

# Reproductive Rights and Femicidal Violence Against Mexican Women

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In the matter of reproductive rights, our nation has a long history of advances and retreats, the most recent of which, thanks to its irrational legal system, are those that have led to women being criminalised to the extent of their being pursued, accused and prosecuted, not only for the crime of abortion, but also through accusations of aggravated homicide as a relative, infanticide, and the fabricating of ridiculous crimes such as ‘aggravated homicide of a product of gestation’, all of which, on conviction, carry thirty years imprisonment.

It is this exercise of the sovereign power of the State of Mexico against marginalised, poor and vulnerable women that I will describe in this essay, with the object of making it visible and evident as ‘necropolitics,’<sup>i</sup> the nature of which has been legally defined in the patterns of institutional femicidal violence described in the General Law of Women’s Access to a Life Free from Violence, promulgated in 2007. The latter forms part of the regulatory framework which brings the fundamental rights of women affirmed by Mexico<sup>ii</sup> into consistency with international standards of protection. The obligation to implement these fully was made explicit in the constitutional reforms of June 2011.<sup>iii</sup>

To understand why cruel, degrading and inhuman legislation has recently been enacted against women and to be able to denounce what is involved as the starting point of necropolitical practices by the state against those who terminate a pregnancy willingly, even spontaneously, it is necessary to trace, as if genealogically, changes in legislation and public policy made over the recent years in matters of sexual and reproductive health.

In Mexico there has been a strong and persistent struggle for the decriminalisation of abortion since the beginning of the past century. Gradually, battles were won in which exemptions from criminal responsibility were gained in some federated entities. This depended on the ideology of those in power and the strength of civil society organisations concerned for the life and sexual and reproductive health of the most vulnerable women. There was no single law in Mexico on the matter of abortion, rather variations from state to state, and it is significant that it was only in five states that abortion was criminalised in penal legislation as a serious crime; consequently very few women went to prison before 2008, since by paying a fine, they were free to have an abortion.

In contrast to the moral and ideological norms, religious in character, that rule in the interior of the country, the Mexican urban population is for the most part progressive and more indifferent to metaphysical considerations. And, moreover, it is crucial that three powers rested with the capital, which had the constitutional responsibility to fulfil and cause to be fulfilled the international treaties it had ratified on human rights, including the prompt and responsible implementation of international recommendations received by the State of Mexico on questions of women’s right to health.

In April 2007, with a local left-wing government and the political implications of broaching a controversial topic thoroughly assessed, the Legislative Assembly of the Federal District voted for the decriminalisation of voluntary abortion up to the twelfth week of gestation, passing reforms to both the penal code of the city of Mexico and the corresponding legislation on health. The legislative strategy consisted of reformulating the legal definition of the crime of abortion as follows: ‘abortion is the termination of pregnancy after the twelfth week of gestation’. In that termination of pregnancy could only be penalised from the thirteenth week of pregnancy, voluntary abortions procured within the first twelve weeks of pregnancy would be legal (Article 144CPDF).

It should be noted that an important advance achieved by the legislators was to define pregnancy as affected by criminal law thus: ‘that part of the process of human reproduction that begins with the implantation of the embryo in the endometrium’, a position that explicitly approved the legality of methods of post-coital contraception such as the emergency anti-contraceptive (Article 146 CPDF). They also reduced the penalties on women who did practise abortion after the twelfth week. Previously the penalty was one to three years imprisonment, but now they imposed three to six months in prison or a hundred to three hundred days of

community work on a woman who voluntarily practised abortion or consented to someone performing one for her after twelve weeks (Article 145 CPDF). To protect the free and voluntary maternity of women who were forced to abort, they established the category of forced abortion, which they defined as ‘the termination of pregnancy, at any time, without the consent of the pregnant woman’. The penalty for anyone performing a forced abortion is five years in prison and if physical or psychological violence is involved, eight to ten years imprisonment will be imposed (Article 146 CPDF).

In the matter of health, the Health Law of the Federal District was reformed to indicate that sexual and reproductive health is a priority and that services in this matter have as their goal the prevention of unwanted pregnancies. It was established that the government would promote, permanently and intensively, comprehensive policies supporting sexual health, reproductive rights and paternal responsibilities. Further, counselling services (pre- and post-abortion) were to be offered with the giving of objective information to women who sought legal termination (Article 16, clause 8).

These legislative changes were published on 26 April, 2007, in the Official Gazette of the Federal District and came into force the day after publication, so that from that date, the hospitals of the Ministry of Health of the Federal District started giving legal terminations called ‘health policies on ILE’ (legal abortion service).

