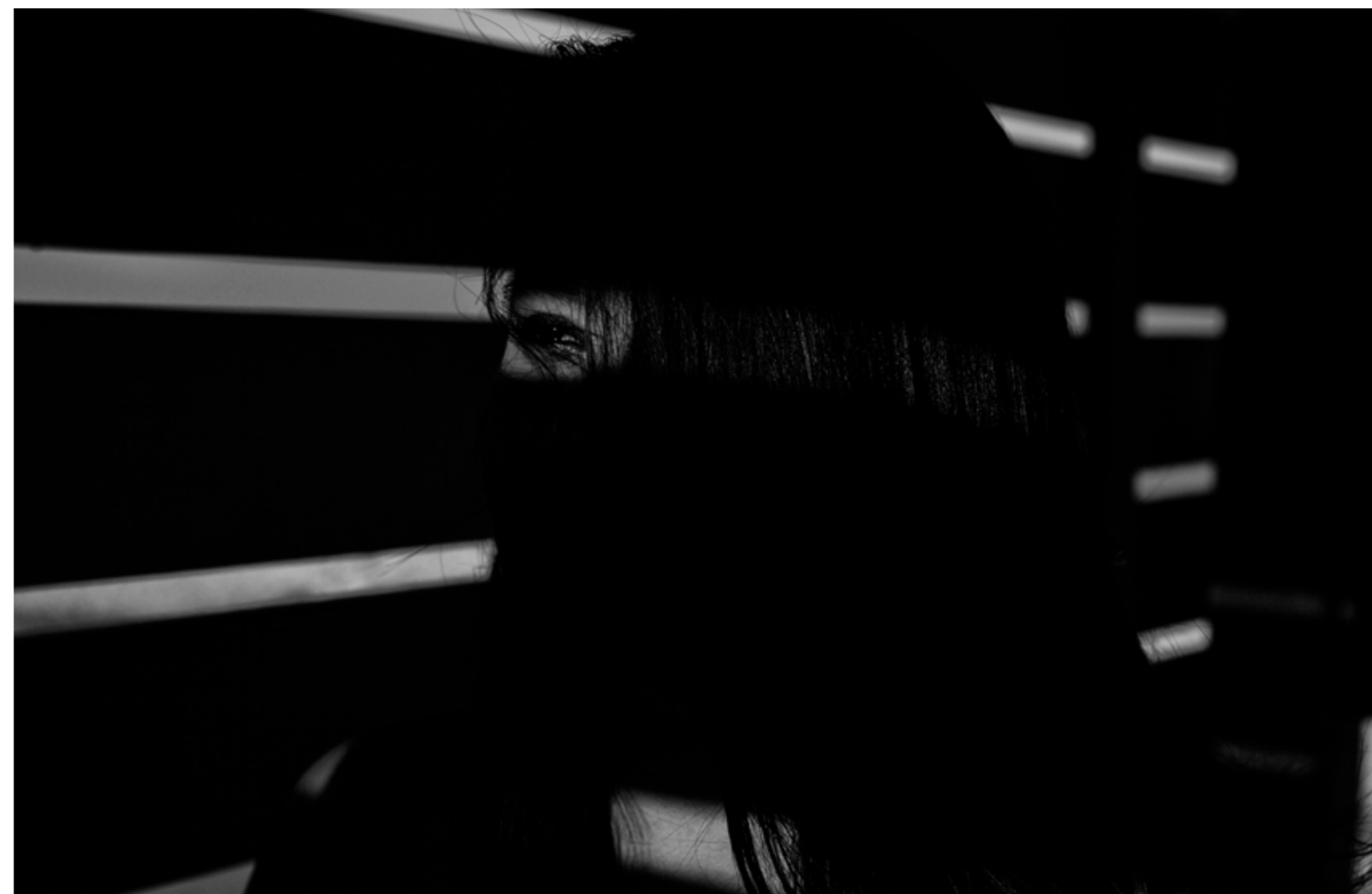
Marisa lived with her partner in an informal union, and tried to have children without success. After discovering that she had ovarian cysts, she started a treatment to eliminate them and, thus, be able to get pregnant.

Early one morning, Marisa felt pains in her belly. When she went to the bathroom, she noticed that she was expelling large amounts of blood and fluid. She and her partner went to the hospital, where the gynecologist informed her that she had had an abortion at 18 weeks gestation. In the days before her bleeding, Marisa —without knowing about her pregnancy— had taken medicine to be dewormed and a tea to treat the cysts. She was reported by the gynecologist and charged with the crime of abortion.

However, the judge considered that the evidence provided was not sufficient or suitable to prove the crime of abortion, so the sentence was acquitted. He argued that the expert reports provided were effective in determining that Marisa had an abortion, but that neither determined the cause of the abortion or that there was harmful intent on her part.

The reasoning of the judge in Marisa's case is a positive example, unlike other sentences where women are automatically assumed guilty and condemned for abortion without proof of their responsibility.

*Right to equality
and non-discrimination*





/ Absolute Prohibition of Abortion in El Salvador

On April 20, 1998, a new criminal law came into effect in El Salvador that established the absolute prohibition of abortion. The following year, the recognition of personhood from the moment of conception was included in the country's Constitution.

Before that, Salvadoran criminal law provided three grounds for access to abortion: risk of death of the woman, rape, and serious fetal malformations. After the civil war, debates on proposals for a new penal code began. Women's rights groups proposed that the new code contemplate, in addition to the three mentioned causes, risk to the physical and mental health of women. However, conservative and religious forces promoted a campaign to ensure that the code did not contemplate any exceptions for abortion. Thus, El Salvador became part of the three percent of countries in the world that still establish an absolute prohibition of abortion.⁸¹

⁸¹ *Ibid*, paragraph 63.

This situation is made worse considering that El Salvador faces poverty, inequality, lack of access to sex education and modern contraceptives —placing it as the country with the highest adolescent pregnancy rate in Latin America—, in addition to generalized violence against girls and women.⁸² Furthermore, the situation of sexual violence against girls and women is alarming: in 2016 alone, there were 1,873 official reports of sexual violence against minors. It is estimated that every 21 minutes, a Salvadoran girl is a victim of rape.⁸³

Local organizations have demonstrated the way in which the prohibition and absolute criminalization of abortion has caused serious effects in the lives of Salvadoran girls and women, derived from violations of their human rights.⁸⁴ Even in cases of miscarriage, women are the object of suspicion on the part of health personnel who harass them and report them to the authorities, resulting in long sentences for homicide.⁸⁵ It is also common practice for women in this situation to be interrogated while being treated or even under the effects of anesthesia —often without legal assistance— to be kept handcuffed to the hospital bed and kept under guard during their entire hospitalization.

Unwanted pregnancy pushes Salvadoran girls and women to seek abortion services in conditions of insecurity and, sometimes, in total solitude due to the strong stigma against abortion. The situation is more serious for very young girls or low-income women. It has been documented that, in the face of despair, some decide to use chemical products such as pesticides, or introduce knitting needles or pieces of wood.⁸⁶ Some even decide to take their own lives.⁸⁷

In cases where a woman’s pregnancy represents a risk to her health or life, doctors who decide to act to preserve the health or life of a woman can face sentences of up to 12 years in prison.⁸⁸ The criminal threat usually leads medical personnel to report women —in the case of obstetric emergencies— to avoid the risk of being prosecuted themselves. This means that health personnel frequently violate doctor-patient confidentiality. In the absence of confidentiality, women who need care for pregnancy complications or post-abortion care avoid going to the hospital, putting their health and life at risk.⁸⁹

The abuse continues during the investigation and the judicial process. An investigation carried out by the Center for Reproductive Rights reveals that in El Salvador, it is common for women to be arrested, investigated and tried under presumption of guilt, with serious violations of due process. They can even be sentenced for homicide, even if they had an obstetric emergency.⁹⁰ One of the cases of Salvadoran women in this situation is that of Manuela:⁹¹

82 Amnesty International, *On the verge of death. Violence against women and prohibition of abortion in El Salvador*, Madrid, 2014, page 11.

83 Seguimos Unidos, Public opinion on abortion in El Salvador, 2017. Available at: <http://seguimosunidos.com/wp-content/uploads/2017/10/ENCUESTA-INFOGRAFIA-PRINT.pdf>.

84 See, for example: The Citizen’s Association, *From the hospital to the prison. Consequences for women due to the penalty without exceptions, of the interruption of pregnancy in El Salvador*, 2013.

85 Amnesty International, *op. cit.*, page 35.

86 *Ibid.*, p. 30.

87 *Ibid.*, p. 28.

88 *Ibid.*, p. 21.

89 Center for Reproductive Rights / The Citizen’s Association, *Marginalized, Persecuted and Imprisoned: The Effects of El Salvador’s Total Criminalization of Abortion*, New York, 2013, p. 8.

90 *Ibid.*, p. 12.

91 *Ibid.*, p. 37 to 39.

Manuela

Manuela was a Salvadoran woman of limited resources who, after suffering an obstetric emergency, was sentenced to 30 years in prison for aggravated homicide. When homicide is classified as aggravated, the sanctions increase.

Since 2006, Manuela suffered from constant headaches, nausea and generalized pain. However, the hospital never performed studies to diagnose her. As such, she did not know what illness she had, but it continued to worsen. Two years later, when she went to the latrine, she felt something come out, and lost consciousness. Her family took her to the hospital, where she was reported to the police for an alleged abortion. Handcuffed to the bed, still convalescing and without a lawyer present, Manuela was interrogated by the police.

Carmen, Manuela’s mother, was threatened with prosecution if she did not tell them where the fetus was, and Juan, her father, who does not know how to read or write, was forced to put his fingerprint on a document whose contents were never explained to him, and which turned out to be a criminal charge against his daughter.

The required formalities regarding the detention of Manuela’s and preventive custody were not fulfilled. Once sentenced, she could not appeal the ruling because she met her lawyer on the same day of the hearings. Her parents did not receive information about her process or her health status. In addition, each time Carmen went to prison to visit her daughter, she was the victim of unhygienic vaginal and anal inspections, which psychologically affected her and forced her to stop visiting Manuela. A victim of lymphatic cancer, Manuela died during her stay in prison, where she was never given the proper treatment for her condition. Her parents assumed the responsibility of her children.

There are many more cases of women like Manuela’s. The Citizen’s Association for the Decriminalization of Therapeutic, Ethical, and Eugenic Abortion in El Salvador led a campaign for the release of “The 17”: women who were sentenced for abortion despite having suffered obstetric emergencies, and in favor of whom the Association filed a petition for pardon in 2014. The cases of these women are paradigmatic of the frequent violations of due process: Belen was accused of aggravated homicide after suffering a miscarriage. One piece of evidence presented against her during the trial consisted of bones that were allegedly found in the latrine of her house; however, an autopsy later revealed that they were animal bones.⁹² To condemn Maria Teresa Rivera to 40 years in prison for aggravated homicide, it was enough that she had told her employer —three months before the miscarriage she suffered— that she thought she might be pregnant, evidently inadmissible evidence during a trial.⁹³

92 Amnesty International, *op. cit.*, page 40.

93 *Ibid.*, p. 37.

Beatriz

Another well-known case is that of Beatriz, a young woman from a rural area who lived with lupus. After presenting hypertension, high fever and kidney problems, it was discovered that she was pregnant and that the fetus had anencephaly, a condition incompatible with life. The deterioration of Beatriz's health as the pregnancy continued was such that the medical team in her case indicated that it was of vital importance to perform a medical procedure, since there was a high probability of maternal death, and therefore they requested the authorities to allow such intervention.⁹⁴ Their position was seconded by the Minister of Health. In parallel, Beatriz's legal representatives brought the case before the Supreme Court of El Salvador.

With no response and silence from the authorities, various organizations requested the intervention of the Inter-American Commission on Human Rights (IACHR). Although the IACHR issued precautionary measures to carry out the termination of pregnancy, Beatriz still could not access the service.

The Supreme Court took more than a month and a half to issue its ruling. Due to this delay, the intervention provided to Beatriz was not an abortion as such, but an early cesarean section, which allowed the authorities of El Salvador to affirm that this case did not set any legal precedent in terms of access to abortion in the country. However, during the time they made Beatriz wait, she also fought for her life.

Women's access to reproductive health services, including abortion, allows them to make decisions about when and how to exercise motherhood, which is crucial for the development of their life goals. But beyond this, access to abortion can mean the difference between life and death: in El Salvador, every day 830 women die from causes arising from pregnancy.⁹⁵ With these figures, El Salvador exceeds the average number of maternal deaths in the region.⁹⁶ Timely access to an abortion may have prevented many of these deaths.

Since this restrictive criminal legislation on abortion entered into effect, several international treaty bodies have made appeals to the El Salvador State, including the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social Rights and Cultural and the Human Rights Committee.

On October 11, 2016, Deputy Lorena Peña, of the Farabundo Marti Front for National Liberation (FMLN), presented a bill to the Legislative Assembly to reform Article 133 of the Criminal Code, so that abortion is legal under the following grounds: when the pregnancy poses a risk to the life or health of women, when the fetus presents malformations incompatible with life and in case of rape. However, the legislative period ended in May 2018 without the reform being approved. It should be mentioned that, according to a public opinion survey on abortion in El Salvador carried out in 2017, the public supports allowing women access to abortion under these grounds.⁹⁷

The case of El Salvador stands out in a region where there are restrictive laws on abortion, as well as particularly adverse conditions for girls and women in terms of human rights and reproductive justice. Despite the fact that the situation in Mexico seems more favorable due to a normative framework with legal grounds to access abortion, as well as mandatory human rights standards described above, the gap between the norms and the realities that women live results in stories that are not too far from those of Salvadoran women.

⁹⁴ Dora Cardaci, "Penalization of abortion in El Salvador: the struggle for Beatriz's rights", in *Debate Feminista*, vol. 49, year 25, April 2014, p. 198.

⁹⁵ Seguimos Unidos, *op. cit.*

⁹⁶ Seguimos Unidos, *op. cit.*

⁹⁷ Seguimos Unidos, *op. cit.*



4 / Criminalization of Abortion

The criminalization of abortion not only impacts women who are subjected to criminal proceedings for this crime, but also those who, for different reasons, have unwanted pregnancies and risk having an abortion outside the law, continue an unwanted pregnancy, or even face abuse by health personnel when requesting abortions within the legal framework. Undoubtedly, women criminalized for abortion are the most affected and, therefore, it is essential to understand who and how many they are, and the circumstances under which they were criminalized. To this end, GIRE requested access to public information from judicial authorities to find out how many reports, criminal trials, sentences and individuals are in prison for this crime from January 2007 to December 2016. The authorities' responses reveal general patterns contrary to the human rights standards, but also demonstrate the existing barriers to accessing quality public information with a gender perspective in Mexico.

