



Mexico landmark rulings on Reproductive Rights: Abortion – **no longer a crime!**

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Introduction

September 2021 marked a new era for women's and other individuals with gestational capacity reproductive rights in Latin America, particularly in Mexico. The Mexican Supreme Court, the highest judicial authority in the country, issued two landmark rulings that further contribute to reproductive justice, promoting and ensuring fundamental human rights in the Americas. On 7 September, 2021, it declared that a total criminalization of abortion was unconstitutional (No. 271/2021)¹. In doing so, it overturned the statute in the state of Coahuila that punished women with up to three years of imprisonment for having an abortion. Two days later, on September 9th, the Supreme Court rebutted a section of the Sinaloa Constitution that protected life from the moment of conception by ruling that it was unconstitutional (No. 273/2021).²



1. Acción de inconstitucionalidad 148/2017, promovida por la Procuraduría General de la República en contra de los Poderes Legislativo y Ejecutivo del Coahuila, demandando la invalidez de los artículos 195, 196 y 224, fracción II del Código Penal del Estado de Coahuila de Zaragoza, contenidos en el Decreto 990, publicado en el Periódico Oficial local el 27 de octubre de 2017.
2. Acciones de inconstitucionalidad 106/2018 y su acumulada 107/2018, promovidas por diputados integrantes del Congreso de Sinaloa y la Comisión Nacional de los Derechos Humanos, demandando la invalidez del artículo 4 Bis A, fracción I, de la Constitución Política del mencionado Estado, reformada mediante Decreto 861, publicada en el Periódico Oficial de esa entidad de 26 de octubre de 2018.

The significance of the ruling

The Catholic Church has a significant spiritual, cultural and societal influence on Mexican society. Generally, the role of women in the community is primarily considered to be that of a primary caregiver. The idea of motherhood is perceived as women's obligatory function, which prevails over their right to dignity and bodily autonomy. Prior to 2021, abortion was severely restricted across Mexico. Nevertheless, several mitigating circumstances, such as pregnancy resulting from rape or when it could threaten the mother's life, permitted restricted access to abortions. According to the United Nations (UN), "more than 500,000 Mexican women seek illegal abortions every year, with more than 2,000 dying from botched or unsafe procedures."³ The statistics also show that women facing criminal prosecution for abortion in Mexico disproportionately belong to a lower social class, many of whom belong to ethnic minority groups, such as indigenous communities.⁴ All of these are alarming signs of how the criminalization of abortion encourages women to use hazardous and unsafe options that endanger their lives and health while also exacerbating inequality and injustice.

After the Supreme Court's ruling, abortion procedures have readily become available to any woman who is up to twelve weeks pregnant in Mexico City and the states of Oaxaca, Hidalgo and Veracruz. The adoption of this Judgement is a historical moment as judges composing the Supreme Court's panel voted to decriminalize abortion unanimously. This decision creates precedent for future jurisprudence in the field of women's reproductive rights as it will push all 32 Mexican states to adjust their legislation by decriminalizing abortion and ensuring safe and voluntary termination of pregnancy. In other words, this clears the way for pro-choice activists to challenge abortion restrictions across Mexico.

"Today is a historic day for the rights of all Mexican women," said Supreme Court Chief Justice Arturo Zaldívar.⁵ To celebrate this historical victory, tens of thousands of women in Mexico have taken up green bandanas – a symbol of abortion-rights campaigners in Argentina – and marched the streets voicing slogans such as 'Abortion is a human right'.

3. Johnson, T. (2013). Guaranteed access to safe and legal abortions: the true revolution of Mexico City's legal reforms regarding abortion. *Columbia Human rights Law Review*, 2(44), 437. <https://www.corteidh.or.cr/tablas/r30937.pdf>
4. GIRE. (2018). Motherhood or Punishment: Criminalizing Abortion in Mexico. https://criminalizacionporaborto.gire.org.mx/assets/pdf/GIRE_Motherhood_or_Punishment.pdf
5. Romo, V. (2021). Mexico's Supreme Court Has Voted To Decriminalize Abortion. NPR. Retrieved November 3, 2021, from <https://www.npr.org/2021/09/07/1034925270/mexico-abortion-decriminalized-supreme-court?t=1635937401170>.

Human rights standards: Abortion as a human right?

Article 1 of the Mexican Constitution establishes that “all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State.”⁶ Hence, Mexico is bound by international human rights standards to which it has committed to adhere. The legal provisions related to human rights norms are, thus, interpreted according to the Constitution, one which stipulates the conditions through which these rights can be denied or suspended.

