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The Fight for Abortion in Mexico

“Starting now, it will not be possible to try any woman for the issues considered valid by this court without breaking the Court’s criteria and violating the Constitution.

Starting now, a new road of freedom begins, a road of clarity, dignity, and respect for all pregnant persons, especially women.”

Chief Justice Arturo Zaldívar

The year that is coming to a close has brought enormous strides forward in Mexico for the regulation of abortion. To understand these advances, first it must be said that in most of Mexico, as in a large number

of Latin American countries, abortion is a crime. As a result, women and gestating individuals who interrupt a pregnancy, as well as those who assist them, are subject to being declared criminals and punished with sentences that, in the case of Mexico, range from fifteen days to six years in prison, plus fines, community service, or medical or psychological treatment when freed. I mention “most of Mexico” because in this country, each state or federal jurisdiction determines whether abortion is a crime and what sanctions will be applied to those found guilty of it.¹

Far from stopping the practice of abortion, criminalization creates clandestine spaces and leads to unsafe procedures to which people living with greater vulnerability are more exposed than others in society.

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Given this legislation, we activists, collectives, and feminist organizations have pushed for repealing these laws for decades. One among many other arguments is that abortion on demand is a part of women's reproductive lives, that criminalization, far from inhibiting its practice, creates clandestine spaces and in certain contexts leads to unsafe procedures to which people living with greater vulnerability are more exposed than others in society.²

One example of this unfair regulation is the case of Paulina, which caused a great stir in public opinion in 2000. Paulina, an adolescent from a low-income background in Baja California, was refused the ability to legally terminate her pregnancy, which had resulted from a rape.

Despite the fact that at that time, as now, in rape cases, abortion was and is legal in Baja California and all over the country, the public officials who dealt with her case used different maneuvers to manipulate and psychologically pressure her to prevent her from getting the medical procedure. They were acting in accordance with their personal beliefs and not according to the law, forcing her to take her pregnancy to term.³

For years, Paulina's case has been emblematic because it shows the real situation facing girls and women in Mexico and the region, but also because of the significance and transcendence of her struggle for justice. That struggle has led to legal changes that have been important advances in reproductive rights in Mexico, from the establishment of norms to facilitate the access to services for the termination of a pregnancy stemming from a rape, to the decriminalization of abortion during the first trimester of the pregnancy.

However, from 2000 to 2020, the advances, while significant, have come in tiny increments: twelve years had to go by before, in 2019, the state of Oaxaca joined Mexico City in decriminalizing abortion during the first twelve weeks of pregnancy. In 2018, the Supreme Court handed down its first judgments stipulating that the denial of the legal termination of a pregnancy due to rape was a human rights violation. This came eighteen years after Paulina's case! A year later, in 2019, the court deliberated on

another case involving the refusal to give a woman, Margarita, access to a safe abortion when her health was in danger if she continued with the pregnancy. In this case, the court was clear in its ruling that the state has the obligation to protect the right to health of all persons, and that this includes guaranteeing access to safe abortion services for all women and pregnant persons who request it whose health is in danger.

Despite the enormous importance of the Supreme Court's decisions involving the denial of the termination of a pregnancy due to rape and when the pregnant person's health is in danger, what happened in 2021 cannot be fully understood without taking into consideration the social mobilization generated by the Green Wave, born in Argentina, that spread through Latin America and in 2018 flooded Mexico.

From there on in, the story has changed in terms of society's demand and that demand's presence in public opinion, in the streets, on social media, and in the traditional media. Thanks to the Green Wave, the movement for legal, safe, free abortion today has a symbol, the green kerchief.

Before the pandemic, in early March 2020, we were part of the show of force of the different feminisms in the country, with the huge demonstration on March 8, International Women's Day. An estimated more than 80,000 filled the streets of Mexico City.⁴ The demonstrations nationwide were historic. The next day, a Women's Strike was called with the aim that women would not carry out their usual activities for one day; media estimates put women's participation at seventy percent.⁵ The economic impact was estimated at approximately Mex\$30 billion.⁶

Days later, the world changed with the COVID-19 pandemic. One of the consequences of this unprecedented situation was doubts about the sustainability of feminist struggles, among them, the demand for legal, safe, free abortion.