One month after the city government initiated the ILE, the reactionaries of the political clergy and conservative groups, who I am going to call anti-rights groups, began to organise their resources and behave in an extremely violent manner. The Federal Government, joined with some groups from the extreme right and acting through the head of the administration of justice and with the shameful complicity of the then head of the National Commission of Human Rights (CNDH), attempted to overthrow the legislative advances achieved in the city of Mexico, interposing, as a legal strategy, charges of unconstitutionality in the national Supreme Court. The central argument of this recourse to law was more ideological than legal and reflected total neglect of the commitments made at international level by the State of Mexico, in signing up to the treaties of human rights protecting women, to the Millennium Development Goals to decrease maternal deaths and to the fulfilment of the recommendations made to Mexico on several occasions by various international organisations with the intention of eliminating systems restrictive of human rights.

After a year and four months of waiting, in an atmosphere agitated by a polarisation of public opinion nurtured by the massive means of communication owned by the conservative oligarchy, the highest tribunal in the land set itself the task of analysing the legal arguments put forward and opened its precinct to public hearings for or against the constitutionality of the legislative changes made in the capital city in matters of law and health.

The initiative of the judges of the Supreme Court in listening to diverse arguments in relation to reproductive rights must be acknowledged as an historic achievement of the organisations of civil society: of the university, of the law, of professional experts and of public demand for transparency in the enforcement and administration of justice and the social need for public discussion of problems of social justice, human rights and public health.

In attendance at the meetings of the highest tribunal and submitting requests to be heard in the Supreme Court were relevant professional experts, networks of intellectuals from different disciplines and organisations from civil society and the political world who were in favour of decriminalisation of voluntary abortion. Needless to say, the anti-rights groups also fully exploited this opportunity, presenting metaphysical, doctrinaire and reactionary arguments and, after an appropriation of the language of human rights that could not hide its basis in a moral/religious ideology, they attempted to persuade the judges into an opinion invalidating the city of Mexico’s changes to the law.

One must count the importance of the process as being in its production of a rational and pluralistic discussion of the concerns of society and the fact that it gave more depth to the defence of the secular state, education, access to information, empirical and historical knowledge and much else by the rigor and responsibility of arguments concerned with public health, bioethics, history and demography that were scientific, philosophical, legal and social. The pressure of organised civil society on such a sensitive matter obliged the judges of the tribunal to conduct a serious debate, in line with the high expectations generated in public opinion.

On the historic day of 28 August, 2008, eight out of eleven judges of the Supreme Court decided that the penal and health reforms enacted by the Legislative Assembly of the Federal District were constitutional. This decision represented a watershed political and legal event for the whole nation, since the actual right of women to decide was prioritised over the abstract right to life.

Decriminalisation of abortion up to the twelfth week of gestation and free reproductive health services placed Mexico City in the vanguard of Latin America. The theoretical development that took place in social and legal spheres would be an important referential source in future proceedings in the Latin American region since civil organisations and the university had documented it thoroughly. A point to emphasise is the comprehensiveness of the legislative reforms, in that in addition to the free service of the ILE, they proposed a plan for the prevention of unwanted pregnancies, sexual and family planning information and free services for sexual and reproductive health.

Some weeks after what was decided in 2008, the Supreme Court published the decision that validated the constitutional reforms in the Federal District. It should be noted that, in distinction to the plenary sessions' wealth of argument, which the decision had taken on board, the Court opted for a formal and excessively literal declaration that intentionally enfeebled it, in that it allowed to sneak in a perverse conservative strategy with obvious fundamentalist hues, designed by the sites of power in conspiracy with the politicised clergy. This has seriously endangered the life and health of many Mexican women, most of whom live in poverty.

The perverse stratagem of the conservatives, a flagrant assault on state secularity, was clearly intended to fortify the federal entities and prevent anyone legislating in favour of decriminalising abortion. In less than eighteen months after the publishing of the judicial decision, the local parliaments of sixteen states of the Mexican Republic voted for irregular and undemocratic modifications to their local constitutions with the intention to 'protect life from the moment of conception/ fertilisation until a natural death'.

The sixteen states of the Mexican Republic whose parliaments voted for this type of constitutional reform were: Baja California, Campeche, Chiapas, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora y Yucatán. Chihuahua had already changed the first article of its Constitution in 1994 to: 'judicial protection is guaranteed to life from the moment of conception'.

