

Step by Step: Mexico's Supreme Court's Rulings on Abortion



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List of Acronyms and Abbreviations

ALDF	Legislative Assembly of the Federal District
CNDH	Mexico’s National Human Rights Commission
Federal Constitution	Political Constitution of the United Mexican States
IUD	Intrauterine device
DOF	Mexico’s Official Gazette of the Federation
GIRE	Information Group on Reproductive Choice
LTP	Legal Termination of Pregnancy
ISSSTE	Mexico’s Institute for Social Security and Services for State Workers
LGS	Mexico’s General Health Law

LGV

Mexico's General Victims Law

MORENA

National Regeneration Movement

NOM

Official Mexican Standard

NOM 046

NOM-046-SSA2-2005 Sexual and Family Violence Against Women. Criteria for Prevention and Care

WHO

World Health Organization

PAN

National Action Party

PGR

Mexico's Attorney General's Office

PRD

Democratic Revolution Party

SCJN, Supreme Court, Court

Mexico's Supreme Court of Justice of the Nation





Introduction

Mexico's Supreme Court of Justice (SCJN, for its Spanish initials) has played a fundamental role in the defense of reproductive rights in the country. Since 2007, it has issued rulings relevant to ensuring the recognition of access to abortion as a human rights matter. Over the last two decades, it has made steady progress on this issue, adapting its arguments to new human rights standards, to recent and more interesting questions raised by civil society organizations and other authorities, as well as to a political context in which the social demand for liberalizing the regulations restricting abortion is increasingly greater.

However, because of their very nature, the SCJN's rulings are not always accessible to the general public or to all those interested in the issue. Legal technicalities or even the Court's own structure and processes can be an obstacle that hinders each ruling's most important arguments from transcending the legal sphere and becoming concrete improvements in the lives of those they seek to protect, namely women and people with the capacity to gestate.

With this in mind, this document analyzes, in plain language, the emblematic rulings¹ on abortion issued by the country's most important court between 2002 and January 2025. A brief political and contextual analysis is included along with the rulings to highlight their relevance at the time they were issued as well as their impact. Each of these rulings has laid the foundations for abortion to be legally recognized today as a mandatory service in cases where the pregnant person's health is at risk, as well as a right for victims of sexual violence and a cornerstone of the freedom of choice.



¹ The rulings were selected based on the significance of the arguments put forward by the Supreme Court in each case.

The Court's rulings have also led to more states decriminalizing abortion. Most state congresses have opted to legalize it, at least during the first trimester of pregnancy, while some have chosen not to set any time limits for women and pregnant people to have voluntary abortions. Currently, 22 of the 32 states (including Mexico City as a federal entity) have modified their penal codes in this sense: Mexico City in 2007; Oaxaca in 2019; Hidalgo, Veracruz, Coahuila, Baja California and Colima in 2021; Sinaloa, Guerrero, Baja California Sur and Quintana Roo in 2022; Puebla, Jalisco, Michoacán, San Luis Potosí, Zacatecas, State of Mexico, and Chiapas in 2024; and, as of April 2025, Nayarit, Chihuahua, Campeche, and Yucatán.

Despite this significant progress—and the fact that abortion is legally permitted—it is still defined as a crime in most of the country's criminal codes, and access to public health services to perform this procedure is still very limited. However, today there is a Green Tide—a social movement in favor of legal, safe, and free abortion that continues to innovate in its strategies aimed at improving laws and facilitating access to information for those who decide to have an abortion.²

As part of this movement, at Information Group on Reproductive Choice (GIRE) we developed this new edition of *Step by Step: Mexico's Supreme Court's Rulings on Abortion* with the purpose of keeping the general public up to date on the most relevant rulings on this matter. This edition includes a chapter describing GIRE's legal strategy to advance the decriminalization of abortion at the national level. The aim of this document is to serve as a tool to support the outreach, advocacy, and accompaniment of activists, scholars, legislators, and all those interested in

² If you want to know more about abortion in Mexico, you can refer to *Aborto en papiroflexia* [Abortion in Origami], a continuously updated resource that brings together information on the subject, here: <https://abortomexico.gire.org.mx/>

ensuring that women and people with the capacity to gestate in Mexico are able to exercise their rights.

GIRE is an organization that recognizes sex/gender diversity and that the spectrum of people who can get pregnant includes those who recognize themselves as having non-normative gender identities. Therefore, in the area of reproductive health, we refer to both women and people with the capacity to gestate, as it is fundamental that all those who need these services are included in their protection and guarantee. Thus, the term *people with the capacity* to gestate refers to those who do not identify as women and whose bodies have the capacity for pregnancy; namely, trans men, non-binary people, and all those belonging to the gender dissidence included in that category.

Chapter 1.

What You Need to Know to Understand the Supreme Court's Rulings



How many times have you heard or read: “The Supreme Court stated that...,” “The Supreme Court granted a constitutional protection (*amparo*) to...,” or “The Supreme Court declared the invalidity of article...”? How many of those times have you clearly understood what is being communicated? In this first chapter, we will explain what the rulings of the Supreme Court of Justice of the Nation are. (Throughout the text, we will refer to it as: the SCJN, the Court, or the Supreme Court.)

What is the Supreme Court of Justice of the Nation and Why Are Its Rulings Important?

To position the Court and its work on the abortion issue, we must first remember that the Mexican government is divided into three branches—each with different functions—that balance its responsibilities before its citizens: the legislative branch, the executive branch, and the judicial branch.³ They exist at both the federal and state levels (the latter are also called local levels).

The Legislative Branch

Who are its members? Legislators. At the federal level, they are the people who work in the Chamber of Deputies and the Chamber of Senators, which together constitute the Congress of the Union. However, at the local level, each state’s congress is only comprised of deputies.

³ There are also other equally important government offices that are not part of any of these branches; they are formally known as autonomous constitutional agencies. Examples of these are the human rights commissions and the prosecutors’ offices.

What does it do? It creates, modifies, or removes regulations. By regulations we mean any written rule contained in the Political Constitution of the United Mexican States (also known as the Federal Constitution) or in a law (such as criminal codes). These rules are typically referred to as articles. General laws (such as the General Health Law) and federal laws (such as the Federal Criminal Code) can only be modified by the Congress of the Union.⁴ Each state's constitutions and laws can only be altered by its own local congress. However, changes to the regulations, made by any of the congresses, must never be in conflict with what is stated in the federal Constitution.

What does this branch do in relation to the abortion issue? Each state's criminal code as well as the Federal Criminal Code contain rules that prohibit or allow abortion under certain circumstances. When we celebrate the decriminalization of abortion in a state, what we are celebrating is that the majority of legislators in its congress voted in favor of changing one or more articles of the criminal code that prohibited abortion, thus giving people the opportunity to decide to have an abortion—typically during the first weeks of pregnancy.⁵

The Executive Branch

Who are its members? At the federal level, the executive branch is headed by the President of Mexico, while the state levels are led by the governors of the country's 31 states along with Mexico City's head of government.

⁴ An exception to this is when amendments to the Federal Constitution are proposed, because, although it is a general law, the state congresses must also vote on it.

⁵ Do you want to know what each criminal code contains? See GIRE, *Maternidad o castigo: Hacia la despenalización del aborto en México* [Maternity or punishment: Towards the decriminalization of abortion in Mexico], (2025), pp. 60–61 <https://gire.org.mx/publicaciones/maternidad-o-castigo-hacia-la-despenalizacion-del-aborto-en-mexico/>

However, when we speak of the executive branch, we also refer to the teams that work with the president or the governors, known as secretariats (for example, the Secretariat of Health, the Secretariat of Public Security or the Secretariat of the Interior).

What does it do? The Executive Branch has an important role when laws are modified, as it is responsible for publishing them in the official journals⁶ so they will be enforced once approved by the legislators' votes. It is also in charge of ensuring that the articles created or modified by the legislative branch are complied with and not left as words without action.

The executive branch drafts public policies that allow the regulations to be implemented; in other words, it makes work plans that involve one or more government offices. Public policies include a diagnosis of the right that people want to make a reality and detail the goals to be met as well as the activities that must be carried out to achieve them. Moreover, there is an explanation of how the plan will be monitored to ensure that it works, and the offices that will be responsible for carrying out each of the activities are listed. The public policies issued by the executive branch, as well as the work done by the legislative branch, should never go against the Federal Constitution's provisions.

What does this branch do in relation to the abortion issue? Safe abortion⁷ is one of the objectives of the Specific Action Program for Sexual and Reproductive Health 2020–2024, which is a public policy on reproductive health developed by the Federal Secretariat of Health.⁸ This program states that safe abortion services must be provided for the

⁶ Newspapers, gazettes, or official journals are the means of communication used by a government to publish laws and regulations when they are created or modified.

⁷ A safe abortion is one that is performed according to the method recommended by the World Health Organization (WHO), that is appropriate for the gestational period, and performed by a knowledgeable professional. WHO, Abortion Care Guideline: executive summary (2022), <https://www.who.int/publications/i/item/9789240045163>

⁸ It can be consulted here: https://www.gob.mx/cms/uploads/attachment/file/644374/PAE_SSR_24_5_21.pdf

circumstances allowed in each state. When updating this program, there must be a safeguard to ensure that none of its indications imply restricting rights that were already protected. This is a principle that must be respected in all official laws, rules, and regulations.

The executive branch also creates and applies technical regulations, such as the Official Mexican Standard (NOM) 046-SSA2-2005 *on Sexual and Family Violence against Women. Criteria for Prevention and Care*, which states that health institutions have the obligation to guarantee access to abortion services to every girl, woman, and person with the capacity to gestate who has been impregnated as the result of sexual assault.

The Judicial Branch

Who are its members?⁹ Judges, magistrates, and justices. They are named according to which office they work in. At the local level, the judicial branch's highest office is usually called the Supreme Court of Justice or Supreme Tribunal, and it is made up of magistrates. At the federal level, the Supreme Court of Justice of the Nation is the office with the highest authority. Prior to the latest reform of this branch of government, it was made up of eleven justices who, when working together, were called the Plenary. One of them was the Supreme Court's president, who held the position for four years; the other ten justices were divided into two groups of five, known as the First Chamber and the Second Chamber. Despite being called first and second, the work they did was equally important.

On September 15, 2024, the Official Gazette of the Federation (DOF, for its Spanish initials) published the reform to the federal judicial branch. It states that as of September 1, 2025, the Supreme Court will be

⁹ There are other authorities of the federal judicial branch that are not discussed here because they are not as relevant to the issue of abortion. Some examples are the Council of the Federal Judiciary and the Electoral Tribunal of the Federal Judiciary. The former is responsible for organizing the entire federal judicial branch, while the Electoral Tribunal is responsible for settling disputes related to elections.

made up of nine justices, who will work exclusively in Plenary, so that there will no longer be division into chambers. In addition, the president will hold that position for only two years.

What does the Supreme Court do? It delivers justice, mainly by enforcing rules in order to settle disputes. Its final decisions are written down in *rulings*. Some of these conflicts involve the violation of human rights by one or more authorities against one or more people.

So why is the Court's decision important? The Supreme Court also determines if the way an authority acts or if a regulation's content goes against the human rights enshrined in the Federal Constitution. Moreover, in Mexico, all judicial authorities are bound to obey its decisions. That is, when judges—both local and federal—must rule on conflicts similar to cases already decided by the Court, they must do so in the same manner in which the Court ruled. Likewise, congresses should modify any laws that are contrary to the Court's rulings, and the executive branch cannot enforce regulations if the Court has stated that they are contrary to the Constitution.¹⁰



¹⁰ The SCJN may also intervene to settle conflicts between the different branches regarding the enforcement of laws or the limit of each branch's authority (this is called a Constitutional Controversy).

What does this branch do in relation to the abortion issue? In Mexico, the Court has issued several rulings related to abortion, which are discussed in detail below. Some refer to cases in which women have denounced health authorities for denying them access to a safe abortion. Others are related to government offices claiming that other government agencies have acted against human rights or have made decisions that went against the Constitution. Others point out that completely criminalizing abortion in criminal codes goes against the Constitution. What the rulings have in common is the fact that, in all of them, the Court has been in favor of the right to reproductive autonomy; that is, the ability of individuals to make free and informed decisions regarding their own reproduction.



Legal Terms

What concepts do we need to know in order to understand the Court's rulings on the abortion issue?

- ✧ **Human rights and reproductive rights.** These are the rights that all people have just because they are human beings. Human rights are enshrined in the Constitution and in international treaties, but it is up to the authorities to ensure that they are upheld. Reproductive rights are a group of human rights concerning reproduction. The human right to information, for example, is also a reproductive right when it relates to access to information on how to prevent, manage, or terminate a pregnancy.
- ✧ **International human rights treaties and bodies.** International treaties are documents in which several countries state that the same human rights must be guaranteed in all their territories, and then they commit themselves accordingly. Some of them are called *conventions* or *covenants*. These documents are generally accompanied by the creation of mechanisms (known as international human rights bodies) to ensure that all parties comply with their commitments. For example, in 1978, several Latin American countries committed themselves to respect and guarantee a series of human rights, which they set forth in the American Convention on Human Rights. This same convention created an Inter-American Commission on Human Rights and an Inter-American Court of Human Rights to monitor compliance with the commitments that were agreed on. Mexico joined this convention in 1981.
- ✧ **Constitutional protection (*amparo* lawsuit).** As its name implies, in Mexico, an *amparo* is a legal action that allows any person or group of persons to file a claim when one or more of their human rights are violated by one or more authorities. For

example, if someone is denied an abortion, they can demand it through an *amparo*.

- ✧ **Constitutional protection under review (*amparo* lawsuit under review).** This is a legal procedure that a person (complainant) or a group can resort to when they disagree with the decision made by the first judge. In such situations, the original verdict may be reviewed by a higher body, such as the Supreme Court, to ensure that it was issued correctly and in accordance with applicable constitutional and conventional provisions.
- ✧ **Principle of relativity.** This principle establishes that *amparo* rulings should only benefit those who have filed an *amparo* lawsuit. However, the Court has applied it more flexibly in several rulings, arguing that it should not be so strict when seeking to protect the rights of a group of people. This is positive, because it has made it possible to extend protection to more people in some cases, for example, to all those living in a specific state.

However, in June 2024, Article 107 of the Constitution was amended, establishing that when *amparo* lawsuits are held to determine the constitutionality of general regulations, such as the General Health Law (LGS, for its Spanish initials), the rulings will not benefit individuals who are not part of the trial. In other words, the principle of relativity must be strictly applied again. This reform may hinder the defense of human rights, as it limits the protection of rights that affect society as a whole.

- ✧ **Legitimate interest.** This legal figure allows a person, group, or organization to request legal protection when the matter to be resolved concerns them directly, since, if it is resolved in their favor, it would result in a specific benefit to their legal situation. For example, an organization may file a legal recourse—such as an *amparo* lawsuit—to protect collective rights or those of a specific community—such as the

reproductive rights of women and pregnant people—if it demonstrates that its work is related to the defense of those rights.

☀ **Action of unconstitutionality.** In Mexico, this type of lawsuit is also used to file claims related to human rights. However, in contrast to an *amparo* lawsuit, which can be requested by an individual, actions of unconstitutionality can only be presented by certain authorities against modifications that are made to laws or regulations.¹¹ The Supreme Court's Plenary is always responsible for settling these actions, and it can do so in two ways: By stating that what a regulation says is in accordance with the Constitution, or by declaring that it goes against it. In order for the Supreme Court to decide that a regulation is in fact contrary to the Constitution, a majority of the justices must vote in that sense. An example of an action of unconstitutionality would be one brought by the National Human Rights Commission (CNDH, for its Spanish initials) against a state when it believes that its local congress passed a law that is contrary to human rights.

☀ **General declaration of unconstitutionality.** The Supreme Court may use this appeal after an *amparo* lawsuit under review when it has already ruled that a general regulation is unconstitutional and has requested the issuing authority to

11 The authorities that may present actions of unconstitutionality to change laws or regulations are defined in the Federal Constitution: If a general or federal law is modified, it is the equivalent of 33 percent of the deputies of the Chamber of Deputies or of the Senate; when dealing with federal or local regulations, it is the executive federal branch through the legal counsel; when regulations were changed in a state, it is the equivalent of 33 percent of the deputies of the local congress; when dealing with a reform to an electoral law, it is the political parties registered in the National Electoral Institute (INE, for its Spanish initials); when dealing with a federal or local regulation that violates human rights, it is the CNDH or the local human rights commissions when dealing with any regulation from their state that violates human rights; when it is a regulation that violates the right to access to public information or the right to the protection of personal data, it is the bodies that work for the right to information, at a federal or local level (depending on the type of regulation that is being denounced); and if dealing with regulations related to criminal matters, it is the Attorney General of the Republic or the local attorney generals (depending on whether it is a federal or local regulation).

modify or revoke it—i.e., to annul it or leave it without effect—, but after 90 days, the said authority has not yet done so. The Court then issues a general declaration of unconstitutionality and that regulation cannot be applied again to any person from that moment on.

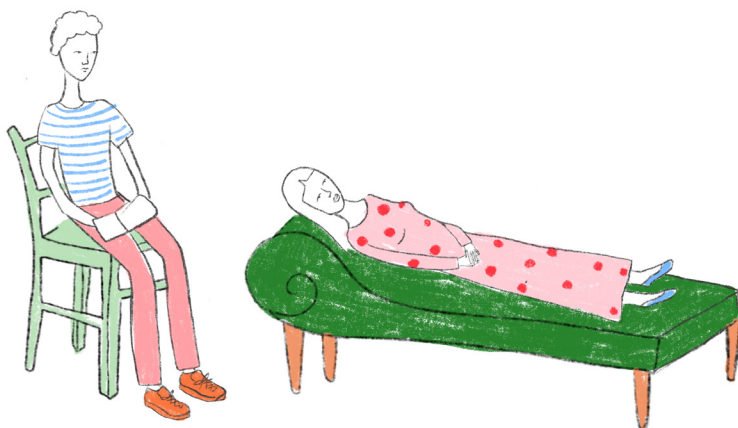
✧ **Rulings.** Rulings are also known as resolutions or judgements. It is a document containing a judge's decision to settle a dispute. Depending on the legal process that is involved, some rulings may be appealed; this means that a request is made for a different judge, of a higher level, to verify if the decision was correct. However, since the Supreme Court is the highest authority in the federal judicial branch, its rulings cannot be appealed. It is important to know that rulings must always explain the effects they will have—i.e., to specify to those involved what will change as a result of their decision. For example, if in resolving an action of unconstitutionality, the majority of the justices of the Court state that a regulation is contrary to the Constitution, the effect of their ruling will be to invalidate the regulation. This means that it will no longer legally exist and, therefore, it can no longer be enforced.

