

# PROHIBITION WITHOUT PROTECTION

Adolescent marriage in México





# **PROHIBITION WITHOUT PROTECTION: ADOLESCENT MARRIAGE IN MEXICO**

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*Prohibition without protection: Adolescent Marriage in Mexico*

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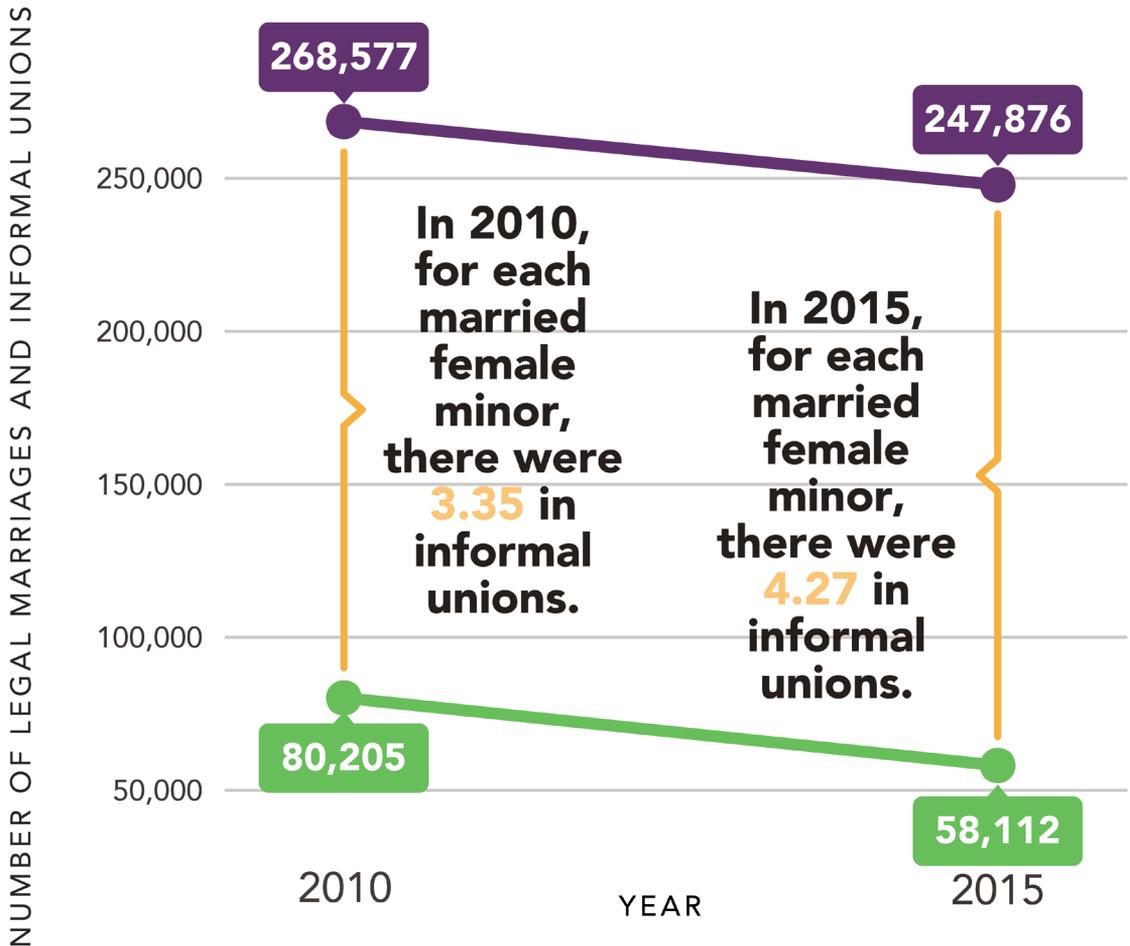
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# MARRIAGES AND INFORMAL<sup>1</sup> UNIONS IN MEXICO

2010-2015



FROM 2010 TO 2015, THE TOTAL NUMBER OF MARRIED ADOLESCENT GIRLS DECREASED BY 28%, WHILE THE NUMBER OF ADOLESCENT GIRLS IN INFORMAL UNIONS ONLY DECREASED BY 7%.

SOURCE:  
2010 CENSUS AND THE 2015 INTERCENSAL SURVEY, INEGI.

● INFORMAL UNIONS ● LEGAL MARRIAGE

# 1. Introduction

In 2016, the Human Rights Commission of the state of Aguascalientes presented Unconstitutionality Claim 22/2016 regarding the absolute prohibition of marriage for minors under the age of 18 before the Mexican Supreme Court (SCJN). This prohibition was included in the state's civil code as of February 2016. It was proposed in response to an international campaign led by the United Nations against child marriage, which was replicated in Mexico, with support from the National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA). The resolution from the Court is still pending.

The General Law on the Rights of Children and Adolescents (LGNA) came into effect in 2014 and stipulates that 18 is the legal minimum age for marriage in Mexico. Shortly thereafter, the majority of state legislatures standardized their civil codes with the federal law. **Some state legislatures went even further and eliminated exceptions<sup>2</sup> to this age limit although they were previously allowed.** SIPINNA and United Nations agencies have celebrated the absolute prohibition of adolescent marriage in Mexico as an advance in the protection of human rights in the country. We consider that absolute prohibition is not an effective mechanism for protecting the rights of adolescents.

While establishing a general law that allows marriage as of 18 years of age is positive, exceptions must be allowed in justifiable cases, in accordance to human rights standards. To better protect the rights of adolescents, a judicial mechanism that grants adolescents' right to marry in certain cases is needed. Establishing a complete prohibition, while politically attractive, is ineffective for reaching its proposed objectives. The State has the obligation to find the ideal manner in which to protect youth, without undermining their autonomy. The absolute ban on marriage is neither an ideal, reasonable nor proportional measure to achieve the above.

**In Mexico, 4.7% of female minors live with their partners.  
The great majority of this percentage (80.9%) is not married.**

*(2015 Intercensal Survey)*

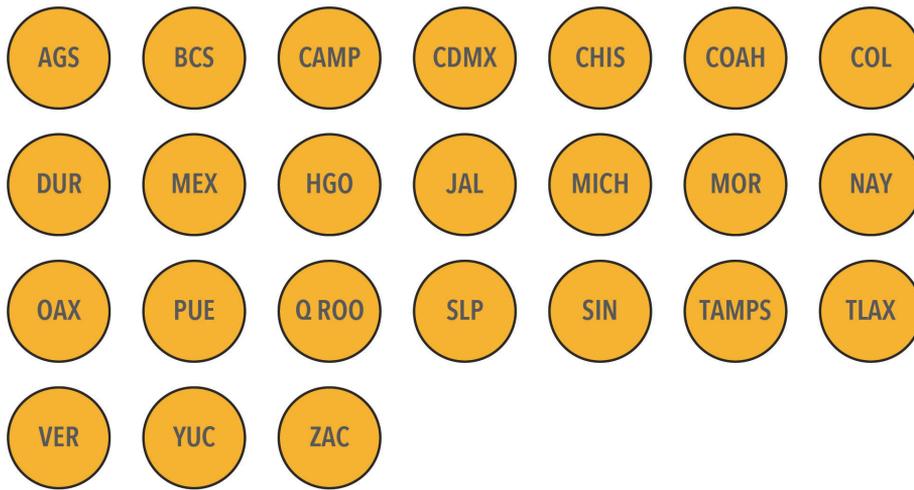
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1 The term "informal unions" refers to unions created by mutual agreement and public behavior, which may include, in some contexts, religious ceremonies, cohabitation or any other kind of agreement that does not contemplate a civil ceremony.

2 Translation of the legal term *dispensa* in Spanish: A *dispensa* is an "exception" to a law granted by a judge or other authority under the Mexican legal system. In this case, an exception allows a marriage to occur when it normally would be prohibited.

