

Using litigation to defend women prosecuted for abortion in Mexico: challenging state laws and the implications of recent court judgments

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Abstract: *While women in Mexico City can access free, safe and legal abortion during the first trimester, women in other Mexican states face many barriers. To complicate matters, between 2008 and 2009, 16 state constitutions were amended to protect life from conception. While these reforms do not annul existing legal abortion indications, they have created additional obstacles for women. Health providers increasingly report women who seek life-saving care for complications such as haemorrhage to the police, and some cases eventually end up in court. The Grupo de Información en Reproducción Elegida (GIRE) has successfully litigated such cases in state courts, with positive outcomes. However, state courts have mainly focused on procedural issues. The Mexican Supreme Court ruling supporting Mexico City's law has had a positive effect, but a stronger stance is needed. This paper discusses the constitutional framework and jurisprudence regarding abortion in Mexico, and the recent Costa Rica decision of the Inter-American Court of Human Rights. We assert that Mexican states must guarantee women's access to abortion on the legal grounds established in law. We continue to support litigation at the state level to oblige courts to exonerate women prosecuted for illegal abortion. Advocacy should, of course, also address the legislative and executive branches, while working simultaneously to set legal precedents on abortion. © 2014 Reproductive Health Matters*

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In April 2007, Mexico City took the historic and unprecedented step of decriminalizing abortion during the first trimester of pregnancy, becoming the only Mexican state that does not punish women for this procedure. From April 2007 to August 2014, the Mexico City Ministry of Health has provided women with over 128,000 safe abortions, free of charge – including women coming from other Mexican states or even other countries. However, after the ruling in 2008 by the Mexican Supreme Court upholding the constitutionality of the Mexico City law, 16 of the 32 Mexican states amended their constitutions so as to protect life from conception.*

The effect of these amendments was to create an abysmal divide regarding access to safe abortion and women's exercise of their reproductive rights between Mexican states, and place women's right to reproductive autonomy at risk throughout the country. They have also led to an increased risk that women would be prosecuted for illegal abortion, even when a desired pregnancy has miscarried or the baby is stillborn.

The *Grupo de Información en Reproducción Elegida* (GIRE), a Mexican non-governmental organization founded in 1992 to promote and defend women's reproductive rights, is working to counteract the effects of these reforms via mutually reinforcing strategies. The organization educates government decision-makers from the legislative branch and works with the executive branch to implement public policy that directly impacts women's lives. At the same time, GIRE

*Baja California, Chiapas, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tamaulipas and Yucatán.

litigates cases of violations of women's reproductive rights in the courts to push for change and create legal precedents. Litigation also helps to demonstrate patterns of violations that underpin GIRE's advocacy on public policies.*

This article starts by presenting the case history of a woman prosecuted for illegal abortion, whose case was taken up by GIRE, as an example of how the law is being used against women in Mexico today. It then discusses the current context of abortion in Mexico and the barriers to women's abortion rights created by the state amendments to protect life from conception, such as health care providers' violation of patient confidentiality. The article will also outline a strategy to engage state courts in protecting women's reproductive rights, based on new precedents at the national and regional level.

Hilda's story

In July 2009, Hilda, an 18-year-old adolescent, was accused of illegal abortion[†] after seeking care for haemorrhage in a public hospital in San Luis Potosí, a Mexican state located in the conservative central region, whose constitution protects life from conception. Hilda was reported to the police by a hospital social worker. Hilda has scarce resources and carries out many domestic chores, which often require considerable physical force, such as carrying heavy buckets of water on a yoke.

After "confessing" in exchange for life-saving treatment, under a doctor's coercion, that she had taken pills to induce an abortion, Hilda was taken to the police station, without even being allowed to change out of the hospital gown. She was released the next day for lack of evidence.

*GIRE is one of the Mexican organizations employing litigation strategies for cases of women criminalized for abortion but others, such as *Asistencia Legal por los Derechos Humanos* (Así Legal) and *Centro Las Libres de Información en Salud Sexual Región Centro* (Las Libres), carry out similar strategies as well.

[†]Article 128 of the San Luis Potosí Penal Code states: "Anyone who causes the death of the product of conception during any moment of pregnancy commits the crime of abortion. The punishment for this crime will be applied to the mother who voluntarily undergoes an abortion, or who consents that another person induce an abortion with a sentence of 1–3 years in prison and a fine of 20–60 days of minimum wage."

Nevertheless, the case against her remained open, unbeknownst to her. Three years later, a judge issued an arrest warrant and she was taken to the state penitentiary, where she was charged with the alleged crime of abortion. Hilda's family paid bail of \$3,000 pesos (US\$ 240), a burdensome amount for a Mexican family with scarce means. From then on, she had to travel from her small village to the capital city to sign in once a month, at her own expense. GIRE found out about the case through the media and offered her legal defence free of charge, which she accepted.

Hilda was judged horribly by the press. Her case appeared in various local newspapers and even on television. When she was released from prison, located in the centre of town, she saw her name in the headlines of the local newspaper in large, red letters, exclaiming: "Hilda murdered her son". Due to the media attention, Hilda was pointed at and stigmatized by her neighbours and community. Journalists from the newspaper that published her photograph marched across her village shouting loudly that Hilda was a murderer. She no longer wanted to leave the house.

Despite the lack of evidence against her, on 5 April 2013, Hilda was sentenced by a judge in Ciudad Valles, San Luis Potosí, to one year in prison and a fine of \$1,039 pesos (US\$ 85). The judge argued that she was responsible for committing an abortion based on her "confession" and a blood test that supposedly confirmed she had taken pills.** In view of her rejection of the guilty ruling, GIRE helped Hilda appeal the sentence before the Supreme Court of San Luis Potosí.^{††}

GIRE's arguments in Hilda's defence included the human rights violations she faced during the penal process and the first court hearing. The organization argued that the mistreatment she experienced at the hands of the hospital staff to obtain her "confession" constituted cruel and degrading treatment (i.e. torture), that patient confidentiality had been violated by health professionals, she was threatened by police, and her right to equality and non-discrimination had also

**A Gynuity Health Projects fact sheet states that the active ingredient in the misoprostol pills that most women take to self-induce abortion cannot be detected by commonly available laboratory tests. See: <http://gynuity.org/resources/info/faq-on-misoprostol-detection-in-blood/>.

^{††}Each Mexican state has a supreme court, the highest court at state level.

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