✧ **Comprehensive reparation.** Comprehensive reparation is a human right of all those who are victims or survivors of a human rights violation. It comprises five types of measures and the authorities must guarantee their compliance, always with the victims' consent:

— **Restitution.** Whenever possible, it should restore the victims to the situation that existed before the violation of their human rights. For example, if someone is fitted with a contraceptive method—such as an intrauterine device (IUD)—without their consent, they have the right to have it removed.

- **Rehabilitation.** These are measures to address any physical or psychological harm that a person has suffered as a result of human rights violation. For example, providing access to appropriate psychological therapy.
 - **Compensation.** It is the payment of the material and immaterial damages¹² suffered by a person due to the events that breached their human rights. For example, they must be paid the total wages they were not paid when their rights were violated and they lost their job or the total amount of money spent during their pursuit of justice.
 - **Satisfaction.** These are measures that seek to restore the victim's honor. For example, renaming a street or making a monument as a tribute or organizing an event to offer a public apology.
 - **Guarantees of non-repetition.** These are measures aimed at ensuring that these human rights violations do not affect the victim or any other person in the future. For example, changing a regulation when it is unjust.
- ✱ **Criminal law.** Law can be divided into many branches or areas depending on the kind of issues it regulates. For example, family law deals with the legal relationships within marriage and between members of nuclear families. Meanwhile, civil law deals, among other things, with regulations related to the sale or lease of property. Criminal law, in turn, establishes the rules that determine which conducts are crimes, i.e., those that a government may prosecute, investigate, and punish—most crimes are described in the criminal codes (of which there are 33 in Mexico: one federal and one for each state).

¹² Material damages are those that can be quantified in money; immaterial damages include the suffering, anguish, and psychological and emotional damage suffered by a person who has been the victim of human rights violations.



- ✧ **Principle of legal certainty in criminal matters.** This refers to the fact that legislators must describe what a crime is with great care and detail so that those who apply the law have enough clarity when deciding whether a person should be punished or not. This is why descriptions of crimes are usually very odd, because instead of saying “whoever steals will be imprisoned for X years,” it says, for example, “whoever takes possession of a thing belonging to someone else, without the right or consent of the owner, will be imprisoned for X years.”
- ✧ **Grounds for abortion.** In Mexico, abortion is still considered a crime and is regulated in the existing 33 criminal codes; however, in all these codes, there are circumstances in which it is not considered a crime or is not punishable. For example, when the pregnancy is the result of rape, abortion is permitted throughout Mexico. These circumstances are called grounds.
- ✧ **Initiative.** This is the name of the document containing a proposal to create, eliminate, or modify a law. Initiatives may be submitted by any legislator or by the head of the executive branch and, in some cases, also by groups of citizens.

- ☀ **Gender-sensitive judging.**¹³ This refers to the judges' obligation to read and understand a regulation with consideration for the different ways it affects those who demand justice. In other words, they must recognize that there are inequalities between men and women, and therefore the problems they experience, as well as the legal provisions and institutional practices, affect them differently.
- ☀ **Intersectional approach.** It allows us to analyze and understand how the different aspects of a person's identity—such as gender, race, social class, sexual orientation, or disability—combine to create unique experiences of discrimination or privilege.
- ☀ **Conscientious objection.** This is an exception to the obligation to fulfill a duty recognized by law, motivated by moral or religious convictions. In order to determine its limits, it is important to review the standards developed by the Supreme Court in the Action of Unconstitutionality 54/2018.¹⁴

13 If you want to know more about this obligation, you can consult the *Protocolo para juzgar con perspectiva de género* [Protocol for Judging with a Gender Perspective], published in 2020 by the General Directorate of Human Rights of the Supreme Court of Justice of the Nation, pp. 119–133, <https://is.gd/Two75w>

14 You can consult it in Spanish here: <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=238286>

Chapter 2.

The First Supreme Court Rulings on Abortion



Political and Social Context

Between 2000 and 2010, the Supreme Court resolved two important cases related to the issue of abortion in Mexico. But what was happening in the country during that period?

Until 2007, abortion by choice was not permitted in any state in the country. The criminal codes had been practically unchanged since 1871, when the “Juarez Code” was drafted (later modified in 1929 and 1931).¹⁵ Of course, since then, there were women advocates, such as Ofelia Domínguez Navarro,¹⁶ who demanded that abortion be removed from the criminal codes.¹⁷

Between 1871 and 1931, the only major progress was allowing abortion when a pregnancy was the result of rape. However, even today, abortion is difficult to access in such circumstances, as demonstrated by the case of Paulina, in Baja California, who was 13 years old when she was impregnated as a result of rape and was denied an abortion by state authorities.¹⁸

Moreover, in 2000, the National Action Party (PAN, for its Spanish initials) won the country’s presidency for the first time in history. This was not good news for the pro-choice movement, because soon afterward, in 2002, the political party declared itself against the

¹⁵ If you want to know more about this process, you can refer to this book: Lucía Núñez, *El género en la ley penal* [Gender in Criminal Law], (CIEG, 2018), pp. 135–154.

¹⁶ Ofelia Domínguez Navarro was a Cuban feminist, teacher, and lawyer who, after being exiled from Cuba, lived in Mexico. In 1936, during the Convention to Unify Penal Law, she presented her text “El aborto por causas sociales y económicas” [Abortion for social and economic causes].

¹⁷ Marta Lamas, *La interrupción legal del embarazo. El caso de la Ciudad de México* [Legal Termination of Pregnancy. The Case of Mexico City], (Fondo de Cultura Económica, 2017), p. 12.

¹⁸ If you want to know more about Paulina’s case, you can read: GIRE, *Paulina, justicia por la vía internacional* [Paulina, Justice through International Proceedings], (2008), https://gire.org.mx/wp-content/uploads/2016/07/PaulinaJusticia_TD6.pdf

liberalization of abortion-related laws.¹⁹ Meanwhile, in Mexico City—then called the Federal District—the Democratic Revolution Party (PRD, for its Spanish initials), which was in favor of abortion, was in power.

This context—in which the capital's government and the federal government held conflicting positions—encouraged several legislators in the Federal District to move forward with the abortion issue, since, in addition to being a strategy that allowed them to reaffirm that they were working in favor of women's human rights, it also set them apart from PAN, the conservative party.²⁰ Legislators did not decide to do this work overnight, but instead listened to the feminist movement, which had been demanding that the criminal code be changed to liberalize abortion laws for several years.

Accordingly, between 2000 and 2007, the Federal District's criminal code was modified several times.²¹ Just as the Federal District reaffirmed its pro-choice position, the federal government wanted to put a halt to these advances in order to maintain its supposedly pro-life stance. And this led to the first two Supreme Court rulings on the abortion issue.

¹⁹ You can find it in *Proyección de Principios de Doctrina del Partido Acción* [National Projection of the National Action Party's Doctrine Principles], approved at the XLV National Convention, 2002, here: <https://almacenamientopan.blob.core.windows.net/pdfs/documentos/toqfeHtQI8xfmvAAi-JNc5U6xqTHiSO.pdf>

²⁰ Marta Lamas, "La batalla por el aborto," [The Battle for Abortion], in *Cuerpo, sexo y política* [Body, Sex, and Politics], (Océano, 2013), p. 110.

²¹ On January 27, 2004, the local congress, which at that time was known as the Legislative Assembly of the Federal District, amended the first paragraph of Article 148 of the local criminal code, so that the grounds for non-punishability of the crime of abortion were now excluded from criminal liability; in other words, previously they were not punishable, but from then on, in addition, they were no longer considered a crime. Articles 16 bis 6 and 16 bis 7 were also added to the Federal District's Health Law, which established, on the one hand, the obligation of public health institutions to provide the service of legal termination of pregnancy in the circumstances contemplated by the criminal code and, on the other hand, the regulation of the conscientious objection of health personnel. GIRE, *El camino hacia la justicia reproductiva: Una década de avances y pendientes 2010-2021* [The Path to Reproductive Justice: A Decade of Progress and Pending Matters], (2021), p. 30, <https://unadecadajusticiareproductiva.gire.org.mx/>



Action of Unconstitutionality 10/2000. “Robles Law”

On August 24, 2000, the Legislative Assembly of the Federal District (ALDF, for its Spanish initials) approved changes regarding abortion in the Federal District’s criminal code based on an initiative submitted by the head of government, Rosario Robles (which is why it’s known as the “Robles Law”).

The changes consisted of adding two new grounds²² for allowing abortion: When the health of the pregnant woman is at risk and when the product of conception presents congenital or genetic alterations. The text, which some of the legislators did not agree with, was as follows:

Article 334. No sanction shall be applied: [...].

III. When, in the opinion of two medical specialists, there is sufficient reason to diagnose that the product presents genetic or congenital alterations that may result in physical or mental damage, to the point that it may endanger the survival of the product, provided that the pregnant woman’s consent is obtained.

[...]

In the cases contemplated in sections I, II, and III, doctors shall have the obligation to provide the pregnant woman with objective, truthful, sufficient, and timely information on the procedures, risks, consequences, and effects, as well as on the existing support and alternatives, so that the pregnant woman can make her decision in a free, informed, and responsible manner.

²² What are grounds? You can find more information in Chapter 1.

As discussed in the previous chapter, an action of unconstitutionality is a lawsuit that begins because an authority considers that a new or amended law is contrary to human rights. In this case, the action of unconstitutionality was brought by a group of 23 legislators—33 percent of the Legislative Assembly, that is, the minimum required to file the lawsuit—who had not voted in favor of this change in the law. They argued that the right to life and, specifically, the right to life of “unborn children” was being violated.

To decide the case,²³ the Supreme Court reviewed our country’s Constitution to see what it said about the right to life. Curiously, it did not find any article stating that “all persons have the right to life” or anything similar. However, that does not mean we do not have this right.

The Court concluded that, although it is not expressly stated in the Constitution, we do have a right to life, which can be inferred from its Article 14, that says that:

Article 14. [...]

No person may be deprived of life, liberty, property, possessions, or rights, except by means of a trial before the previously established courts, in which the essential formalities of the procedure are complied with and in accordance with the laws issued prior to the act.

Then, this Court recognized that the right allegedly being violated was that of “every manifestation of human life, regardless of the biological process it is in.” It also said that there is an obligation to protect the product of conception, as indicated, for example, in section XV of paragraph A of Article 123 of the Constitution:

²³ Do you want to read this ruling directly in Spanish? The Unconstitutionality Action 10/2000 is available here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=37867>

XV. In accordance with the nature of their business, employers shall be obliged to observe the legal precepts on hygiene and safety in their establishment's facilities and to adopt adequate measures to prevent accidents in the use of machines, instruments, and work materials, as well as to organize the latter in such a way as to provide the greatest guarantee for the health and life of the workers, and of the product of conception, in the case of pregnant women. To this effect, the laws shall contain the appropriate sanctions in each case.

So, if there is a right to life and an obligation to protect the fetus, how could what had been approved be considered constitutional?

The Court's ruling explained that, with the changes in the Federal District's criminal code, the right to life was not being attacked, since it was not a license to have an abortion. In other words, the article was only going to regulate a very specific circumstance in which, if all the requirements were met, the person who aborted would not be punished. These requirements include: approval by two medical specialists; that the fetus has genetic alterations; that these alterations could result in physical or mental damage that could endanger the life of the fetus; that the pregnant woman has given her consent; and that the woman has been given all the information about risks, support, and alternatives.

Unfortunately, in this case, the Supreme Court said nothing about women's right to health or any other right that could be violated due to not allowing abortion, even though the ALDF did raise the issue when it argued the reasons for approving this change in the criminal code. In addition to the fact that the Court pronounced itself in favor of moving forward on abortion issues (at least slightly) the following recognition was also positive:

[...] it must be considered that the situation described by the precept places a pregnant woman in a situation involving a very difficult decision: that of heroically accepting to continue with the pregnancy and that of accepting the termination of the pregnancy, considering that it is a crime and the consequences that may follow.

The ruling was especially important because it was the first time that the issue of abortion was discussed and, even if it was not based on the most progressive arguments, it permitted non-punishability for the practice of abortion in two circumstances that are currently in force in many criminal codes. In order to annul the change in the law, it would have been necessary for at least eight of the eleven justices to say that it was against the Constitution, but only four did so, and the other seven supported not punishing women who have abortions when the product shows genetic alterations.

This first decision also influenced the following ruling, in which the SCJN resumed the debate between life and abortion and took it even further.

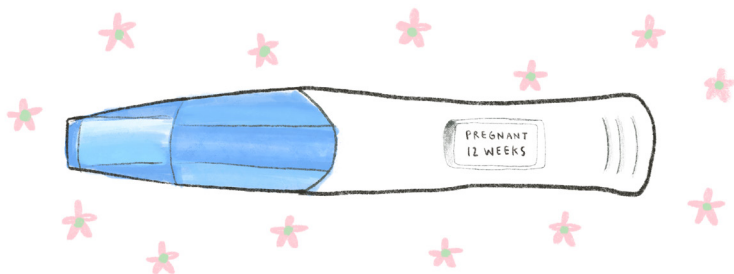
Action of Unconstitutionality 146/2007 and Its Joint Proceedings 147/2007. Decriminalization in the Federal District

On April 26, 2007, an amendment to the abortion regulation was approved in the Federal District to permit women to have an abortion, as long as it occurs during the first 12 weeks of pregnancy. The articles of the criminal code that were changed now read as follows:

Article 144. Abortion is the termination of pregnancy after the twelfth week of gestation.

For the purposes of this code, pregnancy is the part of the human reproductive process that begins with the implantation of the embryo in the endometrium.

Article 145. Three to six months imprisonment or 100 to 300 days of community service shall be imposed on a woman who voluntarily



performs an abortion or consents to another woman having an abortion after 12 weeks of pregnancy. In this case, the crime of abortion will only be punished when it has been consummated.

Whoever causes a woman to have an abortion, with her consent, shall be sentenced to one to three years' imprisonment.

Article 146. Forced abortion is the termination of pregnancy, at any time, without the consent of the pregnant woman.

For the purposes of this article, anyone who causes a woman to have an abortion by any means without her consent shall be sentenced to five to eight years' imprisonment. If physical or moral violence is involved, a prison term of eight to ten years shall be imposed.

Article 147. If the abortion or forced abortion is caused by a surgeon, midwife, nurse, or practitioner—in addition to the penalties applicable under this chapter—they shall be suspended from the exercise of their profession or trade for a period equal to the term of imprisonment imposed.

However, as previously mentioned, many people—in the federal government, for example— did not agree with the changes. Therefore, the former Attorney General's Office (PGR, for its Spanish initials) and the National Human Rights Commission (CNDH, for its Spanish

initials) filed actions of unconstitutionality against them.²⁴ Because they were filed as separate lawsuits, the Court assigned them numbers 146 and 147; however, they were resolved together, as indicated by the title of this section.

The arguments of both authorities on their stance against the decriminalization of voluntary abortion during the first 12 weeks of pregnancy were as follows:

- ✧ It affects the right to life of the fetus.
- ✧ It affects the right to equal treatment and non-discrimination of men in relation to procreation and paternity; and of adolescents and girls who have abortions.
- ✧ There is an encroachment of powers, because it is not up to the Federal District's legislators to regulate a health issue or to define when pregnancy begins; these are federal matters.
- ✧ The amended text does not comply with some of the criminal law principles.

Solving this issue in 2008 was not an easy task for the members of the Supreme Court. It was the first time in the whole Latin American region that the highest judicial authority of a country was required to decide whether abortion should no longer be considered a crime during the first 12 weeks of pregnancy.

For this reason, the Court had to resort to numerous information sources. It requested data on abortions and related maternal deaths from the federal and local health secretariats and the National Population Council. It requested information from the public prosecutor's

²⁴ At that time, the PGR was part of the executive branch, i.e., it depended on the federal government with the PAN party in power (headed by Eduardo Medina Mora). In 2018, it became an autonomous institution—not a part of any of the three branches of government—and changed its name to Fiscalía General de la República (Attorney General of the Republic). Meanwhile, the CNDH was already an autonomous institution headed by José Luis Soberanes. Some of the people who were part of the CNDH's Consultative Council expressed that they did not agree with the actions of José Luis Soberanes when questioning the decriminalization of abortion in the Federal District.

offices and the judiciaries on cases in which women were being prosecuted or tried for having had an abortion; and it also requested further reports on the subject from experts. In addition, the Court convened six public hearings to listen to stakeholders' opinions, including authorities, activists, and politicians, both for and against the issue.²⁵

Finally, after all these consultations, the Court decided that the decriminalization of abortion in the first 12 weeks of pregnancy was not contrary to the Constitution.²⁶ These were the arguments that allowed it to reach this conclusion:

✧ On the right to life of the fetus

Once again, the Supreme Court reviewed what the Constitution said about the right to life, but this time it also reviewed international human rights treaties. Thus, it determined that decriminalizing abortion in Mexico City during the first 12 weeks of pregnancy did not go against the human right to life.

First, it noted that life is not an absolute human right. Unlike what it had ruled in 2000, this time, it did not say there was a right to life that was independent of its current stage. Moreover, it warned that there was not a definition of when life begins in the Constitution or in any international treaty, not even in any interpretation of those documents, and much less a recognition that life had to be protected from the moment of conception.

25 You can learn more about this process at GIRE, *Constitucionalidad de la ley sobre aborto en la Ciudad de México* [Constitutionality of the Law on Abortion in Mexico City], (2009), https://gire.org.mx/wp-content/uploads/2014/07/ConstAbortoCiudad_TD8.pdf

26 Do you want to read this ruling directly in Spanish? It's available here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=37867>

The only document that might have led to doubt in arriving at that conclusion was the American Convention on Human Rights, which states the following in its Article 4.1:

Every person has the right to have their life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of their life.

However, when a country chooses to sign an international treaty, it may opt to say that there is something it does not agree with and, consequently, does not commit to abide by. This is called a reservation or an interpretative declaration. In this case, when Mexican authorities decided to be part of the American Convention, they made an interpretative declaration stating that our country was not committed to protecting life from the moment of conception and that the words “in general”—included in Article 4.1—allowed them to set limits on the right to life, for example, by authorizing abortion in some cases. Therefore, the Court established that the legislators of each state in the country were free to decide how to rule on this right.

Moreover, it acknowledged that one of the principles of criminal law is that other ways of solving a public problem—such as maternal deaths caused by clandestine abortions—should be sought before creating new crimes or increasing their punishments; in Latin this principle is called *ultima ratio*. Even when abortion was a crime, women continued to resort to it in conditions that were not always safe and healthy. Thus, if the outright prohibition of abortion had not served to protect

prenatal life or the gestation process up to that point, it was valid for legislators to decide not to use criminal law as the first option to eradicate the potential risks faced by women with unwanted pregnancies.