# LEGAL FRAMEWORK REGARDING MINORS MARRYING IN MEXICO<sup>3</sup>

WITHOUT EXCEPTIONS (26)



WITH EXCEPTIONS (6)

MINIMUM LEGAL AGE FOR MARRIAGE: 18 YEARS OF AGE

AUTHORITY THAT GRANTS THE EXCEPTION	
JUDGE	GTO, NL, SON, QRO
MUNICIPAL PRESIDENT	BC, GRO
GOVERNOR OR MUNICIPAL PRESIDENT	TAB



ESTABLISH 16 AS THE MINIMUM AGE TO GRANT AN EXCEPTION

UP UNTIL DECEMBER 2017, THE ONLY STATE THAT HAD NOT STANDARDIZED ITS LEGAL FRAMEWORK IN ACCORDANCE WITH THE LGNNA WAS CHIHUAHUA, IN WHICH THE LEGAL AGE FOR MARRIAGE WAS 14 FOR WOMEN AND 16 FOR MEN. CHIHUAHUA MODIFIED ITS LEGISLATION IN DECEMBER 2017 TO ESTABLISH THE LEGAL AGE OF MARRIAGE AT 18 FOR BOTH MEN AND WOMEN, WITHOUT ANY EXCEPTIONS.



At the time of this report's publication, all state-level civil codes establish 18 years as the legal minimum age for marriage.<sup>4</sup> However, the Federal Civil Code maintains differentiated minimum ages: 14 for women and 16 for men, in contradiction to the minimum age stipulated by the LGNNA. Despite the fact that the great majority of marriages in Mexico are regulated by state-level codes, this lack of standardization is contradictory, given that the federal Congress itself approved the LGNNA, which increases the legal minimum age for marriage. Both laws must be modified in accordance to the highest human rights standards.

Of the 32 Mexican states, six permit exceptions on justified grounds; the remaining 26 states do not. Among states that permit exceptions, the majority do not allow them to be granted to individuals under the age of 16. **In almost all cases, exceptions exist so that young people who are 16 or 17 years of age can marry, but an absolute ban on marriage for minors under 16 remains in place.** In the majority of states where exceptions are allowed, they are granted by Judges, in some states, however, municipal presidents and governors can grant them as well. In this sense, it is important to guarantee that the exceptions system be granted by a judicial authority, who is better equipped to analyze these types of cases in accordance with human rights criteria. Furthermore, in its upcoming discussion of Unconstitutionality Claim 22/2016, the Supreme Court must establish criteria for granting exceptions that could guide the actions of judicial authorities in their review.

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3 When this report was originally developed, the number of states with absolute prohibitions of adolescent marriage was 23. Shortly after its publication, three additional states reformed their civil codes to include this restriction: Chihuahua, Guerrero and Nuevo Leon.

4 In April 2014, Senators Barrales (PRD), De la Peña (PRD), García Gómez (PAN) and Gastélum (PRI) presented a legislative bill with the goal of establishing 18 as the minimum age for marriage in the Federal Civil Code. This bill failed to pass approval by the Joint Governance and Legislative Studies Commissions in the Senate in November 2016.

## 2. ARGUMENTS FOR THE ELIMINATION OF EXCEPTIONS

The prohibition of every exception is a response to international and national campaigns seeking to increase the legal minimum age for marriage, and in some cases, eliminating any possibility for underage marriage, regardless of individual circumstances.<sup>5</sup> The most common arguments for the application of prohibitive legislation are as follows:

- 1) Without this restriction in place, girls and adolescents marry much older men, which constitutes a form of violence that must be avoided;
- 2) these marriages have a significant impact on school dropout rates, and
- 3) there is a relationship between marriage and growing rates of adolescent pregnancy.

However, the reality in Mexico differs significantly from that of other regions commonly used as examples to support these types of initiatives. The following analysis of national data clarifies the magnitude of the phenomenon in Mexico, the age differences within couples, and the relationship between formal marriages and informal unions, as well as school dropout and adolescent pregnancy rates.

**Firstly, legal marriage among minors in Mexico is an uncommon phenomenon that has decreased each year**, which does not necessarily respond to the legal changes recently approved to eliminate exceptions and establish an absolute prohibition of underage marriage. The 2015 Intercensal Survey<sup>6</sup> shows that a small proportion of adolescent girls married (0.9%) during that year, while 3.8% decided to live with their partner in an informal union without formalizing paperwork before the State. In fact, the number of informal unions increases as adolescents get older. In other words, as adolescents grow, they are more likely to enter into informal arrangements, not legal marriages.

Among adolescent girls living with their partners, informal unions are the most frequent arrangement. Adolescent girls between 16 and 17 represent the age group with the highest proportion of this kind of unions. In 2010, for each female minor that was married, there were three in informal unions. In 2015, this proportion increased. **In reality, eliminating exceptions does not have a noteworthy effect on deterring these unions; on the contrary, it can contribute to encouraging them by not giving adolescent girls who wish to live with their partners, or those who already do, any other option.** What is certain is that legal marriage is rapidly becoming a less popular choice for adolescents in Mexico: while 1993 saw 120,866 marriages in which one spouse was a minor, in 2015 this rate was reduced to 22,057, which represents an 81.76% decrease.<sup>7</sup>

In 2000, adolescents represented 15% of total marriages. In 2010, this percentage dropped to 10%, and in 2015, only 4% of formal marriages included adolescents.<sup>8</sup>

5 To learn more about these arguments, see UN WOMEN, *Early marriage and partnerships among girls*, Available at: [http://www2.unwomen.org/-/media/field%20office%20mexico/documentos/publicaciones/2016/matrimonio%20infantil\\_.pdf?vs=1122](http://www2.unwomen.org/-/media/field%20office%20mexico/documentos/publicaciones/2016/matrimonio%20infantil_.pdf?vs=1122) [accessed: June 20, 2017].

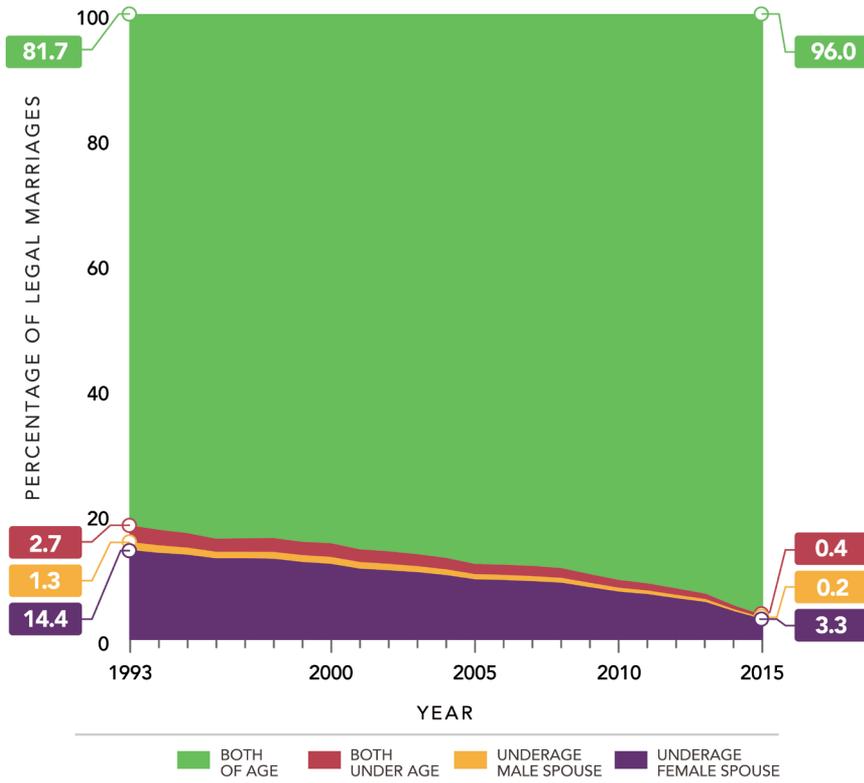
6 The 2015 Intercensal Survey was carried out with the aim of updating information between the 2010 Census and the subsequent census to be carried out in 2020. Available at: <http://www.beta.inegi.org.mx/proyectos/enchogares/especiales/intercensal/> [accessed: June 20, 2017].

7 INEGI, *Administrative registry: marriage, 2015*. Available at: <http://www.beta.inegi.org.mx/proyectos/registros/vitales/nupcialidad/> [accessed: July 28, 2017].

