

Unintended *consequences*

FEMINISM AND PUNITIVE POLICIES IN MEXICO



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INTERSECTA



FONDO SEMILLAS
MUJERES SEMBRANDO IGUALDAD

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Ana Sofía Rodríguez Everaert

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Introduction

Ana Sofía Rodríguez Everaert

That governments commit to finding solutions to gender-based violence is an undeniable achievement of feminism. However, this seemingly good news is not so when, on closer inspection, many of the measures implemented by the authorities follow a punitive logic in which the condemnation and punishment of violence take precedence over reparation, prevention, and redistribution. But perhaps most shocking is that these forms of punitive action are called for and applauded by many contemporary feminists. A movement historically concerned with liberation today considers the criminal apparatus, including its latest and most dramatic expression, prison, as its crucial ally.

Although punitive feminism is a recognizable phenomenon in many latitudes, it seems increasingly pervasive in Mexico, due to the high rates of impunity that exist in the country. The theoretical and concrete implications of punitive feminism are becoming clear. The way femicides are dealt with serves as a paradigmatic example. The criminal concept of femicide was initially proposed by the Mexican feminist Marcela Lagarde y de los Ríos in 2003 to address the alarming number of women murdered in Mexico.¹ Today, the central demand of multiple feminist groups continues to be for the authorities to prosecute and punish this crime promptly. However, the demand is not limited to the inclusion of this crime in all the country's criminal codes—something that has already been achieved—, but rather that the penalties associated with it be increased. Thus, even when aggressors have already been sentenced to decades of life in prison, many feminists focus their efforts on demanding the “maximum” penalty authorized by law.²

The demands, laws, and public policies that seek to address gender issues through punishment are not limited to expanding criminal codes. In the last decade, penalties have diversified; the Mexican government has reconfigured entire parts of the justice process to prosecute aggressors more “effectively,” creating new institutions and allocating enormous resources.

Despite all this, gender violence does not seem to lower in Mexico; on the contrary, such crimes keep increasing.³ This is because gender violence is rooted in a series of complex structural inequalities between men and women with causes and manifestations that do not admit simple or individualized solutions. The punitive discourse does not address the root cause of these inequalities; in fact, this discourse is ingrained in a paradox: The penal institutions themselves are the product of a patriarchal, racist, and classist system.⁴ But the eagerness

to address gender violence from a criminal stance has prevented us from seeing the role of the carceral system in the reproduction of social inequalities, including gender inequalities.

The damage of this framework is unquantifiable if we follow Elizabeth Bernstein who says that, by locating the problem in individuals and not in institutions, “prison feminism” has contributed to the abandonment of strategies that seek to resolve inequalities through the construction of systems of reparation, prevention and the effective redistribution of capital.⁵ Critically assessing some of the consequences that the punitive zeal has brought to State institutions is, therefore, also the responsibility of feminism. As Kristin Bullimer wrote: “Thus, it becomes imperative to ask in both a local and global context—how do policies designed to protect women serve to reproduce violence?”⁶ That book intends to answer this question for the Mexican case.

1 Marcela Lagarde y de los Ríos, “Por la vida y la libertad de las mujeres. Fin al feminicidio”, *Fem*, Vol. 28, No. 255, 2004; Marcela Lagarde y de los Ríos, “Preface: Feminist Keys for Understanding Femicide: Theoretical, Political, and Legal Construction”, *Terrorizing Women: Femicide in the Americas*, Rosa-Linda Fregoso and Cynthia Bejarano (eds.), Durham, Duke University Press, 2010.

2 In Mexico, the work of groups such as the Observatorio Ciudadano Nacional del Femicidio is an example of this. See: “Por unanimidad Quinta Sala Penal ratifica sentencia por feminicidio de Lesvy Berlin”, Comunicado del OCNF, October 28, 2021. Available at: <https://www.observatoriofemicidiomexico.org/post/comunicado-quinta-sala-penal-ratifica-sentencia-por-feminicidio-de-lesvy-berlin%C3%ADn>.

3 On the relationship between the criminalization and femicides see: Verónica Jaso Martínez, *Los efectos disuasivos de la tipificación del feminicidio en la tasa de muertes violentas de mujeres en México*, Tesis para obtener el grado de licenciada en Políticas Públicas, CIDE, 2021. Available at: <http://mobile.repositorio-digital.cide.edu/handle/11651/4375>

4 Lucía Núñez, “¿Es la criminalización un instrumento de libertad femenina?”, *Feminismos y política criminal. Una agenda feminista para la justicia*, Buenos Aires, Instituto de Estudios Comparados en Ciencias sociales y penales, 2020; Mariame Kaba, “So you’re thinking of becoming an abolitionist”, *We do this til we free us*, Chicago, Haymarket Books, 2021.

5 Elizabeth Bernstein, “The Sexual Politics of the ‘New Abolitionism’”, *DIFFERENCES*, 2007.

6 Kristin Bullimer, “Freedom From Violence as a Human Right: Toward a Feminist Politics of Nonviolence”, *Thomas Jefferson Law Review*, 2006, p. 332.

There is a long tradition within feminism of critically evaluating different aspects of criminal law.⁷ In Mexico, much of the advocacy for abortion is an example of this. At the same time, it is common to point out that the judicial apparatus does not serve the victims precisely because of impunity. There are many examples of how victims turn to criminal institutions for help and how these ignore, belittle, and stigmatize them. The case of “Campo algodonerero”—on femicides in Ciudad Juárez, Chihuahua, in 2001—is perhaps the best-known example of this.

The essays gathered here not only analyze the failures of criminal and carceral approaches to reduce gender violence, but also show the counterproductive consequences of these measures; some unexpected, others announced and ignored, and others that are still avoidable. The authors seek to show that the criminal system not only does not guarantee victims what they supposedly want—the punishment of their aggressors—, but that this system can generate further social damage, even for the victims themselves. Recovering the findings of the feminist organizations with which they have collaborated, the authors provide concrete evidence of the adverse effects that the punitive paradigm in Mexico has had on those it intended to protect: women, girls, and other groups discriminated against based on gender. These individuals are affected by the prison apparatus, either when they are behind bars or when a loved one is incarcerated. They are also mistreated by State security forces, discriminated against by prosecutors and courts, and their needs ignored by public authorities.

The essays outline several facts and processes. First, they show the concrete consequences of the punitive discourse in legislation, public policies,

institutions, and justice processes designed to address and eradicate gender-based violence. Although they focus on Mexico, the authors constantly allude to what is happening in other countries, providing evidence of the effects that the punitive discourse on behalf of the protection of women has had internationally. Among the most interesting findings is that some spaces that we have assumed to be natural allies of women have actually been crucial accomplices in the propagation of criminal measures that harm women. This is the case, for example, of specific instances of multilateral organizations that, subject to the influence of some sectors of feminism and ignorant of the particular conditions of each country, have participated in creating this shared common sense of punishment through recommending it as a desirable public policy. This forces us to take a larger view and discuss regional and international legislation that seeks to protect women and the LGBT+ population and question how it is popularized.

On the other hand, the authors show how this series of policies directly violates the rights of women and sexual minorities or hinders the mechanisms to guarantee them. In this sense, the essays denounce the distance, lack of coordination, and, at times, the absolute contradiction between laws and initiatives to protect women and the LGBT+ population in Mexico. For example, the *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia* (General Law on Women's Access to a Life Free of Violence) and *Ley General de Víctimas* (General Law on Victims) imply access to government services outside of the criminal system. However, government institutions have become so accustomed to thinking that the only justice imaginable is criminal justice that they instinctively proceed through it and even block alternative mechanisms recognized by the Mexican Constitution.

As the authors demonstrate, the punitive discourse does not always consider the concrete needs of the victims. Women and the LGBT+ community who experience sexual and gender-based violence do not necessarily want to refer their cases to the

⁷ Black women from English-speaking contexts have elaborated the most radical positions in this tradition. Audre Lorde, Angela Davis, Ruth Wilson Gilmore, Mariame Kaba, Beth E. Richie, Andrea J Ritchie, Akwugo Emejulu, as well as the Combahee Collective, the Organisation of Women of African and Asian Descent (OWAAD), the Brixton Black Women's Group, Critical resistance, Project NIA and Survived & Punished, are just some of the names and experiences that have informed it.

prosecutor's office, nor do they believe that prison is the only measure of redress. And yet, the State—often encouraged by society—pushes them to do so. At the same time, several chapters include first-hand information on the instances and spaces in Mexico in which victims tend to denounce acts of gender-based violence, including trade unions or educational authorities, and on the expectations of justice they have and how they communicate them. Victims often seek honest acknowledgment of what happened to them and guarantees of non-repetition. In this sense, all the essays in this book insist on one basic fact: The variety of notions of justice that exist, the multiple ways of guaranteeing them, and the responsibility of the State to recognize such a variety.

This book is divided into five parts. The first part discusses some practices that feminism and the Mexican government have managed to include in the federal and local criminal codes or for which there are active criminalization campaigns. Specifically, the essays in this part address obstetric violence, adolescent sex, conversion therapies, and surrogacy. The authors do not deny that there are abuses and violent practices that harm women, girls, adolescents, and the LGBT+ population in the health system, during sexual intercourse, or in the spaces that offer conversion “services.” They argue that the punitive response does not guarantee that the victims of these injustices will find justice, nor does criminalization promote the non-repetition of the harm. As the authors explain, focusing on punishment disregards the structural conditions that give rise to these abuses or violence in the first place. In turn, criminalization can undermine the decision-making power of the subjects involved in adolescent sex and gestational surrogacy, for instance, and have counterproductive effects on services. Concerning the prohibition of conversion therapies—perhaps the case that is least subject to debate in the current public discussion—a fundamental fact is ignored: Those targeted by the law as it currently stands are primarily the parents of LGBT+ individuals. Parents, who seek services offered by third-party corporations, are often misled through misinformation and stigma, as the author of this chapter rightly explains.

The second part of the book deals with justice mechanisms that, although initially designed to address gender-based violence in their day-to-day functioning, actually betray women. Protection orders, for example, were conceived to protect imminent victims of gender-based violence without necessarily involving a criminal complaint. However, courts continue to require criminal complaints or fail to thoroughly assess the victims' specific needs, which can lead to fatal results. The essay on the impacts of informal pretrial detentions shows the tendency to include more and more crimes to the list that merit using this figure without any evidence that these are decreasing. What informal pretrial detention does achieve, the authors prove, is to incarcerate proportionally more women than men, violating their rights along the way. The final essay of this part deals with the actor that exists precisely to protect society: security forces. The authors gather testimonies and data that account for the multiple practices of torture in which the Police and the Armed Forces in Mexico engage during detentions and the practices of sexual abuse that also disproportionately affect women.

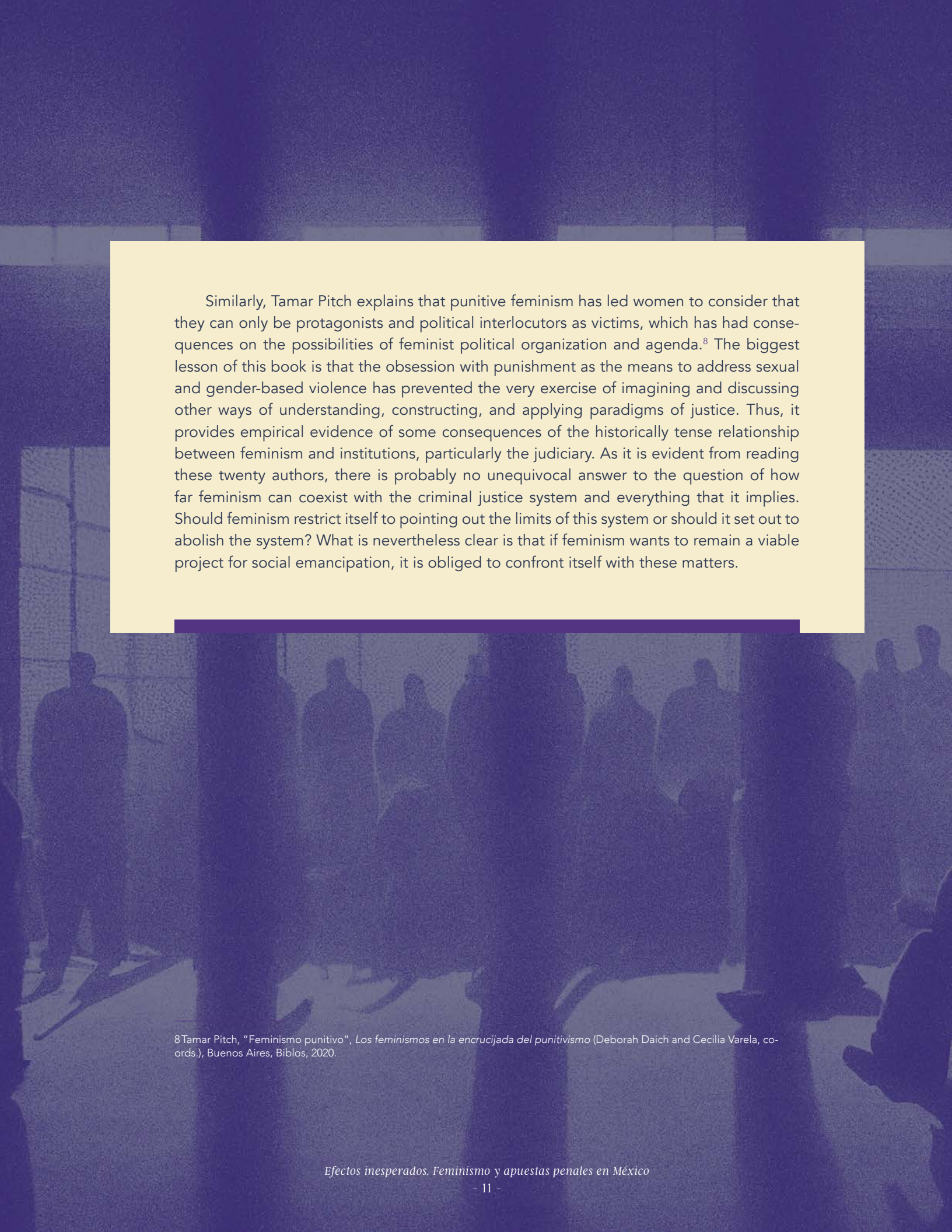
The essays in Part III discuss some of the consequences of convictions on the lives of people found guilty of committing crimes. The first essay, devoted to government registries of sex offenders, explains the problems with these kinds of measures intended to discourage sex offenders and make communities feel safe by publishing databases that flag convicted persons even after they have served their sentences. Drawing from different countries, the authors deny that these registries work and show the consequences they have on the lives of the accused: The stigma that prevents them from accessing work, housing, and medical services, among others. The first-person testimonies of women formerly deprived of their liberty also speaks of this. This piece summarizes information about incarcerated women in Mexico, the overwhelming majority of whom are accused of non-violent crimes and for which they are condemned to pay unjust sentences. These women often come from highly precarious backgrounds, and the prison experience only deepens their economic and social hardships. Unlike men, who also suffer from the stigma of prison, women are excluded from their

social circles for not fulfilling their gender roles. As the final chapter of this part warns us, reinsertion policies need to include a gender perspective. Human rights violations are not limited to the period of internment but continue after prison and affect women profoundly. In this sense, feminism cannot ignore how prison destroys people's lives, particularly women.

The chapters that make up the Part IV show the punitive reflex of some institutions in Mexico, which, sometimes without realizing it, condition to criminal complaints the access to certain services or justice mechanisms. This is the case of the Women's Justice Centers. These are designed to help women who have been violence victims, offering them and their children a safe environment with specialized services. However, since most of them are linked to the prosecutors' offices—in terms of location, personnel, and budget—they discourage users from resorting to them and prevent them from functioning as they should. We see the same problem in certain health institutions that continue to force female victims of rape to notify the prosecutor's office of the crime before they can access medical services. This happens even though, since 2016, Mexican law recognizes that rape represents a medical emergency that must be attended to immediately by health institutions, as established in NOM-046. As the authors of the chapter that analyzes this norm rightly show, the actions of health institutions constitute a form of discrimination and violence that only impacts the victims, as it prevents them from receiving emergency contraception, prophylaxis, and access to legal, safe, and free abortions. To close this part, the chapter titled "The problem with so-called alternatives" explains a series of cases in which the criminal justice system in Mexico deters the use of alternative routes for justice and the attention of sexual and gender violence. By looking at political parties and educational, labor, and administrative institutions, the author proves how the punitive logic prevents victims from accessing justice: by conditioning specific processes to denunciation, by imitating some mechanisms of the accusatory system, or by allowing some alternatives—such as restorative justice, which is recognized in the Mexican Constitution—to be absorbed by the criminal justice system. As the author says, the criminal justice system "obstructs any route that is not its own."

To close, the book includes two chapters on the economic consequences of the punitive approach to gender inequality. The first explains how philanthropy, currently prey to the punitive discourse, could help us escape this paradigm by supporting feminist-inspired justice efforts, of which there are many examples in Latin America. Doing so implies modifying the expectations of donors who, instead of expecting short-term results, would have to rely more on the experimentation and learning processes required to achieve genuine structural changes. Finally, to understand the conditions needed to overturn the penal paradigm in Mexico, the book's final chapter shows us how public money is invested in eradicating violence in the country. In the last decade, in Mexico, more and more money and personnel have been invested in the Armed Forces under the pretext of citizen security and at the expense of public investment in equality-oriented institutions. Thus, as the authors explain, militarizing public security is the example par excellence of a public policy with unintended negative consequences. This is not only because the Armed Forces tend to incur in human rights violations when they take on security tasks but also because the number of resources invested in them "prevents the construction of non-punitive solutions from addressing violence and discrimination in Mexico."

This book is reminiscent of what Janet Halley has written about "governance feminism," referring to feminism that focuses its activism on getting women to participate in the institutions of power. As this feminist lawyer reminds us, in the 1960s and 1970s, the mark of political radicalism was in refusing the possibility that necessary social changes could emanate from the institutions of the State. This was shared by many feminist groups at the time, among which was, naturally, anti-carceral feminism. Without denying the use of participating in power structures, some of feminism's best ideas and projects have been left out—among them, the necessary distrust "of the system" and some forms of "intra-feminist politics." In turn, this has given way to victimhood and identity as the central markers of the feminist agenda. In the face of this, Halley says feminism must undertake a profound self-critique from which it may be challenging to return.

The background of the page is a dark, blue-tinted photograph of a prison interior. It shows the silhouettes of several people standing behind vertical metal bars, creating a somber and institutional atmosphere. The lighting is dim, with some light coming from windows or openings in the distance.

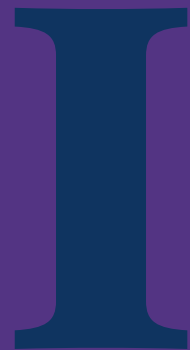
Similarly, Tamar Pitch explains that punitive feminism has led women to consider that they can only be protagonists and political interlocutors as victims, which has had consequences on the possibilities of feminist political organization and agenda.⁸ The biggest lesson of this book is that the obsession with punishment as the means to address sexual and gender-based violence has prevented the very exercise of imagining and discussing other ways of understanding, constructing, and applying paradigms of justice. Thus, it provides empirical evidence of some consequences of the historically tense relationship between feminism and institutions, particularly the judiciary. As it is evident from reading these twenty authors, there is probably no unequivocal answer to the question of how far feminism can coexist with the criminal justice system and everything that it implies. Should feminism restrict itself to pointing out the limits of this system or should it set out to abolish the system? What is nevertheless clear is that if feminism wants to remain a viable project for social emancipation, it is obliged to confront itself with these matters.

⁸ Tamar Pitch, "Feminismo punitivo", *Los feminismos en la encrucijada del punitivismo* (Deborah Daich and Cecilia Varela, coords.), Buenos Aires, Biblos, 2020.

Part I

Crimes conquered by feminism and their consequences

1. **Obstetric violence**
2. **Adolescent sexuality**
3. **Gestational surrogacy**
4. **Conversion therapies**





01 Obstetric violence

Isabel Fulda Graue and Verónica Esparza Pérez

In 2013, various media outlets disseminated a photograph depicting a Mazatec woman, Irma, giving birth on the floor, in the courtyard of the Jalapa de Díaz Health Center, in the city of Oaxaca. Irma was not admitted to the hospital even after she went into labor. She was told to wait, but her son was born during that time. At a symbolic tribunal on obstetric violence and maternal death organized by the feminist organization GIRE in 2016, 27 women and their families shared their testimonies, giving an account of the precariousness of obstetric health services in Mexico.¹

¹ GIRE, *Tribunal simbólico sobre muerte materna y violencia obstétrica. Una memoria*, Mexico, 2016. Available at: <http://tribunal-simbolico.gire.org.mx/#/>.

These testimonies add to data and research indicating that obstetric violence in Mexico is not sporadic but occurs systematically.² According to the 2021 Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (National Survey on the Dynamics of Household Relationships, ENDIREH), of the 7.8 million Mexican women who gave birth at least one time between 2016 and 2021, 30.9 % reported having suffered mistreatment during obstetric care. “Pressure to accept contraception or sterilization” was the second most recurrent cause in reports of obstetric violence and in 2016 it ranked fifth. Applying a “contraceptive method or forced sterilization” increased from 12.2 % to 13.8 % in these five years.³

What is obstetric violence? Obstetric violence is a specific form of violence against women and other individuals who can bear children. It happens during obstetric care in both public and private health services. It consists of any action or omission by health personnel that causes harm during pregnancy, childbirth, or postpartum, thus violating the person’s rights. The manifestations of obstetric violence may be psychological or physical.

Among the actions that cause psychological harm are discriminatory acts, the use of offensive,

humiliating, or sarcastic language during the provision of services, lack of timely information on the medical process, and dehumanizing treatment. Manifestations of physical violence are invasive practices such as cesarean sections when performed without justification, non-consensual or forced sterilization, unjustified provision of medications, delay of emergency medical care, or disrespect for delivery timing. Preventable maternal death is also a result of the actions and omissions constituting obstetric violence and is proof of its most profound expression. In Mexico, the high numbers of deaths from preventable causes related to pregnancy and childbirth are a cause for concern.⁴ In 2020, there were 46.6 deaths per 100,000 estimated births, an apparent increase from 2018 (33.9) and 2019 (33.8) numbers.⁵ These rates keep the country far from meeting its commitment, derived from the Nairobi Declaration, to achieve zero preventable maternal deaths by 2030. They are also evidence of inequality and a further reflection of the problems faced by women and pregnant women in medical services.

The concept of obstetric violence emerged in Latin America at the beginning of the 21st century, and its recognition in the region’s different countries has been gradual. An essential reference is Venezuela, which in 2007 included the concept in its Organic Law on the Right of Women to a Life Free of Violence. The law establishes various behaviors constituting this form of violence and punishes them with pecuniary penalties (i.e., fines) applicable to the person responsible for committing them.⁶ In Mexico, also in

2 Roberto Castro and Joaquina Erviti, “La violación de derechos reproductivos durante la atención institucional del parto: un estudio introductorio”, in *Hacia una política de salud con enfoque de género*, Blanca Rico et al., Mexico, SSA-UNIFEM, 2003, pp. 245-263; Roberto Castro and Joaquina Erviti, “25 years of research on obstetric violence in Mexico,” *Conamed*, Vol. 19, No. 1, 2014, pp. 37-42; Roberto Castro, “Génesis y práctica del habitus médico autoritario en México,” *Revista Mexicana de Sociología*, Vol. 76, No. 2, 2014, pp. 167-197.

3 INEGI, *Encuesta Nacional sobre la Dinámica de las Relaciones de los Hogares (ENDIREH)*, 2021. Available at: <https://www.inegi.org.mx/programas/endi-reh/2021/>.

4 The term maternal death is used throughout the essay following the terminology used in the legislation, documents, and statistical information sources reviewed for this essay. However, GIRE believes it would be desirable not to use the word “maternal” since not all women or other individuals with the capacity to bear children who die during pregnancy, childbirth, or puerperium—from any cause related to or aggravated by these or their management—intended to become mothers.

5 Internationally, the measure used to identify and evaluate the existence and severity of barriers to access to maternal health services is the Maternal Mortality Ratio (MMR), which expresses the number of women who die during pregnancy, childbirth, or puerperium per 100,000 live births. Observatorio de Mortalidad Materna en México, “La mortalidad materna continúa en cifras alarmantes durante la pandemia,” August 11, 2021. Available at: <https://omm.org.mx/wp-content/uploads/2021/08/La-mortalidad-materna-sigue-aumentando-durante-la-pandemia-semana-30.pdf>. It is important to consider that the Weekly Reports for Epidemiological Surveillance of the Ministry of Health in Mexico tend to underreport maternal mortality because they do not take into account women who die from complications following childbirth. This information is adjusted by the National Institute of Statistics and Geography (INEGI) approximately one year after they take place.

6 The law defines obstetric violence as “the appropriation of women’s bodies and reproductive processes by health personnel, which is expressed in a dehumanizing treatment, in an abuse of medicalization and pathologization of natural processes, bringing with it a loss of autonomy and the ability to decide freely about their bodies and sexuality, negatively impacting women’s quality of life.”

2007, the General Law on Women's Access to a Life Free of Violence was enacted, a legislative instrument to comply with international obligations to prevent, address, punish and eradicate violence against women in the country. Although obstetric violence has not been expressly included in this law, psychological, physical, and institutional violence are considered. At the local level, Veracruz was the first state to include obstetric violence in its Local Law on Women's Access to a Life Free of Violence in 2008. This reform was inspired by the law approved in Venezuela and was promoted by feminists and maternal health activists.⁷ To date, 28 of the 32 states in Mexico have included definitions of obstetric violence in their Laws on Access to a Life Free of Violence.⁸

Recognizing and naming obstetric violence has undoubtedly contributed to seeing it as a specific form of institutional and gender-based violence. However, including obstetric violence in criminal codes is problematic. Criminalizing obstetric violence implies dealing with the behaviors that cause it through sanctions and fines for the health personnel. This does not respond to gender violence as the structural social problem it is, but instead transforms it into an interpersonal conflict between victim and perpetrator. Despite this, the insistence on criminalizing obstetric violence in Mexico is part of the punitive strategies promoted by specific sectors of the feminist movement and the government itself.

The states that have criminalized this practice in Mexico are Aguascalientes, Chiapas, the State of Mexico, Guerrero, Puebla, Quintana Roo, Yucatan, and Veracruz.⁹ Some of the behaviors that qualify as obstetric violence are: altering the natural process

of low-risk childbirth through the use of acceleration techniques without obtaining the woman's consent, performing a cesarean section when conditions for natural birth exist, omitting timely attention to obstetric emergencies, and harassing or putting psychological and offensive pressure on a laboring woman, among others.

These actions are not the health personnel's exclusive responsibility, and even when they are, criminal prosecution does not necessarily serve to prevent them. An example of the former is provided for in Article 158 of the Criminal Code of Aguascalientes, which considers it a crime for childbirth to take place in an "inappropriate" place. The article, however, does not specify the characteristics of such places—it could refer to a hallway, an unhealthy space, or even an area without sufficient privacy. The places where childbirth takes place should be monitored to ensure access to adequate obstetric services, but unsuitable spaces are often the result of deficiencies in infrastructure and problems with access to services. They, therefore, cannot always be attributed to an individual's responsibility as the criminal sanction assumes. It is the government that must resolve deficiencies in the infrastructure and equipment of public and private health centers and hospitals. On the other hand, by not indicating the necessary conditions for a place to be considered appropriate for childbirth, the Criminal Code of Aguascalientes also shows that the conducts that are foreseen as crimes frequently do not comply with the principle of taxability imposed by the Mexican Constitution for all penal norms.¹⁰ This is a principle that requires prohibited conducts and forms of punishment to be

7 Paola Sesia, "Violencia obstétrica en México: La consolidación disputada de un nuevo paradigma" in *Violencia obstétrica en América Latina: conceptualización, experiencias, medición y estrategias*, Patrizia Quattrocchi and Natalia Magnone (comps.), Buenos Aires, EDUNLa. 2020, p. 7.

8 GIRE, *El camino hacia la justicia reproductiva: Una década de avances y pendientes*, Mexico, GIRE, 2021. Available at: <https://unadecadajusticiareproductiva.gire.org.mx/>. It is important to mention that the absence of express obstetric violence in the legislation does not imply that the authorities of the entities where it has not been defined do not have the obligation to address the behaviors that constitute this type of violence, which is framed in other figures such as institutional and gender violence.

9 It is important to mention that, despite reports of obstetric violence in the states where this conduct is classified as a crime, no sentence has been issued for these crimes in recent years. See GIRE-Impunidad Cero, *Justicia Olvidada, Violencia e impunidad en la salud reproductiva*, Mexico, 2022, pp. 78-80.

Available at: <https://justiciaolvidada.gire.org.mx/>. The state of Veracruz was the first to reform its Criminal Code to criminalize obstetric violence in 2010. The reform was carried out within the framework of a series of proposed laws modifications to achieve effective access for women to a life free of violence. In June 2018, the Congress of Aguascalientes reformed its Criminal Code to incorporate conduct that constitutes obstetric violence, although the concept is not named as such. It is suggested to consult: GIRE, *La pieza faltante. Justicia Reproductiva*, Mexico, GIRE, 2018, p. 100.

10 Comunicado de la Federación Mexicana de Colegios de Obstetricia y Ginecología, June 10, 2015. Available at: <http://nebula.wsimg.com/a9b64c85598ef5cc5b6d455abf868d4f?AccessKeyId=7DE13D01798D54D68D0E&disposition=0&alloworigin=1>.



thoroughly described in the legislation since failure to do so has profound implications for the individuals to whom these are attributed.

The punitive response also generates resistance among health personnel who often face adverse conditions in performing their work. In Oaxaca, for example, faced with the possibility of criminalizing obstetric violence, in 2015 the medical community published a communiqué that said:

The conditions of the current hospital infrastructure in our country do not allow us to carry out the practices of accompaniment that would be desirable during labor and birth. Infrastructure is one of the main factors involved in this complex process [of providing services], and we obstetricians and gynecologists are alien to it [...] The lack of appropriate facilities, essential supplies, and qualified personnel is undeniable [...] It has not been, nor will it be the solution, to focus on generating punitive laws [...].¹¹

The final part of this official statement warns that punitive measures against health personnel are harmful and proposes that, before criminalizing obstetric violence, administrative and public health policy measures should be sought to reinforce the regulatory and human rights framework.¹²

In Mexico, the incidence of obstetric violence, including preventable maternal deaths, is closely related to the structural deficiencies afflicting the National Health System and constitutes an obstacle to medical care for women and other individuals with the capacity to bear children during pregnancy, childbirth, and postpartum. Indigenous people with disabilities or with social and economic challenges often face more significant difficulties in accessing care for their reproductive needs due to factors such as education, socioeconomic status, geographic location, and language barriers, to name a few. Given these intersections that create differentiated vulnerabilities, the issue is not only a matter of gender equality and human rights but reproductive justice. At GIRE, we understand reproductive justice as the social, political, and economic factors that allow women and other individuals with the capacity to bear children to

11 Comunicado de la Federación Mexicana de Colegios de Obstetricia y Ginecología, June 10, 2015. Available at: <http://nebula.wsimg.com/a9b64c85598ef5cc5b6d455abf868d4f?AccessKeyId=7DE13D01798D54D68D0E&disposition=0&alloworigin=1>.

12 Between 2011 and 2012, the Oaxacan Women's Institute attempted to reform the Oaxacan Criminal Code and criminalize obstetric violence. However, the medical union was opposed and even threatened to go on strike and paralyze the public health system if the reform materialized. The alliance between the medical union and the health authorities also managed to block the inclusion of obstetric violence in the state law on access to a life free of violence, which materialized until 2019. Paola Sesia, "Violencia obstétrica en México: La consolidación disputada de un nuevo paradigma" in *Violencia obstétrica en América Latina: conceptualización, experiencias, medición y estrategias*, Patrizia Quattrocchi and Natalia Magnone (comps.), Buenos Aires, EDUNLa, 2020, p.16.

have power and self-determination over their reproductive destiny. To this end, it is essential to guarantee their human rights, considering the discrimination and structural inequalities that affect their health and decision-making.¹³

In addition to the challenges related to supplies and infrastructure, other factors in the medical practice and the education received by physicians contribute to obstetric violence. Physicians often have prejudices that are reflected in obstetric violence. To tackle this, several interventions are needed to modify the medical habitus of personnel involved in obstetric care.¹⁴ However, opting for the punitive route can affect the channels of dialogue and distance health personnel from the solution to the problem, who, acting under the threat of imprisonment, will not necessarily be willing to seek the best ways to modify their habits and practices.

The eradication of gender-based violence cannot be addressed by deepening criminal law. Criminal law does not address underlying vulnerabilities because it keeps intact the social, cultural, and institutional structures that allow gender-based violence to emerge. In various reports and position papers, GIRE has recommended local congresses not to include obstetric violence as a crime and, instead, make regulatory, budgetary, and public policy adjustments to guarantee the access to quality reproductive services.¹⁵ The conditions necessary for effectively enjoying human rights will not be achieved by attributing criminal or economic responsibilities to health personnel. On the contrary, focusing the response to obstetric violence on punitive sanctions diverts the attention from the government's commitment to guarantee the conditions for access to quality services, in addition to representing a significant economic burden by allo-

cating resources to attend, investigate, and punish behaviors, instead of investing in mechanisms to prevent them.

Finally, in addition to not being the ideal way to address obstetric violence and maternal death, criminal law does not contribute to the demands for justice of the survivors of this type of violence. In monitoring cases, GIRE has found that obtaining criminal sanctions generally does not meet the expectations of survivors of obstetric violence since they are often interested in the authorities acknowledging their experiences and taking responsibility for their actions—for example, through public apologies—but mostly ensuring that the violence they endured does not happen again. As Isela and Marco—a couple who experienced obstetric violence during Isela's pregnancy—shared at the symbolic tribunal organized by GIRE: "At the end of the day, it is not about criminalizing doctors, it is about creating the culture to make a change. This involves us and them as public servants."¹⁶ Or, as another participant pointed out: "I only hope that what happened to me does not happen to other girls."¹⁷

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When justice is conceived as the non-repetition of an unfair situation that systematically repeats itself, an individual sanction is not the answer. Survivors of obstetric violence and relatives of people who died from preventable causes related to pregnancy, childbirth, or puerperium also have a strong interest in

13 GIRE and Impunidad Cero, *Justicia Olvidada, Violencia e impunidad en la salud reproductiva*, Mexico, 2022, p.19.

14 Roberto Castro has called medical habitus all those predispositions that health professionals acquire during their years of training in schools and faculties through the rigid systems of hierarchies, punishments, commutations, recriminations, recriminations and labeling - including class and gender - that they receive and experience during that time, as part of their professional education. These predispositions become entrenched during the years of specialization and, later, tend to permeate their relationships with health service users. See Castro, op. cit., "Génesis y práctica del habitus médico autoritario en México" p. 172 et seq.

15 See: GIRE, *Omisión e Indiferencia. Derechos Reproductivos en México*, Mexico, Mexico, 2013; GIRE, *Niñas y Mujeres sin Justicia. Derechos Reproductivos en México*, Mexico, Mexico, GIRE, 2015; GIRE, *Obstetric Violence. Un enfoque de derechos humanos*, Mexico, GIRE, 2015; GIRE, *51% Una agenda para la igualdad*, Mexico, GIRE, 2018; GIRE, *La pieza faltante. Justicia Reproductiva*, Mexico, GIRE, 2018.

16 Testimony of Isela and Marco. GIRE, op. cit., *Tribunal simbólico sobre muerte materna y violencia obstétrica. Una memoria*.

17 Testimony of Irma. *Idem*.



ending the psychological and emotional violence perpetrated by health personnel and hospital administrative or social workers. The criminal route, however, ignores the conciliatory processes by which the violence suffered is recognized, as well as the monetary alternatives or psychological support with which survivors can also be compensated.

To summarize, the different manifestations of obstetric violence, including preventable maternal deaths, are a clear sign of the persistence of structural discrimination not only related to gender but to other conditions of marginalization. The figures show that, despite regulatory and public policy changes in recent years in Mexico, this form of violence persists and continues to affect women and other individuals with the capacity to bear children. Attention to obstetric violence and maternal death must focus on implementing structural measures to resolve the lack of trained health personnel, the consequent overwork of existing personnel, and the insufficiency of supplies and adequate medical infrastructure. At the same time, medical units in more accessible places are as necessary as a transformation in the attitudes, prejudices, and harmful routines of the medical personnel. Criminal liability fails to identify the social origin that leads to obstetric violence: the culture of abuse, mistreatment, and ethical conflict in medical training and the precarious conditions in which medical services are provided. Obstetric violence thus requires specific solutions and structural rethinking to identify and modify its social origin.



02 Adolescent sexuality

Sara Martínez Cabello and Lizbeth Quezada

Adolescence is the time to experience new things and discover what we like.¹⁸ However, when there are barriers to accessing and guaranteeing sexual rights, exploring is strenuous. In Mexico, the free and pleasurable exercise of adolescent sexuality is hindered by the lack of recognition of adolescents' autonomy, evolving capacities, and decision-making power.¹⁹ This is the result of a series of legislation actions that, seeking to protect adolescents, actually violate their rights.

¹⁸We refer to the age range of adolescents as established in the NOM-047-SSA2-2015, which considers the age group from 10 to 19 years old.

¹⁹The principle of evolving capacities, recognized in the Convention on the Rights of the Child, refers to the progressive development of cognitive, physical, social, emotional, and moral faculties. As children and adolescents acquire increasing competencies, their decision-making capacity increases and the need for them to receive direction and guidance decreases. Source: "Cartilla de Derechos Sexuales de Adolescentes y Jóvenes" (Charter of Adolescent and Youth Sexual Rights). Available at: <http://misderechossexuales.com/>.

Since 1989, with the signing of the Convention on the Rights of the Child, the United Nations and various organizations have spearheaded an international drive to develop a series of legal and policy instruments focused on protecting children's rights. One example is the Optional Protocol to the Convention on the Rights of the Child, published in 2000, which obliges governments to take crucial measures to end the sale, exploitation, and sexual abuse of children.²⁰ In Mexico, these impulses have materialized in the issuance of the Ley General de los Derechos de Niñas, Niños y Adolescentes (General Law on the Rights of Children and Adolescents) which establishes that children and adolescents are holders of human rights and need guarantees for the effective exercise, respect, protection, and promotion of these rights. This law also establishes the child's best interest as a principle to be observed nationally.

The common denominator of these legal instruments is that they seek to protect children and adolescents from violations of their rights and prevent, prohibit, and punish behaviors that may be detrimental to their development, including sexual abuse and rape. These are necessary and beneficial instruments because they allow the enforceability of the rights of this population while establishing the commitments, responsibilities, and obligations for the authorities to guarantee them.

However, we have also fallen into the evil we sought to avoid without realizing it: Government institutions have promoted initiatives that, under the assumption of complying with these commitments, limit the exercise of the sexual rights of adolescents. This phenomenon undermines the enforceability of rights and privileges some over others without understanding that human rights are indivisible and interdependent. Simultaneously, adolescents, as a specific and differentiated demographic group, have been

invisibilized nationally and internationally over the years. Public policies for adolescents are approached through children's rights without considering differences in age, capacity, or gender and without considering the principle of progressive autonomy.²¹ In other words, adolescents have been systematically grouped together with children solely based on the criterion of a minority of age.

This protectionist perspective assumes that adolescents cannot make important decisions, such as voting, and therefore does not recognize they can consent to sexual intercourse. Under this logic, all sexual practices during adolescence are the product of violence, coercion, subjugation, and/or manipulation. Based on these premises, and in response to the need to address systematic violations of the human rights of adolescents, countries have established laws that, rather than managing, preventing, and generating comprehensive policies that truly eradicate sexual violence against children and adolescents, criminalize sexual encounters as the sole way to solve sexual violence against children and adolescents.

In June 2012, the Mexican Federal Criminal Code increased the age of sexual consent to 15 years old. Article 266 establishes that "it is equivalent to rape and shall be punished with eight to thirty years of imprisonment: Whoever without violence performs copulation with a person under fifteen years of age."²² Since 2018, criminal codes throughout Mexico have established different minimum ages for consenting to sexual relations between adolescents under the idea of "protecting" them and without considering

²⁰In the Latin American region, the judgment of the Inter-American Court of Human Rights in the case of V.R.P., V.P.C. et al. v. Nicaragua, in which the Court obliged Nicaragua to have protocols for investigation, action, and care in cases of sexual violence committed against children and adolescents, stands out. This case lays the groundwork for the rest of the States to have an international commitment to adopt or create such protocols.

²¹According to the Supreme Court, the principle of progressive autonomy enables the decisions that children and adolescents can make for themselves. This emanates from the fact that these populations are subjects of rights, and therefore, they exercise their rights gradually according to their level of development. For more information, please visit: https://www.scjn.gob.mx/10ddhh/sites/default/files/redes-sociales/archivos-adjuntos/autonomia_progresiva_0.pdf.

²²Federal Criminal Code. Article 266. Official Gazette of the Federation 14-06-2012.

the specificities of each case—including the age difference between those who participate in the sexual encounter—. The only places that do not have these laws are Jalisco, Nayarit, Tabasco, and Veracruz. The criteria of a minimum age has become essential in the categorization and punishment of crimes such as rape, statutory rape, and pederasty. Although it is far from ideal, the Criminal Code of the State of Mexico is the only one that includes a broader definition of sexual relations and contemplates specificities related to the age difference between those involved. This code states that sexual relations between minors are not a crime if the persons involved are older than 15 years old, or if they are between 13 and 15 years old and: a) both persons manifest that there was consent, b) there is an affective relationship between both parties, c) the age difference between the parties is not more than five years old.²³

That criminal codes set a specific age for sexual relations does not guarantee that the rights of the individuals involved will be respected. In this regard, the case of Mexico City stands out. In this entity, Article 181 Bis of the local criminal code was reformed in June 2021, intending to extend the statute of limitations and increase the penalties in cases of sexual crimes committed against minors. Based on a legislative reservation, the legislators unanimously opted to modify the minimum age of sexual consent by increasing it from 12 to 18 years old, ignoring that international recommendations suggest that, if established, this age should be close to 15 years old.²⁴ Thus, the local criminal code currently establishes that “whoever has intercourse with a person under 18 years of age shall be sentenced to 12 to 20 years of imprisonment.”²⁵ No mention of the characteristics of the persons involved in the copulation is made, nor is it considered whether the relationship was consensual or not. The

norm establishes that having sex during adolescence is a crime that merits imprisonment, even if the partner is another adolescent. And, what is more, it determines that the government has the power to decide when a person can have sex, based not on a welfare criterion but on what the authorities consider morally correct. In this sense, the norm violates fundamental rights, including the free development of personality, privacy, intimacy, and the right to non-discrimination.

This modification of the Criminal Code in the country's capital is not an isolated case. There are several examples of similar regulatory changes at the Latin American level. A good example is the reform of Article 173 of the Peruvian Criminal Code in 2006, modified by the National Congress to ultimately criminalize sexual activity among persons under 18. The article in question establishes that: “Whoever has carnal access by vaginal, anal, or oral means or performs other analogous acts by introducing objects or parts of the body by any of the first two means, with a minor, shall be punished with the following prison sentences,” and further on it states that if the minor is between 14 and 18 years of age, “the penalty shall be not less than twenty-five nor more than thirty years.”²⁶

Mexico City and Peru's regulatory changes arose from a legitimate interest to protect children and adolescents from sexual abuse and pederasty. In the case of Mexico City, this modification was made precisely to grant a longer period for filing complaints of sexual crimes committed when the victim was under 18 years of age. However, the legislators acted from the premise that a person under 18 is always vulnerable and incapable of freely consenting to a sexual act. In other words, legislators assumed that all relationships in which adolescents might be involved are necessarily asymmetrical in terms of age and gender when in fact we know that age differences tend to be small

²³Article 273 of the Criminal Code of the State of Mexico.

²⁴UNICEF recommends that the legal minimum age of sexual consent should be neither too low nor too high and contain provisions considering the limited age difference between partners. UNICEF, *Early sexual initiation--a problem for the rights of adolescents in Latin America and the Caribbean*, 2014. Available at: <https://www.unicef.org/lac/media/2646/file/PDF%20Edad%20m%C3%ADnima%20para%20el%20consentimiento%20sexual.pdf>.

²⁵Article 181 Bis of the Criminal Code for Distrito Federal, paragraph 1. Initiative with Draft Decree reforming Articles 180, 181, and 181 BIS, as well as the denomination of Chapter VI of Title Five, Book Two of the Criminal Code for the Federal District, 2019. Available at: https://consulta.congresocdmx.gob.mx/consulta/webroot/img/files/iniciativa/ln_255_21_11_19_24.pdf.

²⁶Tribunal Constitucional de Perú, “Sentencia del Pleno Jurisdiccional del Tribunal Constitucional de Perú 00008-2012”, 2012. Available at: <https://www.tc.gob.pe/jurisprudencia/2013/00008-2012-AI.pdf>.

in adolescent relations and not all relationships are heterosexual. However, such diverse characteristics were not taken into account in formulating legislation. In Peru, civil society organizations filed a lawsuit for the modified article. This lawsuit reached the Peruvian Constitutional Court, which in 2012 found that the regulation was contrary to the Constitution because it violated the right to free development of adolescents' personalities.²⁷ This decision was reached mainly due to the activism of organizations such as Women's Link and international organizations like the United Nations Population Fund (UNFPA).²⁸

Norms that criminalize adolescent sexuality have countless negative consequences. First and foremost, these norms have the potential to be used to generate sentences for crimes such as statutory rape or pederasty, even in consensual sexual relations. An example of this situation is a case documented by Injusta Justicia ["Unfair justice"], an initiative of various Mexican NGOs to document the consequences of criminalizing adolescent sexuality.²⁹ María, a 14-year-old Mexican girl, had consensual sex with her 20-year-old boyfriend, Lucas. María's mother decided to file a criminal complaint against Lucas for pederasty even though María always maintained that the sexual relations were consensual and stated that she never felt hurt or violated. Since the Criminal Code of Veracruz—the state where the couple lives—establishes that all sexual relations with someone under 18 years of age are subject to punishment, Lucas was sentenced to 12 years in prison.³⁰

A second negative consequence of such laws is that they can potentially inhibit access to sexual health services. Injusta Justicia has also documented one such case. Andrea, a 16-year-old Guatemalan girl, became pregnant after having consensual sex with Juan, a 19-year-old boy. Fearing the consequences Juan would face for having sex with a girl under 18, Andrea decided not to go to the health center for prenatal check-ups, putting her health and that of her offspring at risk.³¹ If accessing a sexual health service puts adolescents and/or their sexual partners at risk of being sentenced, they are likely to refrain from seeking services, opt for other alternatives, or not receive sexual counseling or care.

Thirdly, regulations that criminalize sexual relations during adolescence have the potential consequence of canceling or undermining public policies that seek to guarantee the pleasurable and healthy exercise of sexuality. Why provide barrier methods and contraceptives if, by using them, adolescents would be committing a crime? Without these services or policies, the number of unwanted adolescent pregnancies is likely to increase, as are sexually transmitted infections.³² Along the same lines, access to Comprehensive Sexuality Education (CSE) could be restricted. Again, if what is implied by the absolute prohibition of sexual relations in adolescence is that the exercise of sexuality is undesirable and that the State has no responsibility to guarantee public policies aimed at the pleasurable and healthy exercise of sexuality, there will be no need to provide adolescents with scientific, impartial and reliable information on sexuality. Therefore, governments could roll back advances in CSE and hinder its implementation in schools, as well as restrict access to sexuality counseling centers that provide adolescent-friendly health services.

²⁷ *Idem*.

²⁸ Women's Link, *Amicus presentado ante el Tribunal Constitucional peruano contra la penalización absoluta de las relaciones sexuales con y entre adolescentes*, 2012.

²⁹ Injusta Justicia is coordinated by RESURJ, Vecinas Feministas, and Balance and promoted in conjunction with Aireana, BECA, Casa Rara, Intersecta, Las Ramonas, REDi, Surkuna, and Tik Na'Oj, among other feminist organizations and collectives throughout the region. Information is available at: <https://www.injustajusticia.org/es>.

³⁰ María's case. Available on the online platform Injusta Justicia: <https://www.injustajusticia.org/es/maria>.

³¹ Andrea's case. Available on the online platform Injusta Justicia: <https://www.injustajusticia.org/es/andrea>.

³² Ipas México, *Violencia Sexual y Embarazo Infantil en México, un problema de salud pública y derechos humanos*, México, 2017. Available at: <https://ipas-mexico.org/category/recursos/violencia-sexual-y-embarazo/>.

But María's case mentioned above also points to a fourth problem: The violation of adolescents' intimacy and privacy and the use of prohibitive norms as a method of punishment by fathers and mothers towards their adolescent children. This is also the case of Paola, a 16-year-old who had consensual sexual relations with her boyfriend but was forced by her parents to go to a health center and state that the sexual relations had not been consensual after her parents found out about the relationship seeing text messages on Paola's cell phone. Paola had to remain in the hospital until a judge determined whether or not consent had existed, since the complaint and the presence of the public prosecutor's office is mandatory for care in health centers.³³ These are clear examples of parents controlling their children's sex life only because criminal law allows them.

As we have sought to show, criminal codes can become a platforms that limit the sexual rights of adolescents. They restrict access to services, supplies, and information, especially among the most marginalized populations, where social, economic, and cultural inequality create more significant barriers to guaranteeing their rights. By exclusively considering the age factor when determining the existence of abuse, these laws do not consider the specificities of each relationship and the capacity of adolescents to make their own decisions. The minimum age criterion for sexual consent ignores the diversity of adolescents, the different environments in which they develop, and their needs. In this sense, these criteria constitute a mechanism for violating rights precisely for the populations that need the most protection.

It is undeniable that sexual violence exists and its victims are mainly girls and adolescents. It is also true that violence is normalized in the Mexican context. However, punitive actions do not and will not solve the structural problems that give rise to cases of sexual abuse in which there is a lack of consent (or conditions for consent). Creating mechanisms for prevention, care, denunciation, and ways to repair past abuses is essential. To do so, however, comprehensive policies and programs that generate long-term changes and contribute to creating environments that promote the exercise of sexual rights are essential. To prevent and address cases of abuse and sexual violence, it is necessary to implement thorough sexual education, create effective access to sexual health services, build inputs for free and pleasurable sexuality, and generate actions within communities and populations to change power dynamics. The goal should be to establish relationships based on respect and equality, not to restrict the rights of adolescents.

³³Paola's case. Available on the online platform Injusta Justicia: <https://www.injustajusticia.org/es/andrea>.







03 Gestational surrogacy

Verónica Esparza Pérez and Isabel Fulda Graue

The subject of surrogacy leads to heated debates among feminists. Distinct ethical, social, and legal positions are reflected in the terms used to refer to this practice: surrogacy, surrogate motherhood, and womb renting, to mention a few. The discussion and conflicting positions on surrogacy begin with its name.³⁴

³⁴GIRE considers that the terms surrogacy and gestational surrogacy are better suited to describe the phenomenon since they do not emphasize maternity but rather the activity or main purpose pursued by the parties, which is gestation, as well as being the most appropriate terms from a human rights perspective.

Gestational surrogacy is a contract or agreement whereby one person agrees to carry a pregnancy for another person or persons who intend to act as the baby's primary caregiver or caregivers. Sometimes, this agreement is remunerated, and gestation is understood as a service. In others, it is considered an "altruistic" agreement in which there is no remuneration for the gestational action, although the contracting person or persons cover the pregnancy expenses.

The debate on surrogacy tends to be very polarizing. On the one side is the position that demands that this practice is prohibited and the parties criminalized. On the opposite extreme are those who believe that, while there are several protections necessary to ensure the consent of the parties and avoid abuses, particularly about the agency of women and other individuals with the capacity to bear children, surrogacy must be recognized and regulated.

The first position views surrogacy as a form of slavery or exploitation that turns women into mere "vessels"; that takes advantage of their economic needs while enriching clinics and intermediary agencies, as well as the broader industry of assisted reproductive techniques. This position considers that gestational surrogacy only seeks to satisfy the desire of a few who want to have biological sons and daughters. In this sense, the prohibitionist or abolitionist perspective considers that regulating the practice will not transform the conditions that drive women to engage in these arrangements; on the contrary, it will normalize and institutionalize a kind of reproductive servitude or trafficking.

But what the international experience shows in general terms is that prohibiting surrogacy, instead of protecting the parties, favors the criminalization of the most vulnerable individual involved in the agreement, contributes to the violation of the rights of children born from this practice, and promotes the emergence of new patterns of abuse. Governments

that have adopted punitive models sometimes deny recognition of parentage or nationality to those born from these types of arrangements.³⁵ When the practice is punished in an attempt to combat human trafficking, those who practice or disseminate surrogacy are criminalized: the intended parents, the intermediaries, the health personnel, and the pregnant women, regardless if they participated in the agreement in a free and consensual manner. This association between gestational surrogacy and trafficking victimizes pregnant women by denying them agency or singling them out and punishing them, arguing that their ultimate purpose is to obtain financial gain.

Cambodia is a clear example of the negative consequences of banning surrogacy. After Thailand restricted such agreements, the practice migrated to Cambodia, which lacked laws regarding reproductive medicine and surrogacy. Arguing that the intention was to curb the harmful effects of such arrangements, Cambodia's Minister of Health issued an administrative directive to prohibit the remunerated practice of surrogacy.³⁶ Based on this, at least forty women, some pregnant at the time, remained in prison from June to December 2018, when they were released under the condition that they would raise the babies resulting from these surrogacy arrangements as their own.³⁷

Surrogacy contracts can and often do occur in contexts of cultural, economic, and social inequality between the parties, which can affect the conditions for consent. However, recognizing the agency of women

35 A review of surrogacy in comparative law can be found in: María Mercedes Albornoz (ed.), *La gestación por sustitución en el derecho internacional privado y comparado*, Mexico, IIJ/UNAM/CIDE, 2020. Available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/13/6030/22a.pdf>.

36 Lucas Taylor, "Cambodia Bans Commercial Surrogacy Industry," *BioNews*, Nov. 7. 2016. Available at: https://www.bionews.org.uk/page_95766.

37 United Nations, Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography, and other child sexual abuse material, July 15, 2019, para 77 and GIRE Contribution to Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. Available at: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Children/SR/Surrogacy/CivilSociety/GIRE.docx&action=default&DefaultItemOpen=.

and other surrogates, even in these contexts of inequality, and taking into account the evidence regarding the harmful effects of criminalization, should lead to careful government regulation. Prohibiting surrogacy is a measure commonly based on gender stereotypes and prejudices about motherhood.

On the other hand, even if the prohibition significantly reduces or even abolishes surrogacy in a particular place, experience shows that prohibitionist policies have caused the practice to move to other jurisdictions, often with fewer conditions to guarantee human rights. The transnational nature of surrogacy causes regulatory changes in one jurisdiction to directly affect the practice in another country or territory. In other words, regulating or prohibiting the practice and how it is done has consequences at the domestic and international levels. In countries like Mexico, with defective justice systems and significant institutional weaknesses, criminalization encourages surrogacy services to be offered clandestinely. Consequently, the State has fewer opportunities to mitigate risks and guarantee minimum conditions for consent.

The state of the art of surrogacy in Mexico

In Mexico, surrogacy has been regulated in Tabasco and Sinaloa. In contrast, Querétaro and San Luis Potosí have included articles in their Civil and Family Codes that explicitly disregard this agreement and establish that maternity of the babies born by surrogacy will always be attributed to the surrogate mother. In the rest of the country, surrogacy remains unregulated.

The regulation in Tabasco dates back to 1997 when the local Congress introduced an article in its Civil Code that contemplated registering children born from these agreements. Although the legislation allowed the contracts to exist, it did not offer protections to the parties and favored the appearance of certain abuses and problems. The number of individuals and couples from other countries traveling to this state to enter into such contracts increased significantly in 2012 when India, the largest surrogacy destination in the world, changed its legislation to impose restrictions on foreign individuals and same-sex couples. The changes at the international level had an impact on Tabasco becoming, albeit to a lesser extent, an international surrogacy destination, and the problems with its regulations



began to become visible. In January 2016, the Civil Code of Tabasco was reformed to make the regulation more comprehensive, although some problematic issues remained. These included provisions that encroached on competencies by regulating technical aspects of assisted reproduction procedures that have no place in a local civil norm or ambiguous terms that lend themselves to leaving the parties to the agreement in a situation of legal uncertainty. In 2017, at GIRE we published the report *Gestación Subrogada en México: Resultados de una Mala Regulación* (*Surrogacy in Mexico: Results of Poor Regulation*), in which we explain the human rights violations related to this practice in Mexico, especially in Tabasco: lack of contracts, abuses by clinics and other intermediary agencies, denial of identity documents to girls and boys born from these agreements, criminalization of pregnant women, among others.³⁸

The 2016 reform imposed restrictions regarding who may participate in these agreements. First, all parties had to be Mexican. In addition, the law referred to “the contracting mother and father,” a definition that excluded single people and same-sex couples. One of the severe effects of the new legislation in the state of Tabasco documented by GIRE was the climate of persecution of women who were carrying or had carried for foreigners, single persons, or same-sex couples. Some gestating women who signed legal contracts in the state before the 2016 reform, were threatened and legal proceedings were initiated against them in some instances.³⁹

Deficient or prohibitive regulations harm all parties involved but with more significant effects on pregnant women and babies born from these agreements. Regarding the 2016 reform, the then Attorney General of the Republic filed an action of unconstitutionality that was analyzed by the Plenary of the Supreme Court (SCJN) in June 2021. Some relevant aspects addressed by the SCJN in this ruling were the need to regulate surrogacy and the consideration that the prohibition of the practice generates

negative consequences, among them clandestinity. This brings significant risks for pregnant women and uncertainty for the babies born through these agreements since the government authorities cannot offer protection, monitor the conditions of the consent, or ensure that the clinics and intermediary agencies abide by the law and respect human rights.

Altruistic or paid surrogacy?

Financial remuneration for surrogate mothers is one of the most controversial elements in the discussion on surrogacy. For some, altruistic gestation constitutes an ethical model preferable to paid gestation—or the only acceptable one—because it reduces the risk of exploitation of women in situations of economic and social vulnerability, the commercialization of their bodies, and the commercialization of the babies. For others, remuneration for the service of gestation is a legitimate and fair option, which recognizes the work involved in the gestation process and respects the agency of women and pregnant women to make decisions about their bodies.

In international law there are essential pronouncements on paid surrogacy agreements. The UN General Assembly’s Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography states in Article 2 (A): “Sale of children refers to any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”⁴⁰ Interpretations of what this definition may mean for surrogacy vary. A reductionist approach sees paid surrogacy as the sale of children and therefore considers that it should be prohibited and prosecuted domestically and internationally. In contrast, the Report of the UN Special Rapporteur on the sale and sexual exploitation of children affirms that surrogacy for payment can be compatible with

38 GIRE, *Gestación Subrogada en México: Resultados de una Mala Regulación*, Mexico, 2019. Available at: <https://gire.org.mx/publicaciones/gestacion-subrogada-en-mexico/>.

39 GIRE, *Gestación Subrogada en México: Resultados de una Mala Regulación*, Mexico, 2017, available at <http://gestacion-subrogada.gire.org.mx/#/>.

40 Mexico ratified the protocol on March 15, 2002, and it was promulgated in the Official Gazette of the Federation on April 22 of the same year.



the Protocol and not constitute the sale of children if States regulate it clearly and unambiguously. The regulatory framework for surrogacy needs to guarantee the rights of the parties involved to prevent exploitative practices.⁴¹ In a subsequent report, using the Cambodian case cited above as an example, the rapporteur reiterated that a strict interpretation of the concept of the sale or trafficking of children as a criminal offense could have harmful consequences for the parties. This document recognizes the risks involved in a strict application of criminal law that does not consider the child's best interests or the rights of the surrogate and intended parents. It also explains that it is essential to establish safeguards that focus on surrogate mothers' free and informed consent, which should not lead to their criminalization.⁴²

GIRE has pointed out that financial compensation is a reality that should be acknowledged in legislation, not only in recognition of the will of the parties and the reproductive autonomy of women and other persons with gestational capacity, but also because, otherwise, the agreements would probably be carried out clandestinely, leaving the pregnant party in a situation of greater vulnerability. By establishing prohibitions on surrogacy for payment or remuneration, potential surrogates are left unprotected under the pretense of an altruistic arrangement, which opens the door to even more severe situations of exploitation or abuse. On this particular aspect, the Supreme Court, in resolving the action of unconstitutionality number 16/2016, pointed out that the determination of establishing commercial or altruistic systems in surrogacy contracts is within the competence of local legislatures. However, it also recognized that the best protection for all persons involved in such contracts would only be achieved through a comprehensive regulation that allows both paid and free gestational

41 UN, *General Assembly, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Resolution A/HRC/37/60*, January 15, 2018, p. 21. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/60&Lang=S.

42 UN, *General Assembly, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Resolution A/74/162*, July 15, 2019, p. 19. Available at: <https://www.ohchr.org/es/documents/thematic-reports/sale-and-sexual-exploitation-children-including-child-prostitution-child>.

contracts. Furthermore, regarding Tabasco, the Supreme Court acknowledged that the principle of autonomy of will must prevail and remuneration should be permitted since it is not prohibited in the state's Civil Code. Consequently, the right to charge or not for the gestational procedure corresponds to the woman or pregnant person, since she is the one who submits herself to this procedure.

The discussion on the controversial issues of surrogacy must consider the possibility of abuses in contexts of significant inequality that have been widely documented in Mexico and other regions. However, establishing legal prohibitions, whether civil or criminal, far from eliminating the practice and its consequences, places the parties in greater vulnerability. Given the existing panorama, what is necessary are clear regulations that recognize the various complexities of the practice and that avoid discriminating against the parties. These considerations should lead to a commitment to find domestic and international regulations that guarantee that such agreements can be exercised under the best possible conditions for all the parties. To this end, listening to those that have been involved in surrogacy agreements is essential. Their experiences, motivations, and interests should shed light on the theoretical and practical discussions on the subject. Without this, there is a risk of adopting regulatory models based on moral intuitions whose negative consequences will be faced precisely by those whose rights need to be guaranteed.





04 Conversion therapies

Oriana López Uribe

Since we are children, grown-ups try to mold us through prohibition. I remember, for example, when my mother used to forbid me to watch television and I just ended wanting to watch it even more and finding ways to do it. Prohibition is not very effective, nevertheless, we bet on it to prevent the behaviors that we consider unacceptable in our societies.

Criminal codes are lists of what should not be done, with the corresponding punishments for those who dare to ignore them. Besides the fact that it is a bit naïve to depend on such a strategy to generate the social changes we seek, there is plenty of evidence that criminal systems are, in fact, racist, classist, misogynist, and vio-

lent; a combination that prevents minorities from accessing adequate legal defense. Although it would be more beneficial to reduce and simplify these rules to achieve fairer societies, there are cases in which the advocates of minority groups themselves seek to strengthen rules and make them harsher. This is the case of the LGBT+

movement efforts to criminalize the so-called Conversion Therapies or Efforts to Correct Sexual Orientation and Gender Identity. In 2020, the Mexico City Legislature decided to criminalize these practices and those who force someone to undergo them. Similar reforms followed in other states. In 2021 and 2022, conversion therapies were banned in the State of Mexico, Tlaxcala, Colima, Zacatecas, Yucatan, Baja California Sur, Hidalgo, Puebla, Baja California, Jalisco, and Sonora.

Depending on the context, the term conversion therapies is used to describe various practices and methods that seek to “correct” something that is not wrong and is not “curable”—in some cases clandestinely.⁴³ Their ulterior aim is to “convert” gay, lesbian, or bisexual people into heterosexuals and trans, non-binary, or gender-diverse people into cisgender. Undoubtedly, these so-called therapies are undesirable practices. However, it is essential to stop and reflect on the consequences of their prohibition.

The article mentioned above was added to the Criminal Code of Distrito Federal—the former name of Mexico City—on July 29, 2020. This article, however, is not found in the title of “Crimes against Life, Bodily Integrity, Dignity and Access to a Life Free of Violence,” nor in the title of “Crimes against Sexual Freedom, Security and Normal Psychosexual Development” as would be expected. The prohibition of conversion therapies was framed in Title VI of “Crimes against the Free Development of Personality Committed against Persons over and under Eighteen Years of Age, Persons Who Cannot Understand the Meaning of the Act or Persons Who Cannot Resist the Conduct.” This is found in the fourth chapter: “Labor Exploitation of Minors, Persons with Physical

or Mental Disabilities and Senior Citizens,” although labor exploitation is not an issue in this crime.⁴⁴ But the title is most problematic because it speaks mainly of people who depend on others for their livelihood. In this sense, according to the current Criminal Code of Distrito Federal, the crime of conversion therapy occurs only when people are subjected to it against their will. The criminalization does not consider the complexity of the problem: Conversion therapies are usually advertised with false arguments based on guilt, fear, and stigma and often encourage people of gender dissidence to believe that they are offered a “solution” and, therefore, there are those who enter there on their own.

This leads to a second question: Who is prosecuted for this crime? Who are those who take people under coercion or offer these “pseudo services” under false evidence and the absence of professional ethics because they violate the integrity of persons and their free development? The article points out both parties and makes a redundant distinction concerning the persons already specified in the title and the chapter of the article: “If the conversion therapy is performed on a minor under eighteen years of age or a person who does not have the capacity to understand the meaning of the act or a person who does not have the capacity to resist the conduct, the penalty shall be increased by one half and shall be prosecuted by the office.” In other words, it will always depend on how this article is interpreted. Still, when someone knows of a person who takes a minor to conversion therapy, they can contact the authorities without filing a formal complaint, and these will have to investigate. That sounds quite expeditious and not so bureaucratic, but is it ideal?

The reason that these conversion therapies exist is precisely because they are based on the idea that being homosexual, lesbian, bisexual, pansexual, trans, non-binary, or any orientation and identity that deviates from the cis-hetero-norm is something that is decided and that is also undesirable. Hence, they

43 Many of these practices are poorly documented, as reported by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. UN, *Report on conversion therapy*, 2020. Available at: <https://www.ohchr.org/en/calls-for-input/report-conversion-therapy>.

44 Article 190 of the Criminal Code of the Distrito Federal punishes anyone who provides or forces another person to undergo conversion therapy with two to five years in prison and 50 to 100 hours of community service.

assume that, with a change of habits, it is possible to find a way to fit back into the cis-het-ero-norm. The above is reflected in the results of the 2021 Encuesta Nacional sobre Diversidad Sexual y de Género (National Survey on Sexual and Gender Diversity) in which, of the 4.6 million people aged 15 and over with an LGBT+ sexual orientation and the 908.6 thousand people aged 15 and over with Trans+ identities, 9.8 %, and 13.9 % respectively, indicated that, when their parents found out about their orientation or their identity, they forced them to attend a psychologist, doctor, religious authority, or other person or institution to correct them.⁴⁵

Considering the family members who use these “services” is essential. Conversion therapies are advertised by promising family members of LGBT+ individuals that the latter can be happy. These companies deliberately use the idea of happiness because they know these people are discriminated against. They live in social circles where people look down on LGBT+ people, offer them fewer opportunities, and exclude them from the community to prevent them from “being a bad influence.” Those are the consequences of stigma. Stigma can be thought of as the unwritten Criminal Code of communities: a catalog of undesirable characteristics. Faced with the anxiety of their loved ones facing this discrimination, families believe the false promises of conversion therapies.

So, what happens if someone seeking to “protect” the LGBT+ minor accuses their family of sending their child to conversion therapy? It will be easier for the public prosecutors to find and arrest the mothers, fathers, or primary caregivers than the organizations (secular or religious) that usually offer these services. And what will happen if they are found guilty? In Mexico, in the worst-case scenario, they could end up serving up to 7.5 years in prison. Who will take care of the underage person in that case?

That conversion therapies are recognized to be behaviors that violate the right to free development is a significant advance that helps combat the stigma that those of us in the LGBT+ community must face. However, criminalization offers a false sense of progress and only serves to reduce one of the symptoms of stigmatization that permeates all areas of society

and that, to be abolished, must be addressed comprehensively. Criminal codes are considered a magic wand that will solve society’s problems. Is there violence against women? “Make it a crime!” Hasn’t it been solved? “Throw more years on the sentences!” Still unresolved? “Yes, but. We have done everything.” If only criminal codes were history books behind a glass case, a reference of what used to happen and no longer occurs, this would mean that we have agreed collectively on what we do not want in our societies. Homo-lesbo-bi-pan-transphobia is the real problem, and solving it is not done by punishing those who stigmatize. Something we have learned after decades of HIV management is that stigma is fought with information, education, close contact, and knowledge about people who carry the virus. In other words, we have been able to contain the consequences of HIV with actions that help undo what stigma has done.

The ideal is to transform how we treat each other, to build communities with affection, respect, care, and love for everyone. Let us discuss how stigma has turned sexogenic dissidence into a taboo. If stigma generates stereotypes, let us create content free of gender stereotypes, sexual orientation, gender identities, and expressions. Comprehensive sexuality education is necessary inside and outside schools, workplaces, health centers, congresses, municipalities, and the presidency. Because in Mexico no one has received comprehensive sex education and it is very much needed.

45 INEGI, *Encuesta Nacional sobre Diversidad Sexual y de Género (ENDISEG)*, Mexico, 2021. Available at: <https://www.inegi.org.mx/programas/endiseg/2021/>.



Part II

The paradoxes of justice processes designed for women

- 5. **Protection orders**
- 6. **Automatic pretrial detention**
- 7. **(In)security agents**

II



05 Protection orders

Maïssa Hubert Chakour

The Mexican government has progressively relied on criminal law to address violence, including gender-based violence. Since its conceptualization, the crime of femicide has been included in 33 local criminal codes in Mexico. In 2019, femicide was incorporated into the list of crimes that allow for automatic pretrial detention, along with rape, abuse, or sexual violence against minors.⁴⁶ These measures, however, have not stopped the growing lethal violence against women and girls. Between 2007 and 2019, the murder rate per 100 000 women in Mexico tripled from 2 to 5.9.⁴⁷

⁴⁶ EQUIS: Justicia para las Mujeres, *Prevención de la violencia contra las mujeres*, Mexico, 2022. Available at: <https://equis.org.mx/wp-content/uploads/2022/07/Prevencion-de-las-violencias-contra-las-mujeres.pdf>.

⁴⁷ EQUIS: Justicia para las Mujeres, *Intersecta and Data Cívica, Las dos pandemias: violencia contra las mujeres en contexto de COVID-19*, Mexico, 2020. Available at: <https://equis.org.mx/wp-content/uploads/2020/08/informe-dospandemiasmexico.pdf>.

A more recent example of this tendency to deepen punitive measures can be found in the Programa Integral para Prevenir, Atender, Sancionar y Erradicar la Violencia Contra las Mujeres (Comprehensive Program to Prevent, Address, Punish and Eradicate Violence against Women) 2021-2024, which seeks to discourage violence against women by emphasizing its criminal nature. The Plan Nacional de Desarrollo (National Development Plan) 2019-2024 also considers gender violence a “high-impact crime that must be fought.”⁴⁸ The Mexican government’s gender violence prevention strategy currently focuses on criminalizing forms of violence against women and girls.

What is the problem with this strategy? First, it means that authorities wait for the aggression to be consummated before acting. In other words, they do not protect women at risk and often act when it is too late.⁴⁹ On the other hand, women that face gender violence do not necessarily denounce it to the authorities. According to the 2021 Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (National Survey on the Dynamics of Household Relationships, ENDIREH), 85.7 % of women who have suffered physical and/or sexual violence by their current or last partner did not request support from institutions and did not file a complaint, compared to 78.6 % in 2016.⁵⁰ Among the reasons expressed by women were: not knowing where and how to file a complaint, the shame they felt after the violent act, fear that there could be consequences, and the possibility of disbelief or revictimization from the authorities.⁵¹ Finally, tackling gender violence through criminalization leaves out all those violent acts that do not fall within the list of criminal offenses, like forms of daily violence or microaggressions.

In this context, EQUIS, as a non-governmental organization, has worked closely with other organizations and the judiciary to strengthen the implementation of protection orders as a crucial tool that the government can use to protect women and girls. Protection orders are mechanisms whose central objective is to guarantee a comprehensive sphere of protection against gender-based violence. They can be requested in cases where there is a risk of imminent aggression or to stop the escalation of an existing situation of violence. They must be granted quickly and simply, requiring no further evidence than the woman’s testimony that she is in danger.

Protection orders are among the measures adopted in Mexico as a result of the Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (General Law on Women’s Access to a Life Free of Violence), approved in 2007.⁵² With this law, the Mexican legal framework recognized for the first time that gender violence is a widespread and complex phenomenon that endangers lives and can culminate in what the law defines as feminicidal violence. This law addresses the State’s omissions and proposes a series of actions to be taken by municipal, state, and federal authorities to prevent, punish, and eradicate gender violence.⁵³ In addition to indicating that femicides must be investigated, prosecuted, and redressed from a gender perspective, the law seeks the active participation of multiple types of authorities to prevent and respond to the various forms of violence that can culminate in the murder of women and girls.

The General Law on Women’s Access to a Life Free of Violence considers a series of actions that can be activated within the framework of protection orders. For example: restraining the aggressor from approaching the home, workplace, school, or

48 EQUIS: Justicia para las Mujeres, op. cit., *Prevención de la violencia contra las mujeres*.

49 Fatima Gamboa, “Hablemos de protección porque nos están matando,” *Animal Político*, November 25, 2021. Available at: <https://www.animalpolitico.com/telar-de-justicias/hablemos-de-proteccion-porque-nos-estan-matando/>.

50 INEGI, *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH)*, Mexico, 2016.

51 INEGI, *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH)*, Mexico, 2021.

52 Marcela Lagarde de los Ríos, “Por los derechos humanos de las mujeres: la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia,” *Revista Mexicana de Ciencias Políticas y Sociales*, Vol. 49, No. 200, Mexico, 2007. Among the mechanisms contemplated by the law are the National Bank of Data and Information on Cases of Violence against Women, the creation of Justice Centers for Women, and the Violence Alert mechanisms.

53 Congreso de la Unión, *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, 2007.

any other place frequented by the direct or indirect victims of their actions, as well as the home of the family and friends. These orders also contemplate the transfer of the victim or victims to emergency houses, shelters, or hostels as required to guarantee their safety and protection; personal or home security; and economic resources to guarantee their transportation, food, and communication, among other things. The government's response to requests for protection orders must be comprehensive and involve inter-institutional coordination mechanisms.

In order to be issued, protection orders do not require a complaint; they can be appointed independently from any criminal proceeding or by any authority (prosecutors, judges, police, or trustees) that considers so. This is particularly relevant due to the instances women approach when they are facing domestic violence. While the majority resort to a public prosecutor (37.7 %), followed by the police (25.1 %), a non-negligible number of complaints are filed in municipalities (13.8 %) and labor unions (8.9 %). When gender violence occurs at the school, 90 % of the complaints are filed with the school authorities, and 69 % are filed with labor unions for labor violence. In other words, many women turn to institutions that do not have the power to initiate criminal or civil proceedings but can provide immediate protection.⁵⁴

Unfortunately, despite their great potential, protection orders are not well-known in Mexico and are thus scarcely used. In 2019, as part of the Red para la Ciudadanización de la Justicia (Network for the Citizenization of Justice), EQUIS audited a hundred judicial sentences to evaluate the arguments of local judges from a gender perspective. We found that 69 % of them failed to identify possible situations or behaviors that put women at risk and, therefore, did not issue the necessary protection orders.⁵⁵ In this sense, the judges did not comply with their duty of

enhanced due diligence, which compelled authorities to take measures to prevent violence.⁵⁶

On the other hand, in 2022, 14 non-governmental organizations specialized in assisting and supporting women in situations of violence, including EQUIS, carried out a judicial audit process focused explicitly on protection orders. We analyzed 45 protection orders from four judicial powers and identified that 47 % of the requests are made within a judicial process. Here we see reflected one of the main obstacles to the correct implementation of protection orders: The focus on crimes and the conditioning of any protection mechanism to the initiation of a judicial process. In 88 % of the cases, the protection orders analyzed followed prerogatives in criminal or civil codes, 72 % followed state laws that address gender-based violence against women, and only 67 % referred to the General Law on Women's Access to a Life Free of Violence.⁵⁷

As a result, protection orders are often confused with other measures.⁵⁸ For example, those derived from criminal proceedings or precautionary measures. Precautionary measures seek to protect the investigation, guarantee the accused individual's attendance at the trial, and avoid hindering the process. Although they can complement each other, these mechanisms differ from protection orders, whose *raison d'être* is to prevent and respond to various forms of gender-based violence. While protection orders may have similar effects to precautionary measures (for example, by distancing the woman from the aggressor), they respond to a broader logic in civil or criminal proceedings.

⁵⁴ *Idem*.

⁵⁵ Red para la Ciudadanización de la Justicia, *No es justicia*, Mexico, 2019. Available at: <https://equis.org.mx/wp-content/uploads/2021/02/noesjusticia.pdf>.

⁵⁶ The due diligence standard as a tool for eliminating violence against women. UNHCR, *Report of the Special Rapporteur on violence against women, its causes and consequences*, 2006, p. 6. Available at: <https://acnur.org/fileadmin/Documentos/BDL/2006/4169.pdf?view=1>.

⁵⁷ EQUIS: Justicia para las Mujeres, *No es no es protección*, Mexico, in press.

⁵⁸ Mexican National Code of Criminal Procedures, Articles 137 and 153, 154 and 155.



Abril Perez's case exemplifies how dangerous this confusion can be. Abril was killed in November 2019 in Mexico City when two people on a motorcycle shot her in front of her children. She had been a victim of violence by her partner, which she had denounced in January of that year, and was in the process of trial.⁵⁹ In the first hearing, the judge imposed the precautionary measure of automatic pre-trial detention for Abril's partner due to attempted femicide. Automatic pretrial detentions do not require risk analysis, which meant that there was no evaluation of the suitability of this measure, nor were the risks considered.⁶⁰ In a subsequent hearing, the judge decided to reclassify the crime as injury and domestic violence, which resulted in suspending the preventive detention measure. Although the judge ordered that a new hearing be organized within 48 hours to discuss the relevance of another supplementary measure, none was taken.⁶¹ Abril was left unprotected because the prosecutor's office did not have the elements to propose any other action.⁶²

This is an excellent example of how strategies that privilege criminal prosecution overlook the need to provide the justice personnel with the necessary knowledge on prevention, protection, and risk analysis

in contexts of gender-based violence. This has consequences for the judges responding to requests for protection orders. In the aforementioned audit, 72 % of these orders did not adequately identify the facts and situations of violence. Forty percent did not identify the types of violence committed, and only 12 % of the charges included a definition of violence (gender or family violence). In addition, 77 % of the cases did not include risk analysis. In 72 % of the cases, there is no information regarding the factors of vulnerability that were taken into account for their issuance, nor how the judges evaluated them.⁶³

In Mexico, the prevention of violence against women and girls has focused on the famous saying: "If you suffer from violence, denounce it." While sufficient elements are gathered to prove a crime, the victims are nevertheless left unprotected. Abril's case is an example of how, when the aim is to prevent violence, the focus of the judicial process cannot be on the type of crime in question. What is essential is to address the factors that lead to such violence and promote safe conditions for the victim. The calls to address gender violence need to be conceptualized in terms of lives saved and not only in terms of murders sanctioned.

59 César Reveles, "Abril quería ayudar a víctimas de la violencia, pero fue asesinada en la CDMX", *Animal Político*, November 28, 2019. Available at: <https://www.animalpolitico.com/2019/11/abril-feminicidio-cdmx-violencia-familiar>.

60 Anel Pineda and Alejandro Jiménez, "¿Por qué liberaron al agresor de Abril?", *Animal Político*, December 2, 2019. Available at: <https://www.animalpolitico.com/blog-invitado/por-que-liberaron-al-agresor-de-abril/>.

61 In this regard, it is essential to mention that in Official Letter No. P/DUT/9013/2019, in response to the request for the public version of the resolutions of the case, the Transparency Unit of the Judiciary of Mexico City considered such documents confidential because they were matters that had not yet received a final judgment.

62 Arturo Angel, "Caso Abril Pérez Sagaón: las pistas y dudas a una semana del crimen," *Animal Político*, December 3, 2019. Available at: <https://www.animalpolitico.com/2019/12/abril-perez-sagaon-feminicidio-pistas-exesposo/>.

63 EQUIS: Justicia para las Mujeres, op. cit., *No es protección*.



06 Automatic pretrial detention

Haydeé Gómez Avilez and Adriana E. Ortega Arriaga

In a country where violence does not sleep, where around 97 homicides are perpetrated daily in a context characterized by the militarization of public security and the presence of organized crime, criminalization reigns as the privileged solution.⁶⁴ In this sense, conservative groups ask for zero tolerance in offenses against health, and feminists campaign for harsher penalties regarding crimes such as rape or femicide.

⁶⁴Calculated based on data from INEGI press release No. 376/22: "Datos preliminares revelan que en 2021 se registraron 35,625 homicidios," July 26, 2022. Available at: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/DH/DH2021.pdf>.

An emblematic component of this punitive paradigm is the prevalence and expansion of automatic pretrial detention, which has become the “pillar of the public security strategy,” according to the Mexican government.⁶⁵ Different groups advocate for automatic pretrial detention using a variety of arguments: to restrain corrupt judges, as an incentive to reduce crime, or to protect victims. The consequences of automatic pretrial detention, however, differ from what theory predicts.

Pretrial detention, when it is not automatic, is a precautionary measure by which a person can be imprisoned before being convicted. It should only be used when other precautionary measures are insufficient to ensure that the criminal process continues, to protect victims or witnesses, and to prevent the accused from fleeing. Who reviews and determines that pretrial detention is appropriate for each particular case?⁶⁶ A judge, once they have considered all the arguments by the parties involved and the evidence presented by the prosecutor’s office demonstrating the procedural danger that the accused person’s freedom implies. This has been called justified preventive detention.

Automatic pretrial detention, on the other hand, does not follow these standards. Without debate or deliberation, the law assumes the person’s dangerousness and orders imprisonment. It ties the hands of the judges and forces them to impose imprisonment for determined crimes. This action violates the rights of the accused, precisely, their liberty, due process, and presumption of innocence.⁶⁷ Therefore, it is essential to evaluate this measure critically; analyze whether it works to reduce the incidence of violence, and make visible the negative impacts that the widening of the criminal system that we are seeing in Mexico has on the people—especially women.

A brief history of automatic pretrial detention in Mexico

Although it is generally said that automatic pretrial detentions in Mexico began with the government of President Felipe Calderón, this measure has existed in the country since 1917. What has changed over time is when, how, and why it proceeds.⁶⁸ In 1917, pretrial detention proceeded as a matter of course, and the release of the person charged was exceptional and conditioned to its request, the possibility to post bail, and if the crime in question had a corresponding sentence of less than five years.

In 1993, this scheme was modified. Instead of preventive imprisonment proceeding according to the penalty for the crime, it was now based on the “seriousness” of the crime, which each state legislature defined. This meant that, eventually, a large part

65 Redacción, “Eliminar la prisión preventiva oficiosa terminaría con toda la estrategia de seguridad,” afirma Gobernación,” *Animal Político*, August 25, 2022. Available at: <https://www.animalpolitico.com/2022/08/eliminar-prision-preventiva-corrupcion-ricardo-mejia/>.

66 Article 155 of the National Code of Criminal Procedure establishes thirteen precautionary measures in addition to pre-trial detention. They range from the seizure of assets, the immobilization of accounts, the placement of electronic pagers, the prohibition of going to certain places, and the periodic appearance in court, to name a few.

67 See Inter-American Commission on Human Rights, *Quinto informe de seguimiento de recomendaciones formuladas por la CIDH en el Informe sobre situación de derechos humanos en México*, 2020, para. 259; Inter-American Commission on Human Rights, *Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas*, OEA/Ser.L/V/II.163.Doc. 105, July 3, 2017, para. 91; Inter-American Commission on Human Rights, *Informe sobre el Uso de la Prisión Preventiva en las Américas*, OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, para. 151.

68 A historical review of the figure in: Haydeé Gómez Avilez, “Breve historia de la prisión preventiva oficiosa,” *nexos. El Juego de la Corte*, September 13, 2021. Available at: <https://eljuegodelacorte.nexos.com.mx/breve-historia-de-la-prision-preventiva-oficiosa/>.

of the crimes were considered severe, and the rule, once again, was imprisonment.⁶⁹ This was the scheme in place in the Atenco case; when eleven women that had been victims of sexual torture in Atenco, Mexico, during a police operation, were detained, tortured, and imprisoned for days, months, and even years in some cases.⁷⁰

With the reform of the Constitution in 2008 that implemented an adversarial criminal system, automatic imprisonment was determined to be used only for a limited list of crimes. For all other offenses, automatic pretrial detention could be ordered as long as the prosecutor's office could justify its need. However, the list of crimes that merit automatic pretrial detention, rather than being maintained or reduced, has expanded over time. In 2011, crimes related to human trafficking were added. In 2019, even more crimes were added to this list after the demands of diverse groups, from business people to civil society organizations and victims' rights activists.⁷¹ Despite criticism from other actors, in April 2019, the Mexican Constitution was reformed to expand the catalog of crimes that merit automatic pretrial detention. The following table records the mentioned changes over time:


When is pretrial detention mandatory?

- 2008** Article 19. [...] The judge will order pretrial detention, ex officio, in cases of organized crime, intentional homicide, rape, kidnapping, crimes committed with violent means such as weapons and explosives, as well as serious crimes determined by law against the security of the nation, the free development of personality and health.
- 2011** Article 19. [...] The judge will order pretrial detention, ex officio, in cases of organized crime, intentional homicide, rape, kidnapping, trafficking in persons, crimes committed with violent means such as weapons and explosives, as well as serious crimes determined by law against the security of the nation, the free development of personality and health.
- 2019** Article 19. The judge shall order preventive imprisonment ex officio in cases of abuse or sexual violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, trafficking in persons, housebreaking, use of social programs for electoral purposes, corruption involving the crimes of illicit enrichment and abuse of office, theft of cargo transportation in any of its modalities, crimes involving hydrocarbons, crimes committed with violent means such as weapons and explosives, crimes involving firearms and explosives for the exclusive use of the Army, the Navy, and the Air Force, as well as serious crimes determined by law against the security of the nation, the free development of the personality, and health.

⁶⁹In some state's criminal codes, this list included up to 44 crimes, as in the case of Chiapas. In others, such as Chihuahua, a serious crime is defined by the average imprisonment time of three years.

⁷⁰Inter-American Court of Human Rights, *Women victims of sexual torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 28, 2018, paragraphs 252 and 253.

⁷¹This debate can be seen in depth in the Chamber of Deputies, LXV Legislature. *Parlamento abierto, Audiencias Públicas Prisión Preventiva Oficiosa*, 2019. Available at: <http://www5.diputados.gob.mx/index.php/camara/Audiencias-Prision-Preventiva-Oficiosa/Materiales-de-las-Audiencias>.



Some crimes in this list are clearly delimited. However, others are regulated through secondary legislation, such as the Código Nacional de Procedimientos Penales (National Code of Criminal Procedures) or specific laws on the matter. Thus, in reality, many more crimes than those listed in the Constitution merit automatic pretrial detention.⁷²

While the expansion of the list was being discussed in 2019, activists and legislators proposed to include femicide. They argued that the context of impunity and violence against women in Mexico required extraordinary mechanisms to ensure “justice for the victims of femicide.” According to them, the inclusion of femicide in the catalog of crimes meriting automatic pretrial detention would imply better procedural conditions for direct and indirect victims and witnesses to circumvent the incapacity of the prosecutors or the arbitrariness of the judges, both indifferent to the rights of the victims.⁷³

The initiative to include femicide within the catalog of crimes that merit automatic pretrial detention stated that, given “the dynamics, evolution, and increase of this crime,” automatic imprisonment was necessary to “create a stricter, more punctual and effective legal framework to prevent, combat, and end the impunity that prevails in these cases that affect and tear apart our social fabric.”⁷⁴ The Comisión de Puntos Constitucionales (Constitutional Points Commission) of the Chamber of Deputies even pointed out that “the situation of violence, impunity, and insecurity [...] [requires] instruments to protect the rights of society” and “to reduce the high incidence in the commission of some criminal conducts, highly harmful to the victims or institutions themselves.”⁷⁵

But is there indeed a reduction in crimes when these merit automatic pretrial detention? Let us take two crimes that primarily affect women as an example. Rape was included in the constitutional catalog of crimes that warrant automatic imprisonment 14 years ago, in 2008. What the data from the Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (National Survey of Victimization and Perception of Public Security, ENVIPE) indicate is that changes in the incidence of this crime seem to be entirely disconnected from the incarceration of people allegedly responsible for these events. From 2010 to 2013, the proportion of women who reported having been victims of rape increased five times.⁷⁶ For their part, between 2018 and 2020, femicides increased by 43%, as

72A systematic analysis of the legislation identified at least 140 offenses for which a person can be sent to automatic pretrial detention. This is, again, an estimate. It clearly goes beyond what the Constitution and the National Code of Criminal Procedures indicate. See: *Intersecta, Con juicio o prejuicio: la prisión preventiva oficiosa en México*, Mexico, 2022. Available at: <https://drive.google.com/file/d/18hH4KL98xU0xcjfHNU8djmPc73mCQxJE/view?usp=sharing>.

73These arguments can be seen in: the Chamber of Deputies, LXV Legislature, Mesa de Trabajo: *Feminicidio y Prisión Preventiva Oficiosa*, January 29, 2019. Available at: https://www.youtube.com/watch?v=01PZGM3b_Pw.

74See: *Iniciativa por el que se reforma el artículo 19 de la Constitución presentado por la diputada Silvia Lorena Villacencio Ayala*, December 6, 2018. Disponible en: http://sil.gobernacion.gob.mx/Archivos/Documentos/2018/12/asun_3789084_20181204_1542285478.pdf.

75Chamber of Deputies, *Dictamen de la Comisión de Puntos Constitucionales, con modificaciones a la Minuta Proyecto de Decreto, por el que se reforma el artículo 19 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Prisión Preventiva Oficiosa*, 2019, p. 41. Available at: <http://www5.diputados.gob.mx/index.php/camara/Audiencias-Prision-Preventiva-Oficiosa/Dictamen>.

76While this increase may be due to a greater awareness of violence by women themselves, the truth is that we cannot observe any relationship between the incidence of rape and the application of automatic imprisonment to punish this crime.

did homicides of women.⁷⁷ This crime has intensified since the beginning of the so-called “War on Drugs” in Mexico and the militarization of public security. Since 2007, the rate of murders of women has practically tripled no matter the fact that the crime is listed in the Constitution as a crime that merits automatic pretrial detention.⁷⁸

Unintended consequences of automatic pretrial detention ⁷⁸

Beyond the violations of the human rights of individuals who come into contact with the criminal justice system through automatic imprisonment, the application of automatic pretrial detention disproportionately impacts women. Available data indicate that four out of every ten men (86,850) are in prison without a sentence, while one out of every two women deprived of their liberty (6,461) are in prison without a sentence.⁷⁹

We cannot know precisely how many people are in pretrial detention in Mexico because there is no statistical instrument to measure this. However, based on an approximation we constructed at Intersecta, we can estimate that a higher percentage of the crimes that merit automatic pretrial detention are attributed to women: 46 % versus 41.6 % attributed to men. Proportionally, there is a higher representation of women than men serving a sentence for crimes such as kidnapping, organized crime, and even human trafficking. However, interviews with women in prison suggest that many were unjustly charged or were accomplices. However, these details are lost when they are prosecuted, which means that women accused of committing such crimes are not judged with a gender perspective.⁸⁰

The sociodemographic characteristics of the population in pretrial detention also need to be considered. The majority of these individuals, approximately 54.1 %, are 35 years of age, which contrasts with the national adult population, where 39 % are under 35 years old or younger. Similarly, when analyzing educational levels, people with less schooling are overrepresented in prison. In terms of the income, they received before their incarceration, 60 % of those in pretrial detention received less than 7,500 pesos per month—equivalent to less than two 2021 minimum wages—while almost a quarter received less than 3,000 pesos, an amount that did not even represent one minimum wage. In other words, the automatically incarcerated individuals tend to come from very precarious backgrounds.

In this regard, it is worth highlighting the conditions in which people in prison live. Available data indicate that many of them do not have access to basic goods, menstrual management products, or medical care. In addition, people in prison experience violence, such as robberies, physical injuries, and even sexual violence. Rape is four times more common for women and 13 times more common for men in pretrial detention.

77 Calculated using on the National Census of State Justice Procurement. INEGI, Censo Nacional de Procuración de Justicia Estatal, Mexico, 2021. Available at: <https://www.inegi.org.mx/programas/cnpje/2021/>.

78 To learn more about the impacts of militarization on women's homicides, see: Intersecta, *Las dos guerras*, Mexico, 2020. Available at: <https://www.intersecta.org/lasdosguerras/>. And Data Cívica, *Claves para entender y prevenir el asesinato de mujeres en México*, Mexico, 2019. Available at: <https://docs.google.com/viewerng/viewer?url=https://patrimoniobiocultural.com/subidas/2019/11/claves-para-entender-y-prevenir-los-asesinatos-de-mujeres-en-mexico.pdf&hl=en>.

79 The number of persons in pretrial detention was taken from the Monthly Notebook of National Prison Statistics Information for the month of August 2022. Available at: <https://www.gob.mx/prevencionyreadaptacion/documentos/cuaderno-mensual-de-informacion-estadistica-penitenciaria-nacional>. The total number of persons deprived of liberty at the national level is 229,621. The Órgano Administrativo Desconcentrado de Prevención y Readaptación Social (OADPRS) manages the data.

80 Intersecta, *Amicus curiae para la acción de inconstitucionalidad t130/2019, y amparo en revisión 355/2021*, September 2022. Available at: <https://drive.google.com/file/d/1idnwRrBMZX8U8Tj0YeVciOCjsy1cPdI/view>.

Finally, automatic pretrial detention affects people inside prisons, but also has consequences for their loved ones, who visit them and provide them with food, water, and other essential items. This caregiving role falls, for the most part, on the women in the families of the persons deprived of liberty. This contributes to their own economic precariousness. Automatic pretrial detention is, therefore, a mechanism that perpetuates indirect discrimination against women.⁸¹

As we have shown using available data, automatic pretrial detention has social, economic, and health consequences for the families of persons deprived of their liberty. Beyond the legal discussion, mainly women, live and suffer the effects of the arbitrary nature of this punitive policy. Faced with this situation, there are two alternatives. The first is to continue validating the mechanism of automatic imprisonment that affects the lives of people in vulnerable situations by first depriving them of their liberty and then investigating them. The other possibility is to start putting human rights at the center of the justice system and guarantee the principles that govern the criminal process.

81 *Idem.*





07 (In)security agents

*Estefanía Vela Barba and
Fernanda Torres*

On February 16, 2002, Valentina Rosendo Cantú needed to go to a stream near her home in Barranca de Bejuco, an area very difficult to access in the state of Guerrero. The 17-year-old teenager, from the indigenous Me'phaa community, had to wash her clothes. A significant military deployment, allegedly aimed at controlling various criminal activities, was in the area. A group of eight soldiers and a civilian who had been detained arrived at Valentina's house. They asked her if she had seen some hooded men and showed her a photograph and a list of names. The young woman replied that she did not know them. One of the soldiers then hit her in the stomach with his gun, causing her to lose consciousness. When she woke up, she was lying on the ground. The soldier kept asking her the whereabouts of these people, threatening to kill her and her entire community if she did not tell him. When Valentina did not respond, he scratched her face and tore off her clothes. Subsequently, two of the soldiers raped her...⁸²

The case of 25-year-old Inés Fernández Ortega was similar. On the afternoon of March 22nd, 2002, 11 armed soldiers showed up at her home, also in the Me'phaa community in Barranca Tecoani, Guerrero. The presence of the soldiers in the area was not unusual,

⁸²Inter-American Court of Human Rights, Case of Rosendo Cantú et al. v. Mexico, Judgment of August 31, 2010.

as they were supposedly carrying out organized crime control activities. Three of the soldiers entered her home. Inés was alone with her four children. Her husband had just killed one of the family's cattle, and the animal's meat was hanging in the backyard to be eaten later. Upon seeing the meat, the soldiers pointed their guns at Inés while insistently asking her where her husband had gone to steal it. Inés was terrified. She was not fluent in Spanish and could not answer the soldiers' questions. One ordered her to get down on the ground; another raped her.⁸³

On May 3 and 4, 2006, a massive operation took place in the towns of Texcoco and San Salvador Atenco, in the State of Mexico, in which hundreds of elements of the Federal Preventive Police, along with the Municipal and State police were involved. The government was planning to build an airport in the municipality of Atenco, and the area had become a place where different social demands and protests converged. The events at the beginning of May 2006 responded to a series of conflicts between local authorities and a group of florists who were to be relocated. The police used excessive force, and, as a result of the operation, two young people were killed and hundreds of others were detained and tortured. Such was the case of the 11 women from Atenco, sexually abused by the police during their detention and transfer to the Santiaguito Social Rehabilitation Center: Yolanda Muñoz Diosdada, Norma Aidé Jiménez Osorio, María Patricia Romero Hernández, Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Ana María Velasco Rodríguez, Suhelen Gabriela Cuevas Jaramillo, Bárbara Italia Méndez Moreno, María Cristina Sánchez Hernández, Angélica Patricia Torres Linares and Claudia Hernández Martínez. They were journalists, students, and pedestrians who were only passing by the area and were unjustly detained and mistreated in multiple ways. In their testimonies, these women narrated that, during their detention and transfer to prison, the police officers beat them, kicked them, pulled their hair, insulted and threatened

them, groped them, and penetrated them with their fingers and various objects, among other practices of sexual torture. Both male and female police officers participated in these acts of torture. Subsequently, the women were falsely accused of various crimes, for which some of them spent up to two years and eight months deprived of their liberty.⁸⁴

In northern Mexico, in Chihuahua, on the night of December 29th, 2009, Nitza Alvarado and her cousin José Ángel Alvarado were aboard a pickup truck in the Ejido Benito Juárez. Nitza was 31 years old and had hemiplegia due to a cerebral infarction. Suddenly, two private pickup trucks arrived, from which several people with guns and military uniforms emerged. They inspected Nitza and José Ángel's van, and, after an exchange of words, took Nitza out of the vehicle, pulling her by the hair. José Ángel tried to defend her, but they hit him in the face with a gun. Both were dragged inside one of the vans and taken away. About an hour later, another group of people in military uniforms went to the house of Rocío Irene Alvarado, niece of Nitza and José Ángel. The 18-year-old was with her two brothers, son, and mother. The uniformed officers searched the house and took Irene into custody. The whereabouts of Nitza, Rocío Irene, and José Ángel were not known again.⁸⁵

These cases, which all culminated in condemnation of the Mexican State by the Inter-American Court of Human Rights, exemplify some of the practices of torture exercised by security forces in Mexico: beatings, insults, threats to harm detainees or their families, rape, arbitrary detentions, and fabrication of crimes. In the following section, we show how these practices, far from being exceptional, are the norm in Mexico.

83Inter-American Court of Human Rights, Case of Fernández Ortega et al. v. Mexico, Judgment of August 30, 2010.

84Inter-American Court of Human Rights, Case of Women Victims of Sexual Torture v. Mexico, judgment of November 28, 2018.

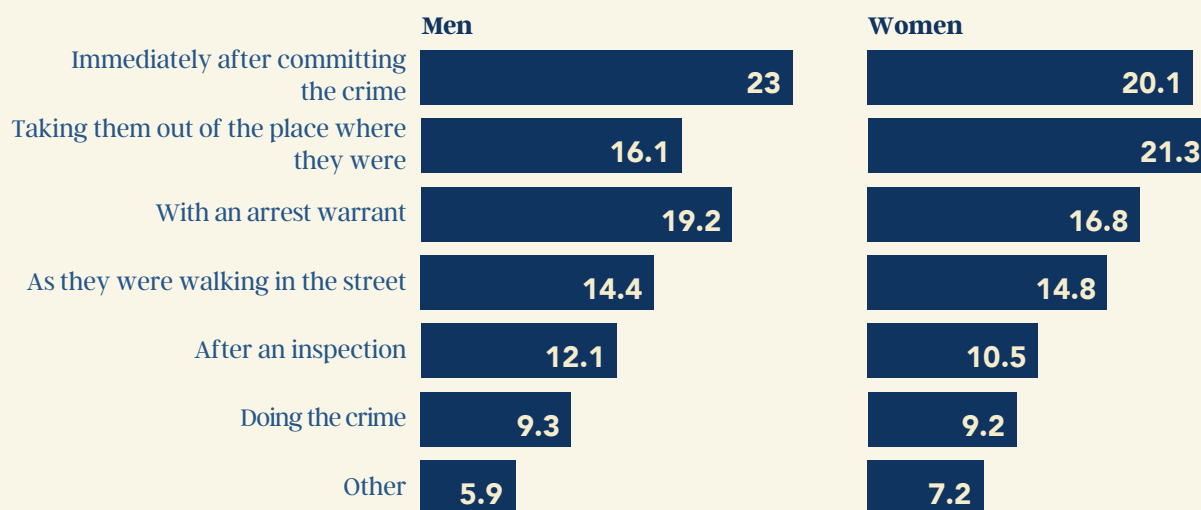
85Inter-American Court of Human Rights, Case of Alvarado Espinoza et al. v. Mexico, judgment of November 28, 2018.

Torture: The rule rather than the exception

In Mexico, the Encuesta Nacional de Población Privada de la Libertad (National Survey of the Population Deprived of Liberty, ENPOL), applied to individuals deprived of liberty, is one of the few sources of information on the violence exercised by security forces during arrests.⁸⁶ It allows comparison of specific aggressions based on the type of authority that made the arrest and the sex of the person arrested.

What does the ENPOL tell us about how security forces act in Mexico?⁸⁷ For starters, it allows us to know under what circumstances people are arrested. In an ideal scenario, people should be arrested with an arrest warrant. However, according to the ENPOL (2021), only 19.2 % of men and 16.8 % of women deprived of their liberty were arrested with an arrest warrant, compared to almost a third being in flagrante delicto arrests for both men and women.⁸⁸ In addition, 42.6 % of the men and 46.6 % of the women reported being arrested after being taken out of the place where they were or while walking down the street, in both cases without an arrest warrant. This was the case of the women of Atenco, several of whom were detained while passing through the area or while they were shopping in the market.

In Mexico, how were people deprived of their liberty detained?
By sex of the detained person



Source: National Survey of Population Deprived of Liberty (ENPOL) 2021.
Data processed by *intersecta.org*

⁸⁶For an analysis of the inadequacies of the various surveys and censuses related to security forces, see Georgina Jiménez and Estefanía Vela Barba, "La (opacidad de la) violencia de las fuerzas de seguridad," *Animal Político: Blog de Intersecta*, August 27, 2019. Available at: <https://www.animalpolitico.com/blog-de-intersecta/la-opacidad-de-la-violencia-de-las-fuerzas-de-seguridad/>.

⁸⁷There are two editions of the ENPOL: 2016 and 2021. In this essay, we exclusively use data from the 2021 edition without comparing between years. For an analysis of torture by security forces based on the 2016 edition, see Carolina Torreblanca and Estefanía Vela Barba, "¿Qué podemos esperar de la Guardia Nacional?," *Animal Político: El foco*, January 16, 2019. Available at: <https://www.animalpolitico.com/el-foco/que-podemos-esperar-de-la-guardia-nacional/>.

⁸⁸A flagrante delicto arrest refers to an arrest made at the time of the alleged conduct for which the individual or individuals are later accused.



Information from this survey indicates that the majority of arrests made in Mexico do not derive from the results of an investigation. This allows for a series of irregularities in the process of arrest and imprisonment, including the fabrication of guilt. In fact, according to the 2021 National Survey of the Population Deprived of Liberty, 43.4 % of men deprived of their liberty and 53.3 % of women deprived of their liberty claimed to be in prison due to a false accusation. When we look at this percentage for people detained while walking in the street or taken from the place where they were, the rate rises to 56 % for men and 61.5 % for women—a difference of almost ten points. Again, Atenco is a paradigmatic example: Women passing by were falsely accused of carrying weapons, using explosives, and kidnapping.

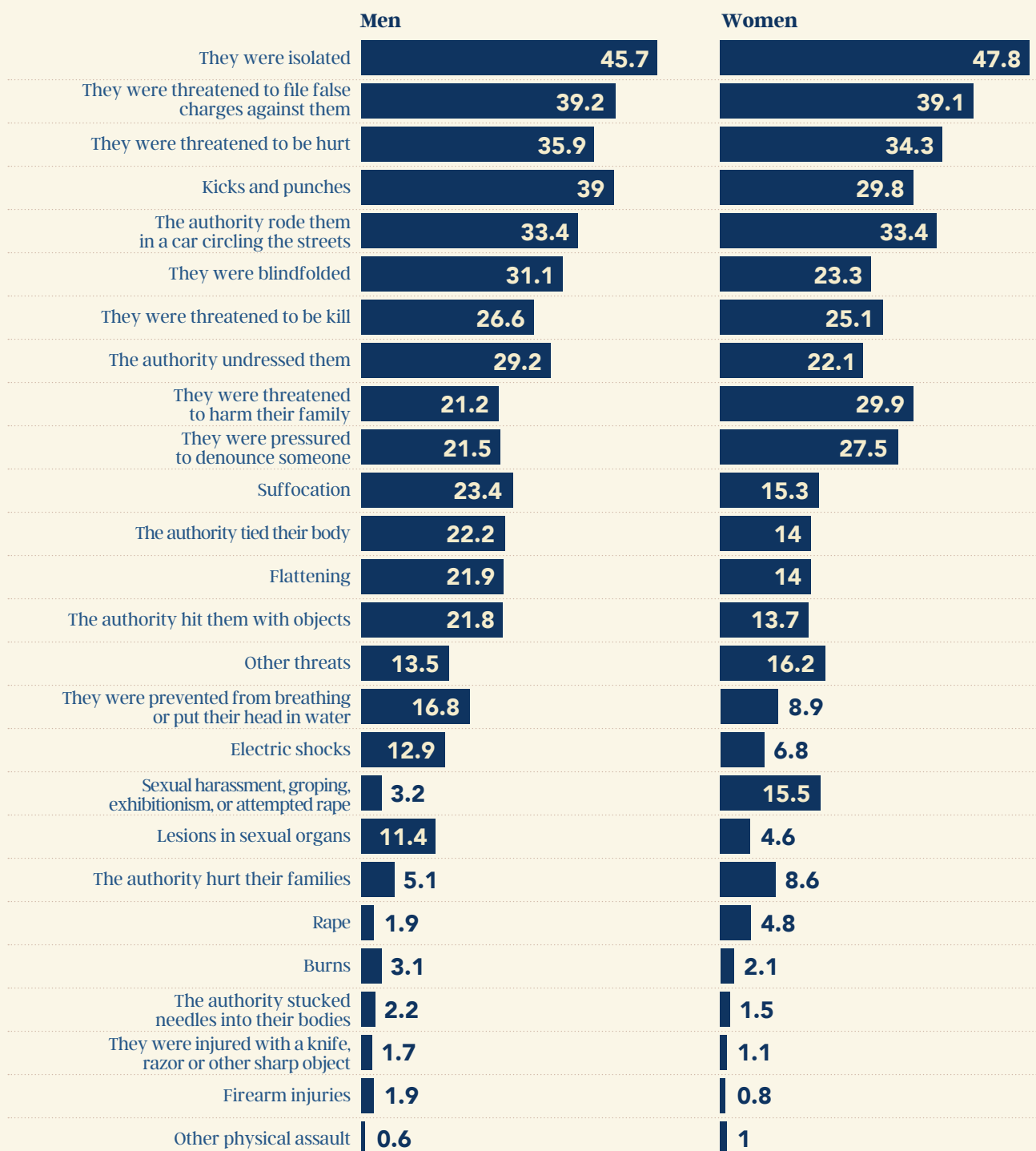
Detained persons have the right to be informed of the specific reasons for their arrests. However, 58.4 % of men deprived of their liberty in Mexico reported that the authorities did not tell them why they were being detained, a percentage that rises to 64.8 % in the case of women.

Arbitrary or irregular detentions are frequently the starting point for other right violations like violence during arrest and transfer to the Prose-

cutor's Office. In theory, the detaining authorities should refrain from using violence during arrests, the use of force being subject to the principles that regulate it. However, excessive use of force is so common in Mexico that one out of every two persons deprived of their liberty suffered injuries during their arrest. It is also a matter of concern that four out of every ten men and three out of every ten women deprived of their liberty were threatened with firearms during their detention, and 5.6 % of men and 2.2 % of women reported having been shot. Such is the case of Inés, summarized above, to whom soldiers pointed a firearm to obtain information. These figures are signs of the excessive and improper use of force by security forces.

However, the ENPOL (2021) also shows that seven out of ten people deprived of their liberty reported having experienced at least one aggression either inflicted or allowed by the authorities after their detention and before they arrived at the Prosecutor's Office. What type of violence is exercised by the authorities at this point in the detention process? The aggressions referred to are diverse, as seen in the following graph.

What percentage of the people deprived of their liberty experienced violence during their detention?
Between the detention and when they were put at the disposal to the Public Ministry
By specific aggression and sex of the person detained



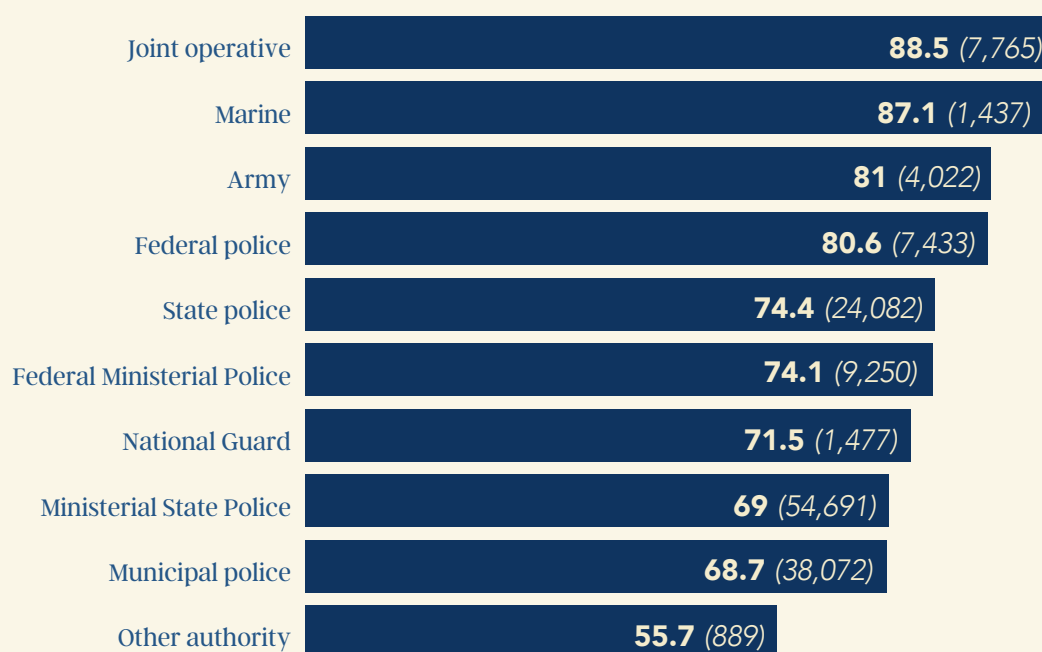
Source: National Survey of Population Deprived of Liberty (ENPOL) 2021.
 Data processed by [intersecta.org](https://www.intersecta.org)

The graph shows that the percentage of men who reported having suffered one of these aggressions is higher or similar to that of women. However, we observe a marked difference between the percentage of women and the percentage of men who reported having experienced rape: 4.8 % of the women deprived of their liberty were raped, while 1.9 % of the men experienced this aggression. Likewise, 15.3 % of women were sexually harassed, groped, and aggressed, and faced exhibitionism or attempted rape by security forces—this is five times the percentage for men (3.2 %). The sexual violence reported by Inés, Valentina, and the women of Atenco corresponds to these gender patterns.

On the other hand, the 2021 ENPOL data indicate essential differences according to the type of authority that carries out the detention. Torture occurs

more often when the arrest occurs within the framework of a joint operation (88.5 %), in which different types of security forces participate.⁸⁹ Violence is also much more common in detentions carried out by the Navy and the Army: Of every ten people detained by these authorities, nine and eight, respectively, were tortured. The percentage of people detained by the State Police who reported having experienced violence between arrest and transfer to the Public Ministry was 74.4 %. In comparison, the rate for people arrested by the State Ministerial Police was 74.1 %, and for the Municipal Police was 68.9 %. A statement that helps us dimension this reality: The police that tortures the least in Mexico, the Municipal Police, committed some sort of assault in almost seven out of ten arrests. Violence is the rule rather than the exception.

What percentage of the people deprived of their liberty experienced violence during their detention?
Between the detention and when they were put at the disposal to the Public Ministry
By authority that made the detention



Source: National Survey of Population Deprived of Liberty (ENPOL) 2021.
Data processed by intersecta.org

⁸⁹A joint operation is the planned deployment of security forces in which various government orders cooperate.

Protect and serve the community?

So far, we have seen how arbitrariness and violence are common in detentions carried out by security agents in Mexico. This is shown both in the cases that have reached the Inter-American Court of Human Rights, as well as in data obtained from the 2021 National Survey of the Population Deprived of Liberty. What interests us in this section is to contextualize the detentions carried out by security agents, answering two questions: How many people are detained in Mexico, and what are the reasons for their detentions?⁹⁰

In 2020, according to the Census of the National Institute of Statistics and Geography (INEGI), the Municipal Police made 1 811 974 arrests; the State Police 759 965 and the National Guard 7 533. On the other hand, the Sedena (National Defense Ministry) detained only 6 568 people that same year and the Semar (National Marine Ministry) detained 906 according to these institutions' answers to our public information requests.⁹¹ That gives us approximately 2.5 million people arrested in the year the COVID-19 pandemic began. 2.5 million people in a single year! Compared to State and Municipal Police, the Armed Forces detain very few people. The armed institution with which people deal the most in their daily lives are, precisely, local police officers. Although, as was seen with the ENPOL (2021), the Municipal and State Police are the ones that torture the least—when compared to federal forces—but the sheer volume of their arrests (2.5 million) is most certainly the reason why

they tend to awaken a negative perception among the citizenry.⁹²

According to INEGI, in 2020, there were approximately 21 million victims of some sort of crime in Mexico. Considering that information, the number of people detained seems small.⁹³ The question is: For what reasons were people detained? Was the majority of the people detained accused of homicide or kidnapping, for example? No.

The overwhelming majority of the people arrested were detained for civic misdemeanors and not for crimes. Of the 2 579 472 people arrested by the Municipal Police, State Police, and National Guard, 83 % were detained for a civic misdemeanor. What is the difference between a civic misdemeanor and a crime? In the case of Mexico City, the crucial difference are the sanctions: for civic misdemeanors, there are warnings, fines, community service, and brief arrests (the longest is 36 hours). What happens with crimes? The main sanction is imprisonment, which can last decades. Although both systems agree in sanctioning certain behaviors—for example, hitting someone can be a misdemeanor and a crime—the civic legislation includes obligations such as picking up pets' feces or throwing garbage in the indicated places. Even if these are different orders, the authority enforcing the law in the streets is the same: the Police (and, in Mexico, the Militia).⁹⁴

Now, what is the specific reason why most people are arrested in Mexico? The number one cause of arrests in the country in 2021 was the consumption of alcohol in public spaces. The third cause was the

⁹⁰It is very important to clarify what is meant by detention. The concept used by the INEGI is "making available," which it defines as the "act, documented in the Homologated Police Report, using which the members of the police institutions physically present persons and/or objects derived from their intervention before the competent authorities due to the commission of civic misdemeanors and/or probably criminal acts." Several clarifications are essential. First: The figure excludes arrests that do not culminate in the person's presentation before the competent authority, with the corresponding record. Second, the fact that people are brought before the prosecutors, or the civic courts does not mean they were incarcerated. The number of people who enter Mexico's prisons yearly is much lower (approximately 100,000 per year). You can be arrested and released. You can be arrested and go free. Third: in the same IPH, there can be several people detained. For this reason, "puesta a disposición" is not equivalent to "persona detenida." Fourth: under the HPI, there can be "renditions without 'use of force'" (as defined in the National Law on the Use of Force), and there can be "use of force" without a rendition.

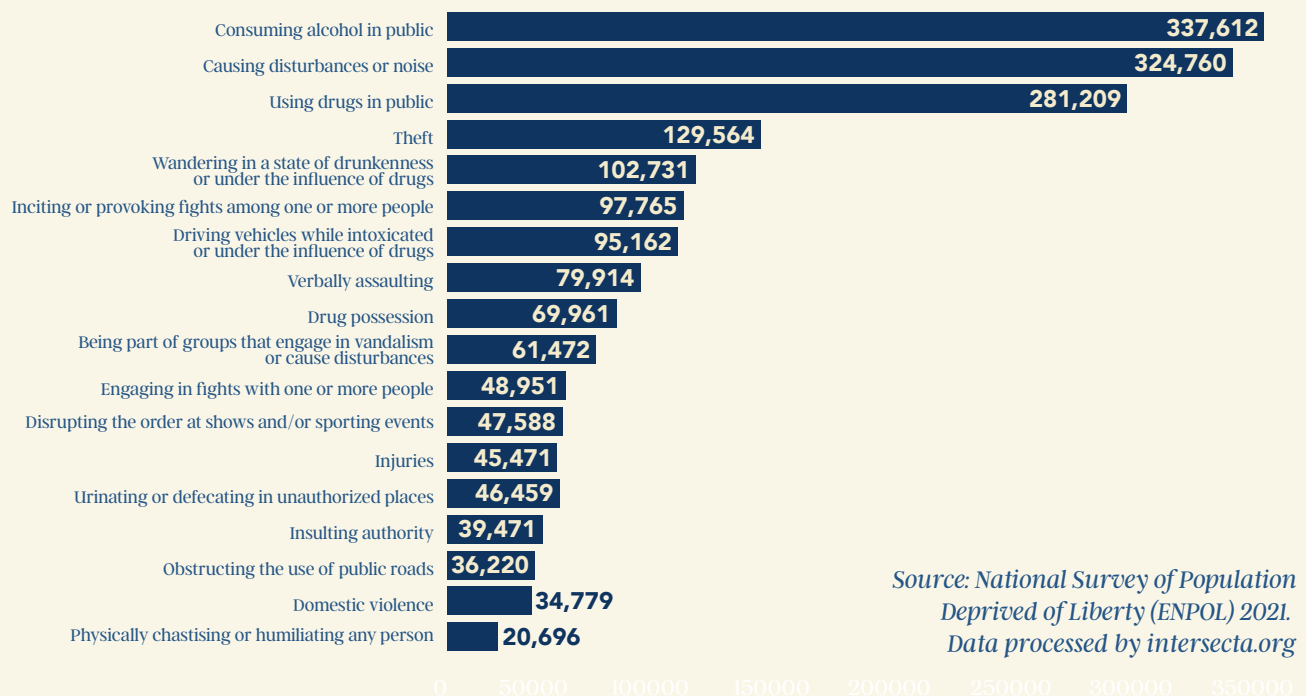
⁹¹Semar's response to the requests for access to public information with folio numbers: 0000700008921 and 0001300078321.

⁹²Both the Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (National Survey on Victimization and Perception of Public Security) and the Encuesta Nacional de Seguridad Pública Urbana (National Survey on Urban Public Security) show that people trust the Armed Forces more than the police. Undoubtedly, the reason that explains this difference must be multifactorial. Looking at the arrest figures, however, we believe that one of them is simply the volume of police arrests. It is the punitive face of the state that people deal with daily. For a survey that makes citizen perception of the Armed Forces more complex, see Daniel Zizumbo-Colunga and Benjamín Martínez-Velasco, *Militarización en tiempos de pandemia: una exploración de las experiencias, percepciones y preferencias de la ciudadanía*, Mexico, CIDE. Drug Policy Program, 2021. Available at: <https://drive.google.com/file/d/1OYUpc4YN-wXUTO5-4RCijGUEur4ZKI0rE/view>.

⁹³INEGI, *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública* (2021). Main results, September 2021. Available at: https://www.inegi.org.mx/contenidos/programas/envipe/2021/doc/envipe2021_presentacion_nacional.pdf.

⁹⁴This could be one more example of alternatives to the penal system that do not work.

What were the most common offenses or crimes for which people were detained by the police in Mexico in 2020?"
This includes presentations of individuals made by municipal and state police and by the National Guard



consumption of drugs other than alcohol in public areas. Suppose you put together all the arrests concerning consumption, possession, dealing drugs, and simply wandering in public under the influence of some substance. These arrests represent 32 % of the total arrests in a year. In all these cases, there is no risk to a third person. Nor are these acts committed with violence. However, they represent one out of every three arrests in the country.

What is the second most common reason for arrests? Noise. The figures show how the police serve, more than anything else, to preserve the appearance of order as conceived by conservatism. Robbery is perhaps the behavior for which the police carry out the most arrests and where there is concrete harm to a person. There are also verbal assaults and injuries. But, as seen in the graph, it is even more common for police to arrest people for "insulting authority" than for "family violence." So, what exactly, are security forces protecting us from?

Appeals to use criminal law include the use of security agents: the Police and, in the case of Mexico,

the Armed Forces. In this essay, the data we recover demonstrate that the actions of the different security forces in Mexico have tangible and often lethal consequences on people's lives. Be it police, soldiers or marines, there are plenty of examples of how, regardless of the uniform they wear, State security agents participate in abuses and rights violations against people, particularly those belonging groups that have been historically discriminated against. The feminist slogan that says that the Police—and, we would add, the Militia—do not take care of us ("*La policía no me cuida, me cuidan mis amigas*" [police do not look out for me, my friends do]) seems accurate.

The question that arises then is: From a feminist perspective, how can we justify the use of these institutions?



Part III

Penalties in addition to penalties

- 8. Sex offender registries
- 9. Women and prison: Personal testimonies
- 10. Impossible reintegration

III

08 Sex offender registries*

Darinka Lejarazu and Brenda Velázquez

On March 23, 2019, we saw the appearance of #MeTooEscritoresMexicanos (#MeTooMexicanWriters) in different social media. It was a continuation of previous hashtags, such as #MiPrimerAcoso (#MyFirstHarrasment), but this time the names that came up were well-known names in the literary industry, and many of them. Soon other hashtags emerged, such as #MeTooTeatro (#MeTooTheater) and #MeTooFotógrafos (#MeTooPhorographers), which also featured the names of admired, hated, successful, or mediocre men, some of whom were mentioned by more than five women. The testimonies denounced rape, manipulation, gaslighting, and physical, psychological, and institutional violence.

*This essay was written months before the discussion at the Supreme Court, in February 2023, on the subject. However, the essay still relevant because it exposes arguments the Court has not considered.

Mainly looking for catharsis and to let the world know that the violence they experienced had been real, dozens of women shared their stories, and the rest of us backed them up by responding: “I believe you.” We offered support and a coffee to chat; we were sorry for not having noticed the violence, and we accompanied them to report the crimes, among other solidarity actions. The campaign had real consequences, and the request of women that had experienced situations of violence became, from then on: “Believe us.”

This was not the first time that violence experienced by women in Mexico had been publicly denounced. In 1978, artist Monica Mayer’s installation, *El Tendedero*, did something similar. In time, many protests will surely follow. However, what we are now seeing is the Mexican government also using these feminist strategies of public denunciation. This can be problematic. What happens when the face of an aggressor is in a public database, but the government is still not tending to the victims of said aggressions? Most importantly: Do we expect from the government what we can and have built ourselves as feminists, or do we expect more, much more?

In response to the high rates of sexual violence in Mexico City, in December 2019, Claudia Sheinbaum, then head of the government, presented an initiative to the local Congress to create the *Ley del Registro Público de Agresores Sexuales de la Ciudad de México* (Law of the Public Registry of Sex Offenders of Mexico City). The law’s objective was to establish an “effective mechanism of prevention and protection to [...] address the risk factor of recidivism and repetition of behaviors of sexual violence, in favor of victims or potential victims of this violence.”⁹⁵ Initially, the registry was thought to aid the public prosecutor’s office investigations. Simultaneously, the threat of publicizing such information pretended to deter future potential aggressors. In the framework of the International Women’s Day 2020, the creation of the registry was approved through amendments to the Criminal Code of Mexico City, the Law on Women’s Access to a Life Free of Violence, and the Law on the Rights of Children and Adolescents. After its publication in the Official Gazette, the platform’s operation guidelines were defined in January of the following year.

Currently, the Public Registry of Sex Offenders of Mexico City is a digital platform with a list of persons who, for the commission of a sexual crime in Mexico City, have an enforceable sentence; that is, a judge has determined that they are legally guilty of a criminal act and that the penalty no longer accepts any other judicial remedy—such as an *amparo* or conditional suspension of proceedings—. A person is included in this registry when the crime in question is femicide—in cases that also involve sexual violence—, rape, sexual violence against minors under twelve years of age, sexual tourism, human trafficking, and other crimes of a sexual nature. Judges order the registration of the sentenced persons and the permanence in the Public Registry of Sex Offenders corresponds to the time of the sentence, regardless of whether the sentence is later suspended or substituted.⁹⁶ Upon completing such period, the person will remain in the registry for at least ten years and a maximum of thirty years. This registry is, therefore, an additional penalty for the penalty of deprivation of liberty.

⁹⁵Article 14, Law on Women’s Access to a Life Free of Violence of Mexico City.

⁹⁶The data included in the public part of the registry were name, alias, age, nationality, and an updated photograph. At the same time, particulars, criminological zone of crimes, *modus operandi*, signalistic record, and genetic profile -as classified information- were also collected. A judge could exclusively grant access to this information after being requested through legal channels and with evidence supporting the interest and legitimacy to access it.


Do sex offender registries deter crime?

Do you remember what happened after #MeTooEscritoresMexicanos? We do. The women who shared their stories bore the consequences of exposing “good men and ruining their lives.” This, in addition to suffering the physical and psychological effects of the denunciation at work, school, and their homes. Even though the public denunciation allowed many women to find support, for others, it also meant taking on new burdens. Months after the cascade of denunciations, most of the accused men (especially those with high purchasing power and/or political backing from their allies in the patriarchal pact) continued to feed the novelty tables of bookstores, received grants, premiered films and plays, inaugurated exhibitions, published albums, and were nominated for high public office. The accused mostly went on with their lives. Reader: Do not forget this in the following paragraphs.

The experience of the Public Registry of Sex Offenders is very recent in Mexico, so there is not enough data to analyze and determine its effectiveness as a means of prevention and protection. For the time being, it is clear that, operationally, the platform is deficient. Its search aids are not set up according to the website’s criteria and do not yield results. The registry project also promised that the platform would show updated photographs of the persons listed in the portal, a feature not fulfilled. But there also seems to be no relationship between the existence of this registry and the incidence of the crimes it contemplates. In 2021, 3 355 investigation files regarding sexual abuse were opened. From these, 117 sexual offenders were registered. In the first four months of 2022, the number did not decrease. On the contrary, we counted 1 151 open investigation files, a higher number than in the first quarter of 2021, when the registry began to operate.⁹⁷

The experience of other countries allows us to ponder some differences in the objectives, operation, and results of measures such as the Public Registry of Sex Offenders in Mexico City. In the United States, there are sex offender registries at the federal and state levels, the first of which was established in California in 1947. When talking about 50 different state laws, the differences between these mechanisms are essential. Half of the state registries in the U.S. classify offenders by the crime committed and the degree of risk that their presence implies for the community; in the other half, there is no difference between someone who committed child sexual abuse and someone who urinated in

⁹⁷ It is important to mention that the Registry only includes those persons with convictions and that -according to the National Survey of Victimization and Perception of Public Security (ENVIPE) 2022- only 3.8% of sexual crimes are reported. Considering that not all reports are received by the authorities, the ENVIPE allows estimating a black figure of at least 97.7%. The figure may be higher considering the investigated but not punished cases. INEGI, *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE)*, Mexico, 2022. Available at: <https://www.inegi.org.mx/programas/envipe/2022/>.



public. On the other hand, most of these registries are public and available online, so anyone, anywhere in the world, can access this information. The U.S. registry is not limited to publishing and maintaining a sex offender database. In many states, this registry is also a notification registry, meaning neighbors are notified if a registered offender moves into their block through automated phone calls, door-to-door notices, posters, and announcements at neighborhood meetings, among others.

In Spain, the mechanism is quite different. A sex offender registry was implemented in the country in 2015. The justice system administers the registry as a resource for the government to monitor those who have committed sexual offenses. However, the mechanism their right to privacy, honor, intimacy, and dignity. In this case, the focus is rehabilitation, i.e., offenders' right to civil, political, and family reintegration. The registry is for the exclusive use of judges, investigative police, and other duly identified justice system personnel with a well-founded justification for accessing this database. One of the main functions of this mechanism is protecting children and adolescents. Anyone wishing to access a job that involves contact with these populations must present a document issued by the registry stating that they are not identified as a sex offender.

On recidivism and communities' safety

Two key arguments are often put forward by advocates of sex offender registries, including certain sectors of feminism. The first is that public registries deter potential offenders, and the second argument is that this information allows communities to stay safe. However, available data say otherwise.

Researchers R. Karl Hanson and Kelly E. Morton-Bourgon reviewed 82 studies conducted on the matter in the United States (35), Canada (26), United Kingdom (12), Austria (2), Australia (2), and Sweden (2) produced between 1943 and 2003. This allowed them to have a sample of 29 450 sex offenders that had been followed for at least five years. Data indicate that, by the end of the five-year term, 13.7 % of the individuals registered committed sexual offenses again, 14.3 % committed other simple offenses, 14 % committed non-sexual offenses with violence; 36.2 % reoffended.⁹⁸

On the other hand, a study in the state of Iowa in the United States compared two groups of convicted sex offenders before and after implementing a sex offender registry. The difference in recidivism between

98 R. Karl Hanson and Kelly E. Morton-Bourgon, "The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies," *Journal of Consulting and Clinical Psychology*, Vol. 73, No. 6, 2005, pp. 1154-1163. Available at: <https://doi.org/10.1037/0022-006X.73.6.1154>.

the two groups was only 0.5 %, demonstrating that the measure had no real impact on recidivism.⁹⁹ Finally, researcher Amanda Agan also analyzed national and local data from the United States to determine whether sex offender registries increase community safety and discourage recidivism. The results indicate that these public databases do not significantly impact recidivism, as knowing the location of offenders does not predict where sexual assaults will be committed.¹⁰⁰ In general, data does not support the thesis that registries of this kind are beneficial for prevention, nor do they increase the safety of communities. Relating these types of initiatives to an eventual decrease in crime is also problematic because dangerousness is discussed abstractly and as a future possibility. This raises a notion of probability that may or may not be fulfilled.

What we do know, however, is that these registries can have negative consequences for the individuals who appear in them, as demonstrated by researcher Joana Vendrell.¹⁰¹ In the United States, for example, appearance in public databases is an extension of the sentence already served, and it implies stigmatization, harassment, and limited access to employment or housing. Many people in this situation are displaced to slums, and ghettos are formed. This is the case of a colony that existed under Julia Tuttle Avenue in Florida until 2018. People who appeared in the state sex offender registry were forced to stay in said avenue from 6 pm to 7 am, given the prohibition to live within 750 meters of places where minors congregate—such as schools, parks, bus stops, etcetera. It is logical to assume that the Mexico City registry will have similar effects of marginalization for the aggressors, the impossibility of their effective reintegration into society, stigmatization, and the eventual precariousness of their families.

But these criminal policy measures also have implications for community life, as they lead to social

alarm, higher levels of anxiety in neighborhoods, and a subjective perception of crime. These conditions do not generate security or tranquility in the communities, as the government does not offer effective tools to manage the information, nor does it create spaces where dialogue and agreements can be reached.

Finally, registries of aggressors do not take into account the needs of victims. These have demanded the security of being able to return home and live without fear, as well as guarantees of non-repetition, reparation, justice, and access to the truth, as expressed during a peaceful protest at the International Cervantino Festival of 2022 by Lorena Gutiérrez Rangel, mother of Fátima, a victim of femicide in Mexico. Araceli Osorio, the mother of Lesvy Osorio, who was murdered in 2017, also expressed these concerns upon receiving the Hermila Galindo 2022 medal. Punitive measures such as the sex offender registry erase the collective nature of the demand for a life free of violence, as there is no further accompaniment. Thus, they cannot be considered measures of reparation. Why are they popular? In the words of Patty Wetterling, a children's rights activist: "People want a silver bullet that will protect their children. There is no silver bullet. There is no simple cure for the very complex problem of sexual violence."¹⁰²

There are exhaustive studies in the fields of psychology, psychiatry, and criminology that shed light on actions that are effective in preventing recidivism of sexual offenders. These involve the creation of interdisciplinary profiles, providing treatment and follow-up care so that they do not re-offend and reintegrate fully and with dignity into society. Options like public registries of aggressors shift the responsibility to the citizenry rather than having the government assume the task of implementing effective measures for early prevention of violence or managing the reintegration of aggressors. The consequence is an atmosphere of tension and fear, as the institutions

⁹⁹Iowa Department of Human Rights, *The Iowa Sex Offender Registry and Recidivism*, 2000.

¹⁰⁰Amanda Y. Agan, "Sex Offender Registries: Fear without Function?" *The Journal of Law & Economics*, Vol. 54, No. 1, 2011, pp. 207-239. Available at: <https://doi.org/10.1086/658483>.

¹⁰¹Joana Vendrell, "Análisis del registro central de delincuentes sexuales," *Actualidad Jurídica Iberoamericana*, No. 5, 2016. Available at: <http://www.revista-aji.com/articulos/2016/num5/294-301.pdf>.

¹⁰²Patty Wetterling, *No Easy Answers. Sex Offender Law in the US*, Human Rights Watch, 2007.

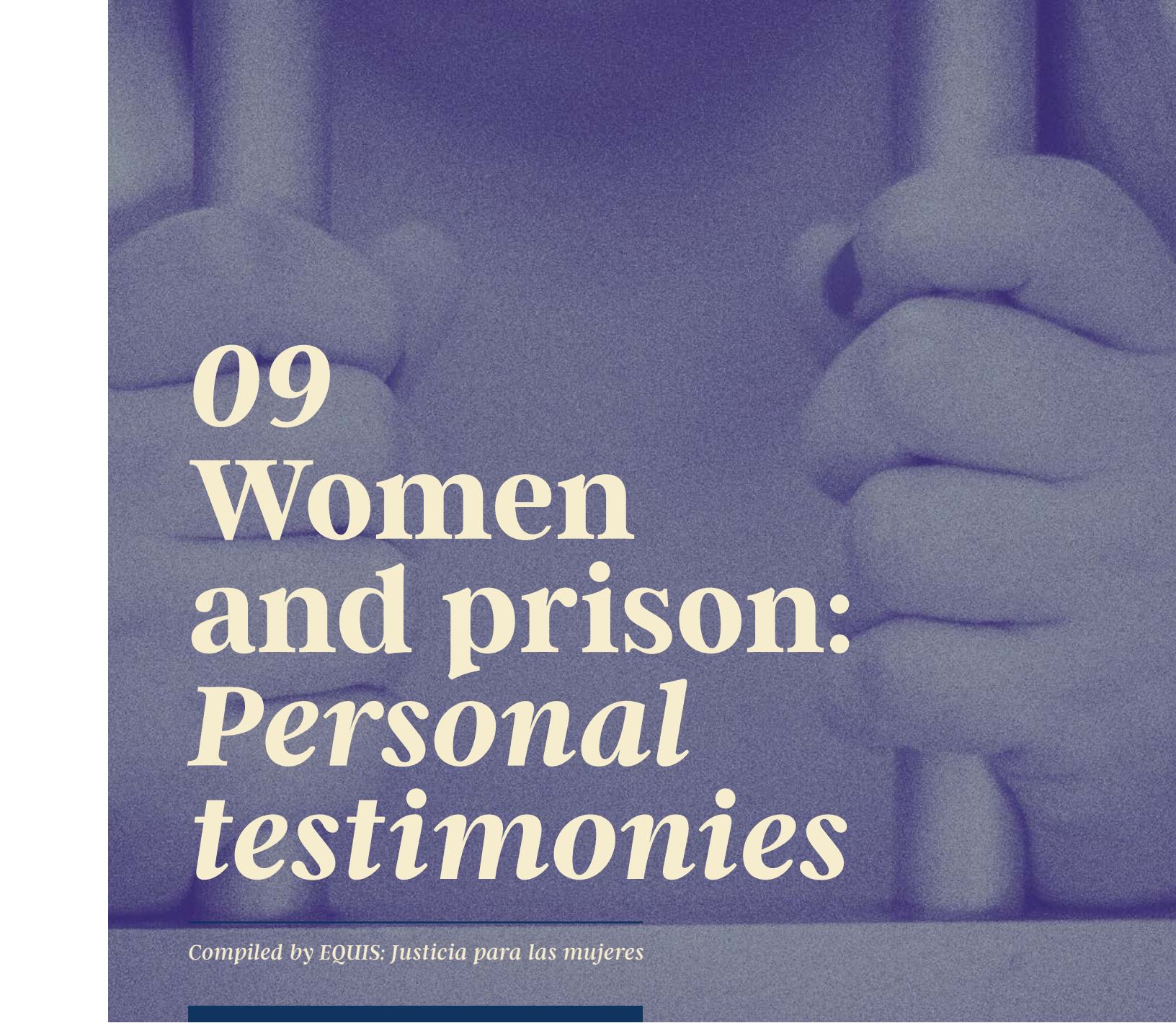


in charge of maintaining the databases do not offer tools to deal with the published information.

The Public Registry of Sex Offenders as conceived in Mexico City is similar to the *tendederos* (clotheslines, similar to Monica Mayer's art installation), and public lists with the names of parents responsible for unpaid child support that feminist organizations, women's groups, students, and workers set up as protests. But when governments engage in similar actions of naming and shaming, the meaning changes. In Mexico, the registry is not the first example of a government appropriation of feminist strategies. Another was the emergency whistles distributed in Mexico City during the administration of Miguel Ángel Mancera (2012-2018). These whistles were inspired, among other things,

by the whistles that women from the Brazilian community of Menino Chorão use to warn of the aggressions they or their neighbors suffer, so that other groups of organized women can intervene.¹⁰³ Within feminist or communal political spaces, actions like these are not discussed and implemented in a vacuum. There is organizing work behind them, that makes these tools useful. It is not the whistle but the response of the community when the whistle is blown. That sort of work is simply not present in government initiatives to prevent sexual violence as we are seeing them implemented in Mexico.

¹⁰³Carolina Morales, "La política de las mujeres en Menino Chorao," *Textos de la Era de la Perla*, Universitat de Barcelona. Available at: <http://www.ub.edu/duoda/web/es/textos/1/279/>.



09 Women and prison: *Personal testimonies*

Compiled by EQUIS: Justicia para las mujeres

Recently, the number of women deprived of liberty in Mexico grew by almost 17 % (from 10 700 in 2016 to 12 500 in 2021). In most cases, these women are involved in crimes against public health (transporting and selling drugs) or financial fraud. This means that women who end up in prison in Mexico have generally not committed violent crimes, and many are first-time offenders. However, most of these women do not have access to an adequate defense and serve harsh prison sentences.

The following lines move away from numbers or percentages. This chapter intends to share the stories of women that have been imprisoned. Viridiana, Sandra, Adri, Margarita, and Abigail, accused of minor crimes, have been in different prisons in Mexico. Their testimonies, taken from the report published by the non-governmental organization EQUIS, *Nuestros caminos: el antes y el después de cinco mujeres en prisión* (*Our path: the lives of five women before and after jail*), are sound proof that we need alternatives to incarceration. Prison does not solve but rather exacerbates the vulnerability of women, their families, and their communities.¹⁰⁴

Reproducing their own words, we narrate the causes that led these five women to conflict with the law, their experiences in the penitentiary centers, the consequences of incarceration, and the lack of a comprehensive social reintegration policy. From a feminist perspective, these stories prove that the criminal system is not the sole tormentor of women who commit crimes but society as a whole. The friends and families of these women often exclude them for not fulfilling their gender roles. These stories, account for the oppressive conditions in which these women live: impoverishment, violence, and abandonment.

Women deprived of their liberty in Mexico are three times victims of inequalities: victims of a racist, classist, and misogynist economic system; victims of a punitive system that seeks to solve social problems with criminal strategies; and victims of stigma when they are finally released from prison.

Starting points

Who are the women who are in prison in Mexico? According to currently available data, women deprived of liberty in this country are young (40 % of them are between 25 and 35 years old), with minimal schooling (63 % have primary or secondary education), and the majority (68 %) have economic dependents. Before arriving to prison, they had precarious jobs: 73 % of the women were traders, sales employees, or service providers. Financial limitations prevailed in their homes due to debt (74 %), to such an extent that 29 % of the women did not have enough money to pay rent or keep their homes, and 25 % did not have the resources to buy clothes or shoes.¹⁰⁵

¹⁰⁴EQUIS: Justicia para las mujeres, *Nuestros caminos: el antes y el después de cinco mujeres en prisión*, Mexico, 2021. Available at: <https://equis.org.mx/nuestros-caminos-el-antes-y-el-despues-de-cinco-mujeres-en-prision/>.

¹⁰⁵INEGI, *Encuesta Nacional de Población Privada de la Libertad (ENPOL)*, Mexico, 2021. Available at: <https://www.inegi.org.mx/programas/enpol/2021/>.

The words of these women reveal stories of violence, sexual abuse, poverty, helplessness, family responsibilities, abandonment, and lack of access to education:

My childhood was waking up and being locked in a room with my sisters. My mother would leave us there. I would look out a window to see if anyone was there. I was worried because I didn't know if we would eat—Sandra.

I had to defend myself from my brothers' physical, verbal, and symbolic violence at home. They used to call me a bastard and hit me. On top of this, we suffered from economic deprivation, a lack of clothes and food. Most of my mother's income went to care for my grandmother, who suffered from cancer—Viridiana.

We had to go to work. I remember that I didn't know how to read or write, so I would count the subway stations, and when we went down the avenue, I would look at the color of the signs. At 17, I had my first child, resulting from rape by a close relative. My older children have made their own lives; the other three are with their father. One of my daughters doesn't love me because I left her father; in fact, I left him because he abused my daughter when she was nine years old. I got involved in this crime because I didn't have an education. They asked for high school or secondary school to get an honest or stable job, and I didn't have any education. Maybe my own desperation and wanting to have money, a house, and a good room, led me to do it the first time. When a family member offered me a job, I said yes. I didn't know what it was like to eat in a restaurant. With that job, no one would make fun of me anymore. Having had nothing made me want to know what it felt like to be well off. That's what drove me—Abigail.

”

Replaceable, alone, and isolated

Poverty, social structure, neglect, and care responsibilities force women to make decisions that can put their lives and safety at risk.

My process was long and intense. After a year, I was sentenced. I was alone, without guidance, and full of fears. First, I had a court-appointed lawyer but never received advice about my rights. I was sentenced to ten years and six months for simple robbery.

I got a lawyer from the Archdiocese who took my case for free. I filed my amparo, and five years later, I got the resolution with a lesser sentence: Eight years and three months. I was the only one accused of the crime by the bank.

When admitted, I was mistakenly placed in a space with repeat offenders, so prison was highly abrupt and painful. I cried daily for my children; however, being in prison gave me the peace of mind that I would not involve them in crime.

There are economic difficulties inside the prison: I had to pay for all the elements of daily life: prison is the most expensive hotel. I got the resources from my work with the raffia. I also got resources from cleaning jobs called “supports.” I did 12 “supports” daily, charging 10 pesos for each.

The shortages I experienced ranged from water, which I had to accumulate in jars since there was only a two-hour supply per day, to food, which was not enough for everyone, so many days I did not eat. I received health and dental care during the health fairs held cyclically. As for my clothes and personal hygiene products, I had to get them on my own. I remember having to sleep in my shoes so they wouldn't be stolen—Margarita

Instead of helping these women who have not committed violent crimes, the system imprisons them even for up to ten years. It does so knowing that women tend to be the last link in the crime chain: the replaceable parts, the least dangerous, the most vulnerable. But above all, knowing that their imprisonment, far from solving anything, only adds problems and obstacles to their lives.

I was arrested at two o'clock in the morning by the Federal Police. They pointed long guns at my bed where I was convalescing after surgery. My children were in the same bed, the twins were 11 months old and my daughter was six years old. All this time, I did not know for sure what was happening. I was accused of terrorism, stockpiling, and trafficking of undocumented immigrants. I was held incommunicado for several hours. The only communication I had with the public defender was when he told me, during the interrogation, not to declare anything.

I was locked up in a small cell with five inmates for almost 24 hours a day, having no contact with my children and with the constant threat that my siblings would also be arrested. I did not know the exact whereabouts of my children.

I was transferred, and the conditions of my

stay improved due to the presence of personnel from the National Human Rights Commission. The food improved, and the showers without curtains and under the scrutiny of cameras and male officers were over. We were able to purchase sanitary towels so we could stop wearing socks.

*That is how I wrote *Monólogos en la antesala de la locura* (Monologues in the prelude to madness). The illness that comes from confinement, from the cameras watching you 24 hours a day... is the edge of madness, where you stop being you. I did not receive visitors during the entire period I was deprived of my freedom, including the eighty days of precautionary detention. I saw my children only a month before I was released: I saw my daughter walking and her purple flip-flops come through the bars. I felt pain. Then I saw my five-year-old twins; they didn't recognize me or know who I was—Viridiana.*

”

Who takes care of the caregivers?

Most women in prison remain in charge of their children and dependents, even though, in general, these women hardly receive family visits. In contrast, men deprived of their liberty usually have the support of their families, both affective and economic, throughout their stay in prison. This feeds the idea that care work is a female task and that love is earned in exchange for this care work.

“

My family abandoned me. I did not receive support for me or my children. That is why today, my children and I are alone. What we women need most is family support, which is usually not given, unlike what happens with men. Men are not abandoned in prison—Margarita.

When I was there, in prison, my mother and daughter visited every eight days. When I left, my daughter was 12 years old, and my mother was eighty years old. They made a significant effort because my daughter ended up taking care of her grandmother. My family abandoned them. For me, that they came to see me was to know that they were well. As time passed, my mother got senile dementia; it was tough because she didn't know who she was or who I was. When she went to see me in prison, she would arrive, and it was like dealing with two girls. My daughter grew older and started to get uneasy with her grandmother.

Even though you are imprisoned, somehow you free yourself. I felt free. It is not the same to live with a society that labels you [as a non-binary person] as it is to live with the prisoners; the idea there is to avoid problems. Many times I felt sad but happy at the same time because I had no obligations or responsibilities. Still, I missed my loved ones and worried about how they would be living out here.

I want many things for my future. My goal is to live in a nice house. I also do social work supporting my colleagues in getting out of prison. Some of them work with me, and I help them to manage government aid and guide them to have a better quality of life—Adri.

Return, leave... start over

EQUIS has documented that women face an extremely difficult situation upon release from prison. In general, the main concerns of these women are the difficulties in finding a job that will allow them to pay their debts and move forward, but, above all, they want to regain emotional ties with their children, families, and community.

The hardest thing out here is to get a job. They ask for criminal records all the time. Today I get up, thank God, take a bath, and go out to look for a job. I don't see my family; the few who contact me usually ask for money. Even so, I experienced the most beautiful thing with my Zumba teacher; her family opened the door for me. I have many plans. I want to continue studying. I want to work and have my own house. My biggest dream is to have a house and a flat-screen. I want to prove that I can make it because if I make it within four walls, I have to be able to make it out here. I also want to motivate those being released from prison; to work with the government so that these people have a place to go, get their documents easily, and avoid falling into the same patterns—Abigail.

Life does not magically fall into place after surviving prison emotionally, physically, and financially. In fact, it is a kind of starting from scratch. It does not matter if the women took courses, studied, or made friends while in prison; it does not matter if they changed or what they learned. They always start three steps back: with fewer economic resources, more difficulties getting a job because they have a criminal record and greater loneliness.

I am facing difficulties in obtaining employment because of my age. Although I have recovered some resources and accounts, this income is insufficient. I am looking for a job that will allow me to reach my retirement—Margarita.

It has been challenging for me to get a job because my trial is still open. After all, the Public Prosecutor's Office appealed. I have felt the stigma of having been in prison. The most serious problem I have encountered is the lack of economic resources—Viridiana.

The imprisonment of women like Viridiana, Sandra, Adri, Margarita, and Abigail, who have committed nonviolent crimes, does not solve any social problems. On the contrary, it brutally impacts their lives and places them in greater vulnerability—criminalization acts against women's rights.

The hardest thing out here was with my family. My sister left with my husband, and my children see her as their mother, not me. I don't know how to act. I have also felt discriminated against, even by my former partner; his family discriminated me for having been in prison. They thought that because I had been there, I was going to steal from them. I am quiet and angry all the time—Sandra.



The penal system deepens the problems that stem from inequalities, disproportionately affecting the most vulnerable groups. Women in situations of poverty and marginalization are at the top of the list. They often become involved in crime out of desperation, driven by caregiving responsibilities, lack of opportunity, and, at times, coercion. The incarceration of these women only increases their vulnerability and wreaks havoc among their families and communities.

EQUIS has demanded authorities for adequate reintegration policies so that leaving prison does not mean ending up in even worse conditions than those that led these women to commit the crimes in the first place. But at EQUIS we have also drawn attention to the fact that these crimes should be judged accord-

ing to their context. For those who have committed minor, non-violent crimes, there are alternatives to incarceration. Real change would involve designing and budgeting for programs tailored to vulnerable people. Our efforts should be directed toward public policy reforms and social programs that seek to reduce incarceration rates and protect human rights.

It is essential to address social problems from a non-punitive approach and help women return to the community after leaving prison. Viridiana, Sandra, Adri, Margarita, Abigail, and hundreds of other women in Mexico are survivors of a system that not only abandons them but also shores them up and drowns them.



10 Impossible reintegration

Lilia Mónica Rebollo López

In Mexico, there seems to be a culture of revenge towards the people that are in conflict with the law. A prevailing logic indicates that these people deserve to be deprived of their freedom and “suffer” for their crimes. This commitment to criminal punishment has become the government’s preferred option to solve social problems. The punitive discourse is reflected in the criminalization of behaviors, the increase of penalties, and the inclusion of crimes in the list of automatic pre-trial detention. At the same time, the system has neglected the causes that originate these behaviors. Public policies are more focused on punishment than prevention. And those punishments are often determinant in people’s lives.

EQUIS has researched and written extensively about the recurrent human rights violations and the poor conditions that women in prison experience, given the lack of essential services, social judgment, and abandonment by their families and support networks. However, human rights violations do not only occur in jail. They are also evident in the release process, which involves various economic, social, and legal difficulties that call for a gender perspective in social reintegration and post-custodial policy.¹⁰⁶

Although men go through the same difficulties during deprivation and ex-deprivation of liberty, this essay focuses on the particularities experienced by women. Women formerly deprived of their liberty explain that, in their release process, they were worried about recovering their children, not having a job, and being rejected by their families and acquaintances.¹⁰⁷ Most of them reported feeling stressed from the moment their family members were waiting for them to leave the center. Others are not so fortunate and face this new moment alone. The lack of support from the authorities is also evident. All these things make it very difficult for women to reintegrate into society after leaving prison. As Abigail, a woman formerly deprived of her liberty, says: "It hurts to go out and be alone outside. To be in a room alone and say: 'Now what do I do?'"¹⁰⁸

In Mexico, the concept of social reinsertion was added to the constitutional framework in 2008. Leaving behind the paradigms of regeneration and social readaptation, the National Criminal Law refers to social reinsertion as the full exercise of human rights and freedoms of individuals after serving a criminal sentence. The law explains that the authorities must offer post-criminal programs and services to guarantee these rights. However, it does not contain a comprehensive public policy that considers the problems that people experience upon release.

Based on the review of the national regulatory framework, the essential components of a comprehensive reintegration policy should include the right to identity, information, mobility, health, decent housing, work, and non-discrimination. All these actions should be implemented through specific government actions.

On the other hand, the Mexican government's National Development Plan (PND) also refers to social reinsertion. The PND for the 2007-2012 period established that the purpose of prisons and "punishment," in addition to the recovery of values and comprehensive training, should be to "reintegrate" individuals into society once their sentence has been served. In 2013-2018, gender perspective was incorporated as a cross-cutting strategy and effective social reintegration was conceptualized as a preventive mechanism. Finally, in the current administration, the PND 2018-2024 points to the penitentiary system in Objective 7 of the National Public Security Strategy, which aligns with the Policy and Government Axis 1. Here, the issue of social reintegration is approached from a human rights and gender perspective by guaranteeing conditions of security, order, education, discipline, and health care. However, this model is not efficiently applied. Its application is not followed, insufficient support programs exist, and co-responsible government authorities are not coordinated.

Post-criminal policy should focus on restoring rights and guaranteeing women access to comprehensive social reintegration. Currently, the legislation does not provide a follow-up plan for social reinsertion that contemplates accompaniment by social workers and psychological support. The government has not understood that, for women, life after prison is full of challenges and that their reintegration does not end when they regain their freedom. Women suffer discrimination for having been in jail. Sometimes,

¹⁰⁶The United Nations has recognized this in its United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

¹⁰⁷EQUIS: Justice for Women, *La reinserción social de las mujeres en México. Un largo camino para el restablecimiento de sus derechos*, Mexico, 2021. Available at https://equis.org.mx/wp-content/uploads/2021/09/Informe_Reinsercion_completo.pdf.

¹⁰⁸EQUIS: Justicia para las mujeres, *Nuestros caminos, el antes y el después de cinco mujeres en prisión*, Mexico, 2021, p. 43. Available at <https://equis.org.mx/historias-de-vida/wp-content/uploads/2021/09/Nuestros-caminos.pdf>.

exclusion forces them to build new ties, often leaving behind their history, their family, and even their culture. This is where women formerly deprived of their liberty organize themselves to fill the void left by the State; they meet each other and form a community.

According to data provided by the National Survey of the Population Deprived of Liberty, 2021, 31.2 % of women deprived of liberty stated that being in a penitentiary center would affect their ability to join back their families.¹⁰⁹ “I had nowhere to go, and when I came out and saw the stairs, I said to myself, ‘I’d better go back.’ I had friends and family in prison,” recalls Abigail.¹¹⁰

Discrimination also prevents women from finding work, exacerbating the economic losses of imprisonment. Families become the financial and emotional support for women in prison and their children. Thus, they suffer consequences similar to being under the execution of the sentence. In his testimony, Juan, Mayra’s husband, remembers that when she was deprived of her liberty:

*The economic and emotional expenses increased all at once. Money went to all the family members who were in prison: diapers, food, medicines, school supplies for my wife and the little girl who started going to school inside prison, clothes for every season of the year, shoes, cleaning supplies, bedding, blankets, phone cards, and drinking water. We sold cars and emptied bank accounts to pay inefficient lawyers.*¹¹¹

60.9 % of women deprived of their liberty consider that their chances of reintegrating into the labor market will be affected once they have completed their sentence.¹¹² Even those women who enjoy a pre-release requirement, like early release, encounter these adversities. Thus, while they can leave the prisons to serve their sentence elsewhere, their

political rights remain suspended. This prevents them from issuing their voter credentials, making it difficult to access financial services and government support from which they and their children could benefit. In addition, they are denied the right to an identity, which has implications for their daily lives. As Karla, another woman formerly deprived of her liberty reports:

*I was released on probation. I still have to present monthly reports, and I will be acquitted after ten years, but in the meantime, I do not have the right to ask for a voter’s ID or support for my son. I have been informed that the municipality provides support for people with disabilities. I went to have it once, but because I do not have the [ID] card, I cannot ask for that support [...]. If there is some stipend for school supplies or a scholarship, I cannot profit from it either. This situation is hurting, not only me, but also my children who are losing that right.*¹¹³

In Mexico, social reinsertion strategies have not fulfilled the objective for which they were created. On the contrary, the conditions faced by individuals deprived of liberty worsened due to the COVID-19 pandemic. As a preventive measure, prison authorities restricted family and intimate visits and sports, artistic, educational, and other activities. Isolation increased, significantly affecting the psychological accompaniment of social reintegration. At the same time, during the first months of the pandemic, the closure of government offices meant that releases from prison remained suspended. The pandemic also caused the loss of emotional ties and care. The elderly, pregnant women, children, and people with disabilities were prohibited from entering the prisons “until further notice.” The lack of economic support and access to food and hygiene items, clothing, among others, was also a consequence of

109 INEGI, *Encuesta Nacional de Población Privada de la Libertad (ENPOL)*, Mexico, 2021,. Available at: <https://www.inegi.org.mx/programas/enpol/2021/>.

110 EQUIS: Justice for Women, op. Cit. *Nuestros caminos, el antes y el después de cinco mujeres en prisión*.

111 Juan, husband of a woman deprived of her liberty in: EQUIS: Justicia para las mujeres, *Vidas en custodia*, Mexico, 2021. Available at: https://equis.org.mx/wp-content/uploads/2021/10/Vidas_EnCustodia.pdf.

112 INEGI, op. cit., ENPOL 2021.

113 EQUIS: Justicia para las mujeres, *Pobreza, género y COVID-19*, Mexico, 2021. Available at: <https://equis.org.mx/wp-content/uploads/2022/02/Pobreza-ge%CC%81nero-y-COVID-19-efectos-sobre-mujeres-indi%CC%81genas-de-Oaxaca.pdf>.

the poor management of the prison pandemic. Although these conditions have been modified over time, they left an indelible mark on the lives of those deprived of their liberty who suffered this isolation. Taken together, they tell us about the difficult conditions faced by this population in our country.

Prisons are places to serve judicial sentences, not to experience hell. It is crucial to remember that the impact of prison is not limited to the person who is the object of the sentence but has effects on their family and social circle. Social reintegration in Mexico is still far from what is established in national and international normative instruments. It is urgent to rethink how to guarantee it. We need to achieve the articulation of inter-institutional programs with concrete politics of accompaniment based on medical care, psychological support, training, work, and the

strengthening of support networks. This requires listening to expert groups, non-governmental organizations, and, above all, the women that have been in prison. Social reintegration is challenging for men and women, regardless of their economic and social conditions. However, as we have seen, society imposes stereotypes on women that enclose them into caregiving roles, which has specific effects on their reintegration. The difficulties that women formerly deprived of their liberty face in returning to their family unit are often because that their families consider them to have failed in their caregiving tasks. This is a socially imposed barrier that men do not experience. Feminism must thus fight for the rights of women deprived of their liberty, both when they are in prison and when they come out.





Part IV

The punitive nature of supposedly non-punitive institutions

11. Women's Justice Centers

12. NOM-046 to address family, sexual and domestic violence and violence against women in Mexico

13. The problem with so-called alternatives

IV



11 Women's Justice Centers

Nancy Carmona Arellano

According to the Comisión Nacional para Prevenir y Erradicar la Violencia contra las mujeres (National Commission to Prevent and Eradicate Violence against Women), as of October 2022, sixty Women's Justice Centers (WJCs) had been established in Mexico. WJCs are institutions that aim to provide comprehensive, sequential, specialized, and accessible care to victims of gender-based violence and their underage daughters and sons. The WJCs were first created in 2011 in response to the demands of social organizations and international provisions.¹¹⁴

¹¹⁴For example, those set forth in the judgment of the Inter-American Court of Human Rights in the case of *González y otras "Campo algodonero" v. Mexico* (2009), as well as the recommendations of the UN Special Rapporteur on violence against women, its causes and consequences, and the protection and support services for victims of violence and their families. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk. Addendum: Mission to Mexico. E/CN.4/2006/61/Add.4, January 13, 2006, para. 69 (c).

WJCs seek to provide clients with a safe, empathetic, and trustworthy environment while avoiding revictimization. However, they currently face several obstacles. While the 2021 Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (National Survey on the Dynamics of Household Relationships) revealed that almost all women in Mexico who experienced an incident of violence did not seek support from governmental institutions, a more thorough review also shows that among those who did, 5 % went to Women's Justice Centers. Of these, the majority (84 %) said they had been treated well and respectfully. However, this perception was six points lower than reported in 2016.¹¹⁵

In principle, these justice centers are multidisciplinary because they offer various services such as medical and psychological care, legal orientation and representation, temporary shelter, social care, educational access, and economic empowerment counseling. Consequently, they require the coordinated participation of various government agencies, hence their inter-institutional nature. However, according to data compiled by the National Institute of Statistics and Geography (INEGI), in 2021, only a small percentage of WJCs had representation from the Ministry of Labor and Social Welfare (13 %), the Ministry of Social Development (15 %) and the Ministry of Public Education (25 %). On the other hand, 53 % mentioned representation of the Secretariat of Citizen Security, and 80 % of the prosecutor's office or attorney gener-

al's office of the entity.¹¹⁶ In other words, judicial institutions were present in the Women's Justice Centers, while social security agencies were not.

Most WJCs (7 out of 10) are affiliated with the state prosecutor's office.¹¹⁷ Contrary to what one might think, this association between WJCs and the prosecutor's offices has several negative consequences that hinder the former from fulfilling the objectives for which they were conceived. As we will see, it affects women's perception of these centers, designed initially to support them. It also impacts the budget allocated to them, their staff, including management, and their training and evaluation processes.

The paradigm of the prosecutors' offices permeates WJCs to the extent that the users have to file a complaint for gender violence or are pressured to do so in exchange for accessing the services offered in these centers. According to INEGI data, 13 % of the WJCs ask for a formal complaint of violence, although neither the model of the Women's Justice Center nor their guidelines state that one must be requested.¹¹⁸ At EQUIS, we did a report on the care provided by these institutions during the COVID-19 crisis which also showed that, although the Mexican government ordered the WJCs' activities to continue—considering them essential during the health emergency—in the state of Oaxaca, for example, the reception and orientation staff discouraged users or made the access to these centers conditional on the filing of a complaint.¹¹⁹ Only some women could obtain the services they required thanks to the intervention of local activists.

On the other hand, even when the personnel at the Women's Justice Centers does not condition their

¹¹⁵ INEGI, *op. cit.*, ENDIREH 2021.

¹¹⁶ Unless otherwise indicated, the data provided were obtained from INEGI's "Recopilación para conocer la operación y registro de información en los Centros de Justicia para las Mujeres 2021." It should be noted that it only compiles information on the 55 Cejum that existed as of June 30, 2021. Available at: <https://www.inegi.org.mx/programas/cjm/2021/>.

¹¹⁷ This means that they are provided for in the internal regulations of these institutions, in their organic law, or the regulations of said organic law. The remaining proportion is mainly attached to the Secretariat of Government and, to a lesser extent, to the Secretariats of Women's Affairs or Citizen Security. In this regard, in the guidelines for the creation and operation of these Centers, Conavim does not decide or recommend that they be attached to any particular institution, and, in fact, the first Justice Centers created in the cities of Ciudad Juárez and Chihuahua depended until 2021 on the Secretariat of Government, while the one in the city of Campeche depends on the Prosecutor's Office.

¹¹⁸ The most requested requirements are to be accompanied by a family member (84 %), to be a woman (78 %), and to be a minor child of the woman user (38 %).

¹¹⁹ Agreement establishing extraordinary actions to address the health emergency generated by the SARS-CoV-2 virus. Official Gazette of the Federation, March 31, 2020. EQUIS: Justice for Women, Violence awaiting attention: *Los Centros de Justicia para las Mujeres frente a la crisis by COVID-19*, Mexico, 2020. Available at: <https://equis.org.mx/violencia-en-espera-de-atencion-los-centros-de-justicia-para-las-mujeres-frente-a-la-crisis-por-covid-19/>.

attention to a formal complaint, the simple fact that some of these centers are located within the prosecutor's offices or in facilities adjacent to them appears to discourage women from reaching out to them. Data indicate that in Mexico, approximately 8 out of every ten women who suffered violence by their partner did not seek institutional support or file a complaint. Among the reasons they gave are not knowing how or where to do so and a lack of trust in the authorities.¹²⁰ The 2022 Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE) revealed that 68 % of women in Mexico do not identify the public prosecutor's office in their state, that almost a quarter (24 %) say they distrust them to a certain extent, 65 % consider them corrupt and only 9 % evaluate their work as "very effective."¹²¹

In this sense, another consequence of subordinating the attention of WJCs to criminal complaints is that, paradoxically, this action inhibits women from filing complaints. Through the experience of the social organizations that are part of the Citizen Observatory of Women's Justice Centers, of which EQUIS is a member, we learned that once the users are referred to the legal institutions, they are discouraged by the staff that uses the argument of the amount of time the procedure will take, questions them, or intimidates them.

EQUIS has also drawn attention to the impact criminalization has on the budget of Women's Justice Centers. These are either decentralized organisms (22 %) or administrative units (40 %), and, thus, they do not have economic resources specifically allocated to them but depend on the annual budgeting of the prosecutor or the attorney general's offices.¹²² In interviews, WJCs' officials refer to the "goodwill" or "sensitivity" of the prosecutor as a factor that allows

them to receive additional budget. This means that WJCs are exposed to the prosecutor's discretion on duty their priorities and vision. Also, the provision of services and supplies, including food, transportation, or stationery, are differentiated amongst Women's Justice Centers.

In EQUIS, we have learned that some of the personnel assigned to the WJCs initially worked in the prosecutor's office and do not have previous professional experience in gender-based violence and the care its victims need. This prevents the centers from guaranteeing specialized services as they are supposed to, and, what is more, it can lead to the revictimization of the users.¹²³ In addition, the prosecutor's office designed and implemented training processes for WJCs' personnel without prioritizing the specific requirements of certain areas, such as those in charge of psychological care or social work, and without considering the centers' multidisciplinary nature. The training and the evaluation of personnel are mainly limited to control and confidence exams, leaving aside professional profile and capacity. Finally, the issuance and follow-up of instruments such as a security plan, risk evaluations, and first contact interview, among other essential tools to care for women victims of violence, are subject to the approval of the prosecutor's office, who may or may not share the vision of comprehensive care that supposedly guides the actions of these centers.

Finally, in at least 36 Women's Justice Centers, the general directors were appointed by the governor's office of the entity or the prosecutor's office. Sometimes, the regulations do not establish who is to make such an appointment or the requirements to hold the position.¹²⁴ Incidentally, during an Open Parliament organized by the Chamber of Deputies in

120 INEGI, *Encuesta Nacional sobre la Dinámica y las Relaciones en los Hogares (ENDIREH)*, Mexico, 2021. Available at: <https://www.inegi.org.mx/programas/endireh/2021/>.

121 INEGI, *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE)*, Mexico, 2022. Available at: <https://www.inegi.org.mx/programas/envipe/2022/>.

122 Deconcentrated bodies have specific powers over a given subject matter and territorial scope, they are hierarchically subordinated to a State Secretariat or, in this case, to the Prosecutor's Office, and enjoy technical and managerial autonomy. On the other hand, the administrative units, generally known as general directorates or coordinating offices, are attached to the agencies and are in charge of handling the matters delegated to these.

123 In this regard, the guidelines propose the personnel profile and list ten characteristics they should have regardless of the accreditation of psychometric evaluations, knowledge, abilities, and values for their work.

124 EQUIS: Justice for Women, *Centros de Justicia para las Mujeres (CEJUM)*. *Informe sobre el estado de la política pública a nivel nacional*, Mexico, 2017. Available at: <https://equis.org.mx/centros-de-justicia-para-las-mujeres/>.



May 2020 on the matter, the then-head of the National Commission to Prevent and Eradicate Violence against Women referred to the need to regulate the WJCs' managers. She pointed out that such institutions should be headed by specialists and their assignment independent from the will of the prosecutor's office. It was also proposed that heads of the WJCs have experience in women's rights and attention to victims of violence.

However, the ruling reforming the General Law on Women's Access to a Life Free of Violence in the area of Women's Justice Centers, drafted by the Gender Equality Commission of the Chamber of Deputies in December 2021, is still pending publication. It is imperative that the Congress publishes this information. Otherwise, the sustainability of these justice centers is at permanent risk. In addition to the aspects mentioned above regarding who should be managing these services, this reform also incorporates in the law the objectives pursued by the WJCs, the services they must provide, the institutions that concur for this purpose, and the budget allocation for their operation.

In Mexico, prosecutors' offices are institutions that oscillate between promoting denunciations and punishment, on the one hand, and discouraging people who have decided to denounce, on the other. Being able to file a complaint is a right, not an obligation. Requiring victims of violence or human rights abuses to do so contravenes the General Law on Victims, which states that the latter have the right to government protection— including the security of their physical and psychological well-being and the safety of their environment —regardless of whether they are involved in criminal proceedings or any other type of proceeding. It should not be forgotten that the ultimate purpose of the Women's Justice Centers is to guarantee the reconstruction of the lives of their users. Justice is crucial, but it is not the only element needed for the effective reconstruction of a life, hence the importance of the Women's Justice Centers, their services, and their inter-institutional nature.



12 The Mexican NOM-046 to prevent violence towards women

Friné Salguero, Eugenia Likar and Cristina Santana

In Mexico, the norm NOM-046-SSA2-2005, better known as NOM-046, is a federal regulation that dictates the criteria for detecting, preventing, attending, orienting, and notifying the government about cases of sexual and family violence through guidelines whose compliance is mandatory for the entire National Health System. This regulation considers, among other things, rape as a medical emergency that must be attended to immediately, allowing the victim to access abortion and obliging health institutions to guarantee this right.

The NOM-046 was amended in 2016, and the required criminal complaint, as well as the need for government permission to access abortions due to rape, were eliminated. Currently, a written request in which, under oath, the victim states that the pregnancy is the result of rape is enough. In the case of minors under 12 years of age, the authorization of the father, mother, or guardian is necessary. To guarantee care, the reform also established the obligation of public institutions to hire medical personnel that are not conscientious objectors to abortion.

At the time, these changes to the regulation were the subject of debate. For specific social sectors, these modifications represented a federal government interference in state governments.¹²⁵ Thus, the Legislative Branch of Aguascalientes and the Government of Baja California filed constitutional controversies that were finally rejected by the Supreme Court in 2022. For others, eliminating the denunciation requirement meant opening the door for women to seek abortions indiscriminately, alleging they had been victims of rape, or leaving girls and adolescents unprotected since they could access abortions without the company of their parents.¹²⁶ These positions were based on highly stigmatizing ideas about women and assumed that the violence they encounter is out of the family environment. In fact, Mexico ranks first in child sexual abuse among the member countries of the Organization for Economic Cooperation and Development, and 90 % of these cases occur within the families themselves.¹²⁷ Requiring the authorization of fathers, mothers, or guardians for girls and adolescents to have an abortion implies, in many cases, needing the consent of the aggressors.

Preventing abortions to rape victims who do not file complaints or have judicial authorization is a form of discrimination and institutional violence because

these actions limit the victims' autonomy to make decisions regarding their own health and life. Of course, victims have the right to file a complaint, the right to know how to do so, and to have the authorities provide them with attention and counseling for this purpose. However, for many victims of rape, the action of filing a complaint does not mean obtaining justice but rather represents an obstacle to accessing timely and quality health services.

The modifications to the NOM-046 result from the joint work of feminist movements, civil organizations, and decision-makers. They represent a crucial advance in terms of reproductive rights and health, and towards the management of sexual violence. However, there are still barriers to the regulation's effective implementation. It is necessary that the local congresses of states such as Campeche, Colima, Guerrero, and Quintana Roo, reform their criminal codes by the General Law on Victims. The NOM-046 itself needs to eliminate the requirements of authorization and denunciation to access abortion for rape. Finally, it is necessary to make this a standard procedure and make its operation known among health personnel and responsible authorities.

125 Eduardo Murillo, "Avala SCJN aborto a menores de edad en caso de violación," *La Jornada*, May 24, 2022. Available at: <https://www.jornada.com.mx/notas/2022/05/24/sociedad/avala-scn-aborto-a-menores-de-edad-en-caso-de-violacion/>.

126 Francisco Vázquez Gómez Bisogno, "Las menores de edad víctimas de violencia sexual. La respuesta inconstitucional del Estado mexicano a través del espejismo generado por la NOM-046," *Revista Penal México*, Vol. 9, No. 16-17, 2020. Available at: <https://revistaciencias.inacipe.gob.mx/index.php/01/article/view/327>.

127 Karina Aguilera Karina, "México está en primer lugar de la OCDE en violencia física, abuso sexual y homicidio de niñas, niños y adolescente," *Cuestione*, June 17, 2022. Available at: <https://cuestione.com/nacional/mexico-primer-lugar-ocde-violencia-fisica-abuso-sexual-homicidios-ninos-ninas-adolescentes/>.

What is public is ours: Findings on the NOM-046

For over a decade, at the non-governmental organization Instituto de Liderazgo Simone de Beauvoir A.C. (ILSB) we have worked to strengthen and accompany organized groups of young people, indigenous women, and, more recently, Afro-Mexican women to demand and advance their sexual and reproductive rights. In the last six years, these groups have focused on monitoring the Estrategia Nacional para la Prevención del Embarazo en Adolescentes (National Strategy for the Prevention of Adolescent Pregnancy, ENAPEA) and sexual and reproductive health services in urban and rural clinics, with the aim to carry out informed advocacy with decision-makers and service providers. As part of this, the groups that we support have conducted field research in 13 states of Mexico through requests for public information, interviews, and simulated user exercises. The intention has been to learn about the implementation of the NOM-046 and the care provided to women and other persons with gestational capacity who seek information about abortion in cases of sexual violence.

Among the main findings were that in Chiapas, Campeche, Durango, Estado de México, Michoacán, Guanajuato, Guerrero, Quintana Roo, Sonora, Veracruz, and Yucatán—which represent 84 % of the states in which the research was carried out—medical personnel linked health care for victims of sexual violence with the filing of a complaint at the public prosecutor's office.¹²⁸ In Quintana Roo, health personnel refused to provide care as long as the women did not make a prior report.¹²⁹ In this state, only one legal termination of pregnancy for rape was reported between 2009 and 2016, although there were 979 complaints to the public prosecutor's office during the same period.¹³⁰ In Veracruz, health personnel channeled users who were victims of sexual violence to the public prosecutor's office without giving them any clarity about how to transit back to the health system. The authorities declared there is no information regarding the number of abortions for rape

between 2009 and 2016, when there were 24,523 rape complaints at the public prosecutor's office.¹³¹

In other states, such as Chiapas and Durango, although health care was secured first, medical personnel subsequently referred the victims to the attorney general's office, the public prosecutor's office, or summoned the municipal police without considering whether or not the victims wished to report the assault.¹³² It is essential to mention that although, the NOM-046 establishes circumstances under which health personnel must give immediate notice to the public prosecutor's office—for example, when there are injuries that endanger life or bodily integrity or when there is risk in the transportation—this is not equivalent to a complaint and should not represent a limitation in providing care. Requests to access public information revealed that in Durango, the Ministry of Health did not provide specific training on sexual and reproductive health medical personnel. In Michoacán,

¹²⁸ ILSB, *Lo Público es Nuestro*, Mexico, 2019, Available at: www.ilsb.org.mx.

¹²⁹ ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Quintana Roo*, Mexico, 2019. Available at: www.ilsb.org.mx.

¹³⁰ GIRE, *Violencia sin interrupción*, Mexico, 2017. Available at: <https://aborto-por-violacion.gire.org.mx/#/>.

¹³¹ ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Veracruz*, Mexico, 2019. Available at: www.ilsb.org.mx.

¹³² ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Chiapas*, Mexico, 2019 and ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Durango*, Mexico, 2019. Available at: www.ilsb.org.mx.

there was no purchase of emergency contraception pills, and no information was available on the distribution patterns of this medication.¹³³

The research found that in some states with a high concentration of indigenous populations, such as Chiapas, Oaxaca, and Guerrero, sexual and reproductive health services lack informative material in indigenous languages and do not have translators or interpreters. We also found that the health personnel's lack of knowledge and prejudices contribute to users' revictimization and failure to provide comprehensive care, as stipulated in the NOM-046. In Michoacán, for example, the institutional guidelines of some health centers for abortions were based on religious rather than scientific beliefs. In Veracruz, some medical personnel considered the victims responsible for sexual aggression.¹³⁴

As a result of these findings, activist networks have implemented a series of actions in their states. For example, they have disseminated the way to access health care in situations of violence, created audio materials in indigenous languages with scientific and culturally relevant information on sexual and reproductive rights, and developed training projects and actions for health personnel and public institutions.

Some considerations and recommendations

In Mexico, between 2016 and 2021, violence against women increased by 4 % and sexual violence by 8.2 %.¹³⁵ Despite this, criminal complaints decreased by almost two percentage points during the same period.¹³⁶ From July to December 2021, There is an estimated 97.3 % underreporting of rapes that were either not reported or have no investigation file.¹³⁷ Women do

133 ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Michoacán*, Mexico, 2019. Available at: www.ilsb.org.mx.

134 ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Oaxaca*, Mexico, 201 and ILSB, *Recomendaciones para prevenir el embarazo en adolescentes por medio de los servicios de salud sexual y reproductiva en Guerrero*, Mexico, 2019. Available at: www.ilsb.org.mx.

135 INEGI, *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH)*, Mexico, 2021. Available at: <https://www.inegi.org.mx/programas/endireh/2021/>.

136 *Idem*.

137 México Evalúa, "Crece la cifra negra de la violencia sexual: en 2021, el 99.7 % de los casos no se denunciaron," March 8, 2022. Available at: <https://www.mexicoevalua.org/>



not report rape to a large extent because they do not trust the authorities and consider that they will most likely be re-victimized.¹³⁸ However, specifically in cases of sexual violence, most women who file complaints do not have access to adequate health care. Of the 111 413 rape complaints received from January 2009 to June 2016 by local attorney general's offices and the federal attorney general's office, only 63 abortion procedures for rape were reported in local health secretariats, the Mexican Social Security Institute (IMSS), and the Institute of Security and Social Services for State Workers (ISSSTE).¹³⁹

In the states where we researched the implementation of the NOM-046, we found that care for women who have experienced sexual violence is provided in a limited manner and that, in one way or another, health care is linked to the criminal justice system. This, in addition to contravening the Mexican regulatory framework, and the rulings of the Supreme Court that uphold it, has multiple adverse consequences for victims of sexual violence, such as: the lack of timely care for emergency contraception, post-exposure prophylaxis for HIV and other sexually transmitted infections, and access to legal, safe and free abortions.¹⁴⁰

Prioritizing criminal complaints over health care implies that women and other individuals with gestational capacity are not automatically trusted. This adds obstacles that hinder access to health care and talks about an idea of justice and reparation as being restricted to the criminal system, which ignores the high rates of impunity in Mexico. It is an unintended consequence of punitive thought that shows us how, in the face of violence, people and institutions find difficulties in conceiving other ways of acting beyond the criminal system, even when there is the possibility of doing so.

The Mexican government neglects many things regarding prevention, protection, and generation of better public policies when it is fully engaged in criminalizing and "punishing" crimes. In the face of sexual violence, it is essential to strengthen the authority's responses, especially at the local level, focusing on prevention, protection, and comprehensive care. In the area of health, local congresses that have not yet done so should amend their criminal codes to ensure due compliance with the General Law on Victims and the NOM-046; so that governments take urgent action to provide services that meet standards of availability, accessibility, acceptability, and quality that protect the lives, rights, and opportunities of women and other persons with gestational capacity in all their diversity.

It is also essential to provide and disseminate the necessary guidelines, as well as the internal mechanisms, amongst medical and nursing personnel for the proper implementation of the NOM-046, including the appropriate procedures and path for the care of victims of sexual violence. In addition, annual mandatory training should be developed and implemented for medical and nursing personnel. This training of which should include, among other issues, the criteria for access to post-exposure prophylaxis for HIV and other STIs, emergency contraception, and voluntary interruption of pregnancy, as well as the promise that there will be no legal or administrative repercussions for the personnel who provide this care. At the same time, the authorities must also guarantee the availability and provision of the necessary supplies to provide timely and quality care to victims of sexual violence.

Health services must give information on alternatives for care and support in cases of sexual and

[crece-la-cifra-negra-de-la-violencia-sexual-en-2021-el-99-7-de-los-casos-no-se-denunciaron.](#)

138 INEGI, *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH)*, Mexico, 2016. Available at: <https://www.inegi.org.mx/programas/endireh/2016/>.

139 ILSB, *Prevenir embarazos no deseados en adolescentes en casos de violencia sexual Recomendaciones para cumplir con la norma oficial mexicana en violencia familiar, sexual y contra las mujeres*, Mexico, 2021. Available at: https://ilsb.org.mx/wp-content/uploads/2021/12/LPN_Incidencia_Nom-46_Embarazos-no-deseados_VF.pdf.

140 In 2021, the Supreme Court unanimously resolved that it is unconstitutional to criminalize abortion in an absolute manner and ruled for the first time to guarantee the right of women and pregnant women to decide without facing criminal consequences. The Court's decision is binding on all judges in Mexico, both federal and local. From now on, when deciding future cases, they must consider as unconstitutional the penal norms of the federal entities that criminalize abortion in an absolute manner, such as penal types that do not contemplate the possibility of interrupting the pregnancy in a period close to implantation or norms that only provide for the possibility of abortion as absolving excuses.



family violence and do so in a culturally relevant manner. They should also inform the victims of their right to report the facts to the authorities, but without stating any obligation. Medical personnel should register all cases of sexual violence in the General Directorate of Health Information, as well as the type of care provided to the victim and its follow-up. It is also essential to guarantee the presence of medical and nursing personnel who are not conscientious objectors in health units, as well as translators and interpreters in indigenous languages.

Finally, the authorities must recognize that they have not been able to reduce sexual violence. To do so, they need to commit to tackling the structural causes that provoke it and act together with the citizenry, the communities, and the spaces where women participate, feel safe, and build support networks.¹⁴¹

¹⁴¹ If you know someone who has experienced sexual violence and is seeking guidance regarding their rights and information to receive health care, psychological or legal accompaniment, visit www.tiempofuera.mx.



13 The problem with so-called alternatives

Estefanía Vela Barba

Among criticisms of the criminal system, it is natural to ask whether there are alternatives to guaranteeing security and justice and which are these. If jail is not the answer, what is? Where should we proceed if the way is not the prosecutor's office? The feminist movement should aim to find answers to these questions; alternatives that effectively contribute to solving the multiple social problems that exist, including discrimination and gender-based violence. However, there are many obstacles in the ideation, recognition, and implementation of other means to address these problems. This essay focuses on just one of these obstacles: how the criminal system hinders the use of other justice mechanisms or engulfs them until they are nothing more than an extension of the criminal system itself.

To show how criminalization can get in the way of the use of alternative justice mechanisms in Mexico, the first section of this chapter focuses on the case of Félix Salgado Macedonio, candidate for governor of the state of Guerrero in 2020, accused of multiple sexual crimes. The second part outlines other examples in which the criminal system has ended up monopolizing justice in Mexico and the implications of this.

Félix Salgado Macedonio is a Mexican politician who has held various public offices, including a Federal Deputy, a Municipal Presidency (of Acapulco, Guerrero), and a Senate seat in 2018. In late 2020, Salgado Macedonio requested a leave of absence from the Senate to run, for the third time, for the governorship of Guerrero as a candidate of the Morena party—the presidential ruling party at the time.¹⁴² In this context, the newspaper *Milenio* published a story on a 2016 complaint in which Salgado Macedonio was accused of sexually assaulting a woman who had worked with him in the Guerrero edition of another newspaper, *La Jornada*.¹⁴³ Like thousands of other cases, this one lay buried in the Guerrero Prosecutor's Office.

Following *Milenio*'s revelation, stories of other women accusing Salgado Macedonio of sexual assault appeared in the media. The matter not only put the Guerrero Prosecutor's Office in the spotlight, but

also Morena and its members, including the President, Andrés Manuel López Obrador.¹⁴⁴ It even led to the protests of dozens of Morena women who united to demand that their party not support Salgado Macedonio.¹⁴⁵

This demand was articulated politically and legally before Morena's Comisión Nacional de Honor y Justicia (National Commission of Honesty and Justice, CNHJ). The CNHJ has several powers that could have allowed it to impede Salgado Macedonio's candidacy and even expel him from the party.¹⁴⁶ Appealing to this mechanism meant aiming at controlling the violence attributed to the politician and preventing him from being a candidate, but not through the criminal route. The CNHJ was a much more expeditious route.¹⁴⁷ A proceeding against Salgado Macedonio initiated on January 11, 2021, and concluded a little less than two months later.¹⁴⁸

142 According to the Legislative Information System, September 16, 2020, was the initial date of the license. Salgado Macedonio is one of the founders of the Partido de la Revolución Democrática (Party of the Democratic Revolution, PRD). All the positions he contended and held before 2018 were held while he was in the PRD. He was appointed Senator as part of Morena. See http://sil.gobernacion.gob.mx/Librerias/pp_PerfilLegislador.php?Referencia=9221881#Licencias.

143 Liliana Padilla, "Félix Salgado, acusado de abuso sexual," *Milenio*, November 11, 2020. Available at: <https://www.milenio.com/policia/felix-salgado-acusado-de-abuso-sexual>.

144 Despite the multiple accusations, the response of the President was to affirm that in "election times [there are] accusations of all kinds." Ultimately, López Obrador argued, it was necessary to "have confidence in the people" and let them decide whether they wanted Salgado Macedonio as governor. Morning press conference by President Andrés Manuel López Obrador, February 17, 2021. Stenographic version available at: <https://lopezobrador.org.mx/2021/02/17/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-471/>.

145 Almudena Barragán, "Más de 100 diputadas de Morena exigen que se retiren la candidatura de Salgado Macedonio tras las acusaciones de violación," *El País*, January 12, 2021. Available at: <https://elpais.com/mexico/2021-01-13/mas-de-100-diputadas-de-morena-exigen-que-se-retire-la-candidatura-de-salgado-macedonio-tras-las-acusaciones-de-violacion.html>.

146 The powers of the CNHJ are stated in Article 49 of the Morena Bylaws. These can be found at: https://www.morenacnhj.com/_files/ugd/3ac281_7e0e1d-5f356a4e94954829d968cea956.pdf.

147 From their normative design, partisan and electoral law, particularly during campaign periods, have much shorter timeframes than criminal law. Cases are resolved more quickly. The case of Salgado Macedonio is an example of this: less than two months passed from the beginning of the process to the issuance of the resolution.

148 There were two proceedings against Salgado Macedonio before the CNHJ. The first is the one initiated by Basilia Castañeda, founder of Morena and one of Salgado Macedonio's complainants, on January 5, 2021. However, finding the resolutions to this proceeding on the CNHJ web page has not been possible. I say "resolutions" in plural because, from what I have been able to reconstruct, the first decision was to dismiss the case. Faced with this, Castañeda went to the Electoral Tribunal of the State of Guerrero, which, in resolution TEE/JEC/084/2021 of May 11, 2021, revoked the dismissal agreement of the CNHJ, instructing it to issue a new resolution. What did the second resolution consist of? I do not know. In the ninth and last communiqué published by Castañeda in the SemMéxico portal, she simply states that "[t]he response of the criminal investigation and intra-party investigation authorities has been, until now, one of impunity. Under legal formalisms, they have limited and hindered access to justice." Available at: <https://www.semmexico.mx/comunicado-9-basilia-castaneda-macie/>. On February 27, 2021, the CNHJ finally issued its resolution (Resolution of the National Commission of Honesty and Justice of file CNHJ-GRO-014/2021 of February 27, 2021).

The CNHJ determined the “inexistence” of sexual violence, favoring Salgado Macedonio. However, what is worth analyzing from the process is how the commission reached that conclusion and the role that criminal law played in all of this.¹⁴⁹

One of the main issues brought before the CNHJ was whether Salgado Macedonio had committed gender-based violence. The CNHJ acknowledged the variety of newspaper articles with accusations against Salgado Macedonio. It determined, however, that the reports alluded to “conducts that derive from two criminal types, such as rape and sexual abuse.”¹⁵⁰ That is: the CNHJ classified the accusations as criminal accusations. Based on this classification, the CNHJ later argued that it did not have “the powers to judge criminal matters” and added that Salgado Macedonio had presented the party with a certificate of no criminal record. Thus, the party’s justice office determined “the inexistence of gender violence.”¹⁵¹

A second issue that the CNHJ had to resolve and for which it deployed the same logic of first classifying the matter as criminal and then declaring it out of its competence is related to Salgado Macedonio’s “good reputation.” According to Article 46 of Morena’s bylaws, “It is the responsibility of Morena to admit and retain in its organization individuals who enjoy a good public reputation.”¹⁵² The CNHJ had to resolve

whether Salgado Macedonio met this criterion or not and concluded the following:

*The evidence provided by the Respondent, most of which is public documentary evidence, proves that he has not been tried for any crime or has performed any acts that lead to his disqualification as a public servant; the evidence provided, most of which is journalistic notes, prevent public fame to be determined from them, and only generates indications of situations that the present Commission does not have the authority to investigate and sanction.*¹⁵³

What did the CNHJ have to do if it was not up to it to judge Salgado Macedonio—because the accusations led to crimes in the exclusive domain of criminal authorities? Its conclusion: To refer the case to other authorities, particularly the criminal ones, which is what it did.¹⁵⁴

The reasoning deployed by the CNHJ—if the conduct attributed to a person may constitute a crime, the judgment about it becomes the exclusive competence of the criminal courts of the prosecutors’ offices—is dangerous. Authorities, as the CNHJ in this case, assume that they are prevented from acting in any way when the matter is a possible criminal conduct, because doing so would imply exceeding their

149 The heart of the decision is divided into three main sections, each related to a different “grievance”: the gender violence attributed to Salgado Macedonio (CNHJ/P2/AJCG/JEBP, pages 25-32), his “good public reputation” (CNHJ/P2/AJCG/JEBP, pages 32-36) and the justification for his registration as a pre-candidate (CNHJ/P2/AJCG/JEBP Pages 36-41). What the CNHJ emphasized in its publicity is the third point because it is the only one it ruled against Salgado Macedonio. The CNHJ determined that the National Elections Commission had not adequately justified why he met Morena’s profile. For this reason, it instructed to reanalyze whether he complied with the profile to be a pre-candidate. On February 26, 2021, both on its Twitter account, as well as on its Facebook account, the CNHJ published an image, accompanied by a brief text, referring to the case. The image reads: “Derived from the ex officio procedure initiated by this Commission [...] this intraparty body resolves -by unanimous vote- to instruct the National Elections and National Polls Commissions, the reinstatement of the profile evaluation procedure for the selection of the candidate for the governorship of the state of Guerrero.” Ver: https://twitter.com/CNHJ_Morena/status/1365476977839394817?ref_src=twsrc%5Etfw.

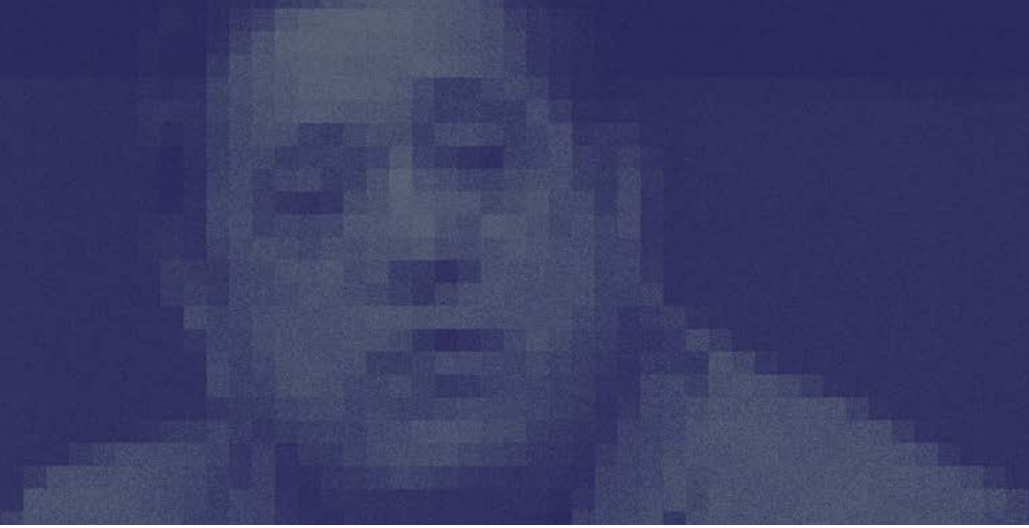
150 CNHJ/P2/AJCG/JEBP, p. 25.

151 The lack of a criminal record became one of the candidate’s main defenses. “All those are purely journalistic clippings that have the purpose of not registering me as a candidate for governor; this record of no criminal record dated yesterday proves my innocence, I am innocent, and all those journalistic clippings and all that has been said are to stop the 4t, to stop the government headed by our president Andrés Manuel López Obrador, the best president in the world, with that record all the slanders made against me are thrown away and I reserve the right to proceed legally against those who have defamed me.” CNHJ/P2/AJCG/JEBP, pp. 19, 29 and 30.

152 Article 46 of the Morena Bylaws.

153 CNHJ/P2/AJCG/JEBP, p. 35.

154 “Likewise, in search of compliance with the protection of human rights and guaranteeing a gender perspective, the following authorities were notified of the present case so that, within the scope of their attributions, they may carry out what corresponds according to law, the authorities are the following: National Electoral Institute, Electoral and Citizen Participation Institute of the State of Guerrero, Specialized Prosecutor’s Office for Sexual Crimes and Domestic Violence of the State of Guerrero, Specialized Prosecutor for the Protection of Human Rights of the State of Guerrero, General Coordinator of the Women’s Justice Center of the State of Guerrero, Secretariat for Women of Guerrero, State Executive Commission for Attention to Victims of the State of Guerrero, Specialized Prosecutor for Electoral Crimes, Women’s Secretariat of the National Executive Committee of Morena, National Executive Committee of Morena, National Elections Commission of Morena.” CNHJ/P2/AJCG/JEBP, p. 29.



functions. It would mean investigating what they do not have the power to investigate. To judge what they should not. The CNHJ recognizes that all government authorities, including itself, must ensure respect for human rights. However, from the Salgado Macedonio case, it seems that the CNHJ does not understand situations of abuse as a violation of rights but exclusively as a crime. Following this logic, the only possible idea of justice is criminal justice.

The CNHJ's position is wrong, since the same conduct may conflict with different laws. Something can be a crime and, simultaneously, a partisan misdemeanor, or an electoral offense. In the case of Salgado Macedonio: the violence he is accused of can constitute both a violation of the criminal law of Guerrero and a violation of the bylaws of Morena. The competence of the CNHJ is indeed over the statutes of Morena, not criminal legislation. Nevertheless, that competence allows it to investigate accusations like those expressed against Salgado Macedonio and understand them as a violation of the party's principles. Although the consequence cannot be imprisonment—since that is the exclusive prerogative of the criminal sphere—the CNHJ could have determined other sanctions and dictate various reparatory measures.¹⁵⁵ By using criminal law as a justification for its incompetence, the CNHJ obstructed access to justice.

This example makes us think about the different ways the criminal justice system acts as a barrier to

using parallel routes for justice. In the remainder of this essay, I offer five supplementary examples of how the instinct to resort to the criminal justice system impedes the search for alternative justice.

Incompetence

When a person approaches a non-criminal instance—such as Morena's CNHJ—but the latter does not resolve the case because it considers that responsibility for it relies on the criminal authorities, criminal law serves as an excuse for incompetence. How frequent is this scenario? It is difficult to know from the available information. For now, we mainly have anecdotes, and that of Salgado Macedonio is hardly the only one.

A few years ago, at Intersecta, we participated in a working group on violence in universities. An officer from the Ministry of Public Education in Mexico shared that educational authorities go to the prosecutors' offices for the complaints of violence they receive when these are cataloged as crimes. They do this even though the Ley General de Educación (General Education Law), among others, grants educational authorities the power to directly attend to victims without distinguishing between types of violence.¹⁵⁶ This means the law does not prevent universities or other academic centers from acting against possible crimes. Still, educational authorities choose not to act and rather divert the complaint to criminal authorities.

¹⁵⁵Article 64 of Morena's bylaws establishes the sanctions that may be imposed on a person who violates Morena's regulations. It includes, among others, private reprimand, public reprimand, suspension of party rights, denial or cancellation of registration as a (pre)candidate, and the obligation to compensate for the property damage caused.

¹⁵⁶Intersecta, *Discriminación y violencias en las universidades. Datos, leyes y buenas prácticas*, Mexico, Consejo para Prevenir y Eliminar la Discriminación de la Ciudad de México, 2020, p. 121. Available at: <https://copred.cdmx.gob.mx/storage/app/media/informe-discriminacion-y-violencias-en-las-universidades-datos-leYES-y-buenas-practicas-volumen-i.pdf>.

This also happens in workplaces. At Intersecta, we are frequently asked about the obligation of employers to act in cases of sexual harassment. The question we are asked time and time again is: Should employers wait until workers are criminally convicted of harassment before firing them? The answer is clear: There is no need to wait because workplaces have the legal right to fire a person for sexual harassment. In fact, workplaces can fire people regardless of the reason, as long as the cause for termination is explained or the person fired is adequately compensated.¹⁵⁷ What the question reveals is that people believe that conducts like sexual harassment are the exclusive responsibility of the prosecutors' offices, which, once again, is a logic that hinders the activation of other avenues of justice.¹⁵⁸

In virtually every jurisdiction in Mexico, various conducts have been criminalized in the name of women's rights. The wording of the offenses is so broad in some cases that it is difficult to think of cases that fall outside the criminal scope. For example, the Criminal Code in Mexico City defines sexual harassment, among other things, as the performance of a "conduct of a sexual nature undesirable to the recipient."¹⁵⁹ If everything that falls under this definition becomes the exclusive competence of the prosecutors' offices, there would be no instance capable of resolving any case of sexual violence within political parties, schools, workplaces, or public institutions, to mention just a few examples. That is why pointing out and resisting this logic is so important.

The referral

A second way in which criminal law interferes with other justice avenues is by forcing the authorities to refer cases to criminal law. The authorities do resolve the matters in question (unlike the CNHJ), but, in doing so, they refer the case to the criminal authorities anyway. The referral *is made as a matter of course*, without necessarily consulting with the victims about whether or not this is what they want.

For example, the Comisión Nacional de Derechos Humanos (National Human Rights Commission, CNDH) has become an instance for denouncing cases of obstetric violence. These complaints have culminated in a variety of recommendations to the Mexican Institute of Social Security and the Institute of Security and Social Services for State Workers. It is common, however, to find that the CNDH refers cases to the attorney general's office. In recent recommendations, this referral is considered a reparation measure regardless of whether the victims have requested it.¹⁶⁰ In other words: The alternatives for justice return to the criminal realm without second thoughts.

Another example of this automatic reference to the criminal system is the Mexican Official Standard NOM-046-SSA2-2005, (The NOM-O46). This norm guarantees, among other things, access to abortion in cases of rape. Its Article 6.5.1. establishes the obligation for health institutions to notify the public ministry "in cases where injuries or other signs are presumably linked to family or sexual violence." The only exception is "in cases in which the injuries presented by the person do not constitute a crime prosecuted *ex officio*," according to Article 6.5.6.

157 Article 47 of the Federal Labor Law lists the "causes for termination of the employment relationship, without liability for the employer." Among the causes is "committing immoral acts or harassment and/or sexual harassment against any person in the establishment or workplace." This only means that if the workplace wants to fire the worker *without compensation*, it must show that the worker is harassed. The process is the same as it would be for all other grounds for justified dismissal: investigate and show or indemnify.

158 The National Survey on the Dynamics of Household Relationships (ENDIREH 2021) provides relevant information on this point. Namely: of the women who ever experienced violence in the school environment and who reported the violence they experienced, 90 % went to the school authorities. The vast majority. In comparison, only 9.8% went to the prosecutor's office. Of those who experienced violence and reported it in the workplace, 69% went to their own workplace or union. In contrast, only 21.9 % went to the prosecutor's office. This suggests that women prefer the closest routes, where they exist or are clearly identified and that the criminal justice system is not necessarily what they most desire. To what extent does the current configuration respect this preference?

159 Article 179 of the Penal Code of the Federal District.

160 For example: "In the present case, the satisfaction includes that the public servants assigned to the Hospital General La Paz collaborate extensively with the investigating authorities in the processing and follow-up of the complaint that this CNDH presents to the Internal Control Organ of the ISSSTE, as well as in the integration of the investigation in the Attorney General's Office, against the persons referred to in the present Recommendation." Recommendation 91/2022, issued by the CNDG on April 29, 2022. Available at: https://www.cndh.org.mx/sites/default/files/documentos/2022-04/REC_2022_091.pdf.

In these cases, the person will be *informed* about the possibility of reporting to the public prosecutor's office. Which crimes are prosecuted *ex officio* without regarding the will of the victim? While the answer varies from jurisdiction to jurisdiction, an overwhelming majority of crimes are prosecuted *ex officio*. In the Mexican Federal Criminal Code these are: injury, sexual abuse, and rape.

The NOM-046, in other words, automatically channels to criminal institutions the vast majority of family and sexual violence matters that reach health institutions. One of the impacts of this mandatory referral is the one pointed out in the essay "The Mexican NOM-046 to prevent violence towards women" in this same collection: While feminism has fought to decouple access to abortion for rape from criminal complaints, at the same time it has fought to mandate criminal intervention in cases of rape. Thus, there is a presumption that criminal intervention is necessary when people seek abortions after being victims of rape. In Mexico, having an abortion is your right, yes. Doing it with a cop alongside apparently also is.

Several reasons have historically led different movements, including feminism, to demand that criminal authorities become *automatically* involved in situations of sexual and gender-based violence, even without asking the victims whether they want to or not. It is important to note that this can also have undesirable consequences, and one of them is that the alternatives in the search for justice become an

extension of criminal law, preventing any option that escapes the punitive paradigm.

Engulfment

Restorative justice is often considered an alternative, almost the opposite, of criminal justice. This is because, traditionally, the focus, process, and outcome of both are different.¹⁶¹ Since the criminal system has as one of its possible outcomes the incarceration of a person, governments have built a whole series of rules and principles to limit the system's abuse. For example, the presumption of innocence, which places the burden of proof on the prosecutors, or the standard of "beyond reasonable doubt."¹⁶² While the criminal system is focused on prison punishment, restorative justice focuses on the victim, the community, and reparation. What has happened in Mexico? Criminal law seems to have swallowed any restorative justice alternatives.

Since 2008, with the constitutional reform to the criminal justice system, "alternative dispute resolution mechanisms" were incorporated. Currently, the Ley Nacional de Mecanismos Alternativos de Solución de Controversias en Materia Penal (National Law on Alternative Dispute Resolution Mechanisms in Criminal Matters) regulates the mechanisms that can be used by the parties to reach a "restorative agreement in a conflict."¹⁶³ Among them are mediation, conciliation, and restorative boards. What is the problem with these? That the incorporation of some of the

161 An excellent introduction to restorative justice, including a comparison with the criminal paradigm, can be read in Howard Zehr, *The Little Book of Restorative Justice*, New York, Good Books, 2007.

162 According to a thesis of the Plenary of the Supreme Court: "Now, the concept of 'doubt' that is implicit in the principle of *in dubio pro reo* must be understood as the existence of rational uncertainty about the truth of the hypothesis of the accusation. Such uncertainty is not only determined by the degree of confirmation of that hypothesis but also eventually by the degree of confirmation of the hypothesis of the defense, assuming that there is exculpatory evidence to support it. [The satisfaction of the standard of proof does not depend on the existence of a subjective belief of the judge that is free of doubt, but on the absence within the body of the evidentiary material of elements that justify the existence of a doubt." Tesis de la plenaria de la Suprema Corte de Justicia de la Nación: "In Dubio Pro Reo. Interpretación del concepto de 'duda' asociado a dicho principio", *Gaceta del Semanario Judicial de la Federación*, January 2019, Book 62, Volume I, page 469. Available at: <https://sjf2.scjn.gob.mx/detalle/tesis/2018952>.

163 In Mexico, the procedure for reparatory agreements is set forth in Article 187 of the National Code of Criminal Procedures. It is important to mention that the possibility of using these mechanisms is restricted to certain crimes. Among those excluded are, for example, "crimes of domestic violence or their equivalents in the federal entities," according to Article 187 of the National Code of Criminal Procedures. In other words, assuming that these mechanisms are alternatives to criminal proceedings, they are not so for domestic violence, which affects women the most. INEGI's Encuesta Nacional de Seguridad Urbana (National Urban Public Safety Survey) shows that "violence in the family environment" disproportionately affects women (see presentation of the September 2020 and September 2021 results. Available at: https://www.inegi.org.mx/contenidos/programas/ensu/doc/ensu2020_septiembre_presentacion_ejecutiva.pdf and https://www.inegi.org.mx/contenidos/programas/ensu/doc/ensu2021_septiembre_presentacion_ejecutiva.pdf, respectively. It is essential to recognize that these mechanisms can, in turn, be used for cases of sexual violence. For example, in Mexico City, they could be used in cases of sexual harassment, sexual abuse, and rape within the couple, considering that these crimes are prosecuted by complaint (an assumption of origin for reparatory agreements). These forms of violence disproportionately affect women. Volga Pilar de Pina Ravest, *Medios alternativos de solución de conflictos y violencia familiar contra las mujeres. Repensando los MASC desde la desigualdad*, Thesis to obtain the degree of Master in Human Rights and Democracy, Facultad Latinoamericana de Ciencias Sociales, September 2014.

principles of restorative justice into the criminal field can distort the former. Although these mechanisms are still “alternative” resolution mechanisms, they operate under the criminal umbrella, which implies that they also operate under the criminal threat.¹⁶⁴ If a reparation agreement is reached and complied with, the State can no longer prosecute the accused person. However, if the agreement is not adhered to and a reparation agreement is not reached, the criminal proceeding continues, and the possibility of the person ending up in prison remains.

This engulfment of alternative justice mechanisms is not unique to Mexico. In the United States, it has been going on for decades.¹⁶⁵ For this very reason, abolitionist feminists of color tend to be critical of restorative justice. They have pointed out how, rather than reforming the criminal system, restorative justice has been swallowed up by the latter.¹⁶⁶ In the process, it has served to “mask the continuation of systems of oppression,” offering a kinder face to a violent apparatus.¹⁶⁷

What I want to point out is how difficult it is to have alternatives outside the criminal system. One reason is that the system itself ends up overrunning possible alternatives.

The impediment

In 2021, the Ley General de Educación Superior (General Law of Higher Education) was published in Mexico. For the first time in history, various obligations related to the prevention, attention, sanction, and reparation of “violence against women” were

imposed on universities. Among the obligations are those contained in Article 43, which ask institutions to issue “diagnoses, programs, and protocols for the prevention, attention, sanction, and eradication of all types and modalities of violence.” The same article, however, contemplates an exception: For the specific case of violence against women, this article mandates the exclusion of “conciliation or equivalent measures as a means of dispute resolution.”¹⁶⁸

While in criminal law, conciliation, mediation, and restorative boards were incorporated as alternative dispute resolution mechanisms that victims are allowed to choose, in the university environment, according to the General Law of Higher Education, these mechanisms are now prohibited. It does not matter if the victim wants them or not. The irony is evident: Criminal law not only gobbles up alternative mechanisms but also monopolizes them. In the particular case of universities, this is regrettable considering that universities are spaces in which, in recent years, thanks to the activism of students and female professors, there has been innovation in terms of justice. To mention two examples, at the National Autonomous University of Mexico and the Universidad Iberoamericana, cases were handled using restorative justice.¹⁶⁹

Proscriptions like those in the General Law Higher Education are not new. There is a long history within feminism of promoting the prohibition of “conciliation” in national and international law. An example is the Second Report of the Committee of Experts of the Belém do Pará Convention Follow-up Mechanism, which devotes a section to “mediation and

¹⁶⁴It is important to recognize that, according to Article 189 of the National Code of Criminal Procedures, at least “The information generated as a result of the reparation agreements may not be used to the detriment of the parties in the criminal proceedings.”

¹⁶⁵Jerusalem Demsas, “The promise -and problem- of restorative justice,” Vox, March 23, 2022. Available at: <https://www.vox.com/22979070/restorative-justice-forgiveness-limits-promise>.

¹⁶⁶“We are not necessarily against restorative justice. What we are against is restorative justice that is tied to the security system in any form.” Mimi E. Kim and V. Kalei Kanuha, “Restorative Justice and the Dance with the Devil,” *Women and Social Work*, Inc, Vol. 37, No. 2, 2022. Available at: <https://journals.sagepub.com/doi/full/10.1177/08861099221084830>.

¹⁶⁷“For those of us who [...] fear repetitive patterns of reform that simply mask the continuation of systems of oppression, restorative justice has generally been tied to the authoritarian forces it is supposed to restrain. [...] For adults, restorative justice is generally available only to those already trapped in the criminal system; it is offered as an alternative but is designed and controlled by law enforcement.” *Idem*.

¹⁶⁸Article 43 of the General Law of Higher Education. Emphasis added.

¹⁶⁹Office of the General Counsel of UNAM, “Informe sobre procedimientos alternativos para la atención de casos de violencia de género en la UNAM del 9 de junio de 2018 al 7 de junio de 2019,” Mexico, 2020. Available at: <http://www.abogadogeneral.unam.mx/sites/default/files/2020-10/Informe%20sobre%20procedimientos%20alternativos%202019.pdf>; Ibero Rectoría, “Protocolo para la Prevención y Atención de la Violencia de Género en la Universidad Iberoamericana,” Official Communication 560, August 18, 2021. Available at: <https://ibero.mx/protocolo-de-genero.pdf>.

conciliation and other forms of resolution of complaints of violence.” In the report, the Committee expresses concern for institutions that offer mediation to women victims of violence, “minimizing gender-based crimes and increasing the danger in which they find themselves.”¹⁷⁰ For this reason, it urges States to prohibit these mechanisms absolutely.¹⁷¹

Again, for those seeking alternatives to the criminal justice system, it is critical to recognize how qualifying gender-based violence as a crime impedes doing so. Why? Because everything outside the criminal justice system, including mediation, conciliation, and other similar mechanisms, is understood as a minimization of the problem and, therefore, is outlawed. The message is clear: Nothing outside the criminal system and its adversarial logic.

The mirror

As the last example, I would like to mention the case of the Ley General de Responsabilidades Administrativas (General Law of Administrative Responsibilities). In Mexico, this law establishes the obligations of public servants and the procedures to be followed if they fail to comply with said obligations. This law serves to establish responsibilities in cases of harassment, or allows, for example, to disqualify a public

servant for harassment. What is the problem with it?

The General Law of Administrative Responsibilities establishes that “any person accused of administrative misconduct has the right to be presumed innocent until proven guilty beyond a reasonable doubt.”¹⁷² Thus, this law incorporates the criminal standard of guilt, which is the highest standard that exists. In this case, the administrative process copies the criminal process. It becomes its mirror.¹⁷³

In all lawsuits, no matter the legal branch, due process must be respected. What changes is who carries the burden of finding proof and what is the standard for proving that a crime has been committed. In theory, what distinguishes criminal law is precisely the “beyond reasonable doubt” parameter because if someone is going to be deprived of their liberty, there better be certainty that they actually committed the crime attributed to them. This is the ideal standard to limit possible abuse of authority; however, if it is transferred to other legal branches it can become a nightmare to the victims.

Precisely one of the advantages of alternative routes to criminal proceedings is that they do not have to meet this standard. In fact, the different branches of law—electoral, civil, family, labor, etc.—not only have different standards of proof, but they can also incorporate another set of procedural rules that are more favorable to victims who are in structurally disadvantaged situations. The paradigmatic example is labor law, which has a variety of rules that, recognizing the “material inequality” between workers and employers, seek to level the playing field during trials.

170 Second Report of the Committee of Experts of the Belém do Pará Convention Follow-up Mechanism, 2015, para. 53. Available at: <http://www.oas.org/es/mesecvi/docs/mesecvi-segundoinforme seguimiento-es.pdf>.

171 The position of the CEDAW Committee is different. In its General Recommendation 35 on gender-based violence against women, it recommended that States: “Ensure that gender-based violence against women is not mandatorily referred to any form of alternative dispute resolution procedures, such as mediation and conciliation. The use of such procedures should be strictly regulated and allowed only when a prior assessment by a specialized team ensures the free and informed consent of victims/survivors, and there are no indicators of new risks to victims/survivors or their family members. Procedures should empower victims/survivors and be carried out by professionals specially trained to understand and intervene appropriately in cases of gender-based violence against women, ensuring that the rights of women and children are adequately protected and that such interventions are carried out without stereotyping or re-victimization of women. Alternative dispute resolution procedures should not obstruct women’s access to formal justice.” In other words: the CEDAW Committee does not prohibit conciliation; it prohibits conciliation from being mandatory. See: <https://www.acnur.org/fileadmin/Documentos/BDL/2017/11405.pdf>.

172 Article 135 of the Ley General de Responsabilidades Administrativas (General Law of Administrative Responsibilities). Emphasis mine.

173 Adriana Ortega Ortiz pointed out to me that one justification for incorporating this standard of proof into administrative sanctioning law is that the State acts as both judge and party. The standard acts as a protection against possible abuse by the State. I write what she says: “Although this could apparently justify a higher standard of proof, one cannot lose sight of the difference between the severity of the sanctions at stake. In any case, it would be desirable to adapt what should be understood as ‘reasonable doubt’ in one or the other area.”

To give a concrete example: Mexico, discrimination in the workplace is a crime in most jurisdictions, but it is also an occupational misdemeanor. In criminal proceedings, the entire burden of proving that the employer discriminates falls on the prosecution. The employer's defense may be simply to remain silent (because people have the right to remain silent). Once the employee alleges discrimination, it is up to the employer to prove that it was not the case. Another example from the Ley Federal de Trabajo (Federal Labor Law) is that workers can be fired "without liability for the employer" in the case they commit acts of harassment in the workplace.¹⁷⁴ The standard that an employer has to meet to show that the termination was justified—in this case, that the person committed harassment—is lower than the standard that the prosecution has to meet to send the same person to jail for the exact same conduct.

Rather than maintaining the distinctions between the branches of law, each with its advantages and disadvantages, the logic of criminal law progressively permeates these. The branches are beginning to resemble each other. Thus, alternatives cease to exist.

In this essay, I have provided some examples of how the paradigm imposed by criminal law hinders alternative routes to obtaining justice in Mexico. To prove how systematic this claudication is needs more research. However, I hope that these examples serve to keep us alert. Beyond the fact that the criminal system is ineffective for what it supposedly does, it is also important to point out how it obfuscates any way to obtain justice that is not its own. The criminal system seeks to monopolize justice. If we want to build effective alternatives we must no longer allow that.

¹⁷⁴Article 47 of the Ley Federal del Trabajo (Federal Labor Law).

Part V

Prospects for feminist justice

14. Philanthropy and different types of justice

15. Money invested in the Armed Forces and not in equality

V

A close-up, sepia-toned photograph of a hand placing a coin into a slot. Below the slot are several tall stacks of coins, suggesting a financial or economic theme.

14 Philanthropy and different types of justice

Diana Medina González

The use of economic resources is the result of political decisions. This is true for both private and public resources. Money can generate structural changes, determine the sustainability of social change strategies, and improve the living conditions of the most vulnerable populations. However, unlike public resources, private resources can transcend governments and avoid the conditionalities associated with administrative policies or programs. In this sense, philanthropy has the potential to implement long-term strategies that foster innovation and collective ownership, and that provide greater flexibility and confidence to those who are in charge of philanthropic activities.

This way of looking at philanthropy, which is closer to the principles of justice and equality than welfare or benevolence, is called feminist philanthropy. Feminist philanthropy is implemented mainly by organizations linked to feminist movements.¹⁷⁵ These movements have historically struggled to achieve justice and dignify life while demonstrating positive results in the face of increasing violence that afflicts bodies, families, and communities.¹⁷⁶ The sense of justice that feminist groups, organizations, and collectives have can help us find the emancipatory horizons that feminism aims to build and, therefore, the actions or strategies in which feminist philanthropy should be investing.

The links between feminist movements and justice

Modern societies have normalized and naturalized the search for justice within the State's models. From this perspective, governments are the sole actors that can exercise justice, and their strategies usually follow a punitive logic: criminalizing, punishing, stigmatizing, and incarcerating.

According to the Mexican lawyer, Catalina Pérez Correa, there are two main problems with understanding and implementing justice from an exclusively punitive logic. The first is that criminal justice does not solve the structural issues that explain violence; on the contrary, it generates new conditions of violence and deepen the inequalities that gave rise to it. The second is that criminal justice is based on a system of norms and procedures that has been designed, constructed, and controlled by the most privileged members of society (white heterosexual men) who have left out other visions of justice, such as those of women, members of the sexual and gender dissidence, children, or indigenous peoples.¹⁷⁷

But is it possible to speak of justice outside the framework of the government and its punitive paradigm? Some feminist movements have pointed to a notion of justice that incorporates concepts such as reparation, healing, recovery, redistribution, changes in power relations, sustainability of life, collective responsibility, and good treatment.¹⁷⁸ Such concepts and experiences go far beyond the stigma, criminalization, punishment, or incarceration offered by punitive justice. For the feminist movements that have advocated for other ways of justice there is no single type but a plurality of justice systems in open criticism of past and present political, economic, and social relations. This is a notion motivated by the experience of traditionally relegated communities. The diversity of approaches responds, in turn, to the variety of existing bodies, territories, knowledge, and worldviews.

For this essay, I recover four different approaches to justice from Latin American feminist movements: healing justice, peoples' justice, economic justice, and environmental and climate justice. The ways of conceptualizing and operationalizing these justice approaches were collected in the *Guía para encuentros reflexivos de co-construcción: Las justicias que queremos construir* (Guide for Reflective Encounters

175 Kellea Miller, Caitlin Stanton, and Esther Lever, "5 Principles of Global Feminist Philanthropy," *Responsive Philanthropy*, National Committee for Responsive Philanthropy, Summer 2012. Available at: <https://www.ncrp.org/publication/responsive-philanthropy-summer-2012/5-principles-global-feminist-philanthropy> and "Feminist Funding Principles," Astraea Lesbian Foundation for Justice. See <https://astraefoundation.org/microsites/feminist-funding-principles/>.

176 The Bridgespan Group and Shake the Table, "Lighting the way: A report for philanthropy on the power and promise of feminist movements," Global Fund Community Foundations, May 2022. Available at: <https://globalfundcommunityfoundations.org/resources/lighting-the-way-a-report-for-philanthropy-on-the-power-and-promise-of-feminist-movements/>.

177 Catalina Pérez Correa, "La cadena de Jabba: La falacia punitiva," *nexos*, June 1, 2016. Available at: <https://www.nexos.com.mx/?p=28488>.

178 Patricia Reguero Ríos, "Qué es y cómo se hace justicia feminista," *El Salto Diario*, March 7, 2020. Available at: <https://www.elsaltodiario.com/feminismos/justicia-feminista-que-es-como-se-hace>.



of Co-construction: The Justices We Want to Build), a project of Fondo Semillas and the Central American Women's Fund carried out between 2021-2022, that was enriched with documentation received from groups, collectives and organizations financed by Fondo Semillas during the 2020 and 2022 grant cycles.¹⁷⁹

It is worth noting that the justice issues presented here are only a sample of the multiplicity of proposals constructed by feminist movements in the region. None excludes the others; on the contrary, they are interconnected and complement each other to create integral long-term strategies. On the other hand, it is essential to say that most of the requests received by Fondo Semillas from feminist groups, organizations, and collectives looking for financing tend to seek the criminal system's implementation, strengthening, or reform. This speaks to the prevalence of punitive justice in collective Latin American imaginaries, including feminist ones, which makes the rescue of alternative approaches ever more relevant.

Healing justice: Pathways of collective care and psychosocial action

Healing justice is a framework for action that, since the 1980s, has allowed for holistic responses to trauma and intergenerational violence in the Latin American

region. This form of justice seeks to repair the damage that socio-political violence and human rights violations have left on the bodies, relationships, and communities that experienced them. Healing justice works particularly in recovering the well-being of women and the LGBT+ community by strengthening their actions as political agents.


In this sense, healing justice is an exercise of political and collective empowerment and sovereignty that targets and transforms the consequences of oppression in bodies, hearts, and minds.¹⁸⁰ From this perspective, learning and resilience are what gives individuals and their communities agency to regain individual and collective power.

The paths of healing justice have germinated among survivors of war and forced displacement, genocide, sexual violence, migration, and amongst the relatives of disappeared persons. Such is the case of Equipo de Estudios Comunitarios y Acción Psicosocial, an organization that emerged more than 20 years ago after the militarization of Guatemalan and whose strategies aim to seek truth, justice, and reparation through psychosocial action or intervention, specifically with women and indigenous communities.¹⁸¹ Another organization that has implemented healing justice strategies is Aluna Acompañamiento Psicosocial de México, which, since 2013, has provided psycho-emotional, political, and security tools that

¹⁷⁹This guide can be accessed and downloaded at: <https://semillas.org.mx/boladecristal-guia>.

¹⁸⁰Guadalupe Chavez, "Healing is justice," *Dignity and Power Now*, May 20, 2019. See: <https://dignityandpowernow.org/category/healing-justice/>.

¹⁸¹Equipo de Estudios Comunitarios y Acción Psicosocial. Website: <https://ecapguatemala.org.gt/>.



reinforce the collective dynamics of coping with contexts of socio-political violence in the region.¹⁸² Finally, Mujeres Al Borde, a Colombian organization, has been working since 2001 to recover the memory of bodies, geographies, and ancestral knowledge of sexual and gender dissidents through artistic and communicational creations and collective experiences.¹⁸³

Peoples' justice: Legal pluralism

Peoples' justice, also called indigenous justice or community justice, recovers the different visions and ancestral knowledge of indigenous communities. These communities put their self-determination and self-government into practice through their authorities, values, procedures, and decisions. The exercise of peoples' justice is recognizable in very different territories, paradigms, and worldviews. However, all perspectives seem to agree in three key aspects: conciliation, reparation, and collective response.

Peoples' justice is a type of justice with millenary roots, although it was not until the 1980s that its existence began to be recognized and conceptualized in Latin America.¹⁸⁴ Depending on the territory,

peoples' justice may or may not be coordinated with State justice systems. This means that this type of justice recognizes the existence of more than one legal system in the same geopolitical space. In the words of Boaventura de Sousa Santos, this coexistence requires taking seriously the pluralist, decolonizing, and democratizing projects undertaken by social and State actors, and acknowledging that justice processes may present tensions or challenges between pre-existing systems and power relations within the indigenous communities themselves.¹⁸⁵

In Mexico, some feminist groups are committed to grassroots forms of justice and are working to incorporate a gender perspective in these legal traditions. This is the case of Tequio Jurídico, who has advocated for the integration of women into the Chontal People's Assembly in Oaxaca and has achieