

## **Seminar G: Mexico - Avant Garde Abortion Reform in Mexico City: How did it happen and what lies ahead**

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### **I. Introduction**

#### **a. National and Local Context**

The change in the law in Mexico City was due to a combination of social and political factors that were aligned at the right time in the right place to create an environment amenable to passing the new law. Among these, perhaps the most important were the fact that:

- 1) Abortion is an issue that has been placed on the public agenda in Mexico; and
- 2) The presidential election process and post-electoral conflict led to polarization of political tendencies.

Over thirty-five years of dedication by the feminist and women's movements, with the support of civil society allies, had achieved placing abortion on the public agenda in Mexico; significantly, it was a question that **had to be** posed during the presidential debates in 2006. Multiple strategies have been used over the years to frame the debate, in order to inform and educate both the public and decision makers. Different perspectives have been incorporated into the arguments used in favour of safe and legal abortion including: public health, human rights (particularly the international human rights framework), ethical and social justice perspectives, such as pro-choice Catholic arguments, scientific data and research, and not least important, the secular nature of the Mexican state.

In terms of political timing, the contested presidential elections in July 2006 were an influential factor: Calderón, the conservative National Action Party (PAN)) candidate, was given a highly questionable victory by the smallest possible margin, leading the

progressive candidate, Lopez Obrador, to claim fraud. As a result, Calderon was sworn in as president with very little legitimacy. At the same time López Obrador's left wing party (Democratic Revolution Party- PRD) maintained control of Mexico City's legislative assembly and the Mayor's Office. Mexico City is generally the most liberal city in the country and there was the sense that there was a lot to gain by demonstrating the difference between the two parties on polemical social issues such as the rights of GLBTQ and reproductive rights, by supporting progressive laws on these issues. When two initiatives to reform the penal code regarding abortion were presented by a representative of the third major political party, the Institutional Revolutionary Party (PRI, 70 years in power) and the representative of a smaller centre-wing party, this was the opportunity we were waiting for.

A long debate allowed cross party support to be built, while Mexico City public authorities (Mayor and Minister of Health) declared themselves in favour of the bill and social and political actors (scientific, intellectual, academic communities, writers, artists) also offered overwhelming support for the decriminalisation of abortion, which led to extensive media coverage in favour of the reform. The support of journalists, TV presenters and opinion leaders who had not addressed this issue before was especially impressive. These factors considerably strengthened the legitimacy of the reform once it was approved.

## **II. Role of each organization**

### **a. Grupo de Información en Reproducción Elegida (GIRE, Information Group on Reproductive Choice) -Technical assistance (content of the law)**

A number of changes were bundled together in the legislative reform on abortion in Mexico City in April of this year. Changes were made to both the penal code as well as the Health law that governs the provision of health services. First, and most publicly, abortion was decriminalized up to 12 weeks of pregnancy in Mexico City. This puts Mexico City at the forefront of abortion liberalization in Latin America, on par with countries such as Cuba, Guyana and Puerto Rico. Second, pregnancy was redefined as beginning at implantation, rather than fertilization. This is certainly important for determining gestational age, for example, but it also implicitly sets a legal precedent for assisted reproduction and stem cell research.

At the same time, penalties were reduced for women who have illegal abortions after the twelfth week of pregnancy to one to three months in prison, or carry out 100-300 days of community service. Before the new law, the penalty was one to three years in prison. A penalty of between five and eight years was added for anyone forcing a woman to have an abortion or end a pregnancy against her will. The penalty is up to ten years when the induced abortion involves violence, including as a result of spousal abuse.

What is not as well known is that reform to the penal code redefined the term *abortion*. Now, under the law in Mexico City, an abortion is the termination of a pregnancy of 13 weeks of gestation or more. During the first 12 weeks of gestation, or the first trimester, a termination is referred to as the legal termination of pregnancy, and not abortion. This may appear to be a bit strange or could be brushed off as a mere legal technicality, but in fact, it sets an important legal precedent in a context where abortion is still penalized under the law and is highly stigmatised by society.

