

# Motherhood or Punishment:

## *Criminalizing Abortion in Mexico*

### EXECUTIVE SUMMARY

To guarantee that Mexico complies with its obligatory human rights commitments, abortion should be recognized exclusively as a health service, and not as a crime, as it is presently. GIRE believes that abortion should be decriminalized at least during the first trimester. In the meantime, health institutions must guarantee access to abortion (under the limited grounds when it is legally permitted) without any unjustified obstacles or barriers, and judicial and law enforcement authorities must guarantee the human rights of women who are prosecuted for abortion and related crimes.

Criminalizing abortion materializes the idea that motherhood is a woman's obligatory function; this notion continues to permeate, not only in Mexican culture, but in State agencies, and represents a human rights violation.

When abortion is considered a crime, it negatively effects not only those women who are prosecuted for terminating a pregnancy and those who face an unwanted pregnancy, but also those who miscarry or give birth prematurely. Human rights violations, resulting from the criminalization of abortion, limit women's free and fair decision-making power over their own reproduction.

Criminalization of abortion contributes to health personnel's lack of knowledge on their obligations, which results in little or no access to legal abortion as well as women with obstetric emergencies being reported to the police.

The report *Motherhood or Punishment* presents the current status of the criminalization of abortion in Mexico. To develop the report, GIRE analyzed national law and policies, human rights standards with which the Mexican State is obligated to comply, data offered by governmental agencies in response to GIRE's over 900 public information requests, and documented and accompanied cases by GIRE and other organizations.

## HOW IS ABORTION REGULATED IN MEXICO?

---

In Mexico, abortion is considered a crime in every state, with certain exceptions. The only abortion indication that is legal across the country is when the pregnancy is a result of rape. Voluntary abortion during the first trimester of pregnancy is legal only in Mexico City. Some states include other indications: 15 states permit legal abortion when the woman's health is at risk; 24 when the woman's life is at risk; 15 when non-consensual artificial insemination has taken place; 16 when serious fetal malformations are present, and two allow legal abortion for socioeconomic reasons.<sup>1</sup> The Federal Penal Code only allows pregnancy termination resulting from a careless act, when the pregnancy is the result of rape, and when the woman's life is at risk.

---

<sup>1</sup> To learn more about state-by-state indications, please see *Motherhood or Punishment*, p. 14, available in Spanish at [criminalizacionporaborto.gire.org.mx](http://criminalizacionporaborto.gire.org.mx).

## WHAT ARE THE PENALTIES FOR ILLEGAL ABORTION?

---

Most Mexican states impose prison sentences and/or fines for women who terminate their pregnancies outside of the limited abovementioned indications. Some establish alternative sanctions, such as community service or psychological treatment “to help women get over the effects and consequences of inducing an abortion” or to reaffirm “the human value of motherhood”.

Baja California, Morelos, Oaxaca, Puebla, Sonora and Tamaulipas are among the states with the most severe prison sentences, since they incarcerate women who terminate their pregnancies for up to five years. To the contrary, Chiapas, Michoacan and Veracruz do not contemplate prison time for illegal abortion and in Mexico City, abortion is legal during the first trimester.<sup>2</sup>

Penal codes also establish penalties for those individuals who help women terminate their pregnancies outside of the law. In the case of health personnel, these punishments can include the suspension of their license to practice for up to 20 years. These sanctions place health providers in legal uncertainty with regard to their obligations, which dissuade them from carrying out legal abortions, treating miscarriages or even providing training on abortion care. In this vein, it is noteworthy that health services providers are among those who report the most women for alleged illegal abortion to the police.

At the same time, various state-level penal codes include specific conditions under which the women convicted of illegal abortion can face reduced penalties. These clearly-discriminatory extenuating circumstances include when the abortion is carried out to hide “disgrace”, when the pregnancy is the result of an “illegitimate” union, and when the woman does not have a “bad reputation”. Oaxaca, Puebla, State of Mexico, Tamaulipas and Zacatecas contemplate these “justifications”.

## WHO IS CRIMINALIZED FOR ABORTION?

---

Criminalization of abortion in Mexico affects highly vulnerable women; the GIRE-documented patterns identify that women criminalized for the crime of abortion and other related crimes primarily come from marginalized communities and/or situations of violence and lack access to reproductive health services and information. These are the women who have to pay bail to avoid pre-trial detention, who pay economic fines when found guilty and sometimes even have to pay for reparation of damages.

Regardless of the identified patterns, the lack of quality public information on women criminalized for abortion represent an obstacle to understanding its magnitude. In many cases, authorities did not respond to GIRE’s public information requests or they provided information that was contradictory or not disaggregated by sex or other variables.

## HOW ARE WOMEN CRIMINALIZED IN MEXICO?

---

When women arrive at a clinic or hospital during or after a miscarriage or abortion, or after having given birth (prematurely or full term) outside of a hospital setting, they are usually treated as suspects and then questioned, mistreated and accused by health providers. The police usually respond to this type of report immediately, questioning women while they are still lying in hospital beds. On many occasions, police cases against them are based exclusively on self-incriminatory confessions, without any real evidence of the alleged crime; the confessions have been made by women undergoing obstetric emergencies. Some penal processes end in convictions imposing sanctions such as prison time, fines, community service or “comprehensive medical care”.

In certain cases, women are charged or convicted of homicide of a family member or infanticide, facing 50-year prison sentences, when in fact, they suffered a miscarriage, had an abortion or gave birth, prematurely or full term, outside of a hospital setting. This situation has been documented by civil society organizations and their cases have been included in *Motherhood or Punishment*. Abortion or miscarriage cases that are prosecuted as first degree murder shed light on the motivations behind police and judges’ actions, which, far from seeking coherent and proportional penalties, look to stigmatize women and impose “exemplary” sanctions.

---

<sup>2</sup> To learn more about the sanctions imposed for the crime of abortion in Mexico, see *Motherhood or Punishment*, pp. 16-17, available in Spanish in [criminalizacionporaborto.gire.org.mx](http://criminalizacionporaborto.gire.org.mx).

## JANUARY 2007-DECEMBER 2016

**4,246 INDIVIDUALS REPORTED FOR ALLEGED ILLEGAL ABORTION**  
**ON AVERAGE, ONE PERSON IS REPORTED EVERY DAY**

The five states with the highest number of reports include:

<b>MEXICO CITY</b>	/	<b>894*</b>	
<b>BAJA CALIFORNIA</b>	/	<b>466</b>	<b>(387 WOMEN / 79 MEN)</b>
<b>VERACRUZ</b>	/	<b>416*</b>	
<b>NUEVO LEON</b>	/	<b>339*</b>	
<b>HIDALGO</b>	/	<b>207*</b>	

\*Not disaggregated by sex.

## **HOW MANY INDIVIDUALS HAVE BEEN REPORTED FOR ILLEGAL ABORTION?** **HOW MANY POLICE INVESTIGATIONS HAVE BEEN INITIATED?**

As of January 2018, the Executive Secretariat of the National Public Security System (SESNSP) began to systematize and publish information related to police investigations for alleged illegal abortion. While this represents an important first step, the

## **POLICE INVESTIGATIONS FOR ALLEGED ILLEGAL ABORTION AS REPORTED BY THE SESNSP** **1,666 BETWEEN JANUARY 2015 AND APRIL 2018**

<b>2015</b>	/	<b>512</b>
<b>2016</b>	/	<b>538</b>
<b>2017</b>	/	<b>502</b>
<b>2018</b>	/	<b>114</b>

information is not disaggregated by sex, which makes it impossible to know exactly how many women have been investigated for alleged illegal abortion and other relevant background information.

## JANUARY 2007– DECEMBER 2016

### 228 INDIVIDUALS FACED TRIAL FOR ILLEGAL ABORTION

The five states with the highest number of trials:

<b>MEXICO</b>	/	<b>38*</b>	
<b>VERACRUZ</b>	/	<b>38</b>	(18 WOMEN / 20 MEN)
<b>TAMAULIPAS</b>	/	<b>19</b>	(14 WOMEN / 5 MEN)
<b>SONORA</b>	/	<b>18</b>	(11 WOMEN / 7 MEN)
<b>HIDALGO</b>	/	<b>15</b>	(12 WOMEN / 3 MEN)

\*Not disaggregated by sex.

The information provided by authorities is not separated between acquittals and convictions. Nevertheless, it is important to emphasize that, even when absolved, facing a criminal trial for alleged illegal abortion has significant consequences on women's lives, their families, as well as on their community relationships.

## JANUARY 2007– DECEMBER 2016

<b>PRETRIAL DETENTION</b>	/	<b>83</b>	(44 WOMEN)
<b>IMPRISONMENT</b>	/	<b>53</b>	(19 WOMEN)

For more information, please visit: [criminalizacionporaborto.gire.org.mx](http://criminalizacionporaborto.gire.org.mx)