Not only did we not stop: the Green Wave became stronger. At the end of 2020, we feminists in Mexico received another enormous inspiration from Argentina with the approval of the right to abortion during the first fourteen weeks of pregnancy.

The year 2021 arrived, and with it, what a dear friend and colleague has called the "rainy season of abortion." In July, abortion was decriminalized in the first trimester of a pregnancy in the states of Hidalgo and Veracruz after

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years of work by local and national activists and organizations and feminist congresspersons. In that same month, the Supreme Court handed down a decision in the case of a teenaged girl with disabilities from Chiapas who had been raped and refused the right to an abortion for being more than ninety days along in her pregnancy; that decision declared establishing a time-limit for getting an abortion in a rape case unconstitutional.

In September, the Supreme Court decided unanimously that the absolute criminalization of abortion is unconstitutional when it reviewed the criminal code of the state of Coahuila. This was the first Constitutional Court in the region to hand down a decision of this kind. The court discussed the case for two days, and all the judges present voted in favor of guaranteeing women and pregnant persons the right to decide to continue a pregnancy or not without running the risk of criminal prosecution, in the framework of a secular state. The following is an example of one of the comments during the deliberations: “In a secular state, the defense of women’s autonomy must be unconditional,” said Judge Norma Piña. While this was not the first time that the court decided favorably on an issue involving abortion, it was the first time that it sent such a forceful message about the unconstitutionality of prohibiting it, that is, considering it a crime, in the criminal justice system, as is the case in Mexico and in the region. The decision has the following consequences:

- The Coahuila State Congress must amend its legislation to decriminalize abortion at least during the first trimester of a pregnancy.
- A precedent has been set; the central arguments of the decision create an obligation for all judges in Mexico, both federal and local. Starting with this decision, in future cases, they must classify all criminal norms in the country that criminalize abortion absolutely as unconstitutional.
- State congresses in the rest of the country where abortion is still restricted and punished now have criteria backed by the Supreme Court to decriminalized voluntary abortion.

As if what happened in July and September 2021 were not enough, in late October, the Baja California State Congress—the same state that more than two decades ago violated Paulina’s human rights by denying her a legal,

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safe abortion when she requested her right to terminate a pregnancy that had resulted from a rape— approved a reform to decriminalize abortion during the first twelve weeks of pregnancy. With this, Baja California joined Mexico City, Oaxaca, Hidalgo, and Veracruz as the places where it is now legal.

This year has undoubtedly been one of achievements for the movement for legal, safe, free abortion. However, the road to its full realization is still long and arduous. Next year, we organizations, collectives, people who accompany those having an abortion, and activists will continue to demand the decriminalization of abortion nationwide, at least during the first trimester of pregnancy, as well as access to abortions for all persons who need them.

Although we haven’t reached the end of the road, this year has undoubtedly given us reason for celebration because what has been achieved in state congresses and in the Supreme Court represents a step forward toward a more free and fair country, where women and pregnant individuals enjoy the conditions and freedom to determine their own reproduction, today and in the future. **MM**

Notes

1 GIRE, *El camino hacia la justicia reproductiva: una década de avances y pendientes*, <https://unadecadajusticiareproductiva.gire.org.mx/1-aborto/>.

2 GIRE, *Mitos y preguntas sobre el aborto*, https://gire.org.mx/wp-content/uploads/2020/11/mitos_y_preguntas_sobre_el_aborto.pdf.

3 GIRE, *Paulina cinco años después*, https://reproductiverights.org/sites/default/files/documents/paulina5years_sp.pdf.

4 “‘Nos quitaron todo, hasta el miedo’: así fue la marcha del 8 de marzo en la CDMX,” *Milenio* (Mexico City), March 9, 2020, <https://www.milenio.com/politica/comunidad/marcha-8-marzo-2020-cd-mx-vivo-marcha-feminista>.

5 Forbes staff, “Éstas son las empresas, instituciones y autoridades que apoyan #UnDíaSinNosotras,” *Forbes México*, February 21, 2020, <https://www.forbes.com.mx/estas-son-las-empresas-instituciones-y-autoridades-que-apoyan-undiasinnosotras/>.

6 Forbes staff, “#UnDíaSinNosotras se reflejó en 30000 millones de pesos,” *Forbes México*, March 10, 2020, <https://www.forbes.com.mx/30000-mdp-razones-no-undiasinnosotras/>.