Criminal Proceedings for Abortion

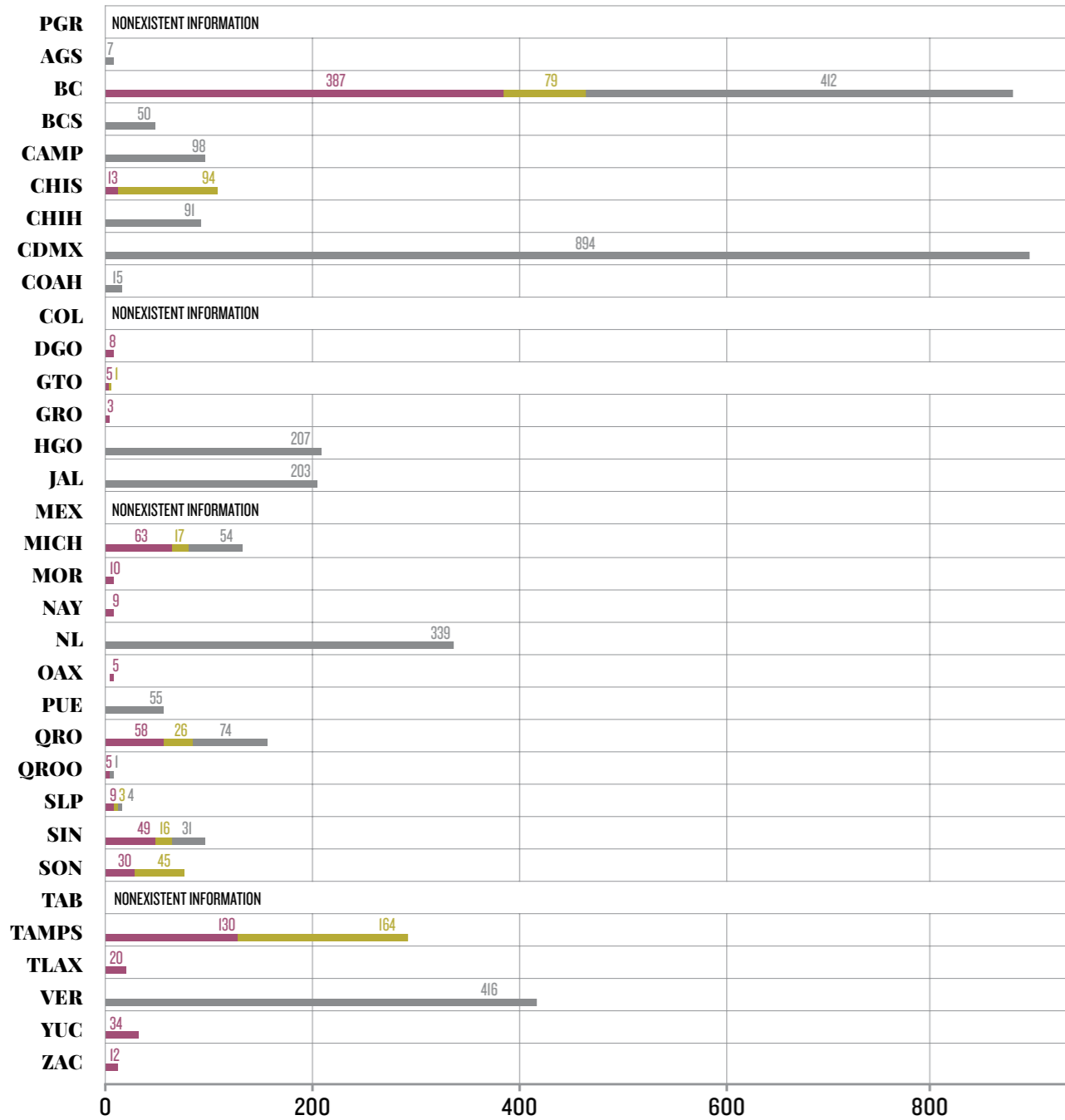
REPORTED BY PUBLIC PROSECUTORS' OFFICES / JANUARY 2007 - DECEMBER 2016

4,246 REPORTS

850 WOMEN

445 MEN

2,951 NOT DISAGGREGATED



Data obtained through requests for access to public information made by GIRE.

Criminal Proceedings for Abortion

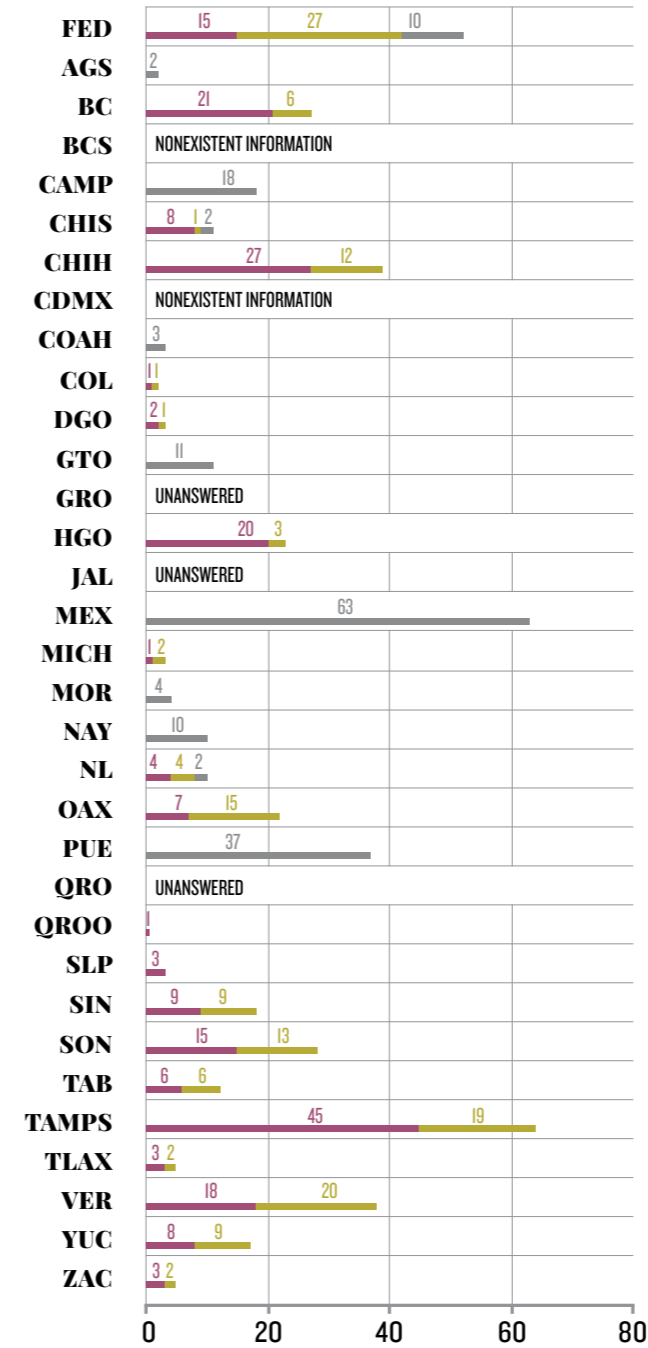
REPORTED BY THE JUDICIAL BRANCH / JANUARY 2007 - DECEMBER 2016

531 CRIMINAL TRIALS

216 WOMEN

152 MEN

163 NOT DISAGGREGATED

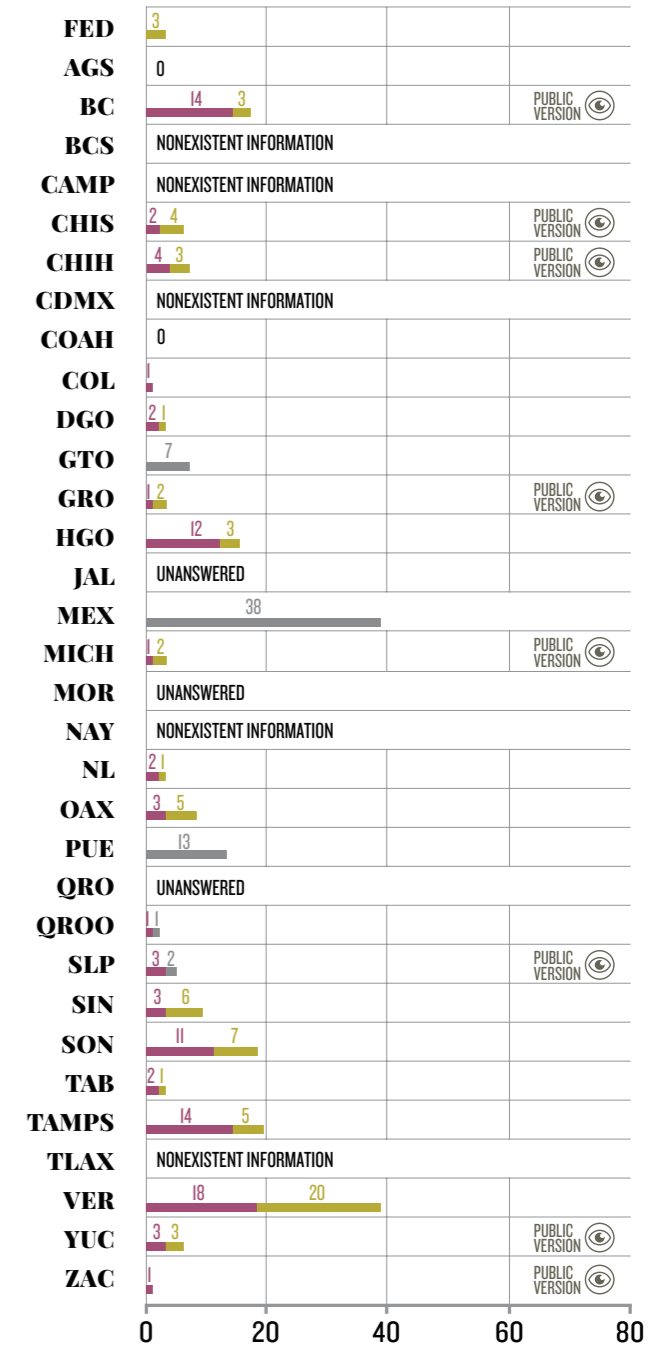


228 SENTENCES

98 WOMEN

69 MEN

61 NOT DISAGGREGATED



4.1 CRIMINAL PROCEEDINGS

From the data obtained, the case of Mexico City stands out as the state that has the highest number of abortion reports in the country, but this information is not disaggregated and therefore it is impossible to know how many correspond to women. Although the figure must be analyzed, taking into account Mexico City's population, the data is striking, as it is the only state in the country where voluntary termination of pregnancy before the 12th week of gestation is legal.⁹⁸ The Mexico City prosecutor reported no information regarding criminal trials and sentences related to abortion, so there's no way of knowing how many of these reports were actually reviewed by a judge to issue a ruling. That is, the information shows us that the reports for abortion in Mexico City are the highest in the country, but not whether or not the persons reported have been charged and prosecuted.

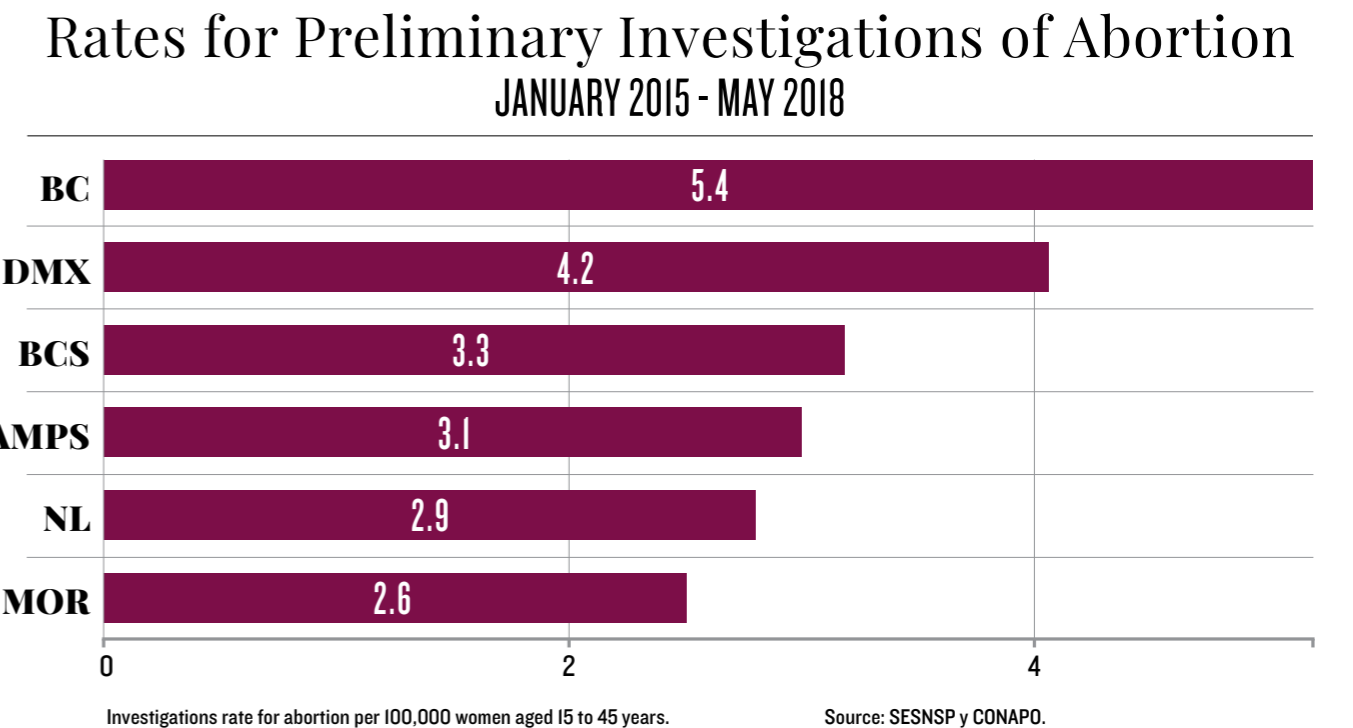
Jalisco also stands out, for having a large number of reports, but it is impossible to understand their outcome, given that the local judicial branch has no record of the number of criminal trials and sentences related to abortion.⁹⁹

Among the states that provided information disaggregated by sex, Baja California, Michoacan, Sinaloa, Tamaulipas and Yucatan stand out, as states with the highest number of abortion reports registered after Mexico City. In all these states, the number of criminal trials is considerably lower as are the number of actual sentences emitted. This suggests that a significant number of reports do not proceed to preliminary investigations, and of those that do, many do not end in a sentence. However, this does not mean that criminalization has not had a significant effect on women's lives.

From the information obtained, several states reported no information regarding women who have had any involvement with the criminal system related to abortion. It also demonstrates that only 17 states have information disaggregated by sex. The states that do not disaggregate the information do not demonstrate what percentage of the registered cases are women, what percentage are men who have facilitated an abortion or another type of circumstances that involve men (for example, cases of homicides of pregnant women that are also classified as forced abortion).

The systematization and access to this information represents an essential transparency and accountability tool that allows monitoring of the State's compliance with its legal obligations and the ability to point out omissions and deficiencies of governmental actions. It is regrettable that the authorities do not have disaggregated information regarding criminal proceedings for abortion and, more so, that in certain cases they declare a general lack of information. Guaranteeing access to information with a gender perspective would, among other things, ensure the availability of data disaggregated by sex, in addition to information related to women's conditions, such as pregnancy being recorded and systematized by different authorities responsible for the issue.

As of January 2018, positive steps have been taken; for example, the National Public Security System Executive Secretariat (SESNSP) included abortion as one of the crimes about which it publishes information on a monthly basis. This could help to make available more accurate diagnoses about the patterns around abortion criminalization in Mexico, without having to face the barriers of using access to public information requests. However, this information is not disaggregated, which makes it impossible to know how many of these individuals are women, their age or if they belong to an indigenous community. According to the published information, we know that between January 2015 and April 2018 a total of 1,666 preliminary investigations were registered for the crime of abortion in Mexico. The states that register the highest rate of preliminary investigations or open investigations for abortion are the following:



If this data is compared with that obtained from requests for access to public information, Baja California, Mexico City and Nuevo Leon stand out in terms of the number of reports and preliminary inquiries or investigations for abortion.

⁹⁸ However, when the population is considered, Mexico City becomes the second state with the highest rate in the country, after Baja California.
⁹⁹ According to the National Census of Administration of Justice conducted by INEGI, between 2014 and 2017 the judicial branches of Mexico City and Jalisco reported having registered four and 12 women accused of the crime of abortion, respectively, as well as 13 and 12 sentences related to this crime. However, the period of time in said census does not allow comparing this information with that obtained through access to public information or demonstrate more details about said criminal proceedings.

Number of Preliminary Investigations for Abortion

2015	2016	2017	2018
512	538	502	569

Source: SESNSP.

4.2 SENTENCES

In addition to the number of women criminalized for abortion in Mexico, it is important to understand the patterns surrounding criminalization. Access to public versions of sentences related to abortion is crucial to outline the route of criminalization, as well as evidence and arguments used by judges to establish their sentences' reasoning and the rationality of the penalties, when applied. Despite the fact that the current Mexican legislation establishes that all rulings of "public interest" must be published, judicial authorities can interpret this however they want, meaning there is little or no clarity regarding this obligation, which is an important tool in understanding the trend followed by the courts in the application and interpretation of laws. Via access to public information requests to judicial authorities made by GIRE, from January 2007 to December 2016, 98 sentences were handed down to women for the crime of abortion.¹⁰⁰ Of that total number of sentences, the following public versions were received:¹⁰¹

STATE	YEAR	FACTS	SENTENCE
BAJA CALIFORNIA	2007	A woman goes to a health center with an abortion in progress, where they notify the public prosecutor. She declares to have used misoprostol to treat an ulcer, with no intention of aborting.	One year in prison. Substitution for \$2,000 fine or conditional release for \$4,000.
BAJA CALIFORNIA	2008	A 25-year-old woman who, after hemorrhaging, goes to a hospital with an abortion in progress. There, health personnel notifies the public prosecutor, who interrogate her.	One year in prison. Substitution for \$5,000 fine or conditional release for \$7,000.
BAJA CALIFORNIA	2008	A survivor of rape reported the crime when she realized that she was pregnant and was informed that she could access a legal abortion. However, she was denied access to abortion for exceeding the three-month pregnancy limit. Later she went to a hospital in a lot of pain and hemorrhaging; the public prosecutor is notified.	One year and six months in prison. Substitution of the penalty for a fine of \$3,000 or conditional release of the custodial sentence for bail for \$6,000.