8 *Ibidem*.

# MARRIAGES IN MEXICO

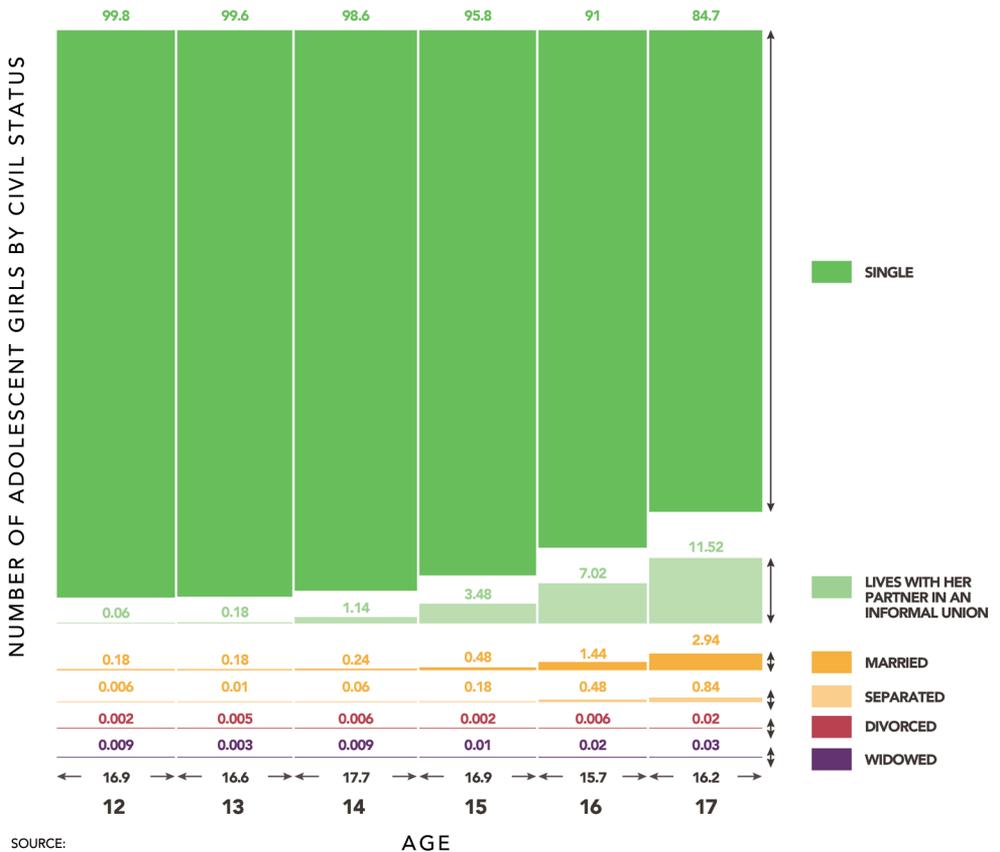
1993-2015



SOURCE: MARRIAGE STATISTICS, INEGI.

# CIVIL STATUS OF ADOLESCENT GIRLS

2015



SOURCE: 2015 INTERCENSAL SURVEY, INEGI.

## 2.1 Age differences within couples

Adolescent marriage is a rare phenomenon in Mexico that has tended to decrease over time. Nevertheless, those who argue for an absolute ban on adolescent marriage base their concern on the possibility of significant age differences between partners; more specifically, with girls being married to male partners much older than them. However, national data show that this is uncommon in the country. While in the majority of marriages in which one of the spouses is underage, the other spouse tends to be of age, the age difference between the two tends to be relatively small. As of 1993 to date, the average age difference between partners has been three years. In 2015 for example, the most common age combination for underage marriage was 17-year-old women with 20-year-old men. In general, age differences within married couples are not very significant in Mexico and have tended to diminish.

### AGE DIFFERENCES BETWEEN SPOUSES

2015



SOURCE: 2015 INTERCENSAL SURVEY, INEGI.

Age differences between married partners vary from state to state in Mexico. In 2015, for example, Aguascalientes registered 192 marriages in which one spouse was a minor. Of these marriages, the average age was 17 for women and 22 for men. (Marriage statistics, INEGI)

In general, there are fewer and fewer cases in which there is a significant age difference between partners, either in legal marriages or informal unions. In accordance with marriage statistics, the number of marriages in which the woman is younger than her male partner decreased by 57.1% between 2010 and 2015. The 2015 Intercensal Survey shows that in the majority of cases, the woman was 17 and her male partner was two or three years older, whether she was married or not.

**In 2015, 61.2% of married female minors were 17 years old; more than half of them married men who were 21 years of age or younger.**

*(2015 Intercensal Survey)*

## AGE DIFFERENCES IN INFORMAL UNIONS

2015



SOURCE: 2015 INTERCENSAL SURVEY, INEGI.

The complete ban on underage marriage in Mexico was proposed in the context of a global campaign. However, national data indicate that the situation in Mexico is notably different from other regions of the world where underage marriage is common, and particularly those cases where the woman is decidedly younger than the man.<sup>9</sup> Contrary to arguments presented by those who promote the elimination of exceptions, the national context presents dissimilar dynamics that must be taken into account when it comes to arguing for prohibitive legislative measures that could have unexpected and unintended outcomes.

**While the LGNNA states that 18 should be the minimum legal age for marriage, it does not indicate that exceptions should be eliminated in extraordinary cases in which adolescents' rights and autonomy protection justify them.**<sup>10</sup> The absolute prohibition of adolescent marriage in Mexico is the result of an unfortunate interpretation of the State's obligation to protect young people, particularly girls.

## 2.2 Protecting the rights of adolescent girls in Mexico

Not all apparent social problems should be solved through the adoption of legal prohibitions, especially when it comes to issues concerning young people, such as school dropout rates, gender and sexual violence or adolescent pregnancy, whose causes and solutions are multifaceted. Comprehensive solutions that focus on ensuring that adolescents have effective access to conditions that allow them to make free and informed life decisions are necessary. Some adolescents do not have access to services that the State is obligated to guarantee, which may force adolescents into relationships or marriages. Among these factors are poverty, discrimination, violence and lack of access to sexual and reproductive health services. **Restricting adolescents' ability to legally marry ignores their progressive autonomy and hinders their access to marriage-related rights that could grant them increased protection in certain circumstances.**

The data in Mexico indicate that adolescent girls in informal unions are the most vulnerable, given that they do not have the legal and institutional protections marriage confers, among other things. **Absolute prohibition of adolescent marriage can undoubtedly seem like an attractive measure; however, it does not solve the various situations young Mexican women face.** On the contrary, eliminating exceptions can actually place young women in circumstances of greater vulnerability as it leaves them without any protections, especially in cases in which they already live with their partners or have children.

9 "Marriage of young girls is most common in Sub-Saharan Africa and South Asia. In Niger, 77% of 20 to 24-year-old women were married before the age of 18. In Bangladesh, this rate was 65%." UNICEF, *Child marriage: Child protection information sheet*. Available [https://www.unicef.org/publications/files/Child\\_Protection\\_Information\\_Sheets.pdf](https://www.unicef.org/publications/files/Child_Protection_Information_Sheets.pdf) [accessed: January 12, 2017].

10 Article 45 of the aforementioned Law states that "federal and state-level laws, under their respective jurisdictions, will establish 18 as the minimum age for marriage."