In the same bill, complementary modifications to Mexico City's Health Law were included: to guarantee sexuality education and Ministry of Health (MOH) campaigns to promote and defend reproductive and sexual rights and prevent unwanted pregnancies as well as ensure the availability of birth control methods and emergency contraception. It explicitly stated that sexual and reproductive health will be a priority in health services, with the goal of preventing unwanted pregnancies and transmission of sexually transmitted infections. Placing priority on sexual and reproductive health and prevention of unwanted pregnancy is a huge step forward for reproductive rights in general, not just abortion rights. It also mandates that public hospital offer counselling for women seeking abortions. The counselling is to include information about contraception, along with objective, true and non-biased information that allows a woman to make a free and independent decision. It also states that all personnel treating women seeking abortions, including nurses and doctors, should give services in a respectful, human and sensitive way. Abortions are to be performed as quickly as possible, and priority given to women who are closer to the end of the twelve-week period. In addition, there is language protecting the confidentiality of services and care of the woman's medical records.

Something else that I want to mention, which maybe not well known, is that in Mexico, public health services are free of charge. This means that any woman, whether she has another private health provider or not, can receive an abortion *free of charge* before her thirteenth week of pregnancy.

The final language of the bill in its entirety was the result of months of debate and consensus building, and the Alliance partners were key players during this critical time, appearing on TV and radio programs and in the printed press, organizing paid ads in newspapers, fielding a public opinion poll, contributing to public events and debates, etc. At the same time, we met with executive branch authorities to inform their defence of the bill. And we also worked arduously to inform public opinion on the bill's content by participating in public events organized by civil society, such as marches, flyer distribution etc. The final language of the bill was also the combination and modification of similar bills presented by two different parties. The inclusion of health law reform was important because it helped garner the support of more centre or right-leaning legislators. The first versions of the bill were both problematic and each lacked key aspects. The Gender Equality Commission asked GIRE for technical assistance in revision of the bills and analysis on the implications of different possible reforms. Four of the Alliance partners were invited to speak at public hearings on the bills, where we provided legal, medical, ethical and rights-based arguments. We also made sure that allies from a progressive group on bioethics publicly presented their opinions. GIRE maintained that forcing a woman to continue an unplanned and unwanted pregnancy interferes with her fundamental rights to life, physical and mental health and to personal development. We were very pleased to see some of our recommendations, verbatim, included in the text of the new law.

**b. Equidad de Género, Ciudadanía, Trabajo y Familia (Gender Equity: Citizenship, Work and Family)** - Mobilization of organized sectors, expansion to other states

Equidad de Género's primary contribution to the Alliance project has been through building support among different organized sectors, including academia, labour unions and indigenous communities in one third of the Mexican states. In 2003, Equidad created the sexual and reproductive rights network (*ddeser*) comprised of leaders from different sectors who engage in outreach and mobilization around sexual and

reproductive health and rights. These leaders also work with key institutions in the states as well as decision-makers to advocate for the inclusion of sexual and reproductive rights in public policy and programs. Finally, they also work with local media to create a favourable public opinion towards these issues.

The *ddeser* leaders have worked extensively to disseminate information to women and young people's about their sexual and reproductive health and rights, including abortion, via debates, forums, fairs and workshops in high schools, universities, unions and public plazas. In addition, these leaders have trained over 100 promoters in sexual and reproductive rights. These promoters in turn promote these issues within their communities and among their peers.

The *ddeser* leaders have informed, raised awareness and trained decision makers in key institutions such as youth and women's institutes, social development institutes, state public education ministries and universities. These entities have in turn promoted actions to inform and defend sexual and reproductive rights among their beneficiary populations.

The Alliance has developed a discourse and diverse material for different populations, from specialists to community members and organized sectors. These materials are distributed by *ddeser* and reinforce dialogue with decision makers as well as ensuring that communities are informed about their rights and can demand their fulfilment. In many cases, *ddeser* leaders have accompanied legal abortion cases to ensure access to health and justice institutions.

The passage of the law to decriminalize abortion in Mexico City, demonstrated that the Alliance had laid the appropriate groundwork in the different states, especially in Mexico City, and was particularly poised to take advantage of a favourable political context to join together with other civil society organizations in generating significant support among the population.