¹⁰⁰ According to the National Census of Administration of Justice, conducted by INEGI, between 2014 and 2017, 157 women were prosecuted for abortion, of which, 37 were sentenced. This information, however, does not allow knowing the reasoning of their sentences or the profile of the individuals processed and consigned, as well as covering a short period of time. Available at: <http://www.beta.inegi.org.mx/proyectos/censosgobierno/estatal/cnaje/2017/>.

¹⁰¹ Of the total number of sentences received, those included in the table correspond to cases of women accused of having an abortion. All public versions can be consulted in Spanish on the website of this report at: criminalizacionporaborto.gire.org.mx.

STATE	YEAR	FACTS	SENTENCE
BAJA CALIFORNIA	2009	A woman went to a hospital experiencing a high level of pain and an abortion in progress. She was refused treatment and received verbal abuse from the health personnel. She stated that a friend brought a doctor to her home to check on her, that she was not sure she was pregnant and that it was the doctor who gave her misoprostol without her knowledge.	One year in prison. Substitution for \$3,000 fine or conditional release for \$5,000.
BAJA CALIFORNIA	2009	A pregnant woman who, presenting pain and heavy bleeding, went to the Red Cross, where they notified the public prosecutor.	One year in prison. Substitution for \$1,000 fine or conditional release for \$2,000.
BAJA CALIFORNIA	2009	A woman went to a Mexican Institute for Social Security (IMSS) clinic with an incomplete abortion, the social worker notified the public prosecutor, who proceeded to question her.	One year in prison. Substitution for \$1,000 fine or conditional release for \$2,000.
BAJA CALIFORNIA	2011	A 20-year-old woman with a small child went to a hospital with an abortion in progress and was reported by the hospital social worker.	Two years in prison. Substitution for \$5,000 fine or conditional release for \$7,000. Payment of damages to her partner.
BAJA CALIFORNIA	2012	A 19-year-old woman went to a health center with a hemorrhage and an abortion in progress. The social worker reported her and her partner. Both were prosecuted.	One year in prison (for each of the defendants). Substitution of the penalty for \$2,000.
BAJA CALIFORNIA	2012	A 19-year-old woman with two small children and a precarious economic situation stated that she stopped taking contraceptives due to the adverse effects they produced. She went to a hospital with an abortion in progress and was arrested when they moved her to the observation area.	Two years in prison. Substitution for \$4,000 fine or conditional release for \$8,000.
BAJA CALIFORNIA	2012	An 18-year-old woman arrived at the Red Cross with fever, hemorrhage and an abortion in progress. The health personnel notified the public prosecutor, who questioned her at the hospital. Both she and her partner were prosecuted.	One year in prison (for both). Substitution for \$4,000 fine or conditional release for \$8,000.
BAJA CALIFORNIA	2015	A woman with three children and economic difficulties went to a clinic with an abortion in progress. She was reported and placed in police custody. Both she and her partner were prosecuted.	Two years in prison. Substitution for \$4,000 fine or conditional release for \$8,000.
CHIAPAS	2008	A woman went to an IMSS hospital because she was hemorrhaging. There, the gynecologist reported her for suspecting that she had induced the abortion. She stated that she did not know she was pregnant. In fact, she had a diagnosis of primary infertility and was treating it because she wanted to get pregnant. She declared she had taken medication for other medical matters.	Paid \$9,000 bail. Judgment of acquittal.

STATE	YEAR	FACTS	SENTENCE
CHIAPAS	2009	A woman went to the emergency room of the Regional Hospital of Tapachula with hemorrhage and hypovolemic shock. The hospital staff notified the public prosecutor for her arrest. She declared not knowing that she was pregnant and she also mentioned having suffered a fall.	Paid \$10,000 bail. Judgment of acquittal.
CHIAPAS	2009	A woman went to an IMSS clinic with a hemorrhage. Clinic staff notified the public ministry because she arrived with an abortion in progress.	Judgment of acquittal.
CHIAPAS	2010	A 21-year-old woman who, after hemorrhaging, went to the Regional Hospital of Tapachula with an abortion in progress. Hospital staff notified the public prosecutor.	Three months in prison and comprehensive medical treatment.
CHIAPAS	2010	A 21-year-old woman went to a hospital with a hemorrhage. There, they diagnosed her with an abortion in progress and notified the public prosecutor. As soon as she was discharged from the hospital, she was transferred to a cell in the municipal prison. She states that she did not know she was pregnant.	Conviction to prison (the duration is withheld). Benefits granted: treatment while released or community service, partial release and conditional condemnation.
CHIHUAHUA	2009	16-year-old adolescent went to a hospital with an abortion in progress and was reported by health personnel. She declared to have decided to terminate her pregnancy with misoprostol due to her precarious economic situation.	Conviction to eight months in prison. She is granted conditional sentence.
CHIHUAHUA	2011	A woman went to health center with an abortion in progress, and health personnel notified the public prosecutor.	Six months in prison. She is granted conditional sentence.
CHIHUAHUA	2015	A woman with two children who was reported and prosecuted along with her friend for the crime of abortion. The person who filed the complaint was the friend's daughter.	Six and 12 months in prison (it is unknown which sentence corresponds to which defendant). Substitution of the prison sentence for community service.
YUCATAN	2016	A woman went to the General Hospital with an abortion in progress and was reported by hospital staff. The prosecutors questioned her there. She claimed to have sought an abortion because of her financial difficulties.	Six months in prison. Substitution for medical treatment, fine or community service.
ZACATECAS	2009	A woman in a violent relationship suffers a fall, followed by a hemorrhage. She goes to the hospital, where health personnel notify the public prosecutor, who comes to interrogate her.	Four months in prison. Commutation of sentence for \$10,000 and conditional release of sentence.
GUILTY SENTENCES: 18			
ACQUITTALS: 3			

In the previous cases, the statements of the accused women were a crucial component in the judges' rationale in determining their guilt, despite the context in which the abortions were carried out and the authorities' obligation to guarantee the principle of presumption of innocence. The statements made by women during medical emergencies should not have been considered proof of causal link. However, the reasons given by women themselves to consider an abortion or use misoprostol should be analyzed, since they reflect a context of women's human rights violations that the State is obliged to address and resolve: lack of access to quality sexual and reproductive health information and contraceptives, contexts of family violence, experiences of abuse and sexual violence, and precarious economic situations, among others. Some of them claimed to have used misoprostol without knowing that it would cause an abortion; others had no knowledge of the pregnancy at all. All of the above must be considered by judges in order to respect, at all times, due process standards from a gender and human rights perspective.

The sentences also demonstrate that, in most cases, women —some of them minors— are reported by hospital staff, who interrogate them during medical emergencies and act based on gender stereotypes when providing services to women who arrive with an abortion in progress. That is, the high number of women reported may be due to the fact that health personnel, faced with misinformation regarding their obligations, or for fear of being criminalized themselves, choose to report women if at all suspicious of the circumstances, even before providing them with necessary medical attention. It is not difficult to imagine the effect that may have on a woman who is reported and forced to confront the State's criminal apparatus to prove her innocence.¹⁰²

Additionally, in several cases, convictions were handed down despite insufficient evidence to effectively establish the causal link between the women's behavior and the abortion. For example, when women had suffered an accident or fall prior to a miscarriage, which was not taken into account by the judge when determining guilt.

In the case of Baja California, a state that stands out for high numbers of women reported and prosecuted for abortion, most of the criminal cases were based on self-incriminating testimonies made in medical emergency contexts, under pressure, with services contingent upon their sharing of information, and medical staff bias not based on evidence. To the contrary, cases such as those in Chiapas must also be noted, in which acquittals were handed down due to insufficient evidence, which constitutes a positive example of judges who refrained from determining guilt based on discriminatory stereotypes.

The obtained sentences demonstrate the relationship between lack of access to grounds for legal abortion and the criminalization of women. For example, in one of the Baja California cases, a survivor of rape was convicted of the crime of abortion after being denied access to legal abortion after rape because she exceeded the gestational limit established by the state's penal code. With respect to sexual violence survivors, the lack of harmonization between some penal codes and federal regulations places women living in certain states at a disadvantage, as they face barriers to abortion access to which they would be entitled if they lived in another state. In this sense, it is urgent that said laws be modified, and that health personnel know and comply with their obligations to provide abortion services for rape survivors without requesting additional requirements; in addition to raising awareness on the issue, to avoid behaviors such as verbal abuse from health providers, among other issues.

¹⁰² When analyzing the sentences, it could be verified that the principle of presumption of innocence was never guaranteed with respect to women who were sentenced.

¹⁰³ An example of a sentence of this type from the state of Baja California (2011) can be consulted in Spanish in criminalizacionporaborto.gire.org.mx. To learn more about the different types of sanctions, see chapter 2 of this publication.

With regards to penalties, the disproportionate effects generated by prison sentences, together with the payment of economic sanctions such as a fine, should be considered, especially since—in general—the women whose sentences we had access to come from contexts of economic marginalization. The cases in which the judge established the payment of damages to a third party also stand out.¹⁰³

While the sanctions alone are onerous for these women, it is necessary to consider the range of difficulties that women face after having been criminalized for abortion. These difficulties include negative social effects on their family and community, the difficulty of recovering custody of their children after a period of imprisonment or the economic and material consequences of having a criminal record.

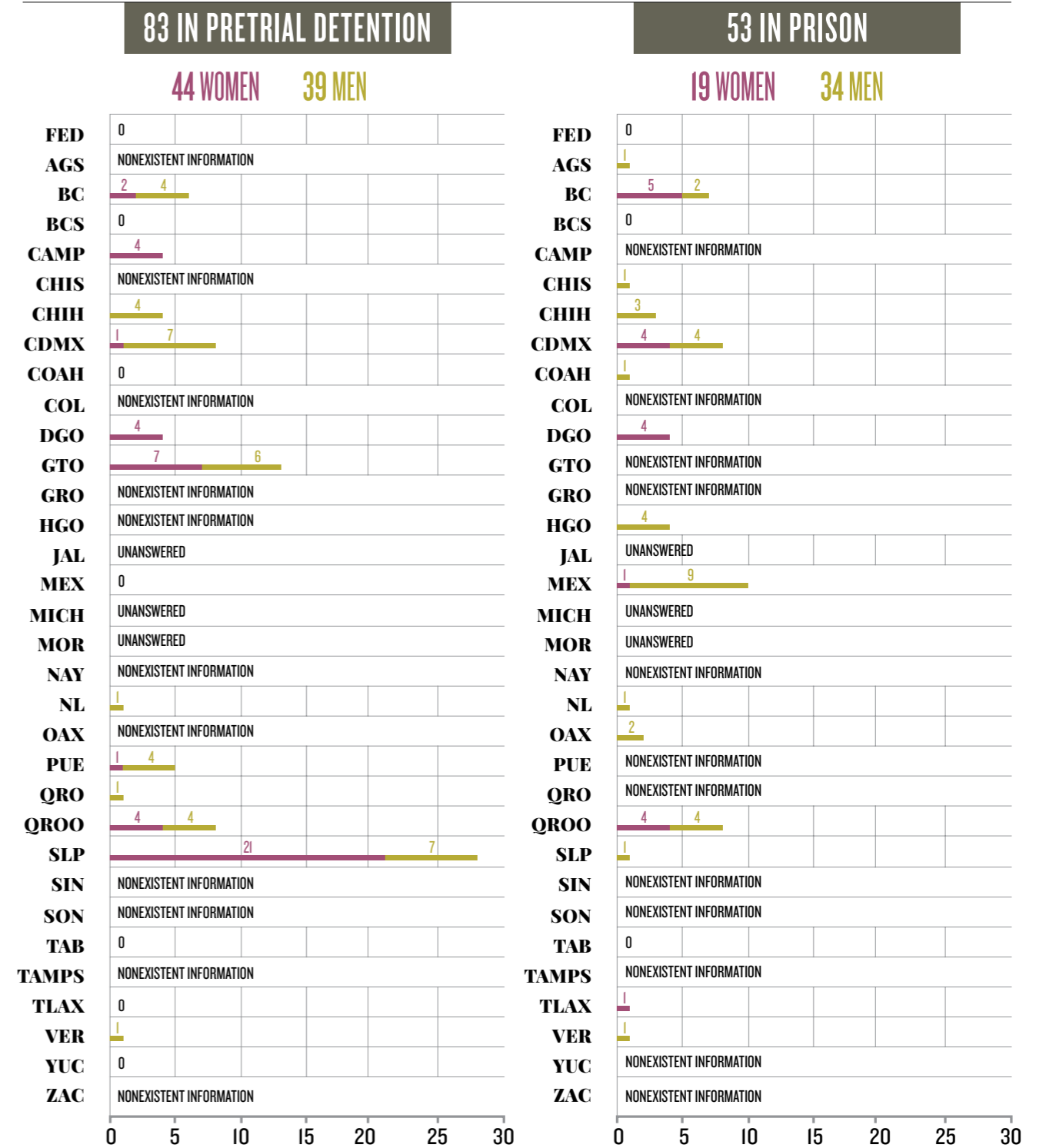
4.3 PEOPLE IN PRISON

According to the 2016 National Survey of the Prison Population, 52.1% of the women in custody in Mexico reported that the prosecutor who interrogated them did not identify his or herself as an authority; 38.2% did not tell her what they were accusing her of and 52.9% reported that police or authorities pressured her to give another version of the facts. Likewise, of the women in prison surveyed, 71.2% reported that they were not allowed to contact anyone after being interrogated by the police and 39.8% were not evaluated in terms of health, even though many of them were interrogated in hospitals or placed at the disposal of the public prosecutor immediately after an obstetric emergency, prioritizing the criminal process over their health.¹⁰⁴

In response to public information requests made by GIRE, the public security ministries reported having record of 83 people in pretrial detention for the crime of abortion, 44 of which are women; as well as 53 people in prison, among which, 19 are women, corresponding to the period from January 2007 to December 2016. Of the states that reported the highest number of women in prison—Baja California, Durango and Quintana Roo— only the first one also appears among the states that reported the highest number of reports, trials and sentences. In comparison, a significant number of states reported not having the requested information, which makes it difficult to understand the situation at a national level regarding the total number of women incarcerated for abortion.

104 INEGI, National Survey of the Prison Population (ENPOL) 2016. Available at: http://www.beta.inegi.org.mx/contenidos/proyectos/encotras/enpol/2016/doc/2016_enpol_presentacion_ejecutiva.pdf

People in Prison for Abortion REPORTED BY PUBLIC SECURITY MINISTRIES / JANUARY 2007 - DECEMBER 2016



Data obtained through requests for access to public information made by GIRE.

The authorities of 12 states¹⁰⁵ reported not knowing the number of women who are serving prison sentences for abortion. The above is problematic taking into consideration that the State is responsible for safeguarding the life and integrity of every inmate in its detention centers. This responsibility can be difficult to fulfill if the State does not know or have information regarding these individuals, which may facilitate the perpetration of human rights violations of the inmates. This data is necessary for legislative and public policy decision-making, and its absence suggests a lack of interest on part of the government in knowing the situation around women criminalized for abortion and, therefore, the lack of rationality for the punishments imposed on women.

4.4 CASES REGISTERED, DOCUMENTED AND ACCOMPANIED BY GIRE

The following cases have been registered, documented and accompanied by GIRE from 2007 to date. These cases present patterns similar to those documented by other organizations, those obtained from public sentences and even cases documented in countries with more restrictive legislation than the Mexican one regarding abortion criminalization. These cases demonstrate the impact that criminalizing abortion can have on women's lives and the urgency of accompanying them in their search for justice.

REGISTERED¹⁰⁶

VALERIA	—	QUERETARO	2007
ANGELES		SAN LUIS POTOSI	2008
ALEJANDRA	—	CHIHUAHUA	2009
BERTHA		ZACATECAS	2009
LLUVIA	—	HIDALGO	2009
SOFIA	—	CHIHUAHUA	2009
JIMENA	15 YEARS	MORELOS	2011
VERONICA	—	CHIHUAHUA	2011
NATALIA	20 YEARS	SAN LUIS POTOSI	2011
MIGUELINA	20 YEARS	MICHOACAN	2011
KARLA	33 YEARS	TAMAULIPAS	2011
JULIETA	—	SAN LUIS POTOSI	2011

¹⁰⁵ Campeche, Colima, Guanajuato, Guerrero, Nayarit, Puebla, Queretaro, Sinaloa, Sonora, Tamaulipas, Yucatan and Zacatecas. The lack of information includes both men and women imprisoned for abortion.

¹⁰⁶ For cases classified as *registered*, it was not possible to directly contact the victim or her family members. GIRE registered them from various sources such as the media, telephone calls or information provided by authorities or other civil organizations.

ALICIA	—	SAN LUIS POTOSI	2011
ILSE	—	QUINTANA ROO	2012
GISELA	18 YEARS	QUINTANA ROO	2012
MAGDALENA	—	PUEBLA	2012
CLARA	—	QUINTANA ROO	2012
BRENDA	—	SAN LUIS POTOSI	2012
SONIA	15 YEARS	BAJA CALIFORNIA	2012
ILEANA	—	OAXACA	2012
PAULA	—	SAN LUIS POTOSI	2013
JACINTA	35 YEARS	DURANGO	2013
LUZ	19 YEARS	CHIHUAHUA	2013
LUISA	—	YUCATAN	2013
GABRIELA	—	CHIHUAHUA	2013
MARIA	23 YEARS	SONORA	2013
SANDRA		YUCATAN	2013
CELIA	20 YEARS	VERACRUZ	2013
ESTHER	—	BAJA CALIFORNIA	2013
EMILIA	—	YUCATAN	2013
AZALEA	—	CHIHUAHUA	2013
BARBARA	28 YEARS	TAMAULIPAS	2014
DELIA	—	AGUASCALIENTES	2016
FRANCISCA	—	SAN LUIS POTOSI	2016
ROBERTA	20 YEARS	SAN LUIS POTOSI	2017
CLARA	23 YEARS	BAJA CALIFORNIA	2018
ANA MARIA	—	COAHUILA	2018
ARACELI	—	HIDALGO	2018
JOAQUINA	22 YEARS	COAHUILA	2018

DOCUMENTED¹⁰⁷

GABRIELA / MICHOACAN, 2011

Gabriela had been dating her boyfriend for six months when she found out she was pregnant. He wanted her to continue the pregnancy, but Gabriela decided to terminate it in Mexico City. She called ILE-TEL, where she was given information about Fondo Maria who offered her accompaniment. The procedure was carried out without any problems and Gabriela returned home the same day.

When she told her partner that she had had an abortion, he threatened to tell her whole family. They continued the relationship, but he often reproached her for the abortion; he was easily disturbed and, on two occasions, was physically violent with her. Gabriela decided to end the relationship with him and, because he became very aggressive, she called the police to take him away.

The next day, he reported Gabriela for having performed an abortion, and a preliminary investigation was initiated, despite the fact that he indicated in the report that the abortion had taken place in Mexico City. The police, accompanied by Gabriela's ex-boyfriend, went to her house to ask her to appear before the Public Prosecutor's Office because she had been reported.

When she arrived at the Public Prosecutor's Office, she was interrogated without a defense lawyer. The police insulted her and pressured her to confess that she had had an abortion in Michoacan. However, she did not give in to the pressure. She presented proof that the termination was carried out in Mexico City and they released her.

CATALINA / YUCATAN, 2011

Catalina was 21-years-old when the events occurred. She was a single mother and lived with her father, a bricklayer. In May 2011, she decided to take an emergency contraception pill and, because her cycle is usually irregular, she was not worried when she was late. It wasn't until July that she began to notice physical changes that made her think about the possibility of being pregnant. When a pregnancy test resulted positive, Catalina talked to her partner who said he did not want to have children.

Catalina's boyfriend said he had talked to a doctor who was going to "take care of the situation," but he never mentioned the word abortion. Since he had shown himself to be violent with Catalina, both physically and verbally, she feared that he would be upset and did not ask any more questions. In August, he brought her some pills that he got from a friend of his, who was a doctor. He indicated that she had to place them vaginally and that if she presented any complication she would have to go to that same doctor.

Catalina did what she was told and hours later she had severe pains in her belly. A neighbor took her to the doctor recommended by her boyfriend, but when he would not attend to her, they went to a local clinic, where a curettage was performed.

She was reported by the social worker and the next day she was interrogated by the police without the presence of a defense lawyer, and still under the effects of anesthesia. Catalina spent three days in the hospital and, when she was discharged, she was escorted to the local Public Prosecutor's Office. There they took her preliminary statement without allowing her talk to her defense lawyer.

Catalina was placed at the disposal of the Sixth Court, where she returned to render her statement without the lawyer her father had hired, and the judge established a bail of \$27,000 Mexican pesos, plus \$170,000 pesos for the reparation of damages. These amounts were never explained or justified. Catalina's father obtained the money for the bail and had to mortgage his house to pay the rest.

¹⁰⁷ For cases *classified* as documented, at least one face-to-face interview was conducted with the victim or her family members and in certain cases, files and documents were reviewed, but, for different reasons, no further action, legal or otherwise, was taken by GIRE.

CARMINA / CHIHUAHUA, 2013

Carmina was 18-years-old when she found out she was pregnant, but she did not want to carry her pregnancy to term because she knew that, with all the problems she had with her parents, they would not support her. She was eight-weeks pregnant when she obtained misoprostol pills at the pharmacy for an abortion. Hours later, she presented a hemorrhage and went to the General Hospital for medical care.

From there, they transferred her to the Maternity Center, where police arrived and Carmina was taken away. In the Public Prosecutor's Office, they set a bail of \$10,000 pesos and kept her for three hours.

Carmina's mother tried to talk to the prosecutor to stop the process, but he replied that they were going to present the case to the judge, that the best he could achieve, instead of six years prison, was for her to keep her freedom but go to court every 15 days to sign in. When Carmina was released, she was not informed that the criminal proceeding was still open, nor was she given a receipt for the bond payment. The case was accompanied by a local organization.

DANIA / PUEBLA, 2013

Dania lived with her mother and helped her sell tamales. She studied nursing, but abandoned her studies for economic reasons. In June 2013, she found out that she was pregnant. Her partner, with whom she had been for a year, showed no excitement upon hearing the news. Dania found out later that he was married. She was afraid, but she thought she could manage by herself.

Every morning, Dania got up early to help her mother and returned around noon to do house work. One October afternoon, however, she began to feel strong pains in her belly and walked to the hospital, which is 20 minutes from her house. The doctor performed an ultrasound and prescribed ampicillin, without giving her a diagnosis, and sent her home.

Later, her partner called her to ask about her health. He told her that the doctor who treated her was an acquaintance of his and that he had told him about her medical visit.

At night she began to feel pain and asked her mother to accompany her to the hospital. There they gave her medication for pain and they performed a check-up. The medical staff said they found two misoprostol pills while checking her. According to her testimony, they pressured her asking if she had done or taken something to have an abortion.

Dania was referred to the Women's Hospital in Tehuacan where she gave birth to an underweight newborn with breathing difficulties. The medical staff intervened and managed to keep him alive. He was transferred to the pediatric ward where, one hour later, he died. Dania was transferred to recovery and was discharged two days later.

In Dania's medical file, it was established that she had used pills, "apparently" misoprostol, to cause an abortion, although there is evidence of an external consultation with a medical note that indicates that Dania had a vaginal infection and had been treated with metronidazole, which could correspond to the pills found in her body.

ACCOMPANIED¹⁰⁸

LAURA / PUEBLA, 2011

In October 2011, Laura got pregnant. She and her partner decided to continue with the pregnancy, but sometime later, the relationship ended. He suggested that she terminate the pregnancy and gave her some misoprostol pills. That night, Laura felt severe abdominal pain and asked her mother to accompany her to the hospital. They took a long time to treat her even though she was in great pain. The doctor ordered urine and blood tests, but did not inform her of her health status.

Laura continued to feel immense pain and, in the midst of all this, the doctors asked her what she had done and questioned the possibility of an induced abortion. She admitted to using misoprostol vaginally, thinking that they would give her some analgesics. Only then, the medical staff gave her the attention she required. A doctor checked the heart rate of the fetus and sarcastically commented that the pills had not “worked.”

Laura had strong contractions that led to a premature birth. The intern doctor and a nurse showed her the fetus “so that it would not be forgotten”, and issued a death certificate for it. After the expulsion, they administered anesthesia. The social worker told her that they would place an Intrauterine Device (IUD), arguing: “If you did it once, you’re going to do it again.”

Without giving her more information about her health status, they put her at the disposal of a doctor who came from the Public Prosecutor’s Office who took her statement in a corridor, without a lawyer or a person she trusted by her side. She was in the custody of the Public Prosecutor’s Office, and noticed that the custodian told those who passed by that she was being reported for homicide.

When she was discharged, five police officers transferred her to the Public Prosecutor’s Office, without allowing her to read her arrest warrant. She had cramps and bleeding. The medical examiner touched her belly and said she had nothing. They put her in a separate jail cell without giving her pain medication.

The public prosecutor agents told the family that Laura could leave if she covered a bail of \$100,000 pesos. The family argued that they did not have that amount, so they reduced it to \$20,000 pesos.

GIRE learned about the case through an allied lawyer. With the support of GIRE, Laura covered the bail and the fees for a criminal lawyer, who demonstrated, through an expert psychological test, that Laura was not in a state of mind to answer the medical questions at the time of the intervention, thus nullifying the validity of her confession.

CLAUDIA / STATE OF MEXICO, 2011

Claudia was 16-years-old and did not know that she was pregnant because, in general, her periods had always been irregular. She never did a pregnancy test. Her neighbor recommended some pills to “make her get her period,” so she got them. Claudia took the pills as explained by the neighbor and, after a few hours, began to feel a strong pain in her belly. When she could not stand the pain any longer, she asked her mother to take her to the emergency room. Her mom thought it was her appendix or stomach.

When she arrived at the hospital, a doctor checked Claudia, did an ultrasound, told her that she was 18-weeks pregnant and asked if she had tried to have an abortion. Claudia said she did not know that she was pregnant and that she did not want to have an abortion, but that she had taken some pills. The medical staff informed the public prosecutor. The agents arrived early and spoke to Claudia alone. They took her statement without the presence of a lawyer or someone she trusted.

During her time in the hospital, neither Claudia’s mother or the lawyer from GIRE were allowed in. The medical staff argued that Claudia was in detention, and that authorization from the public prosecutor was needed in order to talk to her. All this despite the fact that the gynecologist who attended her said that she was not being guarded and that they could not see her because she was in the area of labor and delivery, which is a restricted area.

GIRE accompanied Claudia’s family to process an injunction for isolation before the district courts in Naucalpan and, at dawn the next, day the hospital was notified. By the time the lawyers could see her, she had already given her statement.

Finally, the public prosecutor indicated that the preliminary investigation would not be presented and that it would be closed since there was not enough evidence. It took Claudia two weeks to regain her freedom.

CARLA / BAJA CALIFORNIA, 2011

Carla was 32-years-old when she was taken to a public hospital to be treated for a hemorrhage that occurred in the bathroom of the supermarket where she worked. The store’s staff had called an ambulance that arrived accompanied by authorities from the local Public Prosecutor’s Office, who initiated a preliminary investigation against her for abortion, presumably with misoprostol pills. They kept Carla as a detainee and in custody while she was in the hospital.

Carla had to pay bail of \$8,000 Mexican pesos to obtain her provisional release, even though the medical report specified that it was a molar pregnancy and a miscarriage. She never claimed to have taken the pills nor was there evidence to prove it. A year after the complaint was filed, with GIRE’s support, the judge was able to issue a writ of liberty with reservations of law. This means that, although it was determined that there was no evidence to initiate criminal proceedings, the Public Prosecutor’s Office could resume the investigation to gather more evidence, and, if found, subject her to criminal proceedings.

GIRE worked on Carla’s legal defense together with a criminal lawyer and promoted the final closure of the matter.

FABIOLA / PUEBLA, 2011

Fabiola was a single mother of a three-year-old girl. After her first delivery, she had been recommended to administer an injection of human immunoglobulin anti d in case she wanted to get pregnant again, given that her blood is rh negative. However, this could not be applied due to lack of economic resources.

When she was 22 years old, she knew that she was pregnant for the second time and in the hospital, she was told that her pregnancy was high risk due to her blood type. The doctor said he doubted the viability of the fetus and that he was worried that the pregnancy could put Fabiola’s life at risk.

Near the 7th week of pregnancy, one Saturday at dawn, Fabiola presented a hemorrhage and went to the health center, where she underwent a curettage. The gynecologist who treated her said she had found misoprostol pills and the social worker reported Fabiola for abortion.

The public prosecutor did not want to initiate legal action against her, but the social worker insisted that she should be charged so that an investigation was initiated. She was assigned a public defender and Fabiola gave her statement, without a lawyer advising her. The next day she was sent to the judge.

¹⁰⁸ The cases classified as *accompanied* are those in which GIRE took some action to help the victim or her relatives to access their rights or in their search for justice. This includes, though is not exclusive to, legal actions, such as legal stays and complaints before human rights commissions.

Fabiola's mother hired a private lawyer, who argued that the termination of her pregnancy was framed under legal grounds in the state —danger to the woman's life— and Fabiola was released.

GIRE provided psychological, medical and legal support in the case, as well as financial support for the trial costs and defense lawyer fees.

REBECA / HIDALGO, 2012

Rebecca, 33-years-old, had a planned pregnancy of eight or nine weeks. She strictly followed her prenatal check-ups, because she had a high-risk pregnancy, and wore an IMSS wristband that allowed her access to emergency medical services. One morning, in February 2012, she felt feverish due to a respiratory tract infection. When she took a shower to lower the fever, she was bleeding and shed two clots, so her mother decided to take her to the hospital. The doctor who examined her said that she had used an abortion pill and told a nurse to call the public prosecutor, while also preventing Rebeca from speaking with her mother.

Rebeca was subjected to criminal proceedings and accused of attempted abortion. She was deprived of her liberty in a prison for 19 days under precarious and unhealthy conditions, which deteriorated her health.

Upon hearing about the case, GIRE covered the bail so that Rebeca could obtain provisional liberty, and filed a legal stay against the prison sentence, which was resolved the following January with a favorable ruling.

The public prosecutor filed an appeal for Rebeca's case, but in October 2013, the final decision was obtained in her favor so she could request the return of the bail granted.

ADRIANA / DURANGO, 2012

Adriana, 26, was kidnapped and raped by her ex-partner, who for years, committed violence against her. The Public Prosecutor's Office rescued her from the kidnapping and arrested the aggressor. However, they did not provide information on emergency contraception nor her right to legally terminate a pregnancy due to a rape.

Upon learning that she was pregnant as a result of the rapes she suffered, Adriana requested a legal abortion, with the support of GIRE. She faced several obstacles, such as the lack of objective and up-to-date information on the part of the medical examiner, the request for several medical tests to prove the pregnancy, and unjustified delays for authorizing the termination. The prosecution took their time in issuing the authorization and ten days passed so that she could no longer access the procedure, since public health services did not have trained and available medical personnel. At that time, Adriana received death threats from her ex-partner, without the Public Prosecutor's Office granting her any protection. Months later, after death threats against her and her family, and pressured by her ex-partner's lawyer, Adriana retracted the accusations so he could "go free." The Public Prosecutor's Office then, instead of investigating the threats and granting protection measures for Adriana and her family, accused her of the crime of false statements and abortion, and also requested compensation for the damage caused.

Adriana remained in detention for a while. In prison, she received conjugal visits from her attacker and had a second pregnancy. Also, at this time, she lost custody of the child she had from a previous partner. Adriana lived in a state of severe psychological affectation, and facing a legal process without the necessary protection measures. The authorities, far from guaranteeing her human rights, revictimized her and promoted institutional violence.

ANGELA / STATE OF MEXICO, 2012

Angela is an Otomi woman who in 2012 was 29-years-old. She lives in conditions of extreme poverty in the State of Mexico and on several occasions was a survivor of rape perpetrated by her ex-partner. One day at work, while carrying corn to the mill, she felt severe pain in her abdomen and went to the local public hospital due to a hemorrhage. There she was reported by hospital staff, who suspected that an abortion had been induced.

The police detained her and transferred her to the Public Prosecutor's Office, where she remained for 48 hours. A ministerial investigation was initiated against her for the crime of abortion, allegedly committed by the intake of misoprostol pills. GIRE provided legal advice and accompanied her to verify that, in effect, there was no evidence and that the Public Prosecutor's Office could not proceed against her. Finally, the public prosecutor decreed her conditional freedom for lack of sufficient elements that could prove an induced abortion.

HILDA / SAN LUIS POTOSI, 2012

Hilda was an 18-year-old woman from a low-income family. In July 2009, after fainting accompanied by malaise, cramping and vaginal bleeding, while performing domestic chores, she arrived at the Tamuin Community General Hospital accompanied by her sister and mother.

According to the clinical file, she had a pregnancy of 6.1 weeks and had arrived with an "incomplete induced abortion", so the hospital staff informed the public prosecutor, initiating the corresponding preliminary investigation. During the seven hours that she stayed in the hospital, Hilda was guarded by the police and, later, she was transferred to the "cells", where she stayed one night. They released her the next day for lack of evidence.

The investigation, nevertheless, remained open without her knowledge, which is why three years later a detention order against her was issued. The police arrested her again and moved her to the penitentiary center, where she remained for about 20 hours. She was subjected to criminal proceedings accused of having caused a medical abortion. Hilda had to assume the payment of \$3,000 Mexican pesos for bail to obtain her provisional release. GIRE learned about the case through the media and contacted her to offer legal advice. She agreed and GIRE assumed her defense.

On April 5, 2013, the judge sentenced Hilda to one year in prison for abortion. Hilda appealed this sentence, which was revoked on August 23 of that year, due to due process violations that were presented in the trial. In addition, the Fifth Joint Chamber of the Supreme Court of Justice of San Luis Potosi considered that her criminal liability was not proven since the cause of the abortion had not been determined.

In turn, the San Luis Potosi State Human Rights Commission initiated a complaint procedure for the case, and issued Recommendation 25/14 in which it recognized that the Public Prosecutor's Office and State Health Services violated her human rights to legality, legal security and due process.

However, the recommendation was limited to violations of due process and did not recognize that Hilda's human rights to equality and non-discrimination in relation to the right to health were violated as well, or that she had been subjected to cruel and inhuman treatment. In addition, the recommendations did not establish non-repetition measures focused on the structural conditions that led to her criminalization.

GUADALUPE / QUERETARO, 2013

Guadalupe was 23 years old and lived with her six-year-old son when she was sexually assaulted in November 2013. She decided not to file a report because she did not know how the procedure worked, distrusted the public prosecutor and feared reprisals. She took an emergency contraception pill the day after the rape, but soon after discovered she was pregnant. One morning in early December, Guadalupe felt abdominal pain, bleeding and vomiting. Her father took her to the emergency room of the IMSS hospital. There she was the victim of scolding and shouting from the medical staff, in addition to not being given any pain medication.

Guadalupe left the hospital that same day, without knowing that the staff that attended her had given notice of her case to the public prosecutor. A month later, she received a phone call from someone who identified himself as a police investigator, and told her that she had to come forward to testify. Later, police investigators went to her home in order to take her to testify. She had never received a formal summons. Unofficially, she was informed that the investigation against her was at an early stage. Represented by GIRE and a member of RADAR 4th—a network of lawyers in all the country—, Guadalupe went to give her statement.

In the Public Prosecutor's Office, she learned that there was no evidence in her file of an induced abortion. The doctor, on whose testimony the case was based, did not clearly remember the facts that led him to report and even acknowledged not remembering Guadalupe. It was requested that the preliminary investigation be closed, since there was no evidence against her.

In November 2014, the investigation was filed definitively, due to lack of elements to prove the crime.

VIVIANA / MEXICO CITY, 2013

Viviana, a married woman from Mexico City, had a high-risk pregnancy. In the ninth week of gestation, she presented bleeding and went to a private hospital because she was afraid that the Institute for Social Security and Safety for State Workers (ISSSTE) would take a long time to treat her. They performed an ultrasound, diagnosed her with a possible miscarriage and hospitalized her immediately. A few days later she presented intense pain and moved to the Belisario Domínguez Hospital with an abortion in progress. More or less two hours later they told her that she had lost her 16 weeks pregnancy and she was discharged.

On May 8th, the hospital staff gave notice to the Mexico City Public Prosecutor so that appropriate measures could be taken, due to the “abandonment” of the fetal remains.

Additionally, the Public Prosecutor's Office initiated a preliminary investigation for first degree murder. GIRE prepared a letter addressed to the public prosecutor who was in charge of the file so that the hospital staff could report that Viviana's case was a miscarriage that should not be considered a crime. No criminal action was recorded, as there were no elements to attribute responsibility.

PAOLA / AGUASCALIENTES, 2014

Paola was 20-years-old and had a 25-week pregnancy when she developed severe stomach pains. She entered the Women's Hospital of Aguascalientes early one morning in March 2014. There, she gave birth to a boy, who died 15 minutes later due to extreme prematurity. In the hospital, the social worker staff requested the intervention of the public prosecutor. Shortly afterwards, investigative police arrived to question Paola and her father, who accompanied her. Given the uncertainty about her legal situation, Paola requested her discharge from the hospital that same day.

Later, Paola's father hired a private lawyer and was informed that a preliminary investigation had been initiated against her. On June 17, 2014, he received a summons to appear to testify as a witness, without knowing more details of the case. With the accompaniment of GIRE, he requested a copy of the clinical file, where there is no medical note that indicates that Paola induced the premature birth.

However, in September, ministerial police went to Paola's home with an arrest warrant. It was necessary to file a legal stay to find out the reason why they were looking into the case, without obtaining any information, since the public prosecutor had canceled the corresponding summons and the application for the legal stay was dismissed.

Paola lived in uncertainty about the crime that was imputed to her, until April 2015, when she learned that she was accused of abortion. The criminal judge who heard the case considered that there was insufficient evidence to prove her guilt. However, the public prosecutor insisted on accusing her despite the fact that there was no evidence against her and requested the file back to provide new evidence. The judge agreed to this, and gave a period of six months to submit new evidence. Finally, the deadline expired and the judge decided to close the case.

EUGENIA / YUCATAN, 2014

Eugenia was 20 weeks pregnant when she began to feel sick and decided to go to the O'Horan Hospital. The person who examined her began to scold her immediately, suggesting that she had caused an abortion and began to pressure her to accept that she had done so. That same doctor notified the Public Prosecutor's Office.

She was arrested, detained and prosecuted for abortion and was granted bail of \$5,000 Mexican pesos. GIRE met with the private attorney who took her case and gave him legal advice, in addition to analyzing the clinical file to understand on what evidence they were accusing Eugenia.

As part of her defense, a legal stay was filed, given that Eugenia gave her first statement under pressure without representation, which implies a violation of her human rights; in addition, she was transferred to the detention center without her lawyer or the judge being informed.

After performing an autopsy on the fetus, the coroner stated not to know if it had been a stillbirth or a premature one. GIRE did not participate further in the case.

BEATRIZ / CHIHUAHUA, 2015

In June 2015, Beatriz and her friend were arrested for abortion. The case was made public in the news with the description of the events, the names of both women and their photographs. GIRE contacted them two weeks later to offer legal representation. However, by then, they had already been sentenced, because they had accepted the facts and a summary process followed. Beatriz agreed to meet with the GIRE team to learn about the type of support the organization provides, so GIRE staff traveled to Chihuahua to meet with her at her home. There, she narrated that she had been a victim of torture by the police in the Prosecutor's Office where she remained for 48 hours. From there, she was transferred to the detention center, where she remained for eight days in critical condition and could not sit up due to the injuries inflicted upon her in the Prosecutor's Office. She appeared in court in a wheelchair, hunched over and very sore.

Beatriz asked GIRE for financial support to deal with the injuries caused to her, as well as companionship each time she had to go sign, during six months, in compliance with the conditional sentence that was granted, since she was very emotionally affected.

With the accompaniment of GIRE, she was able to access psychological therapy through the Executive Commission for the Attention of Victims (CEAV), but it took her four months to be able to return to work, not only because of fear and physical injuries, but because no one wanted to give her a job due to her case's media exposure. This severely affected her economy and her family, which consists of four children, two minors.

ELENA / STATE OF MEXICO, 2015

Elena was 20-years-old and pregnant. Her partner is in the military and works in Queretaro, and when he learned of the pregnancy, offered her to support her financially.

In July 2015, she had heavy bleeding. Her sister-in-law took her to a private doctor to examine her and make sure everything was fine. He told them that he did not have the necessary equipment to do the studies and suggested that they go to the Huehuetoca Hospital, where she was received and checked. There, the social worker notified the public prosecutor by telephone, suspecting that Elena had tried to induce an abortion. In addition, she gave a medical-legal notification to Elena's relatives, telling them that they had to take it to the public prosecutor. This was done and police went to the hospital to interrogate Elena unofficially, ordering the social worker to notify them when they released her to take her to the agency to make her statement. Later, the hospital director said that this was not the protocol they used to inform the public prosecutor.

GIRE learned about the case through Elena's sister-in-law and sent a legal team to visit her. When they arrived, they were informed that she was not in the hospital, because she had been referred to a private laboratory to perform an ultrasound and check the status of her pregnancy.

When she left the hospital, she decided to stay at an aunt's house and asked for GIRE's support to confirm with another doctor that what she had been prescribed in the hospital was correct. She expressed her intention to continue the pregnancy.

GIRE filed a legal stay with the purpose of nullifying the record with which the public prosecutor was informed about Elena's situation. In the end, the prosecution did not initiate an investigation against her because the medical staff said that it was not necessary.

Elena continued her pregnancy. Her partner registered her into the military medical service to be treated there. She said she had no intention of returning to Huehuetoca Hospital.

IRENE / AGUASCALIENTES, 2016

Irene was 21-years-old in May 2016 when she went to the General Hospital of Zone Number One because she had transvaginal bleeding. That same night, the police on duty reported to the public prosecutor's office that Irene was receiving care for an alleged abortion. Thus, Irene had to appear three days later before the state's Fourth Criminal Judge. There, she was charged with abortion, allegedly committed to the detriment of a four-week old embryo. Initially, the judge ordered the provisional release of Irene and established a bail of \$15,000 Mexican pesos. But then he issued a formal prison order that annulled the previous one, finding her guilty of abortion.

In June 2016, Irene, accompanied by GIRE, filed an indirect legal stay against the order for a formal prison sentence and considered unconstitutional article 101 of the Aguascalientes Criminal Code that defines the criminal offence of abortion as: "The death of the product of conception at any time of pregnancy". In January 2018, Article 101 was declared unconstitutional by the Second Collegiate Circuit Court in Aguascalientes for violating the principle of limitation in criminal matters. That is to say, that its wording does not specify the action or conduct with which the crime would be committed.

The District Judge granted the legal stay against a previous ruling, considering that it fails to comply with the principles of justification and motivation enshrined in Article 16 of the Constitution. At the date of this publication, Irene is still waiting for the file against her to be closed so that she can move on with her life.

Among other things, Irene missed opportunities to study abroad through a scholarship because this process prevents her from leaving the country.

ISADORA / YUCATAN, 2017

Isadora is Mayan, 29-years-old and married. She was diagnosed with high blood pressure. She has two children and has lost two pregnancies. In August 2017, she did not worry when her menstruation did not occur because she had never been regular. A few days later, she began to feel discomfort, colic and bleeding. She thought her period was coming and took two painkillers for the pain.

As her malaises did not stop, Isadora and her husband went to the Juarez Hospital (IMSS) in Merida for medical attention. When they admitted her, they only gave her a serum and left her sitting on a bench without any attention. Her husband, desperate, went to speak with the social worker who, annoyed, told him that what they had committed was a crime: apparently, the medical staff assumed that by saying that she had taken two pills, Isadora meant misoprostol, not diclofenac.

The social worker called the Public Prosecutor's Office, and the staff who showed up at the hospital harassed Isadora's husband and had him sign a document that he was not allowed to read. Then, the prosecutor went to see Isadora and interrogated her in a violent manner. She refused to answer the questions.

As the medical attention was conditioned to her "confession" of having induced an abortion, Isadora requested that she be discharged and went to a private medical center to confirm the state of her pregnancy. There she was discharged without any complications, but she could not return to her house because there were cars surrounding it, which worried her. So, she went to an aunt's house.

GIRE learned about the case through a RADAR 4th lawyer and assumed the legal representation of Isadora. The first task was to find out if there was a file against her. Days later, two police officers showed up at her house and asked for her social security number to be included in the file. She refused to provide this information, as they did not have a court order.

It was later learned that the Public Prosecutor's Office had ordered the police to obtain Isadora's social security number because the IMSS had not forwarded the clinical file and, for this reason, the investigation was interrupted. The police took advantage of this visit to try to extort Isadora and his family: they asked for \$10,000 pesos to close the investigation.

Although there was no evidence that Isadora had induced an abortion, the IMSS hospital insisted on it. Therefore, GIRE and Isadora decided to file a legal stay against the social worker for the notification to the public prosecutor, the doctor at Hospital Juarez, and the General Prosecutor of the State of Yucatan to invalidate any act derived of the notice to the public prosecutor. In addition, she was given psychological support since she was very sad and scared because of the whole situation.

At press time for this report, Isadora is still waiting for a resolution regarding her request for protection that will result in the definitive closure of the investigation against her.



5 / Criminalization for Related Offences

In Mexico, women are also accused of crimes such as infanticide or murder, in cases of abortions or miscarriages. Women criminalized for these offences come from similar contexts as those who are criminalized for abortion: precarious economic situations, lack of access to health services, and situations of sexual, family and institutional violence. They are also reported by hospital staff or by their own family members, and face processes plagued by irregularities, due process violations and sentences permeated by gender stereotypes. In addition, they face more severe penalties and more adverse conditions during the judicial process.

Because abortion is generally defined as the death of the embryo or fetus at any time during pregnancy, the criminal proceedings for infanticide or homicide seek to determine that the birth of a newborn occurred, and that the woman deliberately deprived it of life. Authorities generally base this question on the gestational age of the fetus, as well as on the use of forensic tests, such as pulmonary docimasia.¹⁰⁹ In many cases, gender biases and stereotypes play a crucial role in determining the authorities' actions to initiate and monitor a case for this type of crime, therefore violating the presumption of innocence and other due process elements. This situation is worsened by state constitutional reforms to "protect life from the moment of conception" and other efforts to grant legal status to the embryo, which encourage misinformation and prejudice that permeate the work of police, public prosecutors and judges.

¹⁰⁹ Docimasia is a forensic test used to determine if a newborn was born alive. However, this test has been widely discredited by the scientific community, since there are multiple factors that can offer a false positive without the fetus having taken a breath at birth. To learn more about the use of docimasia in cases of abortion criminalization, see Davis, Gregory J., *Determination of live birth versus stillbirth and considerations about birth related injuries*, Kentucky, University of Kentucky, 2014. Available at <https://www.scribd.com/document/272192771/Davis-Docimacia-Amicus> [query: July 21, 2015]. (This document was presented before the Legislative Assembly and the Supreme Court of El Salvador as an Amicus curiae for the defense of women criminalized for abortion in that country).

The judicialization of abortion cases or premature births shows that, far from seeking coherent and proportional sanctions, the motivation behind the actions of public prosecutors and judicial agents is the stigmatization of women and the imposition of exemplary punishments. This threat not only affects those who are accused of these crimes, but it can impose an excessive fear in women with abortions in progress, miscarriages or premature births, leading them to try to hide the situation rather than seek help from health institutions in cases of emergency.

5.1 LEGAL FRAMEWORK

When women face criminal proceedings related to pregnancy and childbirth and are not reported for the crime of abortion, they can be accused of infanticide or first-degree or aggravated murder for reasons of kinship.

In Mexico, the crime of infanticide is defined as depriving a newborn of life in the first hours of life. Currently, nine states include this crime in their penal codes: Coahuila, Morelos, Nuevo Leon, Oaxaca, Sonora, State of Mexico and Zacatecas all consider this definition within the first 72 hours after birth; Guanajuato and Mexico City, within the first 24 hours. The prison sentences for infanticide in Mexico are notoriously less than those for homicide, but greater than those for abortion.