Whatever may have motivated the analysis and thoughts of the representatives of all political forces in the aforementioned federated entities, they voted in favour of constitutional reforms to 'protect life from its conception', whether through ignorance of ideas of sexual and reproductive health, political ambition, pressure from parliamentary parties, fear of losing votes or simply for ideological reasons.

What is most serious is that they acted without any previous discussion, in opposition to public opinion and without studying or taking into account the judicial absurdities that must ensue, as well as without analysis of the grave consequences their decisions could create in women's lives and health.

For a long time, jurists and experts in the area of sexual and reproductive health have warned how the absence of certainty in these constitutional reforms would affect health service providers in matters concerning methods of family planning, emergency contraception, techniques of assisted reproduction and scientific advances. They have warned especially about this no less grave matter, that the judicial aberration of granting the status of 'person' to a fertilised egg was going to result in women who terminated a pregnancy being accused of the crime of murder, something that, sadly, has been happening in the last five years, after the way of necropolitics.

The constitutional reforms voted in behind the back of the public by legislators of all political parties involve destructive effects in the lives of women; among their many consequences the following stand out:

- They enslave women to a servile obligation to continue a pregnancy for the benefit of third parties by means of a punitive action and the over-valuing of an assumed but non-existent absolute right to life for the embryo.
- A judicial system that criminalises women who terminate pregnancy intentionally or even spontaneously produces a state of discrimination, inequality and repeated violence on grounds of sex, since this is the one crime that considers it just that women alone should lose their lives on account of matters of health inherent in their biological difference.
- The reforms oblige women to choose between only two alternatives, both negative: either to become mothers or to become criminals.
- They deny women the right to freedom of conscience.
- They impose on women a burden that could never be imposed on a man, which violates the principle of judicial equality of men and women before the law.
- Through a coercive and punitive act of the state, women are devalued as persons and reduced to being mere instruments of procreation or reproductive machines, which results in a constitutionally prohibited act of discrimination.
- The constitutional reforms have the end result of imposing forced maternity on pain of legal punishment.
- The absurd absolute 'protection of life from conception' obstructs legal access to those terminations of pregnancy provided for in the state penal codes by 'exclusions from criminal responsibility'.

- The reforms ignore the fact that the Federal Constitution recognises that there is no absolute right to life.
- They attack the secular and democratic state, in which it is not possible to impose a single point of view, whether it be theological, philosophical or ideological.
- They protect an absolute right to life, especially in favour of the life of the conceived but as yet unborn being, which is contrary to the Federal Constitution and to the international treaties that our nation has signed and is obliged to implement.
- They deny the pluralistic nature of Mexican society.
- They make it obvious that sexual inequality is not only an exercise of domination over the bodies of women, but also, which is even more serious, an extraordinary act of necropolitics that fails to distinguish between public and private space or between the individual and the citizen.

To all this, one might add that Mexico has not complied with the Millennium Development Goals, specifically the one referring to lowering the instances of maternal death. The official reports of non-governmental organisations reveal very high indicators of maternal death, which are not, for the most part, due to problems of pregnancy, parturition and post-parturition, but referable to the death of mothers from poverty or unsafe and clandestine abortions.

Following these constitutional reforms, there appeared various activist organisations who brought about an increase in the climate of persecution against women who had experienced an induced or spontaneous abortion, with the majority of complaints to law enforcement agencies being made from hospitals.<sup>iv</sup> The defenders of human rights complained to international bodies<sup>v</sup> that, as an effect of the constitutional reforms, the Mexican judicial authorities had blurred the line between the crime of abortion and the crime of infanticide. And, adopting strategically the discourse of human rights, they argued that the State of Mexico was systematically violating women's rights to health, privacy, autonomy and personal dignity.

Members of the 'National Campaign for the Right to Choose' declared at the United Nations: 'If the punitive legislation violates the rights of women because of an alleged defence of life in the abstract, it is clear that it is not achieving its objective, given that women who do not wish to be mothers at a particular time of life or set of circumstances are going to terminate their pregnancy whatever the consequences may be'.<sup>vi</sup>

It was Mexico City that realised that most abortions were happening in secret and unsafe conditions, i.e. in unhygienic ways where the women risked their health, even their life and now, as a result of these retrograde laws, could also be deprived of their liberty and convicted of the crime of homicide aggravated by cognation (blood relationship).

The cases of women prosecuted and sentenced to different penitentiaries across the country for the crime of aggravated homicide as a relative have increased exponentially in the last five years. Organisations defending sexual and reproductive rights concluded that women who underwent induced or spontaneous abortion were denounced mainly by the providers of health services<sup>vii</sup> and that, in making use of necropolitical technologies and femicidal violence, the state was punishing them as an example to other women and to society as a whole.