The justices ruled that, while there was no obligation to decriminalize abortion, decriminalizing it was a valid option. While there is a right to life, it does not have to be from conception, and while unborn life must be protected in some way, criminal law is not the only way to do so.

✧ **On the right to equal treatment and non-discrimination of men in relation to procreation and paternity and of adolescents and girls who have abortions**

How many times have we heard people raise the question: “Where do the father’s rights stand in a case of abortion?” This was one of the issues addressed by the Court in this ruling. It pointed out that, when it comes to pregnancy, it is not possible to speak of discrimination against men because of their sex, as reproduction is not experienced in all bodies in the same way. Carrying an unwanted pregnancy to term has permanent and profound consequences for women and, for this reason, it should be up to them to decide.

The authorities who were against the decriminalization of abortion also said that it was a mistake not to create specific rules for girls and adolescents who seek abortions. Yet, the Court answered that the rules on informed consent are the same for adults as for those under 18 years of age and that this was already covered by both the Criminal Code for the Federal District and the Federal District’s Health Law.

✧ **On the alleged encroachment of powers**

Those who promoted this action of unconstitutionality also said that all matters related to health must be regulated at the federal level, that is, by the Congress of the Union and the Federal Secretariat of Health, not in the ALDF, or in the Secretariat of Health of said entity. However, the Supreme Court proved otherwise. The LGS itself states that matters related to reproductive health—such as abortion—must be dealt with by both federal and local authorities. Therefore, the ALDF had not acted unconstitutionally.

They also argued that the criminal code could not include a definition of pregnancy contrary to the one that already existed in the LGS Regulations on Health Research. The Court answered that no prohibition was in place regarding the definition of abortion in a law that did not deal with health matters and that, as its name suggests, the definition of pregnancy in these regulations only applied to research. Likewise, the definition of pregnancy in the Federal District's criminal code applied only to the crime of abortion.

✧ **On the claim that the amended text did not comply with some criminal law principles**

In the case of abortion in the Federal District, the authorities that brought the action of unconstitutionality claimed there was a failure to comply with the principle of legal certainty²⁷ because the text did not establish how to count the 12 weeks of pregnancy, and there was no way of knowing the exact number of weeks of a pregnancy intended to be

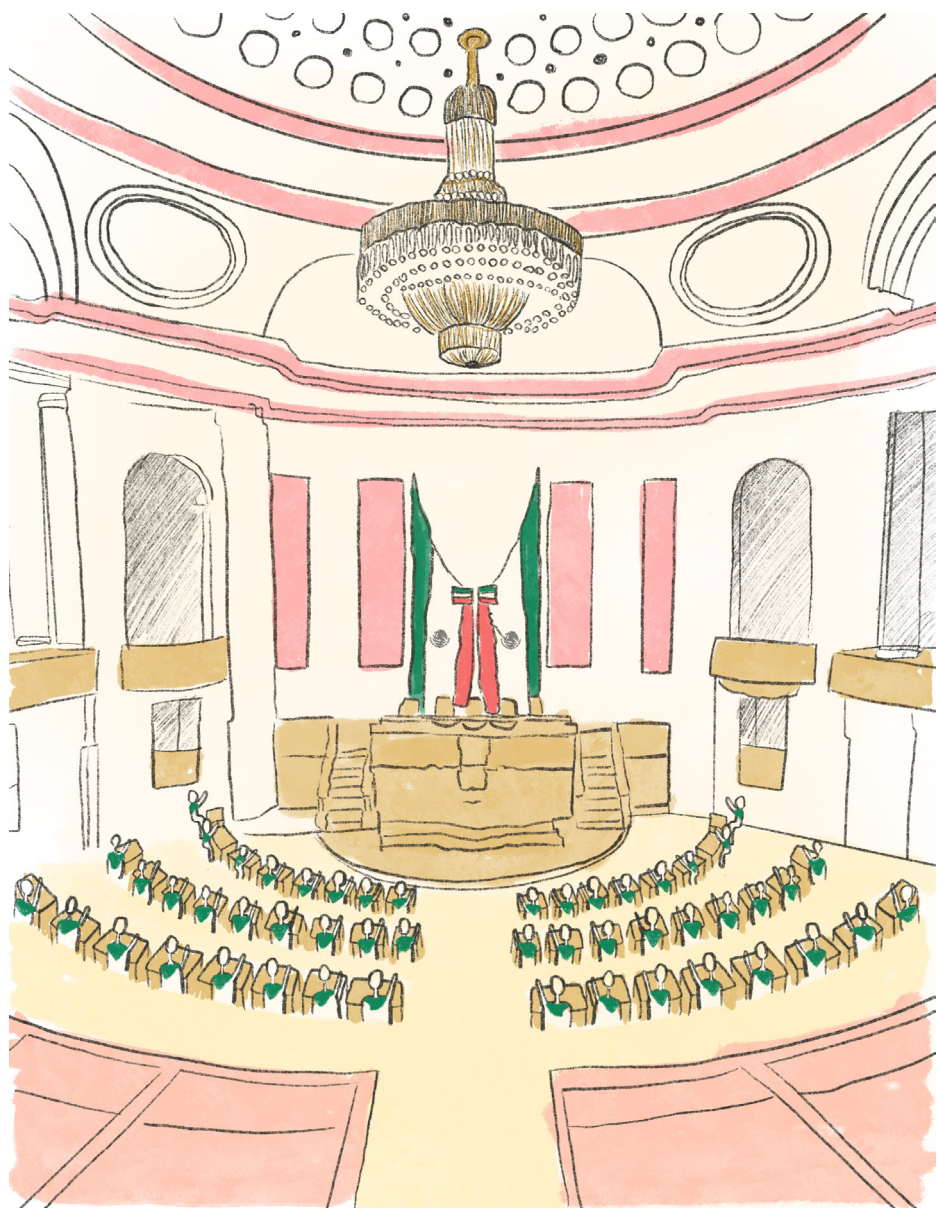
²⁷ Do you want to know what the principle of legal certainty is in the context of criminal law? You can find more information in Chapter 1.

terminated. The Court answered that by including the definition of pregnancy, this certainty was achieved and that, if there was any doubt, it should be resolved by those in charge of prosecuting crimes and judging cases.

Finally, the CNDH said that the reform violated the principle of proportional punishment, arguing that punishing a woman who performs an abortion or allows another person to perform an abortion for her with three to six months in prison was not enough. According to this principle, there must be a logical relationship between the conduct that is considered a crime and its punishment, so the more serious it is, the greater the punishment should be. However, the Supreme Court ruled that the existing punishment was logical and proportional.

What Were the Effects of These Rulings in Mexico?

From a legal point of view, the main impact of the rulings in the Federal District was that they shielded the decriminalization of abortion. By stating that these changes were valid and constitutional, a message was sent to all the legislators in the country so that, if they decided, they could change their criminal codes to reflect those of the Federal District, knowing there would be no legal strategy aimed at reversing this modification.



Moreover, the decriminalization also had an international impact. The arguments developed by the Court regarding Article 4.1 of the American Convention on Human Rights were taken up by the Inter-American Court of Human Rights to resolve another case²⁸ in which the Costa Rican authorities claimed that an embryo has the same right to life as a person. The Inter-American Court's ruling, in turn, has been particularly important for other countries' authorities to move forward in favor of abortion.

The rulings also triggered backlash. Since the Supreme Court had said that each state could freely legislate on the right to life and abortion, many conservatives pushed for changes in their local laws to include the protection of life from the moment of conception and thus prevent the liberalization of abortion in their states. Although these local-level changes did not legally prevent the reform of criminal codes to liberalize abortion, and they did not prevent abortions under the existing grounds, they did create a great deal of confusion.

Furthermore, these rulings did not say much about women's reproductive rights. In fact, at that time, people who are not women but who do have the capacity to become pregnant were not even considered. But let's remember that this was back in 2000 and 2007! Resolving the validity of decriminalizing abortion in the first 12 weeks of pregnancy was of great historical importance. Now, more than a decade after these discussions, there is no denying that they were crucial for a total of 277 268 safe abortions performed between April 2007 and June 30, 2024,²⁹ and for voluntary abortion to be legal in 22 states as of April 2025.

²⁸ The case is known as "In vitro fertilization" or "Artavia Murillo and others v. Costa Rica." We will talk about this case in the coming chapters.

²⁹ This figure was reported by Mexico City's Legal Termination of Pregnancy Program, available here: https://ile.salud.cdmx.gob.mx/wp-content/uploads/WEB_11042022.pdf

Chapter 3.

The First Supreme Court Rulings on Cases of Women Who Were Denied an Abortion



Political and Social Context

After the first rulings on abortion, it was not until 2018 and 2019 that progress was made again at the Supreme Court. Although abortion on the grounds of rape had been permitted across the country since 1931, in practice, it was still difficult to access the service. Paulina's case—which we mentioned in the previous chapter—put abortion on the public agenda and, after pushing for change for some time, brought the pro-choice movement to the forefront.

At the time of Paulina's case, there was an Official Mexican Standard (NOM, for its Spanish initials) in place called NOM-190-SSA1-1999 that regulated medical care in cases of domestic violence. It established rules for the country's health personnel so they would know what to do when attending to victims of this type of violence. As a consequence of this case, the regulation was replaced by NOM-046-SSA2-2005 regarding the criteria for the prevention and care of sexual and family violence and violence against women (NOM 046). This new regulation—also addressed to health personnel—considered how to act in the face of violence and confirmed that rape-related pregnancies could be terminated in public hospitals. This required authorization from a competent authority and, in the case of minors under 18 years of age, the consent of their parents or guardians.

Although NOM 046 was a step forward, these requirements still prevented women, adolescents, and girls from having an abortion in health facilities. Very often, health personnel denied services and created obstacles to performing abortions; in addition, they required permission from a judge or prosecutor.³⁰ Some local criminal codes limited the practice of abortion in rape-related cases to the first trimester of pregnancy (currently, no criminal code restricts access to abortion in cases of sexual violence)

³⁰ For these cases you can refer to GIRE's report, *Violencia sin interrupción* [Uninterrupted Violence], (2017), here: https://gire.org.mx/wp-content/uploads/2019/11/violencia_sin_interrupcion.pdf



further restricting access. Meanwhile, both the public prosecutor's office and the judges were slow in granting permission, making it increasingly difficult for girls, adolescents, women, and people with the capacity to gestate to have abortions.

In 2013, the General Law on Victims was created, which establishes the rights of people who have been victims of crimes (i.e., of behaviors defined as such in the criminal codes) or of human rights violations on the national level, as well as the authorities' obligations when dealing with them. In case of pregnancy, this law specifies that victims of sexual violence have the right to an abortion and that, furthermore, they must be trusted without any suspicion that they are lying.

So, if both the Federal Criminal Code and the 32 local criminal codes already allowed abortion in the case of rape, and there was also a General Law on Victims that obliged all authorities in the country to do the same, why did NOM 046 continue to include the same requirements? This lack of consistency was reported by several international human

rights organizations to inform the Mexican State that, considering its human rights commitments, this regulation needed to be changed. The Committee on the Rights of the Child was among these organizations; it told our government that, from a human rights perspective, no authorization from a judge or prosecutor was necessary to access abortion in cases of rape and, therefore, this requirement should be removed.³¹

Thanks to the work carried out by feminists from civil society and allies in government offices, in 2016, these requirements were removed from NOM 046. Currently, it is only necessary to submit a written statement to a health institution stating, under oath,³² that the pregnancy is the result of rape and that the person wishes to have an abortion. Even so, taking what is on paper and putting it into practice still presents many challenges, and three of the cases that will be discussed in this chapter illustrate this.

Even when a pregnancy put the woman's health at risk, abortion was not very accessible. The case of a woman pursuing justice had to reach the Supreme Court before abortion was finally expressly recognized as a health service in Mexico.

The cases we refer to in this chapter—Fernanda, Marimar, Marisa, Jessica, and Carlota³³ and the case of Sinaloa's Criminal Code—were taken to the Supreme Court by GIRE as part of a comprehensive strategy including legal support, communication strategies, public policy advocacy, and research, with the goal of achieving reproductive justice in Mexico for women and people with the capacity to gestate.

³¹ Given that Mexico is a signatory to the Convention on the Rights of the Child, the Committee on the Rights of the Child could make suggestions to the Mexican State regarding adjustments that were necessary to ensure that its laws respect the human rights of children and adolescents. The rest of the recommendations made by the Committee to Mexico on that occasion (2015) can be found here: https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/CRC_C_MEX_CO_4-5.pdf

³² "Under oath" means that the person writing the document pledges that they are not lying.

³³ Pseudonyms were used to protect the identity of the individuals involved. While these are the first cases resolved by the Supreme Court on refusals to provide abortions, they are not the only ones.

The Cases of Marimar and Fernanda

In 2016, Marimar, who was still a teenager, became pregnant as a result of sexual violence. She lived in Morelos, where abortion in cases of rape was already permitted, like in the rest of the country. In addition, the embryo she was carrying had serious congenital alterations, which in the state's criminal code was also considered legal grounds for abortion.

Marimar and her parents went to the “José G. Parrés” General Hospital of Cuernavaca to request an abortion. The case was sent to the Bioethics Committee of the same hospital for resolution. Without considering the provisions included in the laws of both Morelos and Mexico, this committee ordered the hospital not to perform the abortion because, in their view, the pregnancy did not put her life at risk.

In the same year, but in the state of Oaxaca, Fernanda also became pregnant as a result of sexual violence. When she requested an abortion, the public health authorities told her to go to the “Dr. Aurelio Valdivieso” General Hospital. However, she was denied the service because the institution's staff was on strike and, as the authorities had explained to her, they could only attend to emergencies, and her abortion was not considered an emergency.



The cases of Marimar and Fernanda reached GIRE, where both were given support and accompaniment so they could receive abortions from a private health service and achieve justice. An *amparo*³⁴ was filed for each of them as a legal strategy.



³⁴ Do you want to know more about what it means to file an *amparo*? You can find more information in Chapter 1.

In the *amparos*, it was argued that their state health authorities had violated their human rights by denying them abortions—specifically their right not to be subjected to cruel, inhuman, and degrading treatment—and, therefore, they had to be recognized as victims and guaranteed comprehensive reparation.³⁵ In the first instance,³⁶ the judges did not rule in favor of Marimar or Fernanda. They said that since they had finally had abortions, there was nothing left to resolve. It was at this point that the Supreme Court of Justice was asked to intervene.

In order for the Court to accept an *amparo* case, whoever is providing legal support for the case must explain how the matter is relevant for the country—unlike actions of unconstitutionality, which are always attended by the Court. In the cases of Marimar and Fernanda, the SCJN recognized both their importance and significance. It was the first time it had the opportunity to decide whether the denial of an abortion on the grounds of rape was contrary to human rights. Both cases were decided by the Second Chamber of the Supreme Court.

The Court stated the following for both of them:

- ✧ Denying an abortion when the pregnancy is the result of rape is contrary to human rights, specifically, to the right to not be subjected to cruel, inhuman, and degrading treatment.³⁷
- ✧ Having an abortion is a right of victims of sexual violence.
- ✧ An abortion is an emergency care service; therefore, denying this service is a serious human rights' violation and leads to the continuation of the effects of the rape.

35 Do you want to know what “Comprehensive reparation for harm” means? You can read about it in Chapter 1.

36 “In the first instance” means that a court’s decision can be reviewed by a higher court.

37 This right is found in Article 5 of the American Convention on Human Rights, which states: “Right to Personal Integrity. 1. Every person has the right to have their physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [...]” https://www.cndh.org.mx/sites/all/doc/Programas/TrataPersonas/MarcoNormativoTrata/InsInternacionales/Regionales/Convencion_ADH.pdf

- ✧ Health authorities should not hinder those who want to terminate a rape-related pregnancy from doing so; this means that health personnel should be aware of NOM 046 as well as of its state's grounds for abortion. In Fernanda's case, the Court pointed out that the hospital's strike was not a valid reason for denying her access to an abortion, and that health institutions have the obligation to accept abortion requests and ensure that they are carried out.
- ✧ The fact that those who were denied the right to an abortion were able to do so by their own means is irrelevant; likewise, they are entitled to comprehensive reparation.

The SCJN acknowledged that both Fernanda³⁸ and Marimar³⁹ (and their parents) were victims of human rights violations and ordered that they be guaranteed comprehensive reparation for the harm they suffered.

Despite the fact that several regulations already allowed for abortion when it was the result of rape, for a long time this right was not guaranteed by certain authorities, which is unfortunately a situation that persists today. Although no arguments related to reproductive rights or the right to health were raised in the cases of Marimar and Fernanda, they were still very relevant, because it was the first time that the SCJN ruled on the issue of abortion in specific cases in which women's lives were affected.

³⁸ Do you want to read the ruling? You can access the *Amparo* in Review 1170/2017 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=225783>

³⁹ Do you want to read the ruling? You can access the *Amparo* in Review 601/2017 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=218421>

The Case of Marisa

In 2013, Marisa was living in Mexico City and was 40 years old when she became pregnant. Months earlier she had undergone surgery and was facing health problems. Therefore, in addition to having had more than one threatened miscarriage, she was at greater risk of suffering complications during her pregnancy, such as preeclampsia, diabetes, thromboembolism, malnutrition, and bowel obstruction.



Seeing her health threatened, Marisa requested an abortion at Mexico's Institute for Social Security and Services for State Workers (ISSSTE, for its Spanish initials) where she was insured and received prenatal care. However, even though her health was at risk, the institution's authorities refused to perform an abortion. They argued that there was no provision in the LGS stating that ISSSTE members were entitled to the service of abortion.

As in the previous cases, and with GIRE's support, Marisa filed an *amparo*. The lawsuit claimed that denying her an abortion had been contrary to her human rights. It also argued the unconstitutionality of the article regulating abortion in the Federal Criminal Code since it did not contemplate cases in which the pregnancy endangered the pregnant woman's health as grounds for abortion.

The first judge who ruled on Marisa's case did not agree with her. He said that there was no point in ruling on the *amparo*, since Marisa had already had an abortion by her own means. Furthermore, he explained that he could not analyze whether or not the Federal Criminal Code's regulation regarding abortion was constitutional, because that would require an act of enforcement. This means it would have been necessary for Marisa to have been denied the service on the grounds that the Federal Criminal Code established or for her to have been suspected and investigated for having committed the crime of abortion.

But, as with the cases of Marimar and Fernanda, a request for review was filed for his sentence, and the Supreme Court was asked to take on the case.⁴⁰ It was the First Chamber's turn to decide. While it agreed with the first judge in that it was not possible to analyze the constitutionality of abortion as regulated in the Federal Criminal Code because that specific article had not been enforced, it disputed the reasoning that the case could not be analyzed because Marisa had already had an abortion. It stated that what should be analyzed was whether or not denying Marisa an abortion was constitutional based on the following arguments:

⁴⁰ Do you want to read the ruling? You can access the *Amparo* in Review 1388/2015 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=190811>

- ✧ In the *amparo*, Marisa had not requested an abortion because she had already received one. She was only requesting recognition of the fact that being denied an abortion had violated her human rights and for the Court to rule on the necessary reparations.
- ✧ The Court said that, in this case, in which continuing the pregnancy would have put Marisa's health at risk, the abortion was only the beginning of her recovery.
- ✧ In cases involving a request for abortion, judging in a way that is gender sensitive⁴¹ allows for flexibility when it comes to the rule that states that a decision should not be made on an act that has already occurred. Applying this rule without exceptions would force women to decide whether to have an abortion by their own means (thus safeguarding their life project) or not to have an abortion and to wait for the resolution of an *amparo* that could come too late in the pregnancy or even after childbirth.

In order to determine whether abortion should be considered a health service, the Court decided to analyze which aspects were part of the right to health. To do so, it referred to the Constitution and international human rights treaties. It noted that the right to health can be found, for example, in:

41 You can read about the gender perspective in Chapter 1.

- ✧ Article 4 of the Constitution⁴²
- ✧ Article 12 of the International Covenant on Economic, Social and Cultural Rights⁴³
- ✧ Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)⁴⁴
- ✧ Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴⁵

In addition to these documents, the Court reviewed other cases in which the right to health had been analyzed and concluded that this right:

- ✧ should be understood as essential for the exercise of other human rights and not only as the right to be healthy;
- ✧ includes the right to services and conditions necessary to attain the highest level of health;
- ✧ is related to the right to life, since health is essential for a dignified life;

42 Article 4: Every person has a right to receive medical treatment. The law shall not only define the guiding criteria regulating access to health services but also establish concurrent activities to be carried out by the federation and the states in organizing public health services under Article 73, paragraph XVI of this Constitution.

43 Article 12: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; b) The improvement of all aspects of environmental and industrial hygiene; c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. <https://www.ohchr.org/sites/default/files/cescr.pdf>

44 Article 10: 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. <https://www.oas.org/juridico/english/treaties/a-52.html>

45 Article 12: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. <https://www.ohchr.org/sites/default/files/cedaw.pdf>

- ✧ requires maternity services to be guaranteed, and
- ✧ is the highest enjoyment of physical, mental, and social well-being.

After specifically analyzing what happens when the health of the pregnant woman or person is jeopardized by a pregnancy, the First Chamber decided that:

- ✧ In order to fulfill the right to the highest attainable standard of health, each person's parameters of well-being must be respected. In the case of pregnancy, those who are pregnant have the right to define what they consider well-being to be.
- ✧ Denying services that are only required by women—such as the termination of pregnancy for health reasons—as well as placing barriers that limit their access to them are acts of discrimination and a violation of the right to equality before the law.
- ✧ Abortion for health reasons includes all cases in which a pregnancy is incompatible with the pregnant person's life plan, thus affecting her well-being, not only those cases in which her physical health is at risk or in which her life is at risk.
- ✧ When a person's health—in its physical, mental, or social dimension—is affected by pregnancy, the possibility of opting for its termination means exercising one's right to freedom, autonomy, and the free development of personality.
- ✧ Given that abortion is a health service, Mexican authorities must guarantee that women are aware of the risks posed by pregnancy and that they have access to abortion when it threatens their well-being.

As for Marisa's rights, the Court said that:

- ✧ The authorities had breached her right to privacy, to health, and to equality and non-discrimination.

- ✧ The authorities should not have quoted the LGS in denying Marisa an abortion because, although this law does not expressly state that abortion is a health service, it does recognize—along with the Constitution and a number of international treaties—the full scope of the right to health and the obligation to provide maternal health services as a priority issue.

Unlike the cases of Marimar and Fernanda, in Marisa's case, the Court said nothing about her right to comprehensive reparation for harm. However, at the end of the ruling, it ordered that she must be given access to all necessary treatment to assess whether denying her the abortion had affected her health and whether she required further medical care. In addition to having a positive impact on Marisa's life, this ruling was the first in Mexico to resolve the abortion issue from the perspective of the right to health and the right to equality and non-discrimination.

It was also the first time that a government authority said that pregnancy constitutes a reproductive process experienced by women and also by people who do not identify themselves as such but have the capacity to gestate. In a footnote, the Court stated:

We use the term *women* because it is the language used by the complainant and because international instruments use it to refer to a common experience of oppression. However, we are aware that pregnancy can also be experienced by transgender men.

This does not mean that trans and non-binary people with the capacity to gestate did not have the same rights as cisgender women before this ruling, but rather that, after this ruling, other authorities could not ignore it. This was the first time that trans men were recognized by the Supreme Court as persons with all the rights related to pregnancy, including abortion. Although it did so more conclusively in subsequent rulings, its inclusion in Marisa's case set an important precedent.

The Case of Jessica

In 2018, Jessica was 17 years old when she was raped. Jessica was born with infantile cerebral palsy and also had seizures. The precarious economic situation in which she and her mom lived—along with Mexico’s lack of infrastructure to support people with disabilities—did not allow Jessica to communicate on her own, so she relied on the care of her mother and grandmother to perform basic activities such as eating.

One day in October 2018, when Jessica had another seizure and her grandmother and mother took her to the General Hospital in Tapachula, Chiapas, they found out that she was five months pregnant (167 days). They notified the authorities that Jessica had been a victim of rape in order to start an investigation and perform an abortion.



However, the head of Tapachula's General Hospital told Jessica and her family that the hospital could not perform an abortion because Article 181 of Chiapas's criminal code⁴⁶ only allows abortion in cases of rape within the first 90 days of pregnancy, and her pregnancy was more advanced. Therefore, they had to find the way to get Jessica an abortion on their own.

With GIRE's support in their search for justice—as in the cases of Marisa, Marimar, and Fernanda—Jessica and her mother filed an *amparo* lawsuit. In it, they stated that Article 181 of Chiapas's criminal code was contrary to the Constitution because it limited the practice of rape-related abortion to the first 90 days of pregnancy. The rights infringed in this case were the right to equality, to health, to privacy, and to physical and mental integrity. In addition, they noted that victims with disabilities, such as Jessica, were particularly affected, as they might not be aware of their pregnancy until many weeks had passed.

Although a precedent already existed for the cases of Marimar and Fernanda, the first judge who heard Jessica's case ruled against her. He admitted that she was in a vulnerable position, but focused on the unborn child, saying that the State (i.e., authorities such as himself and the hospital) should see to it that the fetus was born. He also gave notice to the Public Prosecutor's Office to investigate Jessica and her mother, as it was likely that they had committed the crime of abortion.

⁴⁶ This article stated: "Abortion is not punishable when the pregnancy is the result of rape, if it is verified within 90 days from conception or when the pregnant mother is in danger of death, or it can be determined that the product suffers genetic or congenital alterations that will result in it being born with serious physical or mental disorders, based on the opinion of the attending physician and hearing the opinion of other medical specialists, when possible and when delay does not pose a danger."

After this ruling, the Supreme Court was asked to review the case. Given its importance, the matter reached the First Chamber, as it was the first time it had the opportunity to analyze how the rights of women with disabilities are affected when they are impregnated as a result of rape.⁴⁷

The First Chamber pointed out that the first judge had not ruled in a gender sensitive way and had not considered Jessica's rights as a woman with a disability who had suffered sexual violence while she was still a minor. It also noted that the head of Tapachula's General Hospital had breached Jessica's rights by denying her an abortion because, although the criminal code states that there is a maximum time limit to perform an abortion, it was the hospital's duty to safeguard her health, which was compromised by her pregnancy—as the First Chamber had already stated in Marisa's case. Given that there were other general laws that it ought to know and apply—such as the General Law on Victims and NOM 046—which do not establish any time limit for performing an abortion in circumstances such as Jessica's, the hospital should not have based its decision on the state's criminal code.

The Court declared that Article 181 of Chiapas's criminal code—which stated that an abortion could only be performed during the first 90 days of gestation when the pregnancy was the result of rape—was unconstitutional, as it went against the following rights:

The right to equality and non-discrimination, understood as “any distinction, exclusion, or restriction based on sex which has the effect or purpose of impairing or nullifying women's recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, or civil sphere or any other, irrespective of their marital status and on the basis of equality between men and women.”⁴⁸ It is

⁴⁷ Do you want to read the ruling? You can access the *Amparo* in Review 438/2020 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=275054>

⁴⁸ This is defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

discriminatory to deny abortion after the first trimester—in a law or in an action, such as that of the hospital's director—because:

- Setting time limits on abortion contributes to the stereotypes of motherhood by giving more importance to the fetus than to the woman who is carrying it.
 - It affects girls, adolescents, and women victims of sexual violence who, often, because of having gone through this traumatic experience, are afraid to mention it or report it.
 - It hinders access to abortion for girls, adolescents, and women who in some cases may be unaware of their pregnancies until after the first 90 days of gestation; for instance, because they live in vulnerable situations—such as lacking access to education—or because they have a severe disability or live in extreme poverty.
- ✧ **The right to a life free of violence**, because when rape victims find out that they are pregnant, the suffering is aggravated. In this sense, limiting the time they have to terminate the pregnancy is a way of re-victimizing them.
- ✧ **The right to health**, because a woman's mental health may be harmed when she is forced to continue with a pregnancy that she wants to terminate and that is the result of sexual violence.

After all these arguments, the Supreme Court ordered that Jessica and her mother be granted comprehensive reparation for having been victims of human rights violations; however, it also recognized that it was impossible to completely restore all the injustice they had experienced. This ruling set an important precedent for cases in which there is an attempt to deny abortion when a pregnancy is the result of rape on the grounds that it exceeds the first 90 days of gestation.

Currently, no state imposes time limits on access to abortion in cases of sexual violence. Campeche was the last one to eliminate this restriction from its criminal code, doing so in February 2025 as part of the same reform that decriminalized abortion up to 12.6 weeks of pregnancy. This is a major step forward, as it complies with the provisions of the LGV, NOM 046, and the Court's ruling.

System of Legal Grounds and the Rights of People with Disabilities

In March 2022, Sinaloa decriminalized abortion up to 13 weeks of pregnancy. After that period, the state's criminal code allows for terminating a pregnancy when:

- ✧ Continuing the pregnancy poses a risk to the physical health of the pregnant person.
- ✧ The pregnancy is the result of rape.
- ✧ An involuntary conduct by the pregnant person results in an abortion.
- ✧ The fetus has genetic or congenital alterations.
- ✧ There has been a diagnosis of a gynecological disorder.

While decriminalization represented significant legislative progress, the reform led to new challenges. Regarding genetic alterations as grounds for abortion, it was established that the pregnant person's consent is not necessary in cases where she is unable to grant it.

Although it does not explicitly refer to people with disabilities, the wording of this new article directly affects them, especially those with intellectual or psychosocial disabilities. This could potentially lead to them being subjected to an abortion against their will by considering them incapable of granting consent on their own behalf.

Therefore, GIRE, Balance A. C., the Office of Disability Rights in Mexico, No se metan con nuestras hijas (Don't Mess with Our Daughters), and Mutantes Disidentes Sinaloa filed an *amparo* lawsuit against Article 158, section IV, of Sinaloa's criminal code. They argued that this section of the law violates the rights to equality and non-discrimination, to health, and to self-determination, as well as the social model of disability.⁴⁹

The case reached the Supreme Court's First Chamber, and on October 16, 2024, the Court concluded that the way genetic alterations as grounds for abortion had been regulated in Sinaloa's criminal code was unconstitutional.⁵⁰

The Court recognized that, though not explicitly mentioned, this article contains a discriminatory message against people with disabilities. Furthermore, it pointed out that this ruling implies a substitute decision-making framework; in other words, it is a model in which an individual is deprived of the power to make decisions about their own life because they are considered to lack the capacity to do so. Under this model, another person can decide in their place, even if these decisions do not coincide with their wishes or preferences, which is incompatible with their right to decide.

The First Chamber also recognized that the right to choose of women and pregnant people with disabilities has, at least, the following specific implications:

- ✧ Upholding the legal capacity of women and pregnant people; that is, the right to be recognized as holders of rights and obligations, as well as to exercise them on their own behalf.

⁴⁹ The social model of disability considers that the difficulties faced by people with disabilities stem from physical, cultural, and attitudinal barriers imposed by society. According to this approach, myths, prejudices, and structures that exclude people are the real obstacles to the full exercise of their rights.

⁵⁰ Do you want to read the ruling? Access the *Amparo* in Review 636/2022 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=305588>

- ✧ Refraining from turning to any substitute for the decision to terminate a pregnancy or carry it to term.
- ✧ Providing support for free decision-making, making the necessary adjustments so that all people with disabilities have equal access to information.
- ✧ Ensuring that women and pregnant people with disabilities give their free, full, prior, and informed consent to terminate their pregnancy or carry it to term.

With this ruling, the Court once again recognized the importance of the rights of women and people with the capacity to gestate to make decisions about their health and reproductive future. It also noted the importance of ensuring that reasonable accommodations and the necessary support is in place for people with disabilities to express their will. In cases when, even with such support, this is not feasible, there must be an effort to seek out the best possible interpretation of their will and preferences.

The Court granted the *amparo* to GIRE and ruled that the will of those who are receiving support cannot be substituted; that is, their consent is required in all cases in order to have an abortion.

Although this decision only applies to those supported by GIRE, it represents significant progress. Therefore, it is essential that Sinaloa's Congress modify its criminal code to comply with the Court's ruling.

This case highlights that the criminal regulation of abortion, based on a system of time limits and legal grounds, results in discriminatory and restrictive provisions, such as substitute decision-making for people with disabilities, which jeopardizes their rights and autonomy. This ruling reaffirms the need to remove abortion from criminal codes, as this would ensure that all people can exercise this right without arbitrary barriers or conditions.



What Were the Effects of These Rulings in Mexico?

In a country respectful of human rights, rulings such as those in the cases of Fernanda, Marimar, Marisa, and Jessica should be enough to prevent similar cases from occurring; that is what these women hope for, along with GIRE in supporting them, and the Supreme Court in resolving their cases in the way it did. Unfortunately, the women in these stories had to overcome violations of their reproductive rights, endure first instance rulings in which they were re-victimized, and wait years to gain access to justice.

A few years after these rulings were issued, some important legal and public policy changes took place. Feminist movements advocated for various authorities to ensure that the Supreme Court's rulings were translated into other documents. For example, in June 2021, the Federal Secretariat of Health published its 2020–2024 Sexual and Reproductive Health Program,⁵¹ in which safe abortion is a priority objective and abortion in cases of rape and for health reasons are recognized as medical services to which women in Mexico are entitled. This is the first time that a federal public health program includes safe abortion as a reproductive process. Moreover, the Secretariat of Health has justified it by making reference to these rulings. The program came together with the Technical Guidelines for the Provision of Safe Abortion Care in Mexico,⁵² which instructs medical personnel throughout the country on the steps to follow in order to provide safe abortion services according to the grounds permitted in each state.

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<sup>51</sup> You can find the program here: [https://www.gob.mx/cms/uploads/attachment/file/644374/PAE\\_SSR\\_24\\_5\\_21.pdf](https://www.gob.mx/cms/uploads/attachment/file/644374/PAE_SSR_24_5_21.pdf)

<sup>52</sup> You can find the guidelines here: [https://www.gob.mx/cms/uploads/attachment/file/779301/V2-FINAL\\_Interactivo\\_22NOV\\_22-Lineamiento\\_te\\_cnico\\_aborto.pdf](https://www.gob.mx/cms/uploads/attachment/file/779301/V2-FINAL_Interactivo_22NOV_22-Lineamiento_te_cnico_aborto.pdf)

Moreover, as of April 2025, no criminal code has time limits for abortion in cases of rape. Other requirements that were contrary to the LGV, NOM 046, and the Supreme Court's ruling in the cases discussed here have also been eliminated.

The Supreme Court's rulings regarding abortion in cases of rape also set an important precedent for future decisions. In 2022, the Court resolved the case of Carlota<sup>53</sup> who, accompanied by GIRE, initiated an *amparo* lawsuit for having been denied an abortion of a rape-related pregnancy in Hidalgo. In her case, in 2015—when she was a victim of rape at the age of 16—the criminal code required girls, adolescents, or women who wanted to terminate a pregnancy resulting from rape to have filed a complaint before they knew they were pregnant. In line with the cases of Marimar, Fernanda, and Jessica, the Court protected the right to an abortion when the pregnancy is the result of rape without any requirements other than a written request. In the same year, the Court also resolved two issues regarding NOM 046,<sup>54</sup> determining that its current text complies with the Constitution.

<sup>53</sup> Do you want to read the ruling? You can access *Amparo* in Review 45/2018 in Spanish here: <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=229672>. You can also read more about this case at GIRE, “Carlota: un alto a los obstáculos para acceder al aborto por violación” [Carlota: putting an end to barriers to abortion in cases of rape], Punto G(ire), *Animal político* (Feb. 12, 2022), <https://www.animalpolitico.com/analisis/organizaciones/punto-gire/carlota-un-alto-a-los-obstaculos-para-acceder-al-aborto-por-violacion>

<sup>54</sup> They are Constitutional Controversies 45/2016 and 56/2016. You can find them in Spanish in these links: <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/198008> and <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/199378>

In 2024, the *amparo* in the Sinaloa case represented a step forward both for the right to decide of women and pregnant people and for the protection of the rights of people with disabilities. In a country where the reproductive rights of people with disabilities have been systematically violated throughout history, this ruling strengthened the recognition that all people have the right to decide about their bodies, that their will in matters of reproductive health should be respected, and that no one else should make decisions for them.

While there are still many laws to be changed and many steps to be taken, the feminist movement has gained strength and has become a great Green Tide that has succeeded in getting the Court to continue ruling in favor of our rights, as we will see in the next chapters.



## Chapter 4.

# **The Green Tide Arrives at the Court in September 2021**



## Political and Social Context

In 2005, the National Campaign for the Right to Legal, Safe, and Free Abortion was created in Argentina, resulting in the decriminalization of abortion in December 2020.<sup>55</sup> This struggle, which has been spreading throughout Latin America since 2018,<sup>56</sup> has summoned thousands of people who have marched and demonstrated wearing a green bandana as the movement's symbol. The Green Tide also reached Mexico, where many feminists have taken over public spaces to demand legal, safe, and free abortion<sup>57</sup> and have seized opportunities for political advocacy.



<sup>55</sup> María Teresa Bosio, “Campania por el Derecho al Aborto Legal, Seguro y Gratuito: su historia, sus transformaciones y nuestro aporte como Católicas por el Derecho a Decidir” [Campaign for the Right to Legal, Safe, and Free Abortion: Its History, Its Transformations, and Our Contribution as Catholics for the Right to Decide], XXVI International Colloquium on Gender Studies (CIEG, UNAM, October 2019), <https://cieg.unam.mx/xxvi-coloquio/ponencias/Campania-por-Derecho-al-Aborto-Legal-Seguro-Gratuito.pdf>

<sup>56</sup> In June of that year, the campaign's bill was approved in the Chamber of Deputies with 129 votes in favor and 125 against, however, in August, it did not get the necessary votes to pass in the Argentine Senate. Ana Cecilia Dinerstein, “La creciente Marea Verde: la lucha por la justicia reproductiva en Argentina” [The Growing Green Tide: The Struggle for Reproductive Justice in Argentina], *Cuadernos del pensamiento crítico latinoamericano*, no. 85 (CLACSO, May 2021), <https://www.clacso.org/la-creciente-marea-verde-la-lucha-por-la-justicia-reproductiva-en-argentina/>

<sup>57</sup> For example, in this September 28, 2019 demonstration: <https://animalpolitico.com/tendencias/estilo-de-vida/aborto-grito-global-legal-seguro-gratuito-cdmx>

In July 2018, in an unprecedented electoral process, more than 3400 public office holders were elected in our country.<sup>58</sup> The National Regeneration Movement (Morena, for its Spanish acronym) won not only the national presidency but also five of the nine governorships and the majority in the Congress of the Union. Several representatives of this political party had already declared their pro-choice stance—echoing the Green Tide movement’s demand—creating expectations about the progress that could be made in relation to this issue when they took office.

For example, from the federal executive branch, the secretary of Health declared—even before taking office—that the conditions for decriminalizing abortion existed,<sup>59</sup> and the then secretary of the Interior expressed her position against the criminalization of women who have abortions.<sup>60</sup> Moreover, the president repeatedly stated that, being such a controversial topic, it would be best to submit the abortion issue to a public consultation. The truth is that, although debate should always be possible, reproductive rights have been recognized in the Constitution since 1974; in this sense, submitting them to consultation would be a step backwards.<sup>61</sup>

A group of female legislators from Morena brought forward an initiative to reform the Federal Criminal Code and the General Health Law.<sup>62</sup> The fact that the most influential party in the country was so interested in decriminalizing abortion was unprecedented in Mexico. Although in many

<sup>58</sup> National Electoral Institute, Elections 2018 (2018), <https://www.ine.mx/voto-y-elecciones/elecciones-2018/>

<sup>59</sup> Jorge Alcocer Varela said this in an interview that you can read here: <https://www.excelsior.com.mx/nacional/jorge-alcocer-abre-posibilidad-a-legalizacion-del-aborto-en-todo-el-pais/1260768>

<sup>60</sup> Olga Sanchez Cordero said this in an interview that you can read here: [https://verne.elpais.com/verne/2018/10/16/mexico/1539656256\\_828449.html](https://verne.elpais.com/verne/2018/10/16/mexico/1539656256_828449.html)

<sup>61</sup> If you want to know more about how these processes are regulated in Mexico, you can refer to GIRE’s report *Ni un paso atrás. La garantía del acceso al aborto legal en México y las consultas populares* [Not One Step Back. Ensuring Access to Legal Abortion in Mexico and Popular Consultations], (2021), <https://gire.org.mx/wp-content/uploads/2021/08/Ni-un-paso-atras%CC%81s-HD.pdf>

<sup>62</sup> El Imparcial, “Morena busca despenalizar el aborto en todo el país” [Morena Seeks to Decriminalize Abortion Across the Country], (September 30, 2019), <https://www.elimparcial.com/mexico/Morena-busca-despenalizar-el-aborto-en-todo-el-Pais--20190930-0093.html>

cases no concrete results were achieved, in others, such as in the states of Oaxaca, Veracruz, and Hidalgo, reforms were made to the local criminal codes so that abortion would no longer be a crime when performed during the first 12 weeks of pregnancy.

For its part, the judicial branch also responded to the Green Tide's demand for the liberalization of abortion. At that time, the Supreme Court had several pending resolutions related to this issue and had the arguments and legal tools to resolve them in that way. Thus, it did not miss the opportunity to advance, from its trenches, towards guaranteeing our human and reproductive rights.

### Abortion as a Crime in Coahuila

On October 27, 2017, Coahuila's new criminal code was published. Although abortion was still considered a crime, health grounds were added to the permitted circumstances. However, another part of the text stated the following:

**Article 195.** The crime of abortion is committed by anyone who causes the death of the product of conception, at any time during pregnancy.

**Article 196.** One to three years of imprisonment shall be imposed to the woman who voluntarily performs an abortion or to the person who causes her to have an abortion with her consent.

In November 2017, the then Attorney General's Office of the Republic (PGR, for its Spanish initials) brought an action of unconstitutionality against those two articles before the Supreme Court.<sup>63</sup> The case was analyzed by then-Justice, Luis María Aguilar Morales.

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<sup>63</sup> See Chapter 1 to learn more about what an action of unconstitutionality is and who can file one.

This action marked an important change with respect to the position taken by institutions regarding abortion in Mexico. Remember that in 2007—when abortion was decriminalized for the first 12 weeks of pregnancy in the Federal District—the PGR argued that allowing abortion in early pregnancy was contrary to the Constitution. Ten years later, that same institution turned to the Supreme Court to state exactly the opposite: that an absolute ban on voluntary abortion is contrary to human rights. Its arguments in this action of unconstitutionality were the following:

- ✧ That the new criminal code of Coahuila established a general ban on abortion, which went against the reproductive autonomy enshrined in Articles 1 and 4 of the Constitution;
- ✧ That Articles 1 and 4 of the Constitution also recognized the right to start a family and to decide whether or not to have children; therefore, considering abortion as a crime, without providing time limits in which it is not a crime, is contrary to this right;
- ✧ That, even if Coahuila's legislators had established the crime of abortion as such with the intention of protecting the right to life, this is not an absolute right;
- ✧ That considering abortion as a crime also implied discriminating against women, as it assumed that becoming a mother is every woman's destiny; and
- ✧ That different international human rights bodies had pointed out the importance of liberalizing abortion laws in Mexico.

In its ruling,<sup>64</sup> the Supreme Court made a very important clarification in order to broaden the recognition of human rights. It explained that everything it had resolved included:

64 Do you want to read the ruling? You can access the Action of Unconstitutionality 148/2017 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=227921>

both women and people with the capacity to gestate—a fundamental and inclusive concept that has the underlying purpose of recognizing and making visible those who, belonging to diverse gender identities different from the traditional concept of a woman, have the capacity to gestate (for example, transgender men, non-binary persons, among others).



Furthermore, it determined that there is a constitutional right to decide, which is granted to women and people with the capacity to gestate. This right derives from the interpretation of other principles and rights, contained in articles 1 and 4 of the Constitution:

- ✧ **Human dignity.** This is the principle that allows for recognizing the human rights of all people solely based on their humanity, so they can decide about their person, their body, and their destiny without any imposition;
- ✧ **Reproductive autonomy and free development of the personality.** Women and people with the capacity to gestate have the right—like everyone else—to choose who they want to be, and a pregnancy undoubtedly has a significant impact on that decision. Acknowledging this autonomy means the **authorities should not make decisions for them, because it would imply that they need to be protected from their own choices regarding their own sexual and reproductive lives.**
- ✧ **The secularity of the Mexican State.** In order to guarantee reproductive autonomy, the State must guarantee the free exercise of ethical convictions, conscience, and religion, as stated in Articles 24, 40, and 130 of the Constitution. This means that no church can be considered official by the State.
- ✧ **Legal equality.** This right implies the elimination of gender stereotypes<sup>65</sup> that are assigned to people based on the sexual organs they were born with, as in the case of women and people with the capacity to gestate, who are expected to become

65 A stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group. Gender stereotypes are concerned with the social and cultural construction of men and women, due to their different physical, biological, sexual, and social functions. “Gender stereotype” is an overarching term that refers to a structured set of beliefs about the personal attributes of women and men. Rebecca Cook and Simone Cusack, *Gender stereotyping. Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

pregnant and be mothers. When criminal regulations target them exclusively—such as the regulation on abortion in Coahuila’s criminal code—they are likely to be creating or reinforcing a gender stereotype.

- ✧ **Reproductive health and freedom.** As the Court had stated in Marisa’s case, medical care related to pregnancy and abortion is part of the right to health. Moreover, these rights must not only be recognized on paper, but the infrastructure must also be in place to allow for decision-making regarding one’s own health.

The right to decide, as defined by the Court, consists of seven pillars:

1. Comprehensive sex education.
2. Access to information on family planning and contraception.
3. The right to decide whether to terminate a pregnancy or carry it to term.
4. The guarantee of an informed decision regarding the continuation or termination of a pregnancy.
5. The protection of the decision to terminate a pregnancy or carry it to term. That is, both those who wish to continue a pregnancy and those who choose to terminate it are entitled to all health services.
6. The right to terminate a pregnancy in public health institutions in an accessible, free, confidential, safe, unobstructed, and non-discriminatory manner.
7. The right for the pregnant person to have the free will to choose to terminate a pregnancy, during a period close to the beginning of the gestation process (considering the period of 12 weeks of pregnancy as the reasonable minimum).

The Court—after assessing the right to decide and prenatal life rights—determined that human rights are recognized for all persons from the moment they are born alive, not before, since neither the Constitution nor international treaties protect the right to life from the moment of conception. However, it stated that there is a progressive obligation to protect the gestation process (i.e., that it increases as the pregnancy progresses), and it can only be ensured by protecting the rights of pregnant people through government policies that respect those seven pillars. It also took into account the period of the first 12 weeks of pregnancy (which at the time of issuing the ruling was the period that had already been established in Mexico City, Oaxaca, Veracruz, and Hidalgo) as a reasonable time to allow abortion.

It is important to note that, until that time (2021), the period of the first 12 weeks of pregnancy was the most progressive one under Mexican criminal law. However, as of April 2025, Guerrero and Michoacán, for example, no longer impose a time limit on those who decide to have an abortion. As a result of this progress, at GIRE, the minimum period for guaranteeing access to safe abortion services is considered to be 12 weeks of pregnancy. Moreover, GIRE insists that this health service should not, under any circumstances, be regulated in criminal codes.

The Court also concluded that when the criminal law affects other rights, then it is not the proper way to protect the gestation process. In this case, when Article 196 of Coahuila's criminal code punishes women who voluntarily abort, regardless of the stage of pregnancy they are in, it completely nullifies their rights. Furthermore, the legislators who approved this article disregarded the *ultima ratio* principle.<sup>66</sup> According to the Court: "strict prohibition (backed by criminal sanction) is tantamount to establishing an obligation for the woman who, once pregnant, must necessarily endure it and become a mother."

<sup>66</sup> The meaning of this term was explained in Chapter 2. In this case, for example, it means that before establishing the crime of abortion, public health policies should be put in place in order to address it.

Thus, the Court ultimately invalidated Article 196 of Coahuila's criminal code, which punished anyone who had an abortion and anyone who performed or assisted in abortions. It also invalidated the part of Article 198 that punished health personnel who performed or assisted in abortions, and, in Article 199, it invalidated the time limit of 12 weeks of pregnancy for having a rape-related abortion.

Likewise, the Court resolved that the effects of this ruling would be retroactive in Coahuila, meaning that **all persons to whom any of the invalidated articles had been applied since they were created in November 2017 could benefit from it.** From then on, any investigations against women or people with the capacity to gestate for the crime of abortion and against those who had assisted someone in having an abortion were to be closed. The same applied to anyone who had been sentenced or imprisoned for this crime, who from that moment on had the right to have their case reviewed in order to be released. In addition, **as of the invalidation of this article, no one could be denounced, investigated, or convicted in the state of Coahuila for voluntarily aborting or assisting another person when having an abortion.**

In the rest of the country, the ruling's effect was that no judge may issue a sentence for the crime of abortion when performed of the sole will of the pregnant person in an early stage of the pregnancy (considering as a reasonable minimum the period of 12 weeks of pregnancy).

## Conscientious Objection

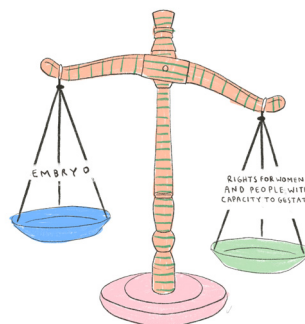
On May 11, 2018, the LGS was amended to include the figure of conscientious objection in its Article 10 Bis. It read as follows:

**Article 10 Bis.** Medical and nursing personnel who are part of the National Health System may exercise conscientious objection and refuse to participate in the provision of services established by this law.

When the patient's life is at risk or it is a medical emergency, conscientious objection may not be invoked, otherwise professional liability will be incurred.

The exercise of conscientious objection will not derive in any type of workplace discrimination.

The CNDH filed an action of unconstitutionality against the addition of this article. Its argument was that it could lead to violations of the right to health by allowing certain medical procedures to be denied to the health institutions' users. This could happen because the wording of the article described conscientious objection in a very broad and deficient manner, without setting limits that ensured the exercise of the right to health.



Thus, the termination of pregnancy was one of the medical procedures that could be hindered by it. Allowing health personnel to refuse to perform legal abortions without an obligation to guarantee care for pregnant people by non-objecting personnel would imply tolerating discrimination.

To resolve the case, the Supreme Court first had to review whether conscientious objection already existed in the Mexican constitutional framework and what its scope was. Next, it had to address the right to health that was allegedly being breached and, finally, determine whether Article 10 Bis of the LGS violated this right.

In its rulings,<sup>67</sup> the SCJN notes that the Constitution establishes the secular nature of the Mexican Republic. This means there is no official religion in Mexico and that the government must be neutral regarding all religions, i.e., it must ensure that all people can exercise the creed of their preference without any coercion. In addition to guaranteeing religious freedom—which includes freedom of conscience—the government must intervene in cases where exercising this right may infringe on the rights of others in order to protect them.

Religious freedom and freedom of conscience take on two forms—one internal and the other external. The internal one refers to personal beliefs while the external one is the way those beliefs are manifested or expressed. The government cannot intervene in the internal aspect, but it can with regard to its external expression, when it violates other people's rights. According to the Court, conscientious objection is:

a way of realizing freedom of conscience and religion, and it occurs when the regulations or acts that generate an obligation or burden go against the person's most intimate convictions—whether religious or not. In this sense, when a legal regulation or an act entails an

<sup>67</sup> Do you want to read the ruling? You can access the Action of Unconstitutionality 54/2018 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=238286>

obligation or legal duty that opposes a person's convictions and they refuse to comply with this duty, a conscientious objection occurs: it is a confrontation between the objector's legal duty and personal convictions.

If conscientious objection is a way of exercising the constitutional right to freedom of religion and conscience, how does this balance with other rights? The Supreme Court is very clear about this:

Conscientious objection does not constitute an absolute or unlimited right that can be invoked in any case and under any form. It is not a general right to disobey the law. On the contrary, conscientious objection is only valid when there is a true contradiction with the dictates of a respectable conscience in a constitutional and democratic context, so that it cannot be invoked to defend ideas contrary to the Constitution.

Regarding the right to health, the Court reintroduced what it had stated in its previous rulings and emphasized that it must be understood as the enjoyment of all the possibilities necessary to achieve a state of general well-being, which implies that:

- ✧ there are sufficient health care facilities;
- ✧ these facilities can be accessed by the general public, including marginalized groups; and
- ✧ the facilities are culturally acceptable and appropriate from a medical and scientific perspective.

As the CNDH pointed out in its lawsuit, abortion is one of the issues in which religious freedom may conflict with the right to health. The Supreme Court already had enough precedents to draw from—such as the cases of Marimar, Fernanda, Jessica, and Marisa as well as the one

related to abortion as a crime in Coahuila—to confirm that the issue of abortion is linked to the right to health, which the State must guarantee. Thus, it ruled that, as with other matters related to the right to health, in the case of abortion the State must adopt: “all possible measures to the maximum of its available resources to progressively achieve, by all appropriate means, the full realization of the right to the protection of health.”

When comparing Article 10 Bis of the LGS to the guidelines that the Court states are necessary for conscientious objection, it is clear that the wording of this article does not comply with them which is why the Supreme Court declared it invalid.

In addition, the SCJN called upon the Congress of the Union to legislate in accordance with the requirements set forth in its ruling and made a concise list of the limits that it must observe:

- a. Conscientious objection is an individual matter, and medical personnel can only appeal to it to refuse to perform a health procedure they are required to perform when it is contrary to their beliefs.
- b. Institutions must have sufficient non-conscientious objector personnel to guarantee the right to health.
- c. Only the personnel directly involved in the procedure can conscientiously object, and with the limitation of doing so within a short time period.
- d. Whoever must decide whether a person's objection will proceed shall do so within a short period of time; otherwise, it shall be understood that it does not proceed.
- e. Conscientious objection shall not be valid in the following cases: when it puts a patient's life at risk, involves a medical emergency, involves a health risk, may cause a disability or aftereffects, prolongs suffering, or when there is no alternative to refer the user to.
- f. Objecting on discriminatory grounds is not permitted.

- g. The objection must not hinder or delay the provision of a service.
- h. Failure to comply may result in administrative, professional, or even criminal liability.
- i. Users should be provided with all the necessary information on the medical options available to them, including information on the objecting staff and the options available to them to receive care in such a case.
- j. Institutions should be clear about the steps to be taken in cases where they do not have sufficient non-objecting personnel.
- k. Those who wish to object should not judge users or attempt to dissuade them from the procedure they need.

These parameters that were set forth by the Supreme Court are highly relevant because it is uncommon for it to provide such conclusive indications of the limits that the legislative branch must take into account when doing its work in order to avoid violating the rights of individuals. Furthermore, in the specific case of abortion, these parameters add to all those found in previous rulings in the sense that they reinforce that denying an abortion is prohibited when the pregnancy is the result of rape and when the health of a pregnant person is at risk.

### Life from Conception

After abortion during the first trimester of pregnancy was decriminalized in the Federal District in 2007, and after the Supreme Court ruled that this decriminalization was constitutional, anti-choice advocates did not stand idly by. Soon afterwards, they began to lobby the congresses of

several Mexican states to reform their local constitutions in order to include the obligation to protect life from the moment of conception.<sup>68</sup>

The purpose of this strategy was to “shield” those states so that, at least in theory, abortion could not be decriminalized. This contributed to many people thinking that, by including this clause, it would be impossible to decriminalize abortion in those states, or even that its practice would be completely banned.<sup>69</sup>

On October 26, 2018, Sinaloa’s constitution was reformed. The following was added in one of its articles: “From the moment an individual is conceived, he/she enters under the protection of the corresponding Law.”

The CNDH along with a group of legislators from Sinaloa filed an action of unconstitutionality against this addition. They explained that this statement was against the Federal Constitution, because:

- ✧ Local congresses lack the authority to define when life begins. In addition, it should be considered that the Inter-American Court of Human Rights has determined that the embryo is not a person with rights.<sup>70</sup>
- ✧ When considering the right to life from conception as a priority, women’s right to reproductive autonomy is jeopardized. The absolute recognition of rights should not affect others.

<sup>68</sup> For more information regarding this context, see: GIRE, *Derechos humanos de las mujeres y protección de la vida prenatal en México* [Women’s Human Rights and the Protection of Prenatal Life in Mexico], (2012), [https://www.gire.org.mx/wp-content/uploads/2016/07/DH-mujeres\\_vidaprenatal.pdf](https://www.gire.org.mx/wp-content/uploads/2016/07/DH-mujeres_vidaprenatal.pdf)

<sup>69</sup> The Court had already analyzed this problem in previous cases and had proposed to invalidate these constitutional articles but had never obtained the eight votes necessary to do so. Those cases are: Action of Unconstitutionality 11/2009, Action of Unconstitutionality 62/2009, Constitutional Controversy 104/2009, Constitutional Controversy 62/2009, and Constitutional Controversy 89/2009.

<sup>70</sup> This was stated by the Inter-American Court in the case of *Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf)

Once again, the Supreme Court reviewed the rights of pregnant people to confirm that, in a secular State such as Mexico, decisions about their own bodies are protected by the human rights recognized in the Constitution, such as: autonomy, health, life project, and the right to a dignified life.<sup>71</sup> These rights, seen under the principle of non-discrimination, imply that:

health services must guarantee the conditions for pregnant people to effectively meet their health needs and for services that are only required by women, such as the termination of a pregnancy, to be provided in safe environments in order to avoid the risks associated with pregnancies and abortions that are performed in precarious conditions.

Regarding the right to life, the Supreme Court noted that it was not within its jurisdiction, nor that of the local congresses or the federal congress, to define the point at which life begins, because there is not even a scientific consensus on the matter. However, the Court must make it clear that the Constitution does not protect a fetus in the same way as a born person, and that the protection of an embryo or fetus cannot override the rights of the person who carries it.

Thus, it determined that the contested article was contrary to the Constitution in that it sought to give more rights to an embryo than to a born person—women and people with the capacity to gestate. In addition, it contributed to stigmatizing abortion and confusing health personnel. In the words of the Supreme Court:

<sup>71</sup> Do you want to read the ruling? You can consult the Action of Unconstitutionality 106/2018 and its joint proceedings 107/2018 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=247133>

It alters the cultural and social meaning of rights and contributes to building a social imaginary that is adverse to the exercise of the human rights of pregnant women and people with the capacity to gestate, since it fosters the belief of the ethical wrongness of abortion and other reproductive options; it increases the stigma for those who seek these health care services based on stereotypical and discriminatory notions and conceptions; it generates a false fear in health personnel, even when criminal legislations do not criminalize abortion under certain circumstances; it causes inequality in the provision of health services among women and forces women and people with the capacity to gestate to put their lives and health at risk in clandestine and poorly performed abortions, given the confusion regarding the real legal scope of these clauses (a confusion that is greater among highly marginalized women); among other constitutionally unacceptable consequences.

Although this ruling only annuls the clause in Sinaloa's constitution, this does not mean that authorities may deny legal abortions or that legislators will be unable to decriminalize this practice in the other states whose constitutions include similar clauses. Moreover, the Court points out that the ruling must serve to guarantee a dignified life, with all the rights this entails, including the right to health and to abortion. In fact, in 2022, the Supreme Court's Plenary analyzed the articles in the constitutions of the states of Nuevo León, Veracruz, and Aguascalientes—which also sought to protect life from the moment of conception—and took that ruling into account at the time of voting.<sup>72</sup>

<sup>72</sup> Action of Unconstitutionality 41/2019 and its joint proceedings 42/2019, promoted by the CNDH and the State Commission of Human Rights of Nuevo Leon <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/253920>, the Action of Unconstitutionality 85/2016, promoted in Veracruz by the CNDH <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/205007>, and the Action of Unconstitutionality 72/2021 and its joint proceedings 74/2021, promoted by the Commission of Human Rights of the State of Aguascalientes and the CNDH <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/282472>

## What Were the Effects of These Rulings in Mexico?

With these three rulings, which were resolved in 2021, the Supreme Court of Justice reinforced what had been said in previous rulings and made progress in fulfilling many of the recommendations that international human rights organizations had been making for several years with the aim of guaranteeing safe abortion. In addition, they set a new parameter so that all states in the country may decide to liberalize abortion laws.

One year after these rulings were made, four more states reformed their criminal codes to allow voluntary abortion during the first 12 weeks of pregnancy: Baja California, Colima, Baja California Sur, and Quintana Roo. As of March 2022, voluntary abortion is permitted at up to 13 weeks of pregnancy in Sinaloa. In addition, Guerrero's criminal code was also reformed in 2022 to allow voluntary abortion at any time during pregnancy without it being considered a crime, although anyone who assists an abortion in cases of more than 12 weeks of pregnancy can still be prosecuted.

At the regional level—shortly after these achievements were made in Mexico and as a result of the struggle of the Causa Justa (Fair Cause) Movement—Colombia's Constitutional Court made its own ruling, allowing abortion at up to twenty-four weeks of pregnancy.<sup>73</sup> However, nine months after these celebrations took place in Latin America, a threat that had long been monitored by the safe abortion movement became a reality in the United States: the Supreme Court handed down a resolution that reversed the *Roe vs. Wade*. Since the early 1970s, this case had been a benchmark for the entire region, as it allowed thousands of women in the United States to have access to safe and legal abortions. The court's recent judgment paved the way for criminalizing abortion in states that make this decision.<sup>74</sup>

<sup>73</sup> You can learn more about this process on the movement's webpage: <https://causajustaporelaborto.org/>

<sup>74</sup> You can learn more about abortion regulation in the U.S. here: <https://reproductiverights.org/maps/abortion-laws-by-state/>

In this new context, sharing the experience of movements such as the Green Tide is extremely valuable. Regardless of borders, their strategies of litigation, advocacy, and accompaniment of abortion cases have allowed Mexico and other countries in the region to reach this historic moment.

Finally, in February 2025, the Court resolved a conflict of interpretation related to safe abortion services. This occurs when two or more courts rule differently on similar cases, which can create uncertainty about how the law or a prior Supreme Court ruling should be applied in similar situations. In this case, while one court determined that—based on the rights protected by the Constitution and international treaties, as well as the Court’s ruling in the Coahuila case—local health authorities were obligated to guarantee access to abortion, another concluded the opposite, arguing that there was no clear mandate in the Constitution or local laws imposing such an obligation.

To resolve this conflict of interpretation,<sup>75</sup> the Court had to determine whether the state should guarantee abortion services as part of the right to health. After analyzing the matter, the Court stated that access to the right to health is essential for making decisions about one’s reproductive life and must therefore be guaranteed and protected without discrimination. Thus, in line with what had already been stated in the Coahuila ruling, it confirmed the obligation of local health authorities to implement and organize health services, as well as to share information about them in order to ensure access to voluntary abortion.

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You can consult the Conflict of Interpretation 110/2024 in Spanish here: <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=332897>





## Chapter 5.

# **GIRE's Legal Strategy**



## Political and Social Context

The Coahuila ruling, issued in 2021, marked a turning point in the fight for reproductive rights in Mexico. The constitutional recognition of women and pregnant people's right to choose opened new doors for creating strategies that liberalize laws on the issue of abortion.

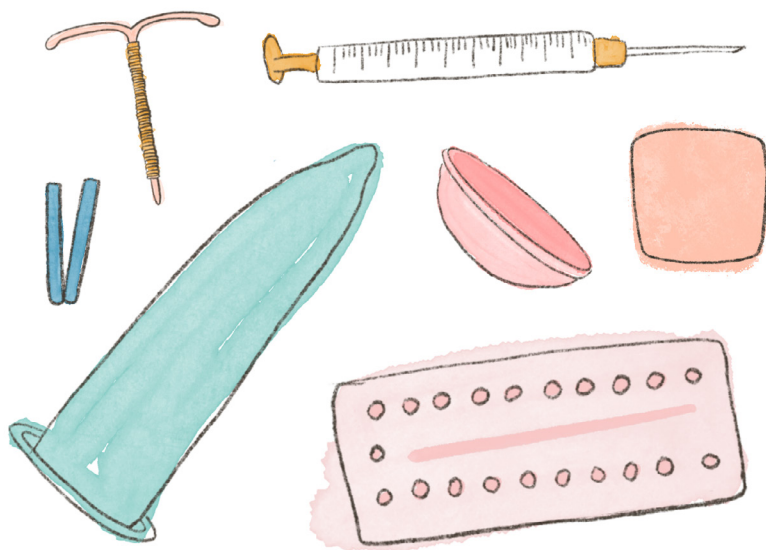
The Court's reasoning on this issue was refined, and accordingly, the Coahuila case became a milestone. In that ruling, the SCJN made it clear that the right to choose implies that the State is obligated to guarantee the necessary conditions for those who wish to carry out their pregnancy as well as for those who choose to terminate it.

This precedent cleared up doubts not only about the right to choose but also about the legality of abortion in Mexico. Previously, the Court's rulings had reinforced the idea that local congresses could regulate this issue. However, following the Coahuila ruling, it became evident that punishing all cases of abortion is unconstitutional and that the State has an obligation to provide reproductive health services, including terminating pregnancies. The Court also noted that there is no justification for keeping abortion in criminal codes and that, in any case, criminal proceedings should be a last resort. It also emphasized that using criminal law to regulate abortion imposes a disproportionate burden on pregnant people, as it forces them to go forward with unwanted pregnancies and fulfill a supposed reproductive function that violates their rights to health, autonomy, and equality.

The fact that the Court changed the circumstances also changed the context. If it once seemed that the decriminalization of abortion solely depended on political decisions, the Court's arguments provided a legal basis that will allow state legislatures that are still criminalizing abortion to reform their laws. Before the Coahuila ruling, states that had amended their criminal code to decriminalize voluntary abortion were considered progressive. Now, however, there is an understanding that states that continue to enforce the absolute criminalization of abortion and do not move toward decriminalization are violating the Constitution and acting against human rights.

The Coahuila ruling also reinforced the right to choose by recognizing it as part of reproductive autonomy in Article 4 of the Constitution and as part of exercising human rights. Thanks to this ruling, this right is now understood as something broader, encompassing everything related to reproductive health. It is a view that, in addition to including the possibility to terminate a pregnancy, also considers access to contraceptives, evidence-based information, sex education, and more. Thus, this ruling provides a comprehensive and integrated approach that protects different aspects of the right to choose.

Furthermore, the Coahuila case also had a significant effect on the way society perceives abortion, provided that the Green Tide gained strength as a broad and diverse movement spanning the entire country. Mobilizations on local levels started having an impact on the national



press, which stopped only discussing what was happening in Mexico City to also report on each state's experiences.

Before this ruling, only four states had decriminalized voluntary abortion: Mexico City (2007), Oaxaca (2019), and Hidalgo and Veracruz (2021).<sup>76</sup> After this ruling, other states amended their criminal codes to decriminalize abortion: Baja California (2021), Colima (2021), Sinaloa (2022), Guerrero (2022), Baja California Sur (2022), and Quintana Roo (2022).<sup>77</sup> Despite this progress, both the criminalization of women and pregnant people who abort and the continued existence of the crime in most criminal codes remained a reality in much of the country. Hence the importance of continuing to implement strategies to combat penal regulations on abortion.

In view of this, in January 2022, GIRE—together with local organizations—promoted a strategy to advance the decriminalization of abortion nationwide. The initiative consisted of filing *amparo* lawsuits based on the criteria set by the Coahuila ruling with the aim of eliminating the crime of consensual and voluntary abortion from the criminal codes. Thus, in 2022, *amparo* lawsuits were filed against the criminal codes of the 21 states where the absolute criminalization of abortion still existed: Aguascalientes, Campeche, Chiapas, Chihuahua, Durango, Guanajuato, Jalisco, State of Mexico, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, San Luis Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala, Yucatán, and Zacatecas, as well as against the Federal Criminal Code.

This strategy's first positive result came in 2022 in Puebla, where a federal judge ruled on the *amparo* filed by GIRE in conjunction with the Center for Analysis, Training, and Social Initiative (CAFIS, for its Spanish

<sup>76</sup> In all cases, until week 12.6 of pregnancy.

<sup>77</sup> Baja California, Colima, Baja California Sur, and Quintana Roo until week 12.6 of pregnancy; Sinaloa until week 13.6. In Guerrero, there is no gestational limit for women and pregnant people who have an abortion, but there is a restriction of until week 12.6 for those who assist in the procedure.

initials) and the Monitoring Body on Sexual and Reproductive Rights (Odesyr, for its Spanish acronym). The judge upheld the criteria of the Coahuila ruling and confirmed that the absolute criminalization of abortion went against the Constitution. The effects of this ruling were based on persuasive precedent; that is, it only protected those supported by these organizations who were found exempt from criminalization for having an abortion in the state. However, the ruling set an important precedent. Not only had a federal court ruled, for the first time, on an *amparo* that was part of GIRE's strategy, but it did so based on the arguments in the Coahuila case, thereby recognizing the importance of guaranteeing the right to choose of those who receive support from the organizations filing the *amparo*. Later, on July 15, 2024, the Congress of Puebla approved the decriminalization of abortion in the local criminal code up to week 12.6 of pregnancy, both for those who abort and for those who assist during the procedure. Accordingly, the benefits of decriminalization were extended to the state's entire population.

While the *amparo* in Puebla made the right to choose the beginning of a new reality, the Supreme Court's First Chamber later made it clear that it was not enough to protect only those supported by the organizations that filed the *amparos*. This position was demonstrated in the cases of Aguascalientes and the Federal Criminal Code, which were the first *amparos* to reach the Court as part of the strategy promoted by GIRE.



## Abortion as a Crime in Aguascalientes

In January 2022, Morras Help Morras, GIRE, Cecadec, Terfu A. C., and Cultivando Género A. C. filed an *amparo* against Articles 101, 102, and 103 of the criminal code of Aguascalientes, considering them unconstitutional. These articles completely criminalized voluntary abortion and violated reproductive autonomy and the rights to health, equality, and non-discrimination. The appeal also argued that these types of regulations constitute a form of violence against women and people with the capacity to gestate since they risk facing criminal prosecution if they do not wish to carry a pregnancy to term.

The case was brought before a federal court in Aguascalientes. The judge who reviewed it terminated the proceedings without examining whether the Constitution had been violated (this is known as dismissing an *amparo*). Her argument was that GIRE and the organizations that filed the *amparo* did not have a legitimate interest,<sup>78</sup> that is, they did not have a justified connection to the issue they were bringing to court. Furthermore, she pointed out that granting the *amparo* would violate the principle of relativity;<sup>79</sup> in other words, it would not only benefit the organizations that requested it but also other individuals or groups that did not participate directly in the trial (going against the nature of the *amparo* lawsuit, which only protects those who file it).

Dissatisfied with the trial's outcome, the civil society organizations requested its review, and GIRE asked the Supreme Court to take the case. The First Chamber—specifically, Justice Juan Luis González Alcántara Carrancá—took responsibility over the matter.<sup>80</sup> First, the Court analyzed whether the organizations had demonstrated that their work was related to promoting, protecting, and/or defending human rights (that is, whether they had a legitimate interest). It also assessed whether

78 To learn more about legitimate interest, see Chapter 1.

79 To learn more about the principle of relativity, see Chapter 1.

80 See *Amparo in Review* 79/2023 in Spanish here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=308233>

granting the *amparo* could benefit individuals who had not been part of the trial (which would violate the principle of relativity).

Regarding the first point, the First Chamber reviewed the requirements it had established in previous cases and determined that GIRE and Morras Help Morras, in particular, had a legitimate interest, as they had proven the following:

- a. *The existence of a regulation in the Constitution that protects an interest that benefits a broad group of specified or unspecified persons (diffuse interest).*

The First Chamber emphasized that the human rights to equality, non-discrimination, and health are enshrined in the Constitution, specifically in Articles 1 and 4. It noted that these rights must be guaranteed to all persons and that their protection is not only individual but also benefits a group.

- b. *The absolute criminalization of abortion in the criminal code of Aguascalientes affects or has affected an interest that benefits a group, be it individually or for an entire group of people.*

The First Chamber argued that this requirement was met, since the organizations indicated that Articles 101, 102, and 103 of the criminal code of Aguascalientes were contrary to the rights to equality and non-discrimination.

- c. *The organizations belong to the group affected by the absolute criminalization of abortion in Aguascalientes, and their purpose includes promoting, protecting, and/or defending a human right that protects a group.*

The First Chamber determined that GIRE and Morras Help Morras proved that their main aim was to promote and defend

human rights, including the right to equality, non-discrimination, and the health of women and pregnant people. Furthermore, it noted that the absolute criminalization of abortion sent a negative message about its practice, which is based on discriminatory criteria that affect all women and people with the capacity to gestate as well as the primary aim of these organizations.

- d. *That the absolute criminalization of abortion in Aguascalientes violates a human right that affects a group and that this rights violation prevents organizations from fulfilling their purpose or mission.*

The First Chamber considered that, if the *amparo* were granted, GIRE and Morras Help Morras would be better prepared to meet their aims, since the challenged regulations would no longer be applicable. This would allow them to work in a more favorable environment for the human rights of women and pregnant people.

Furthermore, it argued that these organizations' interest in fighting against the absolute criminalization of abortion in Aguascalientes was further supported by the fact that they worked in that state, which linked them directly to the regulations they considered unconstitutional.

Regarding the rulings' principle of relativity, the First Chamber considered that it should not be applied strictly and inflexibly in cases seeking to protect the rights of a group—in this case, the rights to equality, non-discrimination, and health. The Court also recognized that, although this principle is supported by the Constitution, the same is true of the rights of women and pregnant people. Therefore, it indicated that priority must

be given to the broadest possible protection of human rights and that restrictions on the principle of relativity should be applied only in exceptional cases.

Thus, in the Aguascalientes ruling, the First Chamber determined that the *amparo*'s principle of relativity has nuances and exceptions, since the absolute criminalization of abortion in the state affects not only the organizations that filed the *amparo* but also a larger group of people. Therefore, it overturned the previous ruling and proceeded to analyze whether Articles 101, 102, and 103 of the criminal code of Aguascalientes were contrary to the Constitution. These articles established the following:

**Article 101.** Abortion. Abortion is the death of the product of conception at any time during pregnancy.

The person responsible for intentional abortion shall be punished with one to three years in prison and be fined for 40 to 80 days<sup>81</sup> as well as for the reparation of damages when performed by the pregnant woman or by another person with the consent of the pregnant woman, taking into account the rules of responsibility, participation, and complicity.

In the absence of such consent from the pregnant woman, the prison sentence shall be three to six years and be fined for 70 to 120 days as well as for full payment of damages. If physical or moral violence is used against the pregnant woman, the person responsible shall be sentenced to six to eight years in prison and be fined for 80 to 150 days as well as for the reparation of damages.

<sup>81</sup> When a government fine is calculated based on days in Mexican legislation, it refers to the amount equivalent to the current daily minimum wage (translator's note).

If the pregnant woman consents to another person performing the intentional abortion on her, she shall be punished with six months to one year in prison and be fined for 40 to 80 days as well as for the reparation of damages.

**Article 102.** Suspension in the case of abortion. When intentional abortion is performed by a doctor, surgeon, or midwife, in addition to the punishability established in the previous article, they shall be suspended from practicing their profession or trade for two to five years.

**Article 103.** Exclusion of intentional abortion. It shall not be considered intentional abortion, and therefore no punitive action or security measure shall be applied, when the pregnant woman would be in serious danger of death if the abortion is not performed in the opinion of the attending physician and another consulted physician, if this is possible and the delay in consulting does not imply danger.

When the pregnancy has been caused by a crime classified as rape at any stage of the criminal proceedings initiated for that purpose, at the request of the victim, the judicial authority may authorize the abortion to be performed by specialized medical personnel, without this entailing the legal consequences described in this chapter.

In reviewing the case, the Court resumed the arguments it used in its decision on the crime of abortion in Coahuila:<sup>82</sup>

82 Read about what happened in the Coahuila case in Chapter 4 of this publication. Would you like to read the full ruling? See Action of Unconstitutionality 148/2017 in Spanish here: <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=227921>

- ✧ It reiterated that the absolute criminalization of abortion in Aguascalientes affected both women and people with the capacity to gestate. This recognition is fundamental, as it seeks to create visibility for those who, while their diverse gender identities differ from the traditional concept of a woman, have the capacity to gestate (for example, transgender men and non-binary people, among others).
- ✧ It emphasized that the right to choose is related to the principles of human dignity; reproductive autonomy and the free development of one's personality; legal equality; health (psychological and physical); and reproductive freedom.
- ✧ It revisited the analysis of the balance between the right to choose and the right to prenatal life and stressed that the gestation process can only be ensured by protecting the rights of women and pregnant people through government measures.
- ✧ It referred to the 12 weeks established in Mexico City and other states as a reasonable time limit for access to abortion.

In relation to the last point, it is important to clarify that, although the Court considered that 12 weeks of pregnancy was a reasonable period for access to voluntary abortion, this should be understood as a minimum period and not as a strict limit. That is, when reforming their criminal code, state congresses can interpret the human rights of women and pregnant people in the most favorable manner and, consequently, opt to completely eliminate the crime of abortion. However, if they decide to uphold a time limit, they must not establish one shorter than 12 weeks.

Since the Coahuila case, the Court has indicated that criminal law should only be used as a last resort. In this regard, it considered that regulating voluntary abortion as a crime contributes to reinforcing stigmas and barriers that violate the human rights of pregnant people, as it limits their access to essential health services and creates an environment of criminalization.

For all of these reasons, the First Chamber determined that the first, second, and fourth paragraphs of Article 101 of the criminal code of Aguascalientes—which regulated self-induced abortion—were contrary to the Constitution. This was because they punished those who voluntarily aborted, regardless of their stage of pregnancy, which completely nullified their right to choose. Therefore, the Court reiterated that criminal regulation is not the appropriate way to protect the process of pregnancy and should not be used to restrict the rights of women and pregnant people.

The Court also declared Article 102 unconstitutional, which penalized those who assisted people in having an abortion with professional suspension. It emphasized that this regulation reinforced the prohibition of access to abortion and had a discriminatory and stigmatizing effect on both healthcare providers and women and pregnant people who need these services. This is because it hindered access to safe abortion services due to a lack of trained personnel and led to the procedure being denied. Thus, the First Chamber concluded that this article was part of a set of regulations that enforced the absolute criminalization of voluntary abortion and, therefore, was also contrary to the Constitution.



With regard to Article 103 of the criminal code of Aguascalientes—which regulated the grounds on which abortion was considered legal—the First Chamber pointed out that it was unconstitutional to establish situations in which abortion is considered a crime even if it does not warrant punishment (grounds for non-punishment). Instead, it must be recognized that, in certain cases, abortion is not a crime at all (exclusions from liability). By upholding it as a crime, it allows criminal proceedings to be initiated against the woman or person with the capacity to gestate, and even if no punishment is imposed, it reinforces the idea of the criminality of abortion, which has a negative effect on the right to choose.

This ruling also declared that the obstacles to accessing abortion were unconstitutional in cases in which the pregnant person's life is in danger. The criminal code of Aguascalientes required that a doctor other than the one treating the pregnant person be consulted before performing the procedure. The First Chamber stated that this requirement was a barrier that hindered rapid and effective access to health services.

The Court also invalidated the requirements for accessing abortion in cases of rape. Without considering previous related cases that the Court had already ruled on,<sup>83</sup> the criminal code of Aguascalientes still required a prior complaint to be filed and the authorization of a judge. The First Chamber reiterated that making abortion conditional on judicial authorization violates women and pregnant people's right to choose. It also argued that this type of regulation jeopardizes the right to health of victims of sexual violence, as it creates delays and difficulties in accessing medical services that must be immediately and urgently provided.

<sup>83</sup> Read about the cases of Marimar, Fernanda, and Jessica in Chapter 3 of this book.

As a result of this *amparo*, the First Chamber ordered the Aguascalientes Congress to remove the articles that were declared unconstitutional from the criminal code. It also warned that this reform must be carried out before the end of the session period in which the ruling was made.

This ruling, in addition to being an important step in the fight for the reproductive rights of women and pregnant people, was also an achievement for the defense of rights that affect a group, which is key to the work of civil society organizations. Even though the *amparo* lawsuit was created to protect individuals from possible abuses by authorities, in this case, the Court recognized the legitimate interest that civil society organizations had in promoting it, since they worked to defend human rights, in particular reproductive rights. For the first time, an *amparo* had diffuse effects on reproductive justice issues; that is, it benefited all women and people with the capacity to gestate in a state, even if they did not participate directly in the trial. In addition, the ruling put an end to the criminalization of health personnel and those who assist in abortion.

## What Happened Next?

In December 2023, the Aguascalientes Congress fulfilled the Court's ruling by decriminalizing self-induced and consensual abortion up to 12.6 weeks of pregnancy. Despite the significance of this progress, a new initiative to reform the state's criminal code was introduced on August 23, 2024 and, on the 28<sup>th</sup> of that month, it was voted on. This reform caused a setback in human and reproductive rights. The same legislators who months earlier had fulfilled the First Chamber's ruling now approved the term for voluntary abortion being reduced to only six weeks of pregnancy.

This reduced term is a way of pretending to respect the right to choose. In addition to going against what is established in the Constitution, the reform increases criminalization and limits the rights of women and pregnant people in the state. In reality, it is a veiled way of banning abortion, since, for most, it is not enough time to realize they are pregnant. Furthermore, it particularly affects those who face multiple forms of discrimination or live in vulnerable situations, such as girls and adolescents, indigenous people, Afro-descendants, people with disabilities, migrants, rural community residents, and those with non-normative gender identities. This measure



adds weight to other social, political, and economic factors that hinder the free exercise of the right to choose and access to health services, such as level of education, income, employment, housing, transportation, and access to information.

This reform ignored the fact that the Court had already established that the minimum reasonable time limit for decriminalizing abortion should be 12 weeks of pregnancy.<sup>84</sup> Furthermore, it contradicts the recommendations of the Abortion Care Guideline published by the World Health Organization (WHO),<sup>85</sup> the leading global authority on public health. This document advises against creating laws that limit access to abortion based on gestational age, as such restrictions have no scientific basis, create confusion, and hinder access to safe health services.

From a human rights perspective, this reform limits the right to choose and affects other fundamental rights, such as equality, health, reproductive health, freedom from violence, personal integrity, free development of one's personality, and reproductive autonomy. Furthermore, it goes against the principle of progressive realization and non-regression, which obliges the State to strengthen recognized rights, guarantee and promote their fulfillment, and not move backwards on the progress achieved. For this reason, the Legal Counsel of the Federal Executive Branch and the CNDH filed actions of unconstitutionality<sup>86</sup> against this reform before the SCJN, which are still pending and will be reviewed by Justice Alfredo Gutiérrez Ortiz Mena.<sup>87</sup>

<sup>84</sup> Find more details on the Court's statements on this time limit in the ruling on the crime of abortion in Coahuila in Chapter 4 of this book.

<sup>85</sup> Consult the WHO Abortion Care Guideline here: <https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf>

<sup>86</sup> What is an action of unconstitutionality? Find out in Chapter 1.

<sup>87</sup> This is referring to Action of Unconstitutionality 172/2024 and its joint proceedings 173/2024. The lawsuit, which is pending resolution, can be consulted in Spanish here: [https://www.scjn.gob.mx/sites/default/files/acuerdos\\_controversias\\_constit/documento/2024-12-02/MI\\_AccInconst-172-2024.pdf](https://www.scjn.gob.mx/sites/default/files/acuerdos_controversias_constit/documento/2024-12-02/MI_AccInconst-172-2024.pdf)

GIRE calls on the legislators of Aguascalientes to guarantee access to voluntary abortion and remove the barriers limiting this right. This entails, for example, removing voluntary abortion from the state criminal code and establishing a legal framework that respects the reproductive autonomy and right to choose of women and pregnant people based on the criteria outlined by the Court and the WHO.

### Abortion as a Crime in the Federal Criminal Code

In August 2022, GIRE filed an *amparo* against Articles 330, 331, 332, 333, and 334 of the Federal Criminal Code for enforcing the absolute criminalization of abortion and limiting the right to choose of women and people with the capacity to gestate. It also indicated that these articles violate rights such as reproductive autonomy, the right to health, and the right to equality and non-discrimination, and are a form of gender-based violence. The articles establish the following:

**Article 330.** Anyone who causes a woman to have an abortion shall be punished with one to three years of prison, regardless of the means used, provided that it is done with her consent. (...)

**Article 331.** If the abortion is performed by a doctor, surgeon, or midwife, in addition to the penalties applicable under the previous article, they shall be suspended from practicing their profession for two to five years.

**Article 332.** A mother who voluntarily procures her own abortion or consents to another person performing an abortion on her shall be sentenced to six months to one year in prison if all three of the following circumstances are present:

- I. She is not of ill repute;
- II. She has managed to conceal her pregnancy, and
- III. The pregnancy is the result of an illegitimate union.

If any of the above circumstances are not met, a prison sentence of one to five years shall be imposed.

**Article 333.** Abortion is not punishable when it is caused solely by the pregnant woman's imprudence or when the pregnancy is the result of rape.

**Article 334.** No penalty shall be imposed when the pregnant woman would be in danger of death if the abortion is not performed, in the opinion of the attending physician after hearing the opinion of another physician, provided this is possible and the delay is not dangerous.



The *amparo* was filed in a federal court. However, the judge responsible decided to close the case without analyzing whether the Federal Criminal Code violated the Constitution (this is known as dismissing an *amparo*). He argued that the regulations indicated by GIRE did not affect or cause any harm to the organization. GIRE disagreed with this decision and requested a review. The new court overturned the previous judge's decision, considering that the absolute criminalization of abortion in the Federal Criminal Code did affect the work of this organization. It therefore requested that the Supreme Court determine whether these regulations were constitutional.

Justice Margarita Ríos Farjat reviewed this issue.<sup>88</sup> As in the Aguascalientes case, the Court had to decide whether it was constitutional to criminalize women and pregnant people who voluntarily chose to have an abortion. In its response, the First Chamber clarified that it would review the matter with an obligation to adjudicate from a gender perspective and intersectional viewpoint.<sup>89</sup>

Thus, in this ruling, the First Chamber once again emphasized the importance of referring to both women and people with the capacity to gestate, with the aim of giving visibility to a wide range of identities, such as trans men and non-binary people. This clarification was also made in the Coahuila and Aguascalientes rulings, thereby reinforcing the recognition of diverse identities.

As established in the Coahuila ruling, the Court reiterated that the principles and rights related to the right to choose are human dignity, autonomy and the free development of one's personality, legal equality, the secular nature of the Mexican State, and the right to health and reproductive freedom.

<sup>88</sup> Consult the *Amparo* in Review 267/2023 here: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=311450>

<sup>89</sup> What is the gender perspective and intersectionality? Find out in Chapter 1.

This ruling also reiterated the pillars of the right to choose, which had been indicated in the Coahuila case, namely:

- a. Comprehensive sex education.
- b. Access to information on family planning and contraception.
- c. The right to decide whether to terminate a pregnancy or carry it to term.
- d. The guarantee of an informed decision regarding the continuation or termination of a pregnancy.
- e. The protection of the decision to terminate a pregnancy or carry it to term. That is, both those who wish to continue a pregnancy and those who choose to terminate it are entitled to all health services.
- f. The right to terminate a pregnancy in public health institutions in an accessible, free, confidential, safe, unobstructed, and non-discriminatory manner.
- g. The right for the pregnant person to have the free will to choose to terminate a pregnancy, during a period close to the beginning of the gestation process (considering 12 weeks of pregnancy as the reasonable minimum).

With this, the First Chamber reiterated that the State has an obligation to provide voluntary abortion services, regardless of whether the Federal Congress has reformed the laws. The Court recognized that the possibility of terminating a pregnancy in public health institutions is one of the pillars of the right to choose and also established the minimum conditions for providing this service.

With regard to Articles 330 and 332 of the Federal Criminal Code, which regulate voluntary abortion, the First Chamber upheld that, given that they completely nullify the right of women and pregnant people to make decisions about their bodies, both articles are unconstitutional. The Court also clarified that the idea of protecting values associated with motherhood does not justify the criminalization of abortion and, there-

fore, is not the appropriate route for attempting to criminalize it. Furthermore, while recognizing that protecting unborn life is a valid aim, it considered that using criminal law to achieve this does not balance this aim with the right to choose but rather completely nullifies it. Thus, this ruling reinforced what had already been established in previous cases: that the absolute criminalization of voluntary abortion is contrary to the Constitution.

The First Chamber indicated that Article 331 of the Federal Criminal Code—which imposes professional suspension of health personnel who assist in an abortion—reinforces the absolute prohibition of voluntary abortion and promotes the stigma surrounding this practice. It also argued that the abuse of criminal law can be perceived as retaliation against healthcare personnel who challenge gender stereotypes or traditional ideas about motherhood. Finally, it recognized that these penalties hinder women and pregnant people’s access to a safe and quality abortion, as they not only lead medical personnel to steer clear of performing abortions but also reduce the availability of proper training with a sensitive approach. For these reasons, the Court concluded that this regulation also violated the Constitution.

Finally, the Court also declared that the articles regulating the grounds on which abortion is permitted—Articles 333 and 334 of the Federal Criminal Code—were unconstitutional.<sup>90</sup> Its argument was that they continue to consider abortion a crime, even if it is not punishable in certain circumstances (grounds for non-punishment), rather than stating that, in such cases, abortion should not be understood as a crime (exclusions from liability). This allows criminal proceedings to be initiated and the woman or person with the capacity to gestate to be investigated, even if the person is not punished. In this regard, the First Chamber reiterated its previous rulings and emphasized that such regulations uphold the idea that abortion is a criminal act, since they continue to treat those who practice it as if they had committed a crime, which goes against the right to choose.

90 What are the grounds for abortion? Find this information in Chapter 1.



In short, the Court ruled in favor of GIRE and ordered Congress to remove the articles declared unconstitutional from the Federal Criminal Code. It established that this should be done before the end of the period of regular sessions, once the ruling had been notified.

Even though Congress's deadline to remove the articles enforcing the absolute criminalization of abortion from the Federal Criminal Code has passed, this does not mean it is no longer obligated to do so. Congress still has a responsibility to comply with the Court's order, and it is essential that it do so in order to fully protect the right of women and pregnant people to choose. As the Court has reiterated in several rulings, using criminal law to regulate abortion services is not appropriate, as it promotes stigma and hinders its free and safe practice. Hence the need for Congress to completely remove voluntary abortion as a crime from the Federal Criminal Code. This is an opportunity to move toward a legal framework that takes a more protective approach to human rights and does not criminalize an essential health service.

### What Were the Effects of these rulings in Mexico?

The Aguascalientes ruling and the Federal Criminal Code ruling were the first to reach the Court as a result of the national legal strategy promoted by GIRE and local organizations. This strategy aimed to eliminate voluntary abortion from all the state criminal codes as well as the federal one. In addition to reasserting the State's obligation to provide abortion services in public health institutions, these rulings highlight the importance of not criminalizing those who assist in performing an abortion.

Thanks to these precedents, other rulings were settled in a similar way. Accordingly, the state congresses of Jalisco, Nayarit, Zacatecas, Yucatán, San Luis Potosí, and Morelos were ordered to remove the articles enforcing the absolute criminalization of voluntary abortion from their criminal codes. The fact that most of these rulings come from collegiate tribunals and district courts is historic. These courts have a lower

hierarchy than the Supreme Court, demonstrating that its decisions permeate all levels of the judicial system. This also reinforces the idea that there is a cohesive judicial system committed to protecting fundamental rights, such as reproductive rights.

On the other hand, the rulings in Aguascalientes and those regarding Federal Criminal Code have also opened a new avenue for decriminalizing abortion: the judicial route. The strategy promoted by GIRE has allowed increasingly more entities “to join the green tide” through judicial decisions. These rulings are a call to the congresses that have not yet completely removed voluntary abortion from their criminal codes to do so. By emphasizing the importance of not criminalizing women, pregnant people, or those who assist them in exercising their right to choose, they represent a key step forward in removing the legal barriers and social stigmas surrounding abortion.

And so, we witnessed a great wave of decriminalizations that charted the course on the issue of abortion in 2024. It began in Puebla (July), followed by Jalisco and Michoacán (October) and, later, San Luis Potosí and Zacatecas (November).<sup>91</sup> Some of these states (Jalisco, San Luis Potosí, and Zacatecas) made these amendments in compliance with court rulings tied to GIRE's strategy to remove abortion as a crime from criminal codes. A few days later, the State of Mexico and Chiapas (November) also joined in,<sup>92</sup> confirming, once again, that the Green Tide is unstoppable.

<sup>91</sup> Puebla, Jalisco, San Luis Potosí, and Zacatecas decriminalized abortion up to 12.6 weeks of pregnancy. In Michoacán, there is no gestational age limit for women and pregnant people who have abortions, but there is a restriction of up to 12.6 weeks of pregnancy for those who assist in the procedure

<sup>92</sup> Both states decriminalized abortion for up to 12.6 weeks of pregnancy. In the particular case of Chiapas, the Court ruled on Action of Unconstitutionality 125/2023, which ordered the local congress to reform its criminal code to eliminate the absolute criminalization of voluntary abortion. Would you like to read the ruling? You can find it in Spanish here: <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/315231>.

In January 2025, Nayarit decriminalized voluntary abortion in compliance with a resolution derived from the strategy promoted by GIRE.<sup>93</sup> That same month, the Court issued a general declaration of unconstitutionality<sup>94</sup> which, in line with its previous rulings, invalidated the articles enforcing the absolute criminalization of voluntary abortion in Chihuahua.<sup>95</sup> By April of that year, the Campeche and Yucatán congresses also decriminalized voluntary abortion up to week 12.6.

In addition, there were some significant changes in public policy. On January 23, 2025, the DOF published the Agreement of the Director General of ISSSTE, which guarantees the implementation of the Legal Termination of Pregnancy (LTP) procedure.<sup>96</sup> ISSSTE is the third largest institution in the country in terms of healthcare services—following IMSS and IMSS-Bienestar, based on the number of people they serve—and it will now guarantee access to voluntary abortion to any rightful claimant who requests it, regardless of the reasons for deciding to abort, following each state's guidelines.

This is significant progress, as ISSSTE, which had once denied abortion services to Marisa,<sup>97</sup> is now promoting a public policy to guarantee access to them. This agreement also recognizes the fact that voluntary abortion has already been decriminalized (especially during the first weeks of pregnancy) in more than half of the country. Furthermore, it responds to international human rights commitments and obligations while also recognizing that access to legal and safe abortion is essential for guaranteeing the reproductive rights of ISSSTE claimants.

93 In Nayarit, voluntary abortion is decriminalized for up to 12.6 weeks of pregnancy.

94 What is a general declaration of unconstitutionality? See more in Chapter 1.

95 Would you like to read the ruling? You can access the General Declaration of Unconstitutionality 01/2024 in Spanish here: <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=330436>

96 Would you like to read this agreement? You can see it in Spanish here: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5747609&fecha=23/01/2025#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5747609&fecha=23/01/2025#gsc.tab=0)

97 See Marisa's case in Chapter 3.



All of this reflects the tireless collective struggle of the feminist movement and is a welcome confirmation that the defense of reproductive rights is gaining momentum in the legislative sphere. The commitment that state congresses have demonstrated toward judicial rulings not only promotes consistent laws throughout the country (known as legislative harmonization) but also strengthens the guarantee of reproductive autonomy and respect for it.

## Conclusions

The Supreme Court of Justice of the Nation has played a key role in the defense of reproductive rights in Mexico. It has been in favor of the liberalization of abortion since its first ruling on the matter in 2002—albeit in only a very limited way, initially. Over these twenty years, it has built the arguments that currently protect the right of all pregnant people to decide to terminate a pregnancy.

Over these more than two decades, the Court began by referring only to women and protecting the grounds for abortion as something extraordinary, leaving it up to the states to decriminalize it. However, over time, it has also recognized other identities that can also become pregnant and decide to have an abortion (people with the capacity to gestate) and established the State's obligation to provide reproductive health services, including abortion. It also ruled its outright criminalization in laws as unconstitutional. Moreover, it stated that any protection of prenatal life can only be done through the body of the person who is carrying it and, finally, it declared the importance of guaranteeing the freedom of conscience of all people but without this implying the denial of health services such as abortion.

The rulings discussed in this publication are the product of years of struggle from grassroots activism carried out in the streets, schools, universities, congresses and, of course, the courts. Separately, they are tiny drops, but, accumulating over the years and through joint and shared work, they have formed an unstoppable Green Tide.

The Constitution already protects safe abortion and there is a national public policy to the same effect. In addition, 22 local criminal codes already allow for voluntary abortion during the first trimester of pregnancy and some with no gestational age limit for women and pregnant people who decide to have an abortion. Although the process has already been begun in the Supreme Court, there is still a long way to go to make sure that voluntary abortion is no longer considered a crime and its access



as a health service is guaranteed. The elimination of social stigma is also a pending issue, as is ensuring that access to this service is free, universal, and of high quality.

What matters most is that the path of social mobilization to advocate, litigate, and accompany thousands of people who want to see the reproductive rights of women and pregnant people in Mexico become a reality has already been mapped out. Many of the keys for walking this path can be found in the rulings that the Supreme Court has issued to date. Taking advantage of the content of this GIRE publication can be a further step in that direction.

# References

Acuerdo del Director General del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, que garantiza la aplicación del procedimiento para la Interrupción Legal del Embarazo (ILE). Diario Oficial de la Federación. January 23, 2025. [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5747609&fecha=23/01/2025#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5747609&fecha=23/01/2025#gsc.tab=0)

American Convention on Human Rights. Pact of San José, Costa Rica. November 22, 1969. [https://www.oas.org/dil/access\\_to\\_information\\_American\\_Convention\\_on\\_Human\\_Rights.pdf](https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf)

Barragán, Almudena. “Olga Sánchez Cordero: No estoy a favor del aborto pero quiero libertad para las mujeres”. *El País* (June 6, 2019). [https://verne.elpais.com/verne/2018/10/16/mexico/1539656256\\_828449.html](https://verne.elpais.com/verne/2018/10/16/mexico/1539656256_828449.html)

Bosio, María Teresa. “Campana por el Derecho al Aborto Legal, Seguro y Gratuito: su historia, sus transformaciones y nuestro aporte como Católicas por el Derecho a Decidir”. XXVI International Colloquium on Gender Studies. CIEG, UNAM, October 2019. <https://cieg.unam.mx/xxvi-coloquio/ponencias/Campania-por-Derecho-al-Aborto-Legal-Seguro-Gratuito.pdf>

Causa Justa. “Causa Justa por el Aborto”. 2025. <https://causajustaporelaborto.org/>

Center for Reproductive Rights. After Roe Fell: Abortion Laws by State. [Website, constantly updated]. <https://reproductiverights.org/maps/abortion-laws-by-state/>

Centro Nacional de Equidad de Género y Salud Reproductiva [National Center for Gender Equity and Reproductive Health] (CNEGSR). Lineamiento Técnico para la Atención del Aborto Seguro en México. 2022. [https://www.gob.mx/cms/uploads/attachment/file/779301/V2-FINAL\\_Interactivo\\_22NOV\\_22-Lineamiento\\_te\\_cnico\\_aborto.pdf](https://www.gob.mx/cms/uploads/attachment/file/779301/V2-FINAL_Interactivo_22NOV_22-Lineamiento_te_cnico_aborto.pdf)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). December 18, 1979. <https://www.ohchr.org/sites/default/files/cedaw.pdf>

Cook, Rebecca and Cusack, Simone. *Gender stereotyping. Transnational Legal Perspectives*. University of Pennsylvania Press, 2010.

Dinerstein, Ana Cecilia. “La creciente Marea Verde: la lucha por la justicia reproductiva en Argentina”. In CLACSO. *Cuadernos del pensamiento crítico latinoamericano*, no. 85 (May 2021). <https://www.clacso.org/la-creciente-marea-verde-la-lucha-por-la-justicia-reproductiva-en-argentina/>

El Imparcial. “Morena busca despenalizar el aborto en todo el País”. (September 30, 2019). <https://www.elimparcial.com/mexico/2019/09/30/morena-busca-despenalizar-el-aborto-en-todo-el-pais/>

Espinosa, Ana. “¡Mi cuerpo es mío, yo decido!: La marea verde en CDMX a favor del aborto legal, seguro y gratuito”. *Animal MX* (September 28, 2019). <https://animalpolitico.com/tendencias/estilo-de-vida/aborto-grito-global-legal-seguro-gratuito-cdmx>

Gobierno de la Ciudad de México. Programa de Interrupción Legal del Embarazo en la Ciudad de México. 2024. [https://ile.salud.cdmx.gob.mx/wp-content/uploads/WEB\\_11042022.pdf](https://ile.salud.cdmx.gob.mx/wp-content/uploads/WEB_11042022.pdf)

Grupo de Información en Reproducción Elegida (GIRE). *Paulina, Justicia por la vía internacional*. 2008. [https://gire.org.mx/wp-content/uploads/2016/07/PaulinaJusticia\\_TD6.pdf](https://gire.org.mx/wp-content/uploads/2016/07/PaulinaJusticia_TD6.pdf)

\_\_\_\_\_. *Constitucionalidad de la ley sobre aborto en la Ciudad de México*. 2009. [https://gire.org.mx/wp-content/uploads/2014/07/ConstAbortoCiudad\\_TD8.pdf](https://gire.org.mx/wp-content/uploads/2014/07/ConstAbortoCiudad_TD8.pdf)

\_\_\_\_\_. *Derechos humanos de las mujeres y protección de la vida prenatal en México*. 2012. [https://www.gire.org.mx/wp-content/uploads/2016/07/DH\\_mujeres\\_vidaprenatal.pdf](https://www.gire.org.mx/wp-content/uploads/2016/07/DH_mujeres_vidaprenatal.pdf)

\_\_\_\_\_. *Violencia sin interrupción*. 2nd edition. 2017. [https://gire.org.mx/wp-content/uploads/2019/11/violencia\\_sin\\_interrupcion.pdf](https://gire.org.mx/wp-content/uploads/2019/11/violencia_sin_interrupcion.pdf)

\_\_\_\_\_. *El camino hacia la justicia reproductiva: una década de avances y pendientes 2010–2021*. 2021. [https://gire.org.mx/wp-content/uploads/2021/11/GIRE\\_INFORME\\_2021.pdf](https://gire.org.mx/wp-content/uploads/2021/11/GIRE_INFORME_2021.pdf)

\_\_\_\_\_. *Ni un paso atrás. La garantía del acceso al aborto legal en México y las consultas populares*. 2021. <https://gire.org.mx/wp-content/uploads/2021/08/Ni-un-paso-atra%CC%81s-HD.pdf>

\_\_\_\_\_. “Carlota: un alto a los obstáculos para acceder al aborto por violación.” Punto G(ire). *Animal político* (February 12, 2022). <https://www.animalpolitico.com/analisis/organizaciones/punto-gire/carlota-un-alto-a-los-obstaculos-para-acceder-al-aborto-por-violacion>

\_\_\_\_\_. *Maternidad o castigo. Hacia la despenalización del aborto en México*. 2025. <https://gire.org.mx/publicaciones/maternidad-o-castigo-hacia-la-despenalizacion-del-aborto-en-mexico/>

\_\_\_\_\_. “Aborto en papiroflexia” [Website, constantly updated]. <https://abortomexico.gire.org.mx/>

Instituto Nacional Electoral (INE). “Elecciones 2018” (2018). <https://www.ine.mx/voto-y-elecciones/elecciones-2018/>

Inter-American Court of Human Rights (IACHR). *Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica*. “Preliminary objections, merits, reparations and costs. Judgement of November 28, 2012.” [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf)

International Covenant on Economic, Social and Cultural Rights. December 16, 1966. <https://www.ohchr.org/sites/default/files/cescr.pdf>

Lamas, Marta. "La batalla por el aborto" In *Cuerpo, sexo y política*. Océano. 2013.

\_\_\_\_\_. *La interrupción legal del embarazo. El caso de la Ciudad de México*. Fondo de Cultura Económica. 2017.

Mejía, Ximena. "Jorge Alcocer abre posibilidad a legalización del aborto en todo el país." *Excelsior* (August 25, 2018). <https://www.excelsior.com.mx/nacional/jorge-alcocer-abre-posibilidad-a-legalizacion-del-aborto-en-todo-el-pais/1260768>

Núñez, Lucía. *El género en la ley penal*. CIEG. 2018.

Organization of American States (OAS). Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador." November 17, 1988. <https://www.oas.org/juridico/english/treaties/a-52.html>

Partido Acción Nacional. Proyección de Principios de Doctrina del Partido Acción Nacional. Aprobada en la XLV Convención Nacional. 2002. <https://almacenamientopan.blob.core.windows.net/pdfs/documentos/toqfeHtQI8xfmvAAiJNc5U6xqTHiSO.pdf>

Secretariat of Health. Programa de Acción Específico. Salud Sexual y Reproductiva 2020–2024 2021. [https://www.gob.mx/cms/uploads/attachment/file/644374/PAE\\_SSR\\_24\\_5\\_21.pdf](https://www.gob.mx/cms/uploads/attachment/file/644374/PAE_SSR_24_5_21.pdf)

Supreme Court of Justice of the Nation (SCJN). *Protocolo para juzgar con perspectiva de género*. 2020. <https://is.gd/Two75w>

United Nations. Committee on the Rights of the Child. *Concluding observations on the combined 4th and 5th periodic reports of Mexico* [CRC/C/MEX/CO/4-5]. June 8, 2015. [https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc\\_pub/Mexico\\_CRC\\_2015\\_en.pdf](https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/Mexico_CRC_2015_en.pdf)

World Health Organization (WHO). *Abortion care guideline: executive summary*. 2022. <https://www.who.int/publications/i/item/9789240045163>

\_\_\_\_\_. *Abortion care guideline*. 2022. <https://iris.who.int/bitstream/handle/10665/34931/9789240039483-eng.pdf>

# Rulings

Action of Unconstitutionality 10/2000 [Robles Law], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Olga María del Carmen Sánchez Cordero de García Villegas, January 30, 2002. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=37867>

Action of Unconstitutionality 146/2007 and its joint proceedings 147/2007 [Decriminalization in the Federal District], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Sergio Salvador Aguirre Anguiano, August 28, 2008. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=91638>

Action of Unconstitutionality 148/2017 [Crime of Abortion in Coahuila], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Luis María Aguilar Morales, September 7, 2021. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=227921>

Action of Unconstitutionality 106/2018 and its joint proceedings 107/2018 [Life from conception in Sinaloa], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Alfredo Gutiérrez Ortiz Mena, September 9, 2021. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=247133>

Action of Unconstitutionality 54/2018 [Conscientious objection], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Luis María Aguilar Morales, September 21, 2021. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=238286>

Action of Unconstitutionality 41/2019 and its joint proceedings 42/2019 [Life from conception in Nuevo León's constitution], Plenary of the Supreme Court of Justice of the Nation, Ponente: Justice Yasmín Esquivel Mossa, May 26, 2022. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/253920>

Action of Unconstitutionality 85/2016 [Life from conception in Veracruz's constitution], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Javier Laynez Potisek, May 30, 2022. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/205007>

Action of Unconstitutionality 72/2021 and its joint proceedings 74/2021 [Life from conception in Aguascalientes's constitution], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Juan Luis González Alcántara Carrancá, October 10, 2022. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/282472>

Action of Unconstitutionality 125/2023 [Crime of Abortion in Chiapas], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Luis María Aguilar Morales, November 7, 2024. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/315231>

Action of Unconstitutionality 172/2024 and its joint proceedings 173/2024 [Reduction of voluntary abortion to six weeks of pregnancy in Aguascalientes], Presiding Judge: Justice Alfredo Gutiérrez Ortiz Mena, November 25, 2024. Pending resolution. [https://www.scjn.gob.mx/sites/default/files/acuerdos\\_controversias\\_constit/documento/2024-12-02/MI\\_AccInconst-172-2024.pdf](https://www.scjn.gob.mx/sites/default/files/acuerdos_controversias_constit/documento/2024-12-02/MI_AccInconst-172-2024.pdf)

*Amparo* in Review 601/2017 [Marimar's Case], Second Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice José Fernando Franco González Salas, April 4, 2018. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=218421>

*Amparo* in Review 1170/2017 [Fernanda's Case], Second Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice José Fernando Franco González Salas, April 18, 2018. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=225783>

*Amparo* in Review 1388/2015 [Marisa's Case], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Alfredo Gutiérrez Ortiz Mena, May 15, 2019. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=190811>

*Amparo* in Review 438/2020 [Jessica's Case], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Jorge Mario Pardo Rebolledo, July 7, 2021. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=275054>

*Amparo* in Review 45/2018 [Carlota's Case], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Ana Margarita Ríos Farjat, February 23, 2022. <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=229672>

*Amparo* in Review 79/2023 [Crime of Abortion in Aguascalientes], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Juan Luis González Alcántara Carrancá, August 30, 2023. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=308233>

*Amparo* in Review 267/2023 [Crime of Abortion in the Federal Criminal Code], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Ana Margarita Ríos Farjat, September 6, 2023. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=311450>

*Amparo* in Review 636/2022 [Genetic alterations as grounds for abortion in Sinaloa's criminal code], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Loretta Ortiz Ahlf, October 16, 2024. <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=305588>

Conflict of Interpretation 110/2024 [Obligation to guarantee safe abortion], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Javier Laynez Potisek, February 25, 2025. <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=332897>

Constitutional Controversy 56/2016 [Constitutionality of NOM 046], First Chamber of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Jorge Mario Pardo Rebolledo, May 31, 2017. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/199378>

Constitutional Controversy 45/2016 [Constitutionality of NOM 046], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Luis María Aguilar Morales, May 24, 2022. <https://www2.scjn.gob.mx/ConsultasTematica/Detalle/198008>

General Declaration of Unconstitutionality 01/2024 [Crime of abortion in Chihuahua], Plenary of the Supreme Court of Justice of the Nation, Presiding Judge: Justice Juan Luis González Alcántara Carrancá, January 30, 2025. <https://www2.scjn.gob.mx/consultatematica/paginaspub/DetallePub.aspx?AsuntoID=330436>

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