Prison Sentences for Infanticide

MEXICO CITY ¹¹⁰ (article 126)	/	3 TO 10 YEARS
COAHUILA ¹¹¹ (article 190)	/	1 TO 6 YEARS
GUANAJUATO (article 156)	/	6 TO 10 YEARS
STATE OF MEXICO (article 243)	/	3 TO 5 YEARS
MORELOS (article 107)	/	6.66 TO 16.66 ¹¹² YEARS
NUEVO LEON ¹¹³ (article 313 bis)	/	3 TO 7 YEARS
OAXACA ¹¹⁴ (article 308-311)	/	3 TO 5 YEARS
SONORA (article 258)	/	8 TO 20 YEARS
ZACATECAS (article 307)	/	6 TO 12 YEARS

¹¹⁰ Infanticide is considered an extenuating circumstance for the crime of homicide provided that the following circumstances concur: a) the woman must not have a bad reputation; b) she has concealed her pregnancy; c) the birth of the infant has been hidden and it has not been registered in the Civil Registry; and d) the child is not “legitimate”.

¹¹¹ It will be considered that there are “serious causes” when: I. (Serious deformities). When the newborn suffers from noticeable physical deformations severe enough to disturb the conscience of the person responsible or in his or her ability to go against the crime; II. (Rape). When the newborn is the result of a rape; III. (Special Circumstances). When there is one or more circumstances that rationally attenuate the degree of punishability.

¹¹² The article establishes a penalty of one third of that corresponding to first-degree homicide for reasons of kinship, which is 20 to 50 years, and an economic sanction of 750 to 10,000 days fine.

¹¹³ If within the death caused to an infant by its mother, within 72 hours following its birth, the following circumstances concur: i. - that the pregnancy is not the result of a matrimonial union or concubinage; ii. - that the pregnancy was concealed; iii. - that the birth of the infant has been hidden and iv. - that there are reasons of a psychosocial nature that explain the need of the abandoned mother to “hide her disgrace”.

¹¹⁴ In order for infanticide to be considered as committed, the following circumstances must concur: I.- that the mother does not have a bad reputation; II.- that she has hidden the pregnancy; III. - that the birth of the infant has been hidden and has not been registered in the Civil Registry and IV. - that the infant is not legitimate.

Like abortion, infanticide is considered a misdemeanor and accused persons can await trial without detention by paying bond or bail. However, for infanticide to be established (as opposed to first-degree murder), in some cases women must comply with gender stereotypes; for example, accused women should not have a “bad reputation”, they must have concealed the pregnancy and it should not be the result of an “illegitimate” union.¹¹⁵ These conditions, in addition to being based on prejudices and gender stereotypes, lack precision. That is, they mention ambiguous conditions leaving the decision up to the judges to determine these cases based on their personal perspective of the woman’s private life, and others’ social perceptions of her life. In this regard, the Inter-American Court of Human Rights has indicated that:

Ambiguity in the formulation of criminal definitions generates doubt and opens the door to the discretion of the authorities, particularly undesirable where the criminal liability of a person is to be determined and punished with sanctions, which severely affect fundamental rights, such as life or freedom.¹¹⁶

To the contrary, in Mexico, murder is considered a felony, for which there is mandatory application of preventive detention, the impossibility of applying alternative sanctions and the imposition of prison sentences that can reach up to 45 or 50 years. This means that women who are accused of murder after a reproductive process cannot await trial without detention, as they are considered “highly dangerous”.

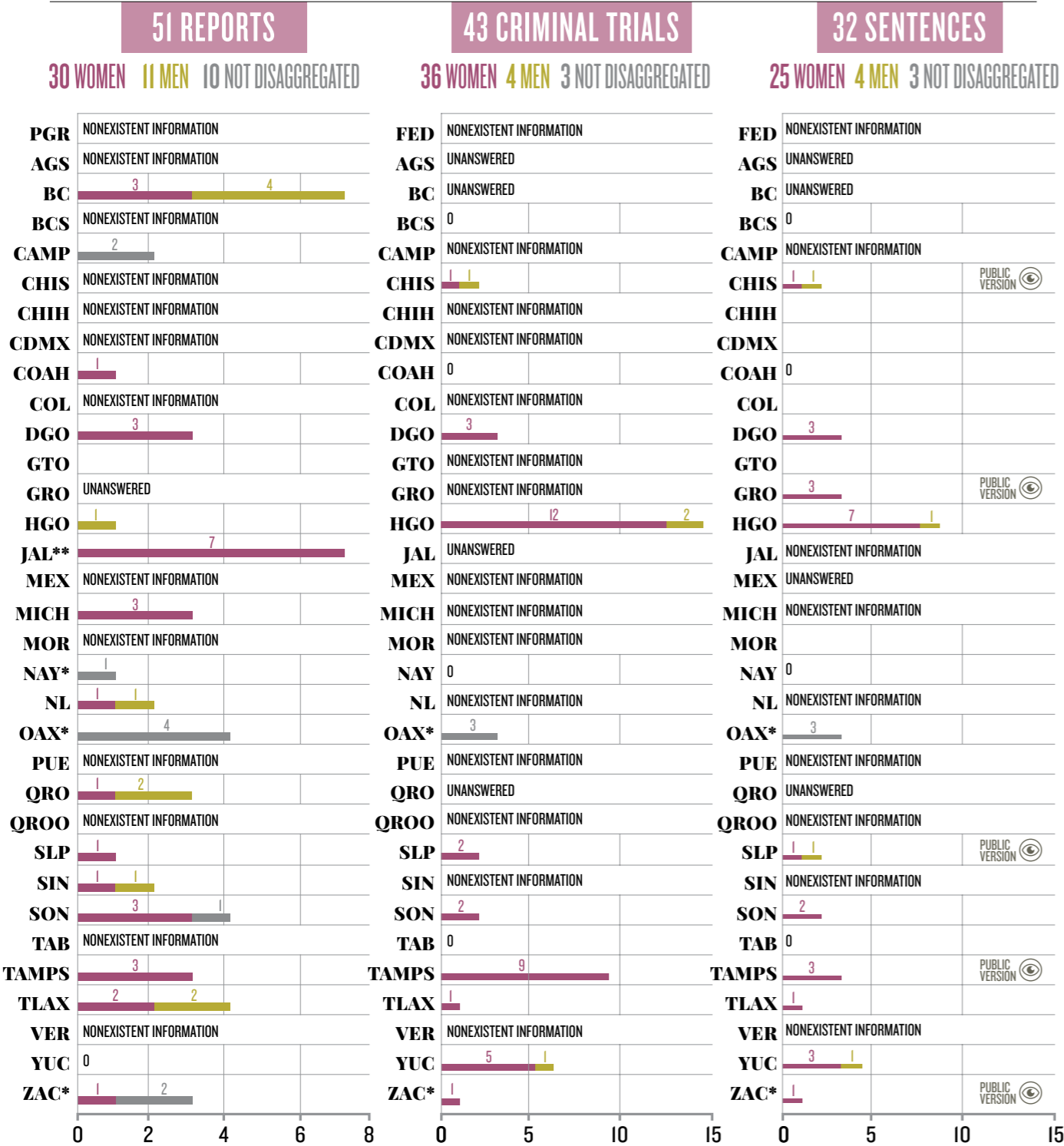
5.2 CRIMINAL PROCEEDINGS

To understand the frequency of this type of criminalization in Mexico, GIRE requested access to public information from various authorities, regarding the number of reports and criminal proceedings for these crimes, as well as public versions of their sentences. For this report, more information was collected from transparency mechanisms than in previous years. However, there were several obstacles that made it difficult to produce a precise diagnosis about the patterns of criminalization. Almost half of the state authorities reported that they do not systematize information related to aggravated murder for reasons of kinship by the age of the victim, and they sent general data on homicides that make it impossible to estimate whether these include cases related to abortions and premature births. The absence of this information makes it impossible to determine how many obstetric emergencies are processed as homicides in Mexico. However, the information obtained allows us to establish some general patterns or trends.

¹¹⁵ This is the case in the penal codes of the State of Mexico, Nuevo Leon and Oaxaca.

¹¹⁶ Case of Castillo Petruzzi et al., supra note 12, paragraph 121, and Case of Lori Berenson, supra note 12, paragraph 125. In addition, the Inter-American Court of Human Rights has emphasized that laws that provide for restrictions “must use precise criteria and not confer unfettered discretion on those responsible for their application.” Cfr. Case of Ricardo Canese, supra note 44, paragraph 124.

Criminal Proceedings for Related Offences REPORTED BY PUBLIC PROSECUTORS AND JUDICIAL BRANCHES / JANUARY 2007 - DECEMBER 2016



Data obtained through requests for access to public information made by GIRE.

*INFANTICIDE. **IN THREE, THE CRIME IS PARRICIDE; IN FOUR, INFANTICIDE.

5.3 SENTENCES

The following sentences were provided by judicial authorities in response to requests for access to public information made by GIRE.¹¹⁷ Although we were unable to obtain public versions of the sentences for all cases in which the judicial authorities reported having convicted persons for these crimes, the information provided allows us to identify certain patterns and point out problematic issues with the way in which judicial authorities deal with these types of cases. However, the lack of access to the criminal proceedings related to these sentences makes it impossible to establish whether there was enough evidence to initiate them, if it would have been more appropriate to charge them for a different crime —such as abortion— and if the established penalties are proportional to the identified conducts. It is worth noting, for example, the case of Guerrero, in which a woman was condemned for “omission of care” of her newborn, who died after a premature birth in the bathroom of her house when she was rushed to the hospital with a hemorrhage.

STATE	YEAR	FACTS	SENTENCE
GUERRERO	2016	Young woman who had a premature birth in her home's bathroom. Her family took her to the hospital in serious condition; she did not mention that her hemorrhage was due to childbirth. It was established that the newborn died due to the omission of care of the defendant and the facts that she had a severe hemorrhage and was rushed to the hospital was not considered.	CRIME: MURDER. Conviction of eight years in prison.
SAN LUIS POTOSI	2011	A 19-year-old woman reports having aborted with misoprostol.	CRIME: MURDER. Acquittal based on insufficient proof to prove causal link.
SAN LUIS POTOSI	2012	A woman of scarce resources had a premature birth in the bathroom of her house. While she was being treated at the hospital, her relatives found the fetus at the ranch where she lived.	CRIME: MURDER. Conviction of 15 years in prison and a fine of \$16,341 pesos as well as \$172,125.20 pesos for damages.

¹¹⁷ Despite having access to a greater number of sentences, all those not related to reproductive processes or in which accused persons were not women were discarded. To consult the public version of the sentences in Spanish, see criminalizacionporaborto.gire.org.mx.

STATE	YEAR	FACTS	SENTENCE
TAMAULIPAS	2017	An 18-year-old woman had a premature birth at home when she was in the bath. After a hemorrhage, she was taken to the hospital, where she was interrogated and reported to the public prosecutor.	CRIME: MURDER. Conviction of 22 years and six months in prison and payment of paymebnt of damages.
YUCATAN	2010	A woman had a premature birth at home. Her family took her to the community hospital, where the staff notified the public prosecutor.	CRIME: AGGRAVATED MURDER FOR REASONS OF KINSHIP. Conviction of 12 years and six months in prison. \$154,811.00 pesos for damages.
YUCATAN	2010	An adolescent woman had a premature birth at her employer's house. She was transferred the next day to a hospital where they diagnosed retained placenta. The hospital staff notified the public prosecutor.	CRIME: AGGRAVATED MURDER FOR REASONS OF KINSHIP. Conviction, but pending exact sentence.
ZACATECAS	2014	A woman had a premature birth at home. After finding her with a heavy hemorrhage, her mother and sister took her to the hospital. The argument is based on the fact that the newborn died due to "lack of care". The judge considered that this "omission" was sufficient to establish infanticide.	CRIME: INFANTICIDE. Conviction of four years in prison and a fine of \$3,069 pesos. Conditional suspension of the sentence.

Women accused of this crimes generally come from precarious economic backgrounds with scarce access to reproductive health and information services and, frequently report having acted based on a fear of being criminalized and a lack of knowledge of what to do in the situations they faced. For example, not reporting a premature birth. In other cases, they suffered fainting spells and hemorrhages that prevented them from seeking help for themselves and their newborns.

In most cases, the principle of the presumption of innocence or due process is not guaranteed: after a woman arrives at a health service with an obstetric emergency, the hospital staff presumes guilt, leading her to face persecution and harassment by police and authorities who interrogate her when she is still hospitalized, or who go to her home without proper search warrants. Likewise, criminal proceedings generally end in convictions in which it is not clear whether there was sufficient evidence to determine that a fetus was born alive and, even more so, if the women committed murder. It should also be noted that, in several occasions, in addition to the prison sentence, women are condemned to pay reparation of damages to their partners or families. The following two cases clearly illustrate these patterns:

Claudia

ZACATECAS

WHAT RIGHTS WERE VIOLATED?


Claudia, aged 22, lived with her parents. Although she wanted to continue with her pregnancy, she hid it from her parents for fear of rejection. One night, with 38 weeks of gestation, she felt a strong pain, which she confused with the need to go to the bathroom. When she sat on the chamber pot that she kept in her bedroom at night, she expelled the fetus. Almost immediately she lost her strength, finding it impossible to get up, because she fell face down on the floor. With difficulty, she managed to cut the umbilical cord with her fingernails, after which she was unconscious for a while.


[W]hen I woke up, I got up and walked through my room. I kept running into things and then I lay down on the floor again, I did not lay down on the bed because I couldn't find it, nor did I turn on the light in the room, I mean, it was completely dark and when I could finally react, it was already dawn and I was still lying on the floor. I heard my mom talking but I did not understand with whom. After a while, they knocked on the door and told me to open it [...], but I couldn't because when I tried to get up I fell and my hands were curled and I couldn't get up [...] I started to hear my mother's voice far away and I was trying to react. I crawled to the door and opened it so she saw me and I told her to quickly take me to the emergency room [...] I could not hear what they were telling me, I did hear that they were talking to me, but I did not understand what it was and I heard them as if they were far away [...] I do remember that I heard when it fell into the pot and I got it out and held it and because it was dark I just remember that I grabbed it and put it up there on bed and I covered it with something, I don't remember if it was a blanket, but I was not fully conscious at the time [...].


Claudia was not in a position to tell her mother that the bleeding was due to delivery, so that she could take proper actions.

In the case of Claudia, the evidence was oriented to verify that she gave birth and to demonstrate that the death of the child happened in the first 72 hours. Although a medical report states that she suffered a postpartum primary hemorrhage and that these are in general the most serious, the judge estimated that "the accused should have asked for help and told her mother what happened, but she did not pay attention to the newborn, causing his death".

It was enough for Claudia to give birth and that the newborn died within the first 72 hours after delivery to sentence her to four years in prison for infanticide.


Right to due legal process


Right to equality and non-discrimination


Right to health, including sexual and reproductive health

Gabriela

GUERRERO

WHAT RIGHTS WERE VIOLATED?

Gabriela, 18-years-old, lived with her parents in a community in Guerrero. Along with her family, she sold tortillas from her home. When she became pregnant and told her partner, he asked her to have an abortion, threatening to hurt her or her father if she did not comply: “When I was three months pregnant, he told me to have an abortion and he bought me injections, pills and gave me home remedies to apply, but I never did.” Despite the threats, she decided to continue with her pregnancy, but she also decided to keep it hidden from her parents.

One night, Gabriela was at home with her family when she felt severe pain. She had a premature birth in the bathroom, which caused the newborn to hit its head on the toilet when it fell:

When I picked her up no matter how much I hugged her and tried to revive her, her little body was not moving and I was bleeding and I felt very weak and the only thing I did at that moment when my baby did not react was to leave her in the corner of the bathroom, and as I was about to faint, everything went dark. I took a bath to see if the water helped me react because I felt very ill. That was when my parents noticed and I did not know anything else because I was bleeding and I lost consciousness, when I woke up in the hospital I found out that they had found my baby.

According to the police reports, when carrying out investigative proceedings in Gabriela’s house, her parents reported that they were unaware of their daughter’s pregnancy, and that she was “a young woman who did not go to parties and when she did, she went with them and her sister, who only works to help her sell dough at home”, a statement that demonstrates the roots of the stereotypes that permeate beliefs about the type of women accused of the crime of abortion: women who abide by gender rules —as she did, in the judgment of her parents— are not accused of these crimes.

An expert opinion determined that the way she gave birth was “clandestine inside the bathroom of her parents’ home.” This statement reveals how women’s reproductive processes —including premature births such as Gabriela’s— are regulated and monitored in such a way that permitted and forbidden ways of experiencing them are conceived. Likewise, the psychological opinion was limited to establishing her IQ, ignoring the impact that the violence exerted by her partner could have had on her behavior.

Gabriela was sentenced to eight years in prison for first degree murder.

These two cases illustrate human rights violations that occurred before, during and after criminal proceedings. In Claudia’s case, evidence was limited to verifying that she gave birth, but not to determine her guilt in the newborn’s death. The judge failed to consider her physical condition after giving birth alone, which made it impossible for her to ask for help at the time. On the contrary, he determined that Claudia should have been able to bind the umbilical cord and provide the necessary care to the newborn to avoid the death, a consideration that fits the stereotypical belief that, first of all, women should be mothers and that, by instinct, they should know how to provide care. Despite fragile evidence in Claudia’s case, it concluded with a four-year prison sentence.

On the other hand, in Gabriela’s case, at the time of the sentencing, the judge adopted a position based on gender stereotypes that mitigated her sentence based on the argument that: “This gender [women] is more likely to be aware of values that reinsert them into their social development.” He also considered it a positive element that Gabriela stated she was Catholic, “since she shows respect towards a religion and belief within the social group in which she developed.” Finally, the fact that Gabriela did not consume alcoholic beverages, cigarettes or drugs led the judge to take a supposedly benevolent stance in her case, considering that “she is not denigrated or stigmatized by society, avoiding being prone to commit some other crime”. Although these considerations allowed Gabriela to have a less severe punishment, they illustrate the gender stereotypes that permeate not only the legal framework, but also the reasoning of the judges.

Right to be free from violence

Right to equality and non-discrimination

Right to health, including sexual and reproductive health

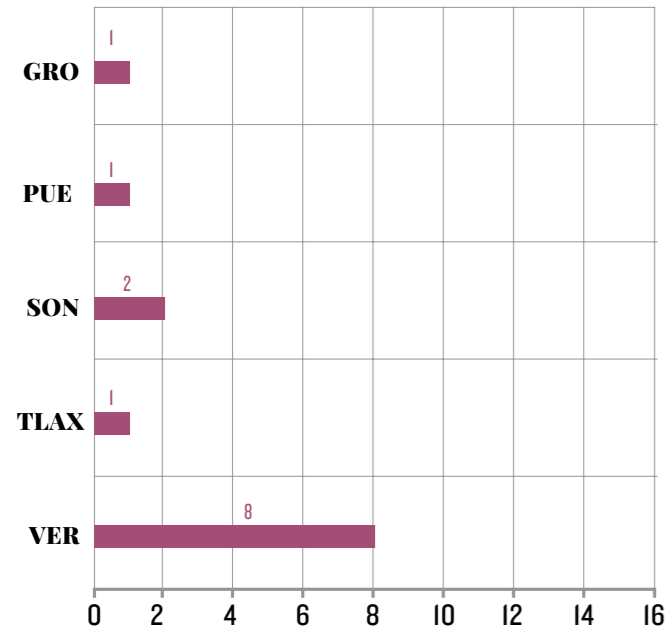
5.4 PEOPLE IN PRISON

Regarding the number of people deprived of liberty for the aforementioned crimes, the authorities reported to GIRE a registry of 13 women in preventive detention for the period from January 2007 to December 2016, and 28 people in prison, 22 of them women. However, it should be noted that most of the states did not respond or reported non-existent information in response to this request, so it is difficult to determine if the information obtained is representative throughout the country.

People in Prison for Related Offences REPORTED BY PUBLIC SECURITY MINISTRIES / JANUARY 2007 - DECEMBER 2016

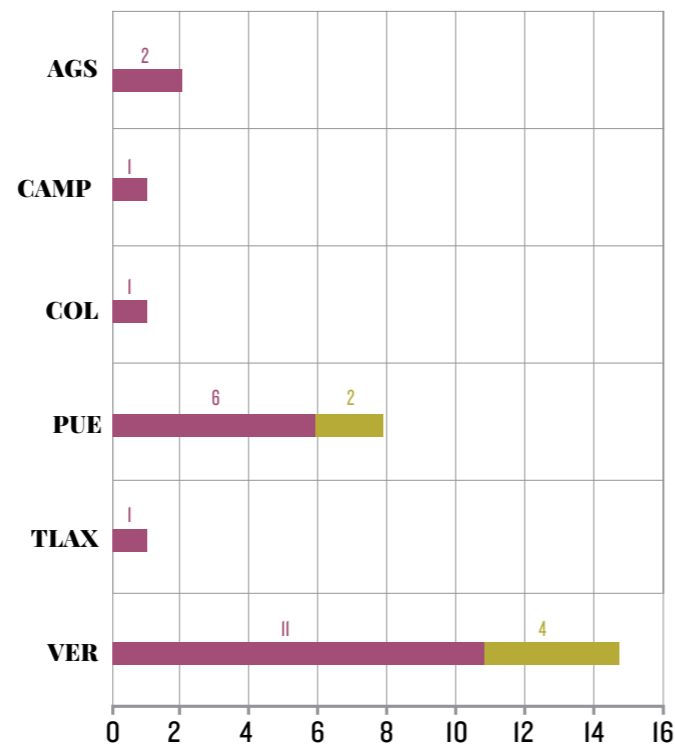
13 IN PREVENTIVE DETENTION

13 WOMEN



28 IN PRISON

22 WOMEN 6 MEN



Data obtained through requests for access to public information made by GIRE.

Due to the large number of authorities that reported no information or did not respond, the above chart only includes those states that delivered information.

All the answers can be consulted in Spanish at criminalizacionporaborto.gire.org.mx.



5.5 CASES DOCUMENTED AND ACCOMPANIED BY OTHER ORGANIZATIONS

The following cases have been accompanied by the organizations Legal Assistance for Human Rights (AsiLegal) and Las Libres in their search for justice when they have been accused of crimes related to reproductive processes. The two civil society organizations have provided accompaniment to these women and documented the violations of due process they have faced and, on occasions, have achieved their release, the reduction of their sentences, or case reclassification to another type of crime.

ASILEGAL

AsiLegal is a non-governmental organization that works for the defense, promotion and dissemination of the human rights of vulnerable groups. The following cases were documented based on semi-structured interviews in detention centers in different states of Mexico; some of them continue to be accompanied by the organization. The lack of access to public information around the patterns of criminalization related to reproductive processes makes field work a crucial source of information for understanding the situation faced by women sentenced in Mexico for this type of crime. However, due to the lack of disposition of certain penitentiary authorities, access to some of the centers included originally in the project was not possible. In general terms, the cases identified present common patterns that coincide with the information obtained from public judgments: contexts of great marginalization, serious failures in due process and convictions without sufficient evidence, based on prejudices and gender stereotypes.

BIANCA

BAJA CALIFORNIA, 2012
AGGRAVATED MURDER FOR REASONS OF KINSHIP
SENTENCE: 23 YEARS IN PRISON

Bianca was born and grew up in the municipality of Mexicali, Baja California. She is married and has a 10-year-old son. She was able to finish high school, and although she would have liked to continue studying, she had to leave school to take care of her son. When the events occurred, she lived with her aunt and worked in an ISSSTE pharmacy, from where she obtained the necessary income for her maintenance. One day, she was taking a bath when she felt something was detaching from her body. Later she learned that she was about seven months pregnant. She had not realized it because her menstrual period had been regular. Two weeks before the expulsion, she had been injected with a medication which might have caused the miscarriage.

Bianca talked with her co-workers about what happened. They reacted with ridicule and insults. Days later, the police arrived at her home, showed her an arrest warrant, explained the reason for her arrest and took her to the Public Prosecutor's Office without mentioning her rights. During her detention, she was the victim of derogatory comments as well as constant questioning by the police and detectives.

Her trial lasted about three and a half years and she was sentenced to 23 years in prison for aggravated murder for reasons of kinship. During her six years in prison, she has received unconditional support from her husband and son.

At the detention center of Mexicali, where Bianca is located, there is a female and male population, although they are separated. Bianca has felt that she receives derogatory and discriminatory treatment, derived from the crime for which she was sentenced. She has also suffered violence and threats.

Bianca has 17 years left of her sentence, but she hopes that her sentence can still be challenged and she has a private lawyer. She worries about the future of her son and what may happen once she is released, since the people of her community have a very negative image of her and she fears that there will be repercussions against her.

CARLA

BAJA CALIFORNIA, 2015
AGGRAVATED MURDER FOR REASONS OF KINSHIP
SENTENCE: 18 YEARS IN PRISON

Carla is a single mother of two girls, 11 and 13 years old. She is originally from Nayarit Ejido of the Mexicali Valley, where she has lived her whole life with her parents, her two brothers and their families. She studied until high school and then decided to take beauty courses. To pay for her expenses, she worked as a cashier.

In 2015, when she was 34 years old, she took a pregnancy test that came out positive. But, the following month, she began to menstruate regularly and performed another test that came back negative, so she ruled out the possibility of being pregnant. However, one night, around 8 o'clock at night, she felt like going to the bathroom, and in the latrine, she expelled a fetus that fell about two meters down. Due to height and lack of illumination, Carla could not see if it was alive. The next morning, they found the body and Carla's mother decided to go to the police.

That same day the police took Carla to the Mexicali Valley hospital where she underwent a sterilization procedure. She was never asked if she consented to the procedure.

After a week of recovery, Carla was taken to the Public Prosecutor's Office in custody, although she was never shown an arrest warrant. At the Prosecutor's Office, they told her that they had DNA tests that proved that the fetus was hers, and that she was accused of homicide.

Carla was transferred to the detention center in Mexicali and the next day she was presented before the Control Judge. From the beginning, she did not have an adequate defense: her lawyer told her to plead guilty so that she would go through a condensed procedure, with which her sentence would be 18 years. If she did not accept, she would have a trial and the sentence could be of 32 years.

Carla accepted the condensed procedure and, in September 2016, she was sentenced to 18 years in prison. The irregularities that were present throughout the process were not assessed, such as the DNA tests and detention without a court order. In addition, she was sentenced to pay more than \$700,000 Mexican pesos in favor of the man with whom she got pregnant, who, when he learned she might have a child, denied her the support she needed.

Currently, she receives a visit from her mother every two weeks. Her daughters have not been able to see her because the prison authorities have not allowed them to enter. To carry out the visit, Carla's mother must face two obstacles: her difficult economic situation and the distance between her home and the detention center where Carla has been deprived of her liberty for two years.

MARISOL

BAJA CALIFORNIA, 2013
AGGRAVATED MURDER FOR REASONS OF KINSHIP
SENTENCE: 22 YEARS OF PRISON

Marisol is originally from San Luis Rio Colorado, Sonora. She has a college degree and would have liked to continue studying, but could not because she got pregnant. In 2003, she lived with her daughter in an apartment that she rents from her partner's family in Ensenada, Baja California. She worked as a medical representative and her income was sufficient to meet her needs.

She was close to the sixth month of gestation of her second pregnancy when she went to an event at her daughter's school and fell out of a chair. At first, she did not feel different and continued her day normally. However, at night, she presented some discomfort. She decided to go to the Red Cross where they examined her and told her that she was not dilated yet and she should go back home.

During the night, Marisol still felt the same way and went to the bathroom, her water broke and she had a premature birth. Marisol noticed that it had not cried and that it was not moving. Although she was in shock, she was able to remove the placenta to detach the umbilical cord, but when performing this action, she injured her uterus and had strong intravaginal bleeding.

When she felt better, she called her boyfriend —she had hidden the pregnancy from him for fear of being forced

to have an abortion— to take her to the hospital. At the General Hospital, they performed a curettage. The doctors asked her what she had done because she was bleeding from the uterus and wanted to know where she had left the newborn. She replied that she had not taken anything to induce the birth, that it happened suddenly in the bathroom. The doctor decided to notify the public prosecutor.

After the third day of hospitalization, she was transferred to the Public Prosecutor's Office, although the authority never presented an arrest warrant. After the arrest, the Public Prosecutor's Office went to Marisol's apartment and searched it without a warrant. There they found the fetus and photographed it. Several days later, female police officers visited Marisol at the detention center and tried to force her to look at the photos taken during the search.

Marisol was tried and sentenced for aggravated murder for reasons of kinship to 27 years in prison. Her defense appealed the decision and the judge reduced the sentence to 22 years. Currently, Marisol is 47-years-old and has served 14 years of the sentence, during which her biggest support has been her mother. Within the detention center, life has been complicated for her. She has suffered violence and threats from prison staff and other prisoners.

ANAHI

GUERRERO, 2008

FIRST-DEGREE MURDER

SENTENCE: 20 YEARS OF PRISON (ACQUITTED IN 2016)

Anahi is a young woman from Guerrero who, in November 2008, suffered a premature birth when trying to reach a book for her son on a stool and fell accidentally. She was 21-years-old and neither she, her partner, nor anyone in her family knew she was pregnant. During the fall, she hit the back of her neck, and she lost consciousness. When she tried to get up, she noticed that her clothes were stained with blood. Disoriented, she tried to clean herself. It was then that her sister-in-law came in and discovered a body on the floor. She did not request medical help for her sister-in-law. The relatives of Anahi verified that the fetus was not alive.

When her partner arrived, he took her to the General Hospital of Acapulco to receive medical attention. At the hospital, a doctor asked the family to bring the body of the fetus, even though they are not authorized nor trained for this work. Without receiving the necessary medical attention, she was accused of aggravated murder for reasons of kinship and transferred to the Public Prosecutor's Office.

From the beginning, Anahi had a poor defense and, although the only evidence that existed against her were the initial and contradictory testimonies of her partner, her sister-in-law and her mother-in-law, she was sentenced in 2012 to 20 years in prison. In November of that same year, with the accompaniment of AsiLegal, the process was reopened, but it was not

until August 2016, that Anahi obtained her acquittal due to lack of evidence.

There was a significant conflict of interest in her case since her partner's kin worked for the state's Superior Court of Justice. It was a relative of her partner who notified her of the formal prison order and other judicial proceedings. Anahi's partner provided false addresses to be notified, so testimonials and other proceedings took years.

In addition, Anahi was a victim of violence perpetrated by the penitentiary system. After arriving to the cell, they handcuffed her to a pole and left her facing where men were defecating. Inside the penitentiary center where she was deprived of her freedom, she was constantly subjected to insults and threats from the staff. A state police agent insulted her and threatened to kill her, arguing that "killing her own son" was the worst thing that could exist and that she deserved to die. In addition, at the hospital where she was treated, she was the victim of mistreatment by the staff when they learned that she was being investigated for the crime of homicide.

Anahi is currently free, but she faces rejection from the people in her community because she is seen as the "woman who killed her newborn". She has started a new process to recover the custody of the son who was taken from her during almost eight years of his life.

JULIA

QUERETARO, 2005 (SENTENCING ON APPEAL, 2006)

FIRST-DEGREE MURDER

SENTENCE: 20 YEARS OF PRISON

Julia lived with low economic resources, with her young son in her in-law's house after her partner left her. In May 2005, she was washing the bathroom when she tried to lift a bucket full of water, she slipped and fell backwards on the floor. Later, she had severe stomach pains and cramps that made her think she was about to give birth. She went to her room where she bled abundantly, so she decided to take a shower. There she ejected a very large clot. She felt as if she was giving birth. She held the fetus, cut the umbilical cord, but realized it was not crying or moving.

Julia was found by her sister-in-law, who took her to the Medical Center of her community, where the doctor who examined her mentioned that she needed to be

transferred to Cadereyta General Hospital. There, she underwent a curettage and was arrested by the public prosecutor who interrogated her less than 12 hours later.

Julia mentioned that the authorities verbally assaulted her when she gave her statement and, according to her relatives, the police referred to her as "the woman who killed her baby." Although the evidence presented was not sufficient to establish her responsibility, she was sentenced in March 2006, for first degree murder, to 20 years in prison. This resolution was confirmed by a second judge in May 2006. One of the arguments of the judge was that Julia had committed homicide for fear of being judged for having a child out of wedlock, a prejudice that constitutes institutional violence.

MONICA

QUERETARO, 2001

FIRST-DEGREE MURDER

SENTENCE: 25 YEARS OF PRISON

Monica was a teacher in the City of Cadereyta de Montes, Queretaro, where she moved while pregnant. In February 2001, she had a premature birth in her rented room's latrine. She then took off her shirt, wrapped the newborn with it, took it in her arms and saw that it was still breathing.

She went in search of help when she realized the baby was no longer breathing. She tried to revive him however, there was no reaction. Shortly after, the owner of the house helped her and Monica was transferred to a hospital where they performed a curettage.

Monica was detained, accused of committing homicide. She said she knew she was pregnant and declared that her delivery was premature. However, she was found guilty.

On November 7, 2001, the judge sentenced her to 42 years in prison. This sentence was appealed and the appeal judges issued their decision in January 2002, reducing the sentence to 25 years in prison.

CONCEPCION

VERACRUZ, 2013

FIRST-DEGREE MURDER
SENTENCE: ACQUITTED

Concepcion sold newspapers, was 25-years-old and had two children and a nephew, who also depended on her financially. In 2013, one morning in February, she woke up to go to work. She felt strong stomach pains and told her friends that she felt very ill, so they decided to accompany her to the Red Cross.

Two paramedics received her, accompanied her to the emergency room and checked her stomach. Concepcion said she needed to use a bathroom and they let her go alone. In the toilet she had a premature birth. According to the protocol that the paramedics should follow, a woman in labor must be accompanied at all times, which means that she should not have gone to the restroom alone, since spontaneous delivery is common. She lost consciousness at that moment. When they found her, the paramedics did nothing for the fetus, not even take it out of the toilet. They just called the public prosecutor.

Concepcion remained at the Red Cross from 7:00 a.m. to 5:00 p.m. without receiving the medical attention

she required. The paramedics told the authority that she had entered the bathroom to have an abortion and that while she was doing it, she had locked the door.

She was then transferred to the Veracruz Regional Hospital, where they removed the placenta. According to the hospital's medical report, there was no evidence that the delivery had been induced. However, Concepcion was accused of first-degree murder and detained. Her arrest was made without a prior investigation.

Article 19 of the Constitution states that: "Detentions before a judicial authority for over 72 hours, counted from the moment the accused is presented to the authority, are prohibited without presenting formal charges," despite which she was detained for seven months during the process against her. There were many orders from different judges, appeals and changes of jurisdiction before, in October 2013, Concepcion was finally released, although there was never any evidence to determine her guilt.

MARTHA PATRICIA

VERACRUZ, 2014-2018

ABORTION
SENTENCE: ACQUITTAL

Martha Patricia is originally from a rural community in the municipality of Playa Vicente, located in the state of Veracruz. She is from a low-income family and spent most of her childhood and adolescence with her grandmother, who said that Martha had to take care of the housework and then get married. For this reason, she took care of her brothers and the extended family since she was six years old.

Martha's mother worked outside of town so she could help Martha study. Upon finishing high school, Martha moved to the port of Veracruz to continue her studies.

In December 2014, she began to feel sick, so she went to the IMSS Clinic 61 to get a medical checkup. She was diagnosed with colitis, gastritis and inflammation of the mammary glands, and given medication to treat the symptoms.

On March 25, 2015, Martha began to feel a strong pain, and asked a friend to accompany her to the hospital. There, she found out that she was about 20 weeks

pregnant and apparently she had had a miscarriage. She was verbally attacked by the staff of the clinic, questioning her and judging her for "having killed a person". A nurse even came to tell her to say goodbye to the fetus "she had killed". Authorities from the Public Prosecutor's Office also verbally assaulted her.

When the public prosecutor arrived, he talked with her alone in a room, without legal assistance and without making notes of any kind. Days later, Martha learned that doctors and the public prosecutor determined that the fetus suffered perinatal death due to induced abortion and that they had initiated an investigation against her.

After a long litigation process accompanied by *Las Libres* and the Center for Economic Investigation and Study (CIDE), today Martha lives in the state of Guanajuato, far from the violence and discrimination she suffered. She has recovered her life and is a few months away from graduating in Business Administration.

LAS LIBRES

As of 2008, the non-profit organization *Las Libres*, located in Guanajuato, began documenting, defending and litigating cases of women criminalized for abortion and other related offences, within the framework of fetal personhood amendments promoted throughout the country following the decriminalization of abortion in Mexico City. Between 2008 and 2010, *Las Libres* documented the situation of a group of women in prison for aggravated murder for reasons for kinship in the state of Guanajuato, a group known as the "Guanajuato case". In the end, thanks to a process of social and media mobilization, nine women were released - seven of them, defended by *Las Libres*: Maria (2002) and Susy (2004), Yolanda (2004), Ofelia (2005), Liliana (2005), Alma Yareli (2007) and Ana Rosa (2008). Between 2010 and 2018, *Las Libres* has advised, defended and litigated women's cases under investigation for abortion and other related offences in the states of Baja California, Guanajuato, Hidalgo, Queretaro and Veracruz. Some are described below.

VIRGINIA

GUERRERO, 2009-2012

FIRST-DEGREE MURDER
NO SENTENCE

Virginia is an indigenous Nahuatl woman from Guerrero and the mother of three children. She lived with her mother-in-law, who beat her and mistreated her, as well as her children.

One day, while she was pregnant with her fourth child, she began to feel discomfort and pain in her stomach. It was early morning and she was alone. The pains were very strong and she could not sit up. At some point, she realized that she was bleeding, took a plastic bucket and sat on it, where she had a premature birth. Then she lost consciousness. When she woke up, she asked for help from her mother-in-law, who took her to the hospital and, later, reported her.

Her family claimed that Virginia suffocated the newborn, which was contradicted by her testimony as well

as the medical report that revealed that the newborn had died from lack of oxygen, that is, by natural death.

In 2009, they issued a formal prison sentence, which was appealed by the defense lawyer. As a result, the court ordered that the legality of the detention be analyzed. Given the delay in confirming the criminality of the case, in April 2011, the CIDE Public Interest Law Clinic filed an application for a legal stay, because there was still no ruling in this regard for the case, as there was not sufficient and valid evidence for Virginia's arrest.

The judge denied the legal stay regarding the authority's delay but granted it regarding the prison sentence. Thus, Virginia was released on August 16, 2012.

ADRIANA

GUERRERO, 2006

FIRST-DEGREE MURDER
SENTENCE: ACQUITTED IN 2014

Adriana is a Tlapaneca woman from the town of El Camalote, one of the most violent and marginalized municipalities in the state of Guerrero. She did not have access to a formal education, she was the mother of a girl and a boy and did housework and work in the field. Her partner had been forced to migrate two years earlier to the United States because of the family's extreme poverty, so she lived with her parents.

While the father of her children was away, she maintained an intimate relationship with "V" and in the summer of 2005, she got pregnant. Adriana was 19-years-old and experienced violence from her father. She knew that this pregnancy would further complicate the situation.

One morning, Adriana's parents noticed that she was no longer pregnant and, as she refused to answer their questions, they called the land commissioner who gave notice to the community and appointed a committee of approximately 30 people for her questioning. Adriana was insulted, stoned and spat on by those who were present during the assembly. The commissioner gave notice to the public prosecutor whose agents arrived in the town and, in April 2006, Adriana and "V" were presented before the judge and an order for her formal imprisonment was issued. Adriana was charged with homicide and "V" with the crime of concealment.

The file includes statements that do not coincide with Adriana's testimony, according to which, she had a stillbirth and, she buried it because she was afraid and did not know what to do.

Taking the results of the docimasia test as evidence, the judge sentenced Adriana for first-degree murder. After an appeal in 2010, her sentence was reduced from 32 to 22 years in prison. But in 2012, the First Chamber of the Supreme Court decided to exercise its power of attraction to hear the legal stay filed by Adriana's defense team—the CIDE Public Interest Clinic and *Las Libres*—against the resolution.

After almost two years, the Supreme Court issued a ruling in which it unanimously decreed the acquittal of Adriana and her immediate release. The arguments that the Supreme Court asserted and with which they discredited the most important foundations of the previous condemnatory sentences were the following:

- Violation of the right to an adequate defense: in previous judgments, the Supreme Court had ruled that the violation of the right to an adequate defense, specifically in cases of an indigenous person, results in the illegality of the declarations made by the accused and, therefore, should be dismissed as evidence. From this criterion, one of the main pieces of evidence against Adriana was dismissed. According to the Court, the statement made by Adriana before the public prosecutor, in which she incriminates herself, lacked probative value because:

... the evidence in the case file notes that at no stage in the criminal proceedings was an interpreter available to the complainant to guarantee her the right to an adequate defense in her capacity as an indigenous person.

- The presumption of innocence was not observed. Although she was treated as guilty at all times, none of the evidence presented by the public prosecutor proved her guilt. The testimonies that existed against her did not provide information regarding the facts because no one had witnessed them. Likewise, the necropsy did not provide conclusive information that Adriana's behavior caused the death of the fetus.

Adriana was liberated after almost eight years. During that time, her son and daughter resented her absence, and remained under the care of their grandmother because her father, after learning of Adriana's pregnancy, never returned. Adriana was released, but could not return to her community, where she was rejected following her criminal process.



6 / Conclusions

6. CONCLUSIONS

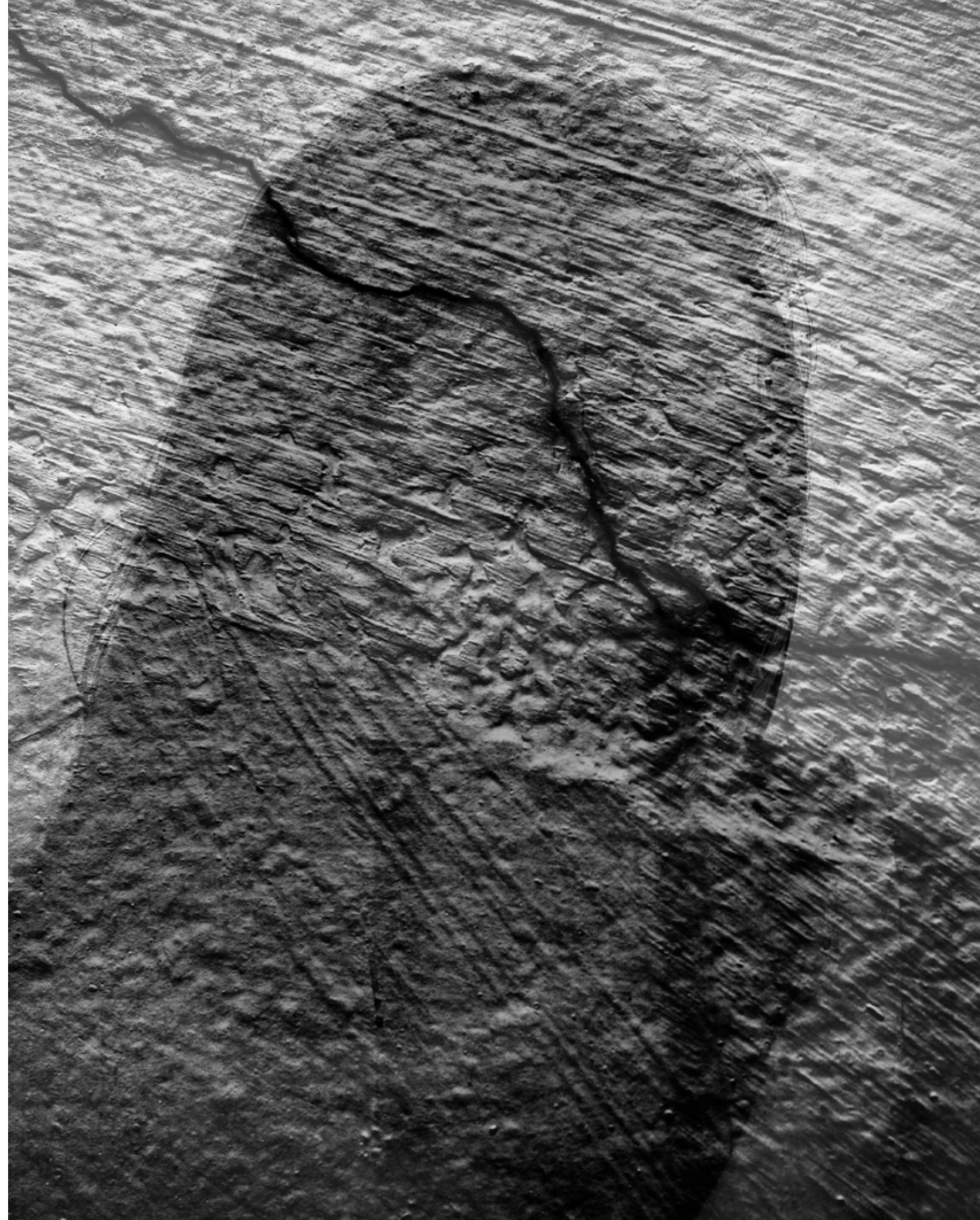
In Mexico, there is a significant gap between the rights established on paper and the services to which individuals have access in practice. Throughout its work, GIRE has identified that access to the legally permitted abortion indications in Mexico is precarious or nil. Authorities, in general, and health personnel, in particular, are ignorant of their obligations; requirements not included in the law are imposed that hinder or make impossible access to legal abortion services; misinformation promoted by anti-rights groups is allowed through the promotion of legislation that seeks to restrict human rights; professional confidentiality is violated and women with obstetric emergencies are criminalized.

The criminalization of abortion in Mexico presents certain patterns: girls and women arrive at health centers with an abortion in progress or an incomplete one and are questioned and reported to the police by health personnel, social workers or by relatives and acquaintances. The public prosecutor generally responds immediately, and questions the women while they are still in hospital beds. In many instances, cases are based exclusively on self-incriminating confessions made under pressure and during medical emergencies. Some of the criminal proceedings culminate in sentences, be it prison time, fines, community service or “comprehensive medical treatment”, a form of sanction that, despite not representing a prison sentence, perpetuates the idea that those who abort need to be “cured”. The very fact of facing a criminal process for abortion, regardless of the outcome, can have permanent consequences in the lives of women, their family and their relationship with their community. It is also important to highlight the cases in which women were accused of other crimes with more severe penalties, such as infanticide and aggravated murder for reasons of kinship, in situations of abortion, premature birth or miscarriages.

The effects of abortion criminalization impact not only those who are criminally prosecuted for this crime, but also those with unwanted pregnancies who must choose between risking their health and freedom through illegal abortions, carrying an unwanted pregnancy to term or, suffering institutional violence when going to clinics or hospitals to request the termination of pregnancy under the legal indications established by law. The adverse effects of criminalization also materialize in cases of women who suffer a miscarriage or premature birth and are treated as suspects by health personnel, with the risk of receiving inadequate care or even being reported to the public prosecutor.

Women are seriously affected when abortion is considered a crime rather than a health service. It is essential that prosecutors, the judicial branch and the public security ministries gather disaggregated information regarding the women reported, prosecuted and in prison for the crime of abortion. Access to this information is crucial in order to monitor compliance with the State’s human rights obligations. The absence of this data reveals a lack of interest and leads to severe punishments for women who make decisions about their reproductive health.

In the face of human rights violations derived from the criminalization of abortion, human rights standards constitute the route to guaranteeing that women can freely decide whether or not and when to exercise maternity. This guarantee is a part of the State’s historic debt to women.





7 / Recommendations

TO STATE CONGRESSES:

Decriminalize elective abortion, at least during the first trimester of pregnancy.

TO THE FEDERAL CONGRESS:

In the case of issuing a Sole Penal Code, ensure that the criminal classification for abortion considers at least the highest human rights standards, which are those provided for in Mexico City's criminal law.

TO STATE AND FEDERAL HEALTH INSTITUTIONS:

Guarantee access to abortion under the legal indications, without imposing unjustified barriers, particularly in cases of rape.

Ensure that health personnel prioritize women's care, particularly in emergencies, and that confidentiality is protected.

Ensure that non-objecting medical personnel is available at all times, in order to guarantee access to abortion services.

TO PUBLIC PROSECUTORS AND JUDICIAL BRANCHES:

Guarantee due process for all women reported for abortion or for related offences and safeguard presumption of innocence at all times.

TO THE JUDICIAL BRANCH:

Guarantee access to justice and comprehensive reparation for human rights violations to women who were denied access to an abortion for rape and, in general, under the grounds included in penal codes, as established by the Second Chamber of Mexico's Supreme Court in the judgments of the legal stays in revision 60I/2017 and 1170/2017.

TO THE EXECUTIVE COMMITTEE OF ATTENTION TO VICTIMS AND STATE COMMISSIONS OF VICTIMS:

Guarantee effective access to comprehensive reparations for human rights violations of all individuals who have been recognized as victims by authorities.

TO THE EXECUTIVE AND JUDICIAL BRANCH:

Systematize and publish disaggregated information as well as public versions of sentences on abortion and related offences.



Motherhood or Punishment. Criminalizing Abortion in Mexico

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