Daysi, Oaxaca,  
17 years old

*I think that preventing under-age people from marrying doesn't guarantee that there won't be unwanted or adolescent pregnancies*

*I think that, if they prohibit marriage and take away any exceptions, our rights would be violated because authorities wouldn't be taking our decisions into account. Banning marriage would also violate more rights: they would not allow us to register our children, if we have any...*

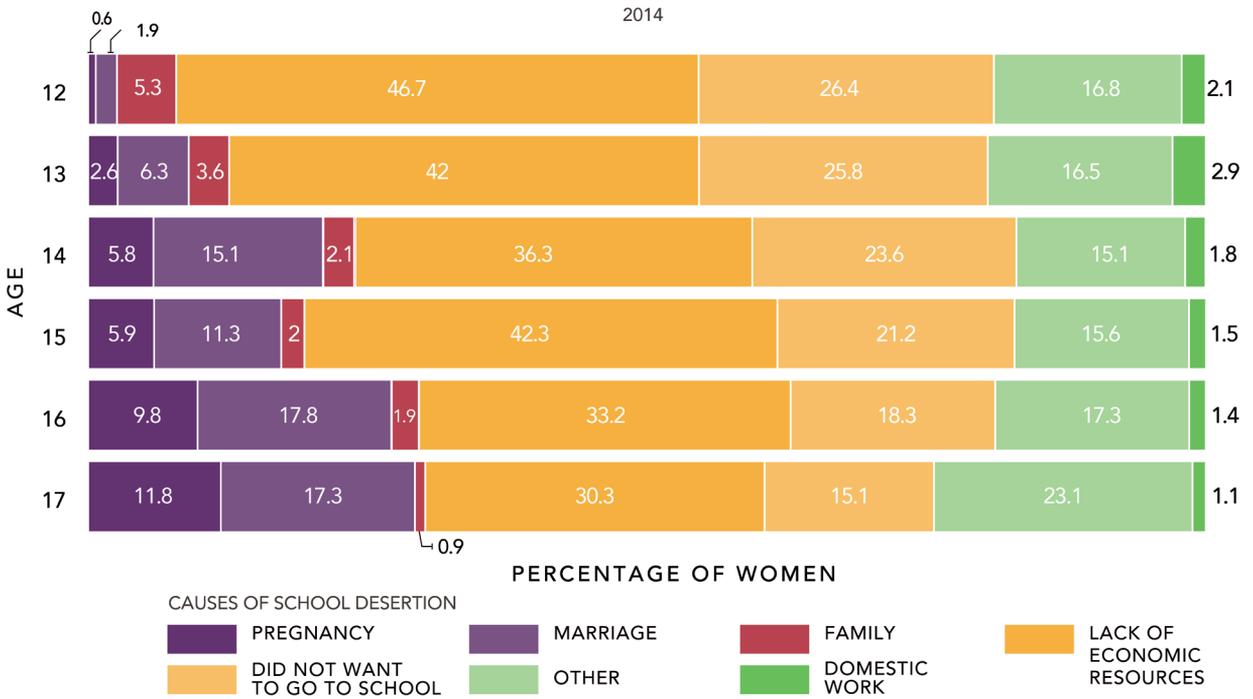
*I don't see the point of prohibiting adolescent marriage because we could still live with our partners, regardless.*

*At least from what I have seen in my community, among couples that do not celebrate formal unions, some adolescent girls still become pregnant without being married.*

### 2.2.1 School dropout rates

In Mexico, poverty is the primary cause for school dropout rates. **Although the desertion rate decreases as adolescents get older, the lack of economic resources is the main reason for dropping out of school across all age groups.** Among adolescent girls in particular, marriage is not one of the main reasons for abandoning school. Therefore, if authorities aim to reduce school dropout rates, it would be more effective to prevent and address other situations such as poverty and early pregnancies, rather than focusing solely on the absolute prohibition of underage marriage.

CAUSES OF SCHOOL DESERTION IN MEXICO



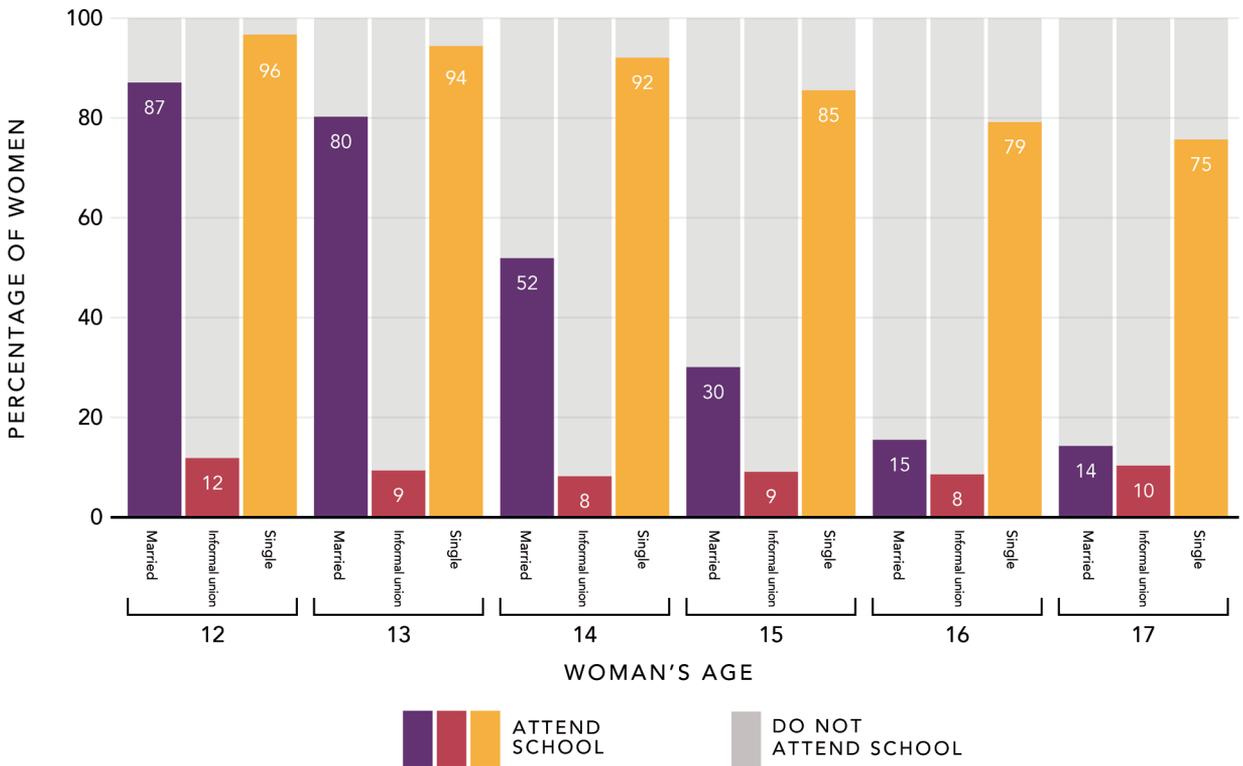
SOURCE: NATIONAL SURVEY ON DEMOGRAPHIC DYNAMICS, 2014, INEGI.

**22.4 % of married female adolescents attend school, while only 9.5% of those who live in informal unions continue studying.**

*(Intercensal Survey, 2015)*

## MARITAL STATUS AND EDUCATION

2015



SOURCE:  
INTERCENSAL SURVEY 2015, INEGI.

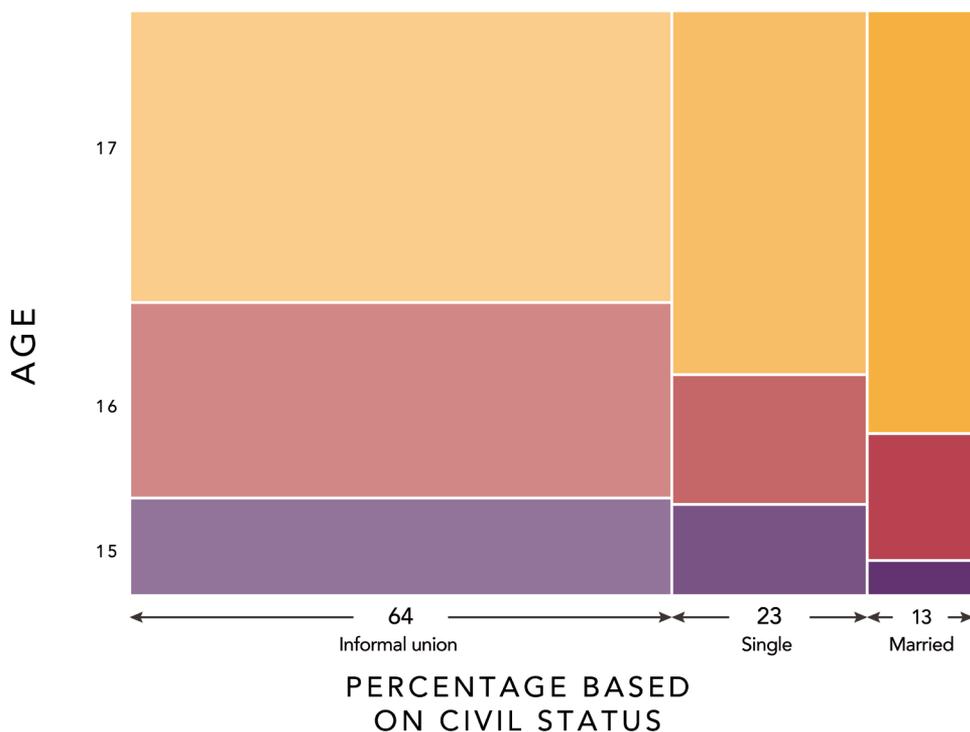
From the graph above, one can observe that the number of married adolescent girls who go to school is always higher than that of girls in informal unions. This difference decreases as women get older.

## 2.2.2 Adolescent pregnancy

Adolescent pregnancy can be a cause and a consequence of human rights violations and is often related to school desertion and maternal mortality. Among the Organization for Economic Cooperation and Development (OECD) member countries, Mexico has the highest birth rate for women between 15 and 19 years of age, with 64.2 births per 1,000 women. According to official public figures, two out of every ten adolescent girls in the country between the ages of 15 and 19 have been pregnant more than once.<sup>11</sup> Is the elimination of marriage exceptions an effective way to prevent these pregnancies? **Demographic trends reveal that the pregnancy rate of adolescents in informal unions is higher than that of those who are married.** In reality, of the adolescent girls who have been pregnant, only 13% were married, while 64% were in informal unions, and 23% were single.<sup>12</sup> As the data indicate, the majority of pregnant adolescent girls are not married, therefore the absolute prohibition of adolescent marriage would most likely not have a significant effect on the plan to reduce pregnancies within this population group.

### ADOLESCENT GIRLS WHO HAVE BEEN PREGNANT AT LEAST ONCE

2014



SOURCE:  
NATIONAL SURVEY ON DEMOGRAPHIC DYNAMICS, 2014, INEGI.

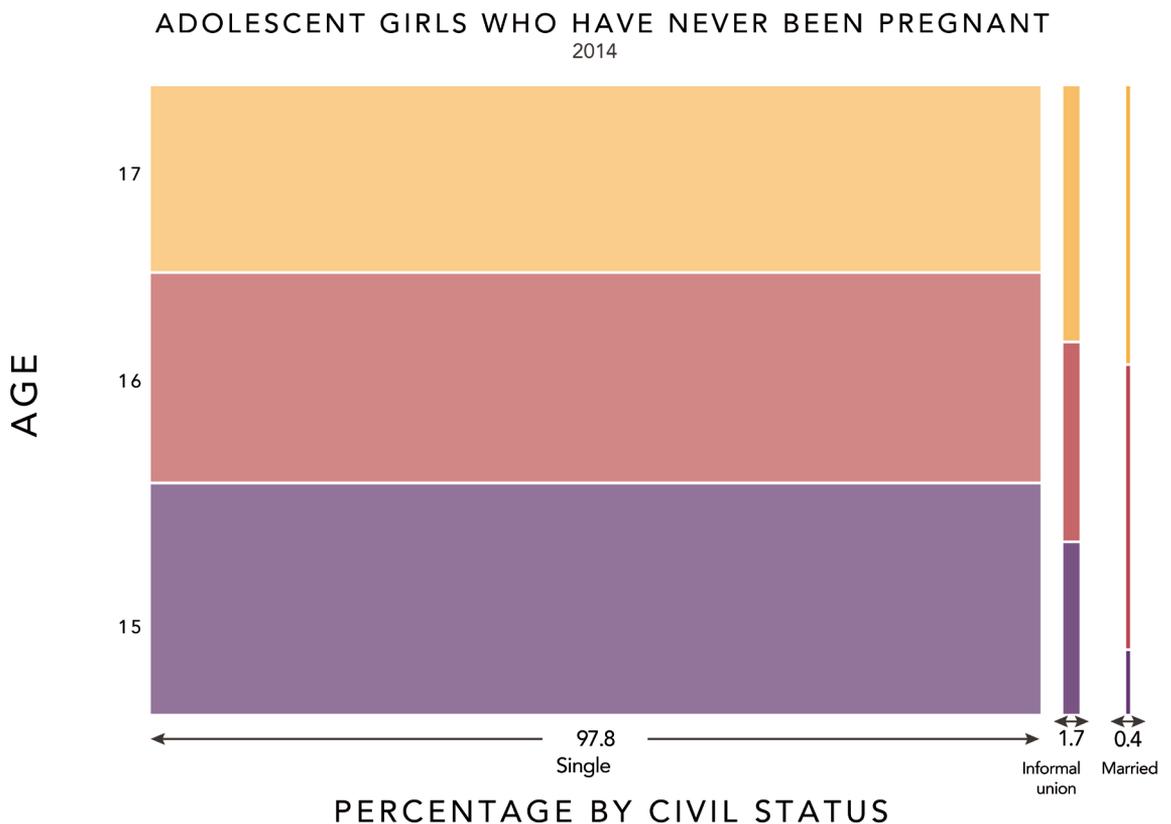
11 INEGI, *National Survey on Population Dynamics 2009: main results of the sociodemographic panorama in Mexico*, Mexico, CONAPO, INEGI, 2011 p. 22.

12 *Ibid.*

According to the World Health Organization (WHO), adolescents who are pregnant face significantly higher risks of maternal mortality in comparison with women over 20 years of age.<sup>13</sup> The WHO estimates that particularly in Latin America, young women under 16 face four times the risk of maternal mortality than women in their twenties.<sup>14</sup> Between 1990 and 2008, approximately one out of every eight maternal deaths was of an adolescent girl under 19 years of age. In 2013, in Mexico, 129 minors died during childbirth, six of whom were girls between 10 and 14 years of age. In the same year, underage women made up 15% of total maternal deaths.<sup>15</sup>

**In Mexico, 13% of female minors who have been pregnant are married, while 64% live in informal unions.**

(National Survey on Population Dynamics (ENADID), 2014)



SOURCE:  
NATIONAL SURVEY ON DEMOGRAPHIC DYNAMICS 2014, INEGI.

13. WHO, *The second decade: Improving adolescent health and development*, Geneva, 2001. Available at: [http://www.who.int/maternal\\_child\\_adolescent/documents/frh\\_adh\\_98\\_18/en](http://www.who.int/maternal_child_adolescent/documents/frh_adh_98_18/en) [accessed: June 20, 2017].  
 14. WHO, *Adolescent pregnancy*. Available at: [http://www.who.int/maternal\\_child\\_adolescent/topics/maternal/adolescent\\_pregnancy/es/](http://www.who.int/maternal_child_adolescent/topics/maternal/adolescent_pregnancy/es/) [accessed: June 20, 2017].  
 15. GIRE, *Women and Girls Without Justice: Reproductive Rights in Mexico*, 2015. Available at <http://informe2015.gire.org.mx>.

In addition, figures on access to contraceptives reveal a particular problem for the adolescent population, which has the least knowledge of methods and access to them. Therefore, it is imperative to identify the obstacles this population faces, particularly regarding access to information and sexual health services.<sup>16</sup> Furthermore, unsafe abortions still represent the fourth cause of maternal mortality in Mexico, notably affecting adolescents and girls. Between 1990 and 2013, of the 2,186 women who died from unsafe abortions, 279 were adolescents between 15 to 19 years of age, and 11 were girls between 10 and 14 years of age.<sup>17</sup> According to the Executive Commission on Victim Assistance's (CEAV) estimates, from 2010 to 2015, 3 million sexual offenses were committed in Mexico, at least 600,000 per year. Eight out of ten victims of such crimes were women, 37.5% of them under the age of 15. Moreover, the majority of sexual assaults occur in the victim's home and in more than 60% of cases are carried out by people who are close to them.<sup>18</sup>

Sexual violence is one factor associated with high rates of early pregnancy, along with physical and psychological injury, and sexually transmitted infections. In this sense, it is important to highlight the serious implications of the lack of access to legal abortion in Mexico, in particular after rape.<sup>19</sup> Despite its active participation in promoting the absolute ban on adolescent marriage, the SIPINNA has failed to emphasize the importance of abiding by legislation concerning abortion in cases of rape as a measure to limit early pregnancies. **Concerns regarding forced unions, high rates of early pregnancy, and limited access to both contraception and safe and legal abortions, cannot be resolved by the elimination of any exception to underage marriage.** Protecting the rights of Mexican girls and women requires profound short, mid and long-term actions, aiming to modify cultural patterns and gender stereotypes in the law, as well as in public policies and society as a whole. The Committee on Economic, Social and Cultural Rights' General Comment No. 14 states that, "the realization of the right to health for adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services".<sup>20</sup>

Early pregnancy can translate into school desertion, affecting young women's life plans, which could worsen their already marginalized circumstances.<sup>21</sup> Undoubtedly, the high rates of early pregnancies in Mexico require laws and public policies directed to promoting and guaranteeing access to contraceptives, as well as accessible and non-discriminatory counseling. In addition, the State must undertake urgent actions to prevent sexual violence and provide care for survivors, offer comprehensive sexual education, guarantee access to safe and legal abortion, and provide comprehensive medical care. **For this, the absolute prohibition of underage marriage is neither an ideal, necessary, nor proportional solution.**

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<sup>16</sup> *Ibid*, p. 39.

<sup>17</sup> *Ibid*, p. 177.

<sup>18</sup> Executive Commission on Victim Assistance, *Diagnostic report on assistance in case of sexual violence in Mexico*, 2016, pp. 12-15. Available at: [http://www.gob.mx/cms/uploads/attachment/file/118490/Resumen\\_Ejecutivo\\_diagno\\_stico\\_violencia\\_Sexual\\_CEAV.pdf](http://www.gob.mx/cms/uploads/attachment/file/118490/Resumen_Ejecutivo_diagno_stico_violencia_Sexual_CEAV.pdf).

<sup>19</sup> In Mexico, abortion is a generally a crime with certain indication where it is not punished. Its regulation varies from state to state, which is to say that each penal code establishes under which indications abortion is legal. Abortion after rape is the only abortion indication that is legal throughout Mexico. See GIRE, *op. cit.*, pp. 62-63.

<sup>20</sup> United Nations, CESCR General Comment No.14 (2000): *The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)* [E/C.12/2000/4], Twenty-second Session (2000), paragraph 23. Available at <http://bit.ly/1Tem8RK> [accessed: May 18, 2015].

<sup>21</sup> Government of Mexico, *National Strategy to Prevent and Provide Care for Adolescent Pregnancies*, Mexico, 2015, p. 66. Available at [http://www.gob.mx/cms/uploads/attachment/file/55979/ENAPEA\\_0215.pdf](http://www.gob.mx/cms/uploads/attachment/file/55979/ENAPEA_0215.pdf) [accessed: June 20, 2017].

Moreover, the correlation that is attributed to adolescent marriage and pregnancy assumes that all young couples in Mexico are comprised of a man and a woman. This ignores the constitutionally recognized diversity of families, and the relevance that legal marriage may have for same-sex couples who wish to formalize their relationships, obtain social security benefits and, on occasion, protect themselves from the stigma that can accompany same-sex relationships. According to marriage statistics, between 2010 and 2015, 12 same-sex marriages where one of the spouses was a minor were registered in Mexico. Although this number may be low in comparison to the total number of underage marriages, it should be considered when banning all exceptions.

### 3. REASONS WHY MINORS GET MARRIED

David, Oaxaca, 17 years old

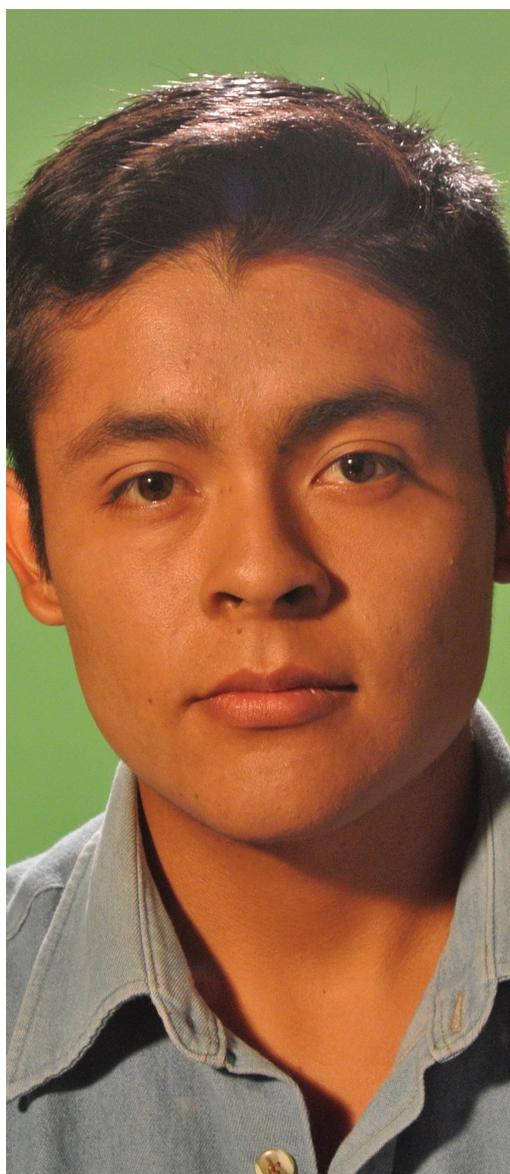
*In general, couples move in to one of their parents' house, without getting married.*

*I think that in the case of adolescents, it's like violating a right, because their opinions aren't considered, even though they can make their own decisions, it takes away their autonomy and violates their rights.*

*Age is only a number; just because someone is 18 years old or younger, it doesn't mean he or she is less responsible.*

*Prohibiting marriage will definitely not reduce teenage pregnancies. In my community, for example, there are young people who move in together and continue studying. It's not true that because they're together, they're definitely going to have a baby. However, lots of other people are not married and have babies. So, I don't think that banning marriage will change much, because every adolescent has a different way of thinking and making decisions.*

*The State sees adolescents as children who still need guidance and considers that forbidding things is the way for a freer and better life. But no, there are young people who may think like adults.*



People who defend the absolute prohibition of marriage tend to assume that every early union between minors is forced or poses risks of violence. There are many reasons, however, why underage people may consider marriage as an adequate life choice. Based on their progressive development, adolescents must be listened to and taken into account.

Antonia, Ciudad de México,  
14 years old

*Love is a feeling that can't be prohibited. It's something you feel and it's your decision if you want to be with the person you love.*

*The State should continue to allow exceptions, because, what if two people love each other, and maybe an exception can help them? For example, what if one of them is foreign and marriage can help his or her migration status, perhaps an exception would be justified in such cases?*

*I think that marriage and school dropout rates aren't related. It's more likely for a woman to abandon school because she's pregnant than because she's married.*

*I don't see a relation between marriage being allowed and violence in adolescent relationships, because what would marriage change if there's violence within a couple?*



### 3.1 Nayarit: Two couples facing the total prohibition of marriage

Two cases in the state of Nayarit, in which couples were denied permission to marry, illustrate the situation. Blanca and Roberto were expecting a child; Nayelli and Victor's son had already been born.<sup>22</sup> Both couples were already living together. Given that the legislation of the state of Nayarit doesn't allow any exemptions for adolescent marriage, both couples presented *amparo* suits,<sup>23</sup> claiming that Article 144 of Nayarit's Civil Code is unconstitutional. As a consequence of prohibiting their marriage, the Code also prevented both couples from registering their children. In both cases, the *amparo* was granted and both judges determined that the total prohibition of marriage before the age of 18 is unconstitutional.

In the ruling resulting from Blanca and Roberto's *amparo*, the judge ruled that there were no rational justifications to grant an incomplete set of rights to young couples in cases where there is no indication whatsoever that coercion or violence are present. The judge asserted that, because legislators in the state of Nayarit had focused their concerns solely on forced marriages involving minors and on the sexual abuse of girls, they disregarded the consequences of an absolute ban on marriages between minors, especially in cases where adolescents are exercising their right to autonomy by marrying, in addition to the cases in which they live together and have children.

<sup>22</sup> Names have been changed to protect the privacy of these individuals.

<sup>23</sup> An *amparo* is a legal stay or federal lawsuit filed by an individual, challenging the official acts of a federal, state or municipal authority as unconstitutional. See *amparos* 1726/2016 and 1284/2016.

Among other things, the judge based his reasoning on Article 1 of the Mexican Constitution, which states that all persons will enjoy the human rights set forth in the Constitution and in human rights conventions to which Mexico is a signatory, without discrimination caused by a set of attributes. Age is included explicitly among these attributes as a “suspicious category”.<sup>24</sup>

In his reasoning, the judge referred to a 2012 Supreme Court ruling concerning the marriage regulation in the state of Oaxaca. The ruling states that the exclusion of same-sex couples from marrying is discriminatory, as it denies them the possibility of enjoying the expressive and material benefits of marriage without a rational justification.<sup>25</sup> Admittedly, Article 1 of the Constitution obliges legislators to provide equal treatment in equivalent situations, unless there is a rational and objective basis that allows for the unequal treatment of individuals. In other words, **the Constitution itself does not forbid the use of “suspicious categories” such as age, rather it prohibits their use in an unjustified manner.** In the cases reviewed, the absence of exceptions for underage marriage in the state of Nayarit had a significant impact on the rights and quality of life of both of the couples involved without any rational justification.

The rulings in both cases refer to Article 4 of the Constitution, which relates – among other things – to family protection and the equality between men and women before the law. According to the judge who reviewed Nayelli and Victor’s case, “what must be understood as constitutionally protected is the family as a social reality, for that matter, this stated protection must cover all of this existing reality’s forms and manifestations”.<sup>26</sup> In other words, constitutional protection of the family includes those families that are constituted through marriage, informal unions, single parent arrangements, or any other arrangement constituted through a similar bond. **The fact that, in both cases, the couples in question lived together, implied the State’s obligation to recognize them as a family and grant them the legal protections that legal marriage in Mexico offers, in particular, the recognition of their children.**

**...marriage grants spouses a great number of rights. In this sense, denying marriage’s tangible and intangible benefits accessible to people of age to underage couples who are freely living together and have children, amounts to treating them as if they were “second-class citizens”.<sup>27</sup>**

24 Similar to the concept of strict scrutiny in the judicial system of the United States of America. This legal criterion establishes that judicial authorities must be skeptical of any norm that excludes historically discriminated groups or uses certain variables (such as age, gender and race) to exclude such groups.

25 SCJN. *Amparo under review 457/2012 (Based on the request number 125/2012 for the Supreme Court to take the case)*. Reporting judge: José Ramón Cossío Díaz. Available at: [https://www.sitios.scjn.gob.mx/codhap/sites/default/files/engrosepdf\\_sentencia-rele-vante/12004570.002-1307.pdf](https://www.sitios.scjn.gob.mx/codhap/sites/default/files/engrosepdf_sentencia-rele-vante/12004570.002-1307.pdf) [accessed: June 20, 2017].

26 *Indirect Amparo Ruling number 1284/2016, Judge Rogelio Alberto Montoya, First District Judge in Civil, Administrative and Labor Amparo Matters and of Federal Trials, year 2016*, page 11.

27 *Ibid*, page 33.

To determine this, both judges examined the constitutionality of the law based on the following criteria:

- 1) If the absolute prohibition of underage marriage fulfills a constitutionally important objective;
- 2) If such a prohibition is explicitly aimed at achieving this objective;
- 3) If the prohibition is the least restrictive measure to safeguard this objective.

Both rulings declared that Article 144 of Nayarit's Civil Code fails to safeguard constitutionally relevant objectives, since the risk of violating the couple's rights related to their civil status should not be contingent upon the generalized idea that underage marriage is always forced and implies other kinds of violence. **Civil laws cannot ignore the will of adolescents wishing to marry, the circumstances surrounding their decision, and the fact that this can be a free and consenting relationship decided by the couple.**

According to both rulings, Article 144 of Nayarit's Civil Code is unconstitutional insofar as it generalizes that all marriages involving minors are forced. **While it is true that marriage among adolescents must not be permitted if risks of physical, sexual or psychological violence exist, absolute restrictions, far from benefiting adolescents, can restrict the exercise of their rights in certain circumstances.** Particularly when a couple is expecting a child or already has children, civil laws can represent an obstacle for registering newborns, as is the case Article 354 of Nayarit's Civil Code. This article establishes that children can only be recognized if the couple is over the minimum required age for marriage. For this reason, limitations imposed by the absolute prohibition of marriage for minors extend to the couple's children, whose right to an identity, among other rights, can also be violated.

Both judges concluded that any legal system that establishes 18 as the minimum age of marriage and does not allow for exceptions, is unconstitutional, as it violates human rights such as the right to free development of personality, to an identity and to access to social security. Thus, in the light of the circumstances of both couples, Nayarit's civil law which bans underage marriage without exceptions is not an ideal, proportional and necessary measure to reach ends that can legitimately be pursued.

## The Legal Prerogatives of Marriage

Given Mexico's current legal framework, marriage is "a right to access more rights" that can help improve the quality of life of young people who wish to formally unite. These rights are the following:

- a) *Tax benefits: for example, personal tax deductions for medical and hospital expenses paid by one spouse for the other.*
- b) *Solidarity benefits: Social Security Law considers a pensioner's spouse as his or her "beneficiary". This means that the spouse becomes the creditor of the benefits already held by the pensioner. The same laws uphold benefits granted to the spouse of the pensioner in the case of his or her death.*
- c) *Benefits relating to the cause of death of a spouse: The widowed spouse has the right to inheritance of assets in the order established by the judicial system when the deceased spouse dies without a will. The widowed spouse has the right to receive compensation in the case of a workplace death, in cases where he or she depended financially on the worker and has a disability.*
- d) *Benefits relating to medical decisions: The General Health Law establishes an order of precedence for the spouse regarding post-mortem medical decisions relating to his or her deceased partner's body. The spouse must give his or her consent for organ donation (unless the deceased had manifested his or her opposition), allow for the disconnection of life support when brain death has been declared, and give consent for autopsies.*
- e) *Immigration benefits for foreign spouses: In accordance with Mexican immigration law, being married to a Mexican individual gives the foreign spouse the right to access different immigration statuses. Citizenship laws grant access to citizenship for the foreign spouse of a Mexican person if he or she has resided with their partner in the marital home in the national territory during a period of two years.*

## 4. THE INTERNATIONAL PANORAMA

Though early marriage is a global concern, legislative responses vary significantly from country to country. To a large extent, this is due to each nation's context and customs. Despite the fact that the legal minimum age for marriage tends to be the same as the age of legal adulthood across the world, the existence of exceptions on justified grounds is a common measure to recognize the progressive autonomy of adolescents and, at the same time, guarantee the protection of their rights. In Spain, for example, people who are 16 years old and over who wish to marry must complete an emancipation process. This is achieved through a trial in which parents or guardians present arguments in favor or against this process before a judge. Afterwards, the judge determines the validity of these grounds and decides whether to grant the emancipation. Thus, it is possible for an adolescent to marry, provided she or he is emancipated.<sup>28</sup> There are other examples of legislation in Latin America that allow exceptions for marriage after 16 years of age on justified grounds:<sup>29</sup>

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28 Government of Spain, "Law 15/2015, July 2, of Voluntary Jurisdiction" in the *Official Bulletin of the State*, No. 158, July 3, 2015. Available at: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-7391](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-7391) [accessed: May 17, 2017].

29 Government of Argentina, "Civil and Commercial Code of the Nation. Law 26.994". Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm#11> [accessed: May 17, 2017].

Government of Chile, "Establishing text founded in, coordinated, and systematized based on the Civil Code; of Law no. 4.808, on the civil registry of the Law no. 17.344, that authorizes the change of given names and surnames, of the Law no. 16.618, the law concerning minors, on the Law no. 14.908, on family abandonment and the payment of alimony, and of law no. 16.271, on the taxation of inheritance, allocations and donations" in the *Official Journal of the Republic of Chile*, year CXXIII, no. 320.108, May 30, 2000. Available at: <http://www.diariooficial.interior.gob.cl/media/2000/05/30/do-20000530.pdf> [accessed: May 17, 2017].

Government of Costa Rica, "Law No. 5.476 of the Family Code" in the *Official Journal of the Nation*, no. 24, February 5, 1974. Available at: [http://www.oas.org/dil/esp/codigo\\_de\\_Familia\\_costa\\_rica.pdf](http://www.oas.org/dil/esp/codigo_de_Familia_costa_rica.pdf) [accessed: May 17, 2017].

Country	Minimum age for marriage	Exceptions	Conditions	Other
ARGENTINA	18 years of age for men and women.	A 16-year-old can marry with authorization from a legal guardian. If an authorization is unavailable, the minor can marry through an exception granted by a judge.	The judge must hold a personal interview with the future spouses and with their legal guardians.	The judge's decision must take the individuals' age and level of maturity into account, and make sure that the couple understands the legal consequences of marriage. The judge also evaluates the opinion of their representatives.
CHILE	18 years of age for men and women.	Those who have not turned 18 will not be permitted to marry without express consent from their parents. If one parent is absent, or both are absent, express consent from a direct family member or next of kin is required.	If a public servant in the Civil Registry denies the marriage, his or her reasons must be explained. In this case, the minor has the right to solicit qualification of the dissenting decision by a competent court.	In the event of a tie, the judge will rule in favor of the marriage.
COSTA RICA	18 years of age for men and women.	For an underage person to marry, it is necessary for one parent who has custody to grant his or her consent. They are not obligated to justify a negative response.	The approval of the exception will be granted by the Court in the following cases: <ol style="list-style-type: none"> <li>1. When the minor has been legally and administratively declared to be in a state of abandonment.</li> <li>2. When an approval is necessary to prevent the minor from facing prejudices arising from offenses that pertain to actions or sentences that may be annulled through marriage.</li> <li>3. When the legal guardian's motives to dissent are unreasonable.</li> </ol>	Marriages between those under 15 are annulable. However, these marriages will remain valid if the spouses do not separate during the month after the youngest spouse turns 15.

Source: GIRE, June 2017.

## 5. SOLUTIONS IN ACCORDANCE WITH HUMAN RIGHTS STANDARDS

Article 71 of the LGDNNA states that children and adolescents have the right to be heard, and have their interests considered, in accordance with their age, evolving capacities, cognitive development and maturity. It is necessary for authorities, under their respective jurisdictions, to establish measures that guarantee the exercise of their rights, according to the needs and particular issues of each age group. For example, the State's obligation to guarantee the right to health consists of providing information and sexual and reproductive health services based on scientific evidence. These services must include effective access to a wide range of contraceptive methods, including short-term methods such as prophylactics, hormonal methods, and emergency contraception, while facilitating permanent and long-term contraception.<sup>30</sup> In this vein, it is essential that authorities establish actions that consider the particularities of each age group at all times, and that specifically consider the development, capacities and decisions particular to each individual.

Though it has been set out as a way of protecting the rights of young people (especially female girls and adolescents) in Mexico, the absolute prohibition of adolescent marriage violates human rights. **Failing to consider exceptional cases disregards young people's cognitive development, evolving capacities and maturity to exercise their autonomy under a formal union.** Such prohibition is the result of a misinterpretation of the LGDNNA. By not considering these exceptions, the ban violates Article 83 of this law, which establishes the following:

Federal, state-level and municipal authorities, as well as those in the Federal District's territories that establish legal or administrative procedures, or who carry out whatever act of authority that relates to girls, boys or adolescents, must determine their actions in accordance with the age, evolving capacities, cognitive development and level of maturity of the minor.

In this regard, all measures promoting the well-being of young people must be based on: 1) guiding principles related to the rights of adolescents and 2) adolescent's human rights related to their civil status:

<sup>30</sup> United Nations Committee on the Rights of the Child. *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, [CRC/C/GC/15]. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vHCIs1B9k1r3x0aA7FYrehlsj%2f-QwiEONVKEf8Bnp-vEXSpkWs88Ox20zopFIZzR2zjj%2b%2b3LgcG%2bV5Nk0UC7ptifD> [accessed: January 12, 2017].

## **1) GUIDING PRINCIPLES RELATED TO THE RIGHTS OF ADOLESCENTS**

### **The best interest of the child**

This principle entails that a child's development and full exercise of rights must be considered the guiding principle for the creation, application and interpretation of all laws in all aspects of children and adolescents' lives. This includes laws that primarily relate to the right to non-discrimination, the right to privacy, and the right to freely develop their personality.

When it comes to legislative or administrative provisions that affect the rights of minors, the best interest of the child requires that judicial institutions carry out much stricter scrutiny with respect to their necessity and proportionality.

### **Evolving capacities**

This principle is established in the LGDNNA and it means that adolescents are legal subjects who possess rights and not objects of protection. This standard signifies that adult mediation must be proportional to the capacities of adolescents, who must participate and exercise their rights in an autonomous manner as much as possible, based on their age and level of development.

In this sense, evolving capacities is a guiding principle for children and adolescents' status as legal subjects of rights. This principle implies that the development of young people's identities should be manifested in freely-elected life choices, recognized as valid and just.

## **2) ADOLESCENT'S HUMAN RIGHTS RELATED TO THEIR CIVIL STATUS**

### **The right to privacy**

In general terms, the right to privacy refers to the guarantee there will not be arbitrary interference in the private life of an individual or their family. In this context, this involves an individual's right to make decisions regarding their civil status.

The Inter-American Court of Human Rights (IACHR) asserts that the private sphere must remain immune and exempt from invasions, or abusive or arbitrary aggressions on behalf of third parties or State authorities. In accordance with the Court, the concept of private life includes, among other protected spheres, family relations and sex life.

### **The right to free development of personality**

Among other things, this right includes the freedom to marry; to decide to procreate, and, if so, when; the freedom to determine personal appearance, profession or employment activities and sexual orientation.

These aspects are part of the way in which people decide to plan and live their lives, and for this reason, only they can make these decisions. The State must respect this ability without coercion or unjustified restraints.

## 6. CONCLUSIONS

The correlation that is commonly attributed to adolescent pregnancy and school dropout rates with marriage does not reflect the situation in Mexico, nor the potential comprehensive solutions that can be implemented to address these phenomena. The statistics in Mexico are clear: firstly, age differences between spouses when one of them is a minor are not significant; secondly, the main cause for school desertion is not marriage, but rather a lack of resources, and thirdly, married adolescent girls have lower rates of pregnancy than those who are single and in informal unions. To address adolescent pregnancy, measures that prevent violence, promote access to contraceptives and safe and legal abortion are required.

Legal marriage in Mexico permits access to important prerogatives, among others, social security, immigration and tax benefits. Eliminating any exception to underage marriage disregards adolescents' ability to exercise autonomy in making their own decisions relating to their life goals and private life and prevent them from obtaining certain protections. If the State complied with its human rights obligations, young women would have better opportunities to make decisions about their private life, which include choices regarding their civil status.

Ultimately, the absolute ban on underage marriage enthusiastically purported by the SIPINNA, United Nations agencies and state-level legislatures, does not address the concerns that it seeks to resolve. These are deep-level issues that have multifaceted solutions. At the same time, prohibition curtails the recognition of adolescents' progressive autonomy.

In light of this evidence, GIRE hopes that in its decision regarding Unconstitutionality Claim 22/2016, the Supreme Court determines that the absolute prohibition of adolescent marriage in Aguascalientes is unconstitutional. Furthermore, GIRE hopes the Court can contribute to establish clear criteria for judicial authorities to grant exceptions in order to safeguard the rights of adolescents, and protect them from abusive scenarios and asymmetrical power relations.

*Prohibition without Protection: Adolescent marriage in Mexico*

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