However, do the obligations of the State to protect human rights include protecting the right to abortion? The short answer, yes. According to Human Rights Watch (HRW), the access to safe and legal abortion is a fundamental right, which prevails over the right to life of the embryo.⁷ Moreover, the Office of the UN High Commissioner for Human Rights (OHCHR) provides that “States have obligations to respect, protect and fulfil women's rights related to abortion services”,⁸ and thus emphasises the “need to decriminalize abortion.”⁹ Even though abortion is not, per se, explicitly mentioned in any of the human rights treaties, the jurisprudence of the treaty bodies has indicated that denying women access to abortion can amount to violations of:

- Right to life of the mother¹⁰
- Right to health (mental and physical), including reproductive health¹¹
- Right to be free from violence, degrading treatment or torture¹²
- Right to equality and non-discrimination¹³

6. Mexico. Constitución. (1917) Mexican Constitution of. Washington, D. Retrieved from the Library of Congress, <https://www.loc.gov/item/17021628/>.

7. Human Rights Watch. (2020, August). A Case for Legal Abortion: The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina. https://www.hrw.org/sites/default/files/media_2020/09/argentina0820_web.pdf

8. UN Human Rights Office of the High Commissioner (OHCHR). (2020). Information series on sexual and reproductive health and rights: Abortion. OHCHR. Retrieved November 11, 2021, from https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf

9. Ibid.

10. UN Human Rights Committee, General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life (2018) CCPR/C/GC/36, para. 8.

11. UN Committee on the Elimination of Discrimination against Women Communication No. 22/2009 L.C. v. Peru (2011) CEDAW/C/50/D/22/2009, para. 8.15.

12. Mellet v. Ireland (2016) CCPR/C/116/D/2324/2013, paras. 7.4-7.6; Whelan v. Ireland (2017) CCPR/C/119/D/2425/2014 para. 7.6.

13. UN Committee on the Elimination of Discrimination Against Women, General Recommendation 24 (1999) on women and health (1999) A/54/38/Rev.1, chap. I, para. 11.

Over the last decade, several human rights protection bodies have expressed their concern regarding the precarious situation of women's reproductive rights in Mexico. For instance, in 2012, the CEDAW¹⁴ Committee, the UN body for the protection of women's rights, stated its concern regarding the criminalization of abortion in Mexico, specifically noting that women are being "deprived of their liberty and sentenced to long prison terms on grounds of infanticide or murder."¹⁵ More recently, in March 2018, the CESCR¹⁶ highlighted that the statistics consistently show a pattern of systematic discrimination against women, especially those originating from underprivileged and minority communities.¹⁷ This has been corroborated by the Committee as it noted that indigenous women are disproportionately affected by the restrictive legal provisions on abortion.¹⁸

The Supreme Court's ruling takes these considerations into account by issuing a decision in line with Mexico's human rights obligations. The decision makes references to the necessity of looking at abortion cases from a "gender perspective",¹⁹ adhering to Mexico's obligations under international human rights legislation. According to the researcher Ximena Casas, the landmark decision "powerfully illustrates the impact of incorporating a gender perspective in judicial decisions and grounding them in women's rights".²⁰ Moreover, the Supreme Court's judgment has also aligned with regional human rights protection standards, especially with the Inter-American Convention on Human Rights (IACHR), a convention which has urged "all States to adopt comprehensive, immediate measures to respect and protect women's sexual and reproductive rights" (IACHR Press release, 2017). Notably, the Commission reiterates that there is a consensus that women's right to life and physical integrity prevails over the right to life and development of the fetus in the early stages of pregnancy.

14. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

15. UN Committee on the Elimination of Discrimination Against Women, Concluding Observations: Mexico (2012) CEDAW/C/MEX/CO/7-8, paragraph 32

16. Committee in charge of supervising the observance and compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR)

17. UN Committee on Economic, Cultural and Social Rights, Concluding observations on the combined fifth and sixth periodic reports of Mexico (2018) E/C.12/MEX/CO/5-6, para 6.

18. Ibid.

19. Human Rights Watch. (2021, September 14). Mexico: Landmark Reproductive Rights Rulings. Retrieved November 11, 2021, from <https://www.hrw.org/news/2021/09/14/mexico-landmark-reproductive-rights-rulings>

20. Ibid.

Conclusion

The depenalization of abortion in Mexico, through the Supreme Court's landmark rulings, places Mexico, along with other countries such as Argentina and Uruguay, on a trajectory towards expanding legal abortion access and bringing their laws closer towards the standards as set by international human rights obligations. This small victory is partly due to women's rights movements, which insisted on putting women's autonomy and dignity at the center of the abortion debate, and by doing so breaking the stigma surrounding women's sexual and reproductive rights. Nonetheless, abortion is still a controversial topic in Latin America, as many States still prohibit and punish voluntary termination of pregnancy. Hopefully, this new wave of depenalization of abortion will push forward a positive change for other neighboring countries to follow suit.



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