Some of the activities during this period included:

1. Extensive dissemination via debates, forums, workshops, informative caravans and performances in high schools, universities, unions and public plazas. This dissemination also included public signage and the distribution of thousands of posters and hundreds of thousand of flyers in Mexico City alone and a similar amount in various states in order to generate debate and inform the public.
2. The Alliance organizations participated in multiple debates in radio and television programs with a national reach. A radio spot was transmitted over the course of two weeks and repeated on 15 radio stations in seven other states. Several paid advertisements were published in national newspapers signed by human rights organizations, academics, Mexican and Latin American feminists and other organized sectors.
3. We had a song tailored in support of a women's right to decide that became emblematic and was played in many public events.

These activities were important in generating a favourable public opinion and crucial for exerting social pressure.

The law that passed in Mexico City has had a positive echo in other states and we have seen that the groundwork that we have worked to lay over the last seven years

can be effectively mobilized when the opportunity arises. The training and materials that have been provided to leaders and promoters were essential for their advocacy with the key decision-makers that they are in contact with.

In the framework of September 28<sup>th</sup>, the Day for the Decriminalisation of Abortion in Latin America and the Caribbean, the Alliance organized more than 40 public discussion forums in Mexico City and in seven other states with the presence of an average of 250 people at each forum along with media and the participation of state decision makers. These forums were intended to promote the law that passed in Mexico City, present its benefits and discuss the impact that a similar law could have for women in these states. These forums supported the advancement of the pro-choice legislative initiatives that have recently been proposed and planted the seed in states where there are no current initiatives.

Activities such as those carried out in the framework of the Day for the Decriminalisation of Abortion in Latin America and the Caribbean are constant and essential in order to generate both demand for legal abortion services and also to ensure their implementation once they are legalized.

### **c. Católicas por el Derecho a Decidir (CDD, Catholics for the Right to Decide) – Counteract Church discourse**

During the period of debate, polarization of the issue was extreme with ultra-conservative groups threatening legislative representatives and feminist groups alike, including the National Pro-Choice Alliance partners. The Catholic hierarchy threatened to excommunicate any legislator who supported the reform bill and the Archdiocese of Mexico's spokesperson even went so far as to call feminist organizations "child-killers" and specifically that Catholics for the Right to Decide should be renamed "murderers for the right to kill children!" We even received a menacing email saying that women who support abortion rights should be killed for "affecting the unborn child's life plan," and upon advice from the Mexico City Ombudsman we filed a report to investigate the person responsible for this mail and stated publicly that we were holding the Archdiocese responsible for creating a climate of intolerance which found its expression in emails and threats of excommunication.

The harassment received by legislators reached its peak with the concrete demand for the death penalty for those who support abortion, made by an anti-choice group called Mexican National Guard. The climate of tension was such that on the day of the vote, the Legislative Assembly was roped off by the police to prevent escalation.

CDD was a key player during this critical time, participating in public hearings, offering technical assistance, appearing on TV and radio programs and in the printed press, organizing paid ads in newspapers, contributing to public events and debates to inform the public about pro-choice Catholic arguments: freedom of conscience and the right that Catholic women have to make decisions following their conscience, even if this decision goes against Catholic moral teachings.

Due to the Catholic hierarchy's involvement in the debate, CDD worked to expose the Catholic hierarchy's threats to excommunicate any legislator who supported the reform bill and to highlight the fact that the Mexican Bishops do not have the moral authority to defend life from conception.

Among the arguments we presented were the following:

1. Women who decide to have an abortion, often do so out of compassion and mercy and to avoid a greater ill. Even though this may be a painful decision that goes against other people's beliefs, it can bring well-being and diminish the suffering of many women and their families.
2. The decision to terminate a pregnancy constitutes a serious ethical dilemma. Women who choose this option do not do so with a joyful heart; they do it as a last resort after considering all the consequences and they make this decision responsibly, following their conscience.
3. Catholic doctrine establishes that in moral issues, Catholics must follow their conscience, since there has been no official statement by our Church that converts moral teachings into dogma.
4. Catholics in Mexico support change in the Church and do not agree with the attempts of the Bishops to intervene in State affairs, since an opinion poll carried out among Mexican Catholics in 2003, revealed that
  - a. 81% of Mexican Catholics are opposed to excommunication for women who have an abortion,
  - b. 80% consider that the Catholic Church should not influence public policy design, and
  - c. 60% agree that abortion should be permitted under various circumstances
5. The Catholic Church does not automatically excommunicate women who have an abortion. To the contrary, the Canon Law Code, the internal law of the Church, establishes mitigating factors for the majority of women who have an abortion.
6. The Canon Law Code also establishes that penalties regarding abortion are restricted in such a way that a person cannot be punished for what he or she thinks or does to protect or promote safe and legal abortion. Therefore it is unacceptable that excommunication is used as a threat to those who propose legal initiatives on abortion.
7. The separation of Church and State has been established in Mexico since the nineteenth century. The Lay State is a source of republican pride and clearly establishes that the Church should not try to influence public policies. This was a weighty argument for Catholic legislators and even though they were threatened by the attitude of the Catholic Church hierarchy, they voted in favour of the reform bill.

Finally, it was important to highlight that an institution with the evangelical task of proclaiming understanding, mercy, brotherhood and sisterhood among its members, should use threats and taunts, when faced with women's legitimate right to decide and local legislators' legitimate right to legislate in a lay state. This was compounded by the fact that the Archbishop of Mexico, Cardinal Rivera Carrera, had recently been accused of protecting a priest charged with sexually abusing almost ninety boys between Los Angeles and Mexico. The Archdiocese's lack of indignation at grave and unacceptable realities such as the sexual abuse of children by Catholic priests, violence against women, including the unresolved murders of women in Ciudad Juarez, when it supposedly defends life from the moment of conception, struck home to many Mexican Catholics.

We therefore took every opportunity to express our distress at hearing the derogatory remarks made by the Archdiocese of Mexico towards women who support public discussion about initiatives on safe and legal abortion, specifically feminists and those who form part of Catholics for the Right to Decide, and called on our Bishops to act serenely and to establish a public dialogue that was productive, respectful, considerate and tolerant.

In conclusion, the institutional Church was the “big loser” in this process. The Catholic hierarchy came across as leaders of intolerant and aggressive ultraconservative sectors that used disrespectful arguments and even promoted violence to try to reverse the decision making process at the Legislative Assembly. These strategies, along with the loss of legitimacy and moral authority caused by the disclosure of child sexual abuse by Mexican Catholic priests, significantly weakened anti-choice arguments throughout the debate on decriminalisation of abortion in Mexico City.

#### **d. Ipas México** - Public health arguments, liaison with health sector

1. Ipas has worked for over 20 years with the public health sector. Before the Robles law was enacted in 2000, Ipas focused its work on post abortion care services. After the law changed, and along with the beginning of the Alliance project, Ipas started working on a “legal abortion termination” project. The strategy was to ensure access to abortion services for victims of sexual violence and rape.

2. During the past seven years, Ipas has worked in many states of Mexico, including State of Mexico, Mexico City, Hidalgo, Michoacan, Guerrero, Baja California Sur, among others. We have sensitised and trained physicians, nurses, social workers, and psychologists, in legal, medical and psychological aspects of abortion.

3. During the process of decriminalisation in Mexico City, Ipas focused its efforts in-depth research of current abortion data. As some of the data that some legislators were using were out-of-date or not reliable, Ipas updated the figures, based on official registration of maternal morbidity and mortality. Official registration about deaths due to unsafe abortion were analysed, but most of all, hospital discharges due to abortion by age, public health institution and state, from 1990 to 2005. All this work was carried out to reinforce the public health argument and made a link with human rights arguments, because even when the number of deaths due to abortion is “low”, it is still a public health problem because of the number of discharges, and the public cost of these abortions.

4. We also reinforced the arguments on a mental health indication, and included some of the bioethics arguments around the decriminalisation before the 12<sup>th</sup> week of pregnancy. We tried to build arguments to respond the conservative “women centred” ones, such as that abortion may cause cancer or generate trauma or depression.

5. We advocated for safe procedures for women, such as manual vacuum aspiration (MVA) and medical abortion.

6. Ipas also trained the personal that was willing to participate in legal abortion services after the law has changed. We have trained them in MVA and medical abortion, and complications related to abortion. We donated 2 MVA sets for each hospital.

7. After the law has changed, we participated in the development on the official guidelines for abortion services in the Mexico City Ministry of Health.

Some challenges:

Increase the number of providers

Improve the quality of the services

### **III. What Lies Ahead**

#### **a. Challenges in service provision, unconstitutionality claim, and expansion to other states**

As the new law is implemented in Mexico City, we anticipate challenges at two levels. The first level we have faced is in the implementation of the new law is at the level of service provision in Ministry of Health hospitals. First, in general, the increased demand for abortion services has been met through increased institutional capacity. Public hospitals are handling about 14 legal abortion cases every day. Second, personnel must be trained to handle the new service, including training and sensitising doctors, nurses, social workers, and administrative staff. This will include overcoming the resistance of some providers to involvement in abortion services. There have been several hurdles to overcome during this process but the Alliance is working directly with the Ministry to work out the kinks. With any serious obstacles that would amount to denial of services, the Ministry has asked us to call them. Their priority is making sure women's requests are met and then investigating the problem and resolving surrounding issues. We also compile other information on staff resistance, other obstacles faced by women. The Ministry is using this information to adjust internal policies, investigate staff resistance, etc.

We should mention, of course, that the Alliance and allied NGOs have been working with the Ministry on the provision of legal abortion services for years now and that procedures for this type of service was in place. Obviously, adjustments had to be made to meet the demand, but these new procedures were stipulated in the law as well.

At this time, the Alliance is working with the Ministry of Health to formalize service guidelines and synchronize services in all of the public hospitals. This includes training provided to all 14 hospitals, formalizing a flowchart of the process each woman seeking an abortion will go through. It also includes formalizing the requirements for attaining legal abortions. In some public hospitals, minors are given the procedure as long as they come with an adult. In others, however, they are turned away if they are not with a parent or legal guardian. GIRE is also in discussions with the head of social work to create a training on mental health and pre- and post-abortion counselling for the hospital social workers.

Second is the legal challenge to the constitutionality of the new law that has been presented by the Federal Attorney General's Office and the National Human Rights Commission at the level of the Supreme Court. It bears noting that the Ombudsman of the National Human Rights Commission presented the challenge without the consent of the advisory board of that agency, and because of his actions, he is currently the subject of an NGO-led investigation. Both challenges to the law's constitutionality talk strictly about foetal rights or even men's right to paternity, but barely, if at all, mention the woman who is pregnant, displaying their lack of respect and consideration for women as independent actors.

GIRE is coordinating the efforts of a number of national and international health and human rights organizations to present *amicus*, or friend of the court, briefs defending the law from various viewpoints and arguments. In Mexico, the Supreme Court Justices gather arguments from both parties and then later, receive opinions from other actors. The oral hearings and arguments, common in judicial systems such as the United States, do not exist. Based on past experiences with the court, GIRE expects our

requests for meetings to be accepted. Other Alliance organizations will also present arguments, and some of the organizations which will likely present *amicus* briefs include Amnesty International, Human Rights Watch, and the World Health Organization along with various reproductive rights NGOs, like Center for Reproductive Rights, leading legal experts such as Rebecca Cook, and renowned academics and educational institutions from all over Latin America and beyond.

The Court has scheduled its internal debate on this unconstitutionality claim for the spring of 2008. To overturn a law of this type, eight of the eleven justices, or a super majority, would need to vote it down. Because of the current make-up of the Court, we are fairly confident that the law will get the four votes needed for it to remain in effect. This is extremely important because such a decision would effectively prove that abortion is *not* unconstitutional, which will help set the ground work for expansion of the law to other Mexican states. Since Mexico is a federation, the liberalization will have to take place state by state; no federal law can essentially legalize abortion across the country as has happened in other countries. But we are optimistic that several states, especially those governed by the left-of-centre party, will take up this reform and push forward to ensure Mexican women's abortion rights.