What this essay intends to argue is that state violence against women is a matter of the *nomos* (law and custom) of the political space in which we live. This violence is, as has been said before, an exercise of sovereignty or power well beyond what is useful, that is, the criminalisation of women for taking decisions about their bodies, their sexuality and the protection of their lives is a mechanism of the power of oversight and control.

The aforementioned 'General Law of Women's Access to a Life Free of Violence' defines femicidal violence as '... the extreme form of sexual violence against women, a product of the violation of their human rights in both public and private spheres, shaped by the conjunction of misogynist conduct, which is allowed to exist with social impunity, and the state, which is able to bring it to culmination in murder and other forms of violent killing of women'.

The violent killing of women, most of them young and healthy, driven by punitive legal systems to practise unsafe abortions in secrecy is femicidal violence on the part of state institutions.

The concept of femicidal violence appears to possess an incalculable energy, resistant to semantic appropriations and limitations in both legal and academic situations, especially when it is employed to render visible a type of violence practised in our society with necropolitical effects, namely murder.<sup>viii</sup>

The philosopher Ana María Martínez de la Escalera argues that: ‘. . . domination and practices of sexual subjection, including the very special case of femicidal violence, do not necessarily have as their aim or function the domestication of women and reproduction, but rather the realisation of a sovereign power that entails the taking over from another person the ultimate decision, to give or to take life. This exercise of sovereignty fails to recognise the techno-legal boundaries between private and public, between nations, languages, ethnicities and cultures, even indeed between the biological and the sociological’.<sup>xiv</sup>

It is a cause for celebration that FEMU is organising public debates to highlight the criminalisation of Mexican women as a result of these retrogressive laws on sexual and reproductive health. They are promoting fruitful interdisciplinary debates with activists in gender politics, an interchange of ideas and projects for the future of the humanities within the universities in order to attend to the urgent necessity to reflect, from a critical perspective, on *how we should behave*, to explain, describe and deplore the stigmatising and persecution of those women who make their own decisions about their bodies and to ask *what are the consequences* resulting from these practices. By these means, we have a public approach to this serious communal problem.

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<sup>i</sup> A certain form of sovereignty exercised by the state over the life and death of women. Asymmetrical and hierarchical, this product of gender politics carries with it the sovereign right to say ‘live’ or ‘die’.

<sup>ii</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Mexico in 1981 and the American Convention to Prevent, Sanction and Eradicate Violence against Women, ratified by Mexico in 1998.

<sup>iii</sup> Reform of Article 1 of the Constitution: ‘In the United States of Mexico every person shall enjoy the human rights recognised in the Constitution and in the International Treaties to which the State of Mexico is a party, and in like manner the guarantees of protection, the exercise of which cannot be restricted or suspended, except in the cases and under the conditions established by this Constitution. The laws relating to human rights are to be interpreted in conformity with this Constitution and the International Treaties on these matters, favouring at all times the most far-reaching protection to all persons.’

<sup>iv</sup> *Omisión e Indiferencial Derechos Reproductivos en México 2013*, Grupo de Información en Reproducción Elegida (GIRE), A.C. y Red de Abogadas por la Defensa de la Reproducción Elegida.

<sup>v</sup> The CEDAW Committee reviewed Mexico in Session 52, July 2012. In opposition to the official information, various non-government organisations presented shadow and other reports that denounced the criminalisation of women who had undergone an induced or spontaneous abortion and their subjection to prosecutions with potential convictions for homicide aggravated by blood relationship.

<sup>vi</sup> Private hearing of the Committee of CEDAW, held at the seat of the United Nations in New York, 17 July 2012.

<sup>vii</sup> The Centre ‘Free Women for the defence of sexual and reproductive rights,’ located in the state of Guanajuato, reports statistics obtained by accessing public information. ‘Revista con la A’ of February 2014 showed that 76 women nation-wide were prosecuted for the crime of homicide aggravated by blood relationship in 2008, but by the end of 2013 there were 690 women accused of the same crime. In the absence of a review of each of the accused, the assumption is that the majority of these women who underwent and induced or spontaneous abortion were poor, indigenous or rural.

<sup>viii</sup> Martínez de la Escalera, Ana María, 2010, ‘Feminicidio: Actas de denuncia y controversia’, Editado por el Programa Universitario de Estudios de Género, UNAM México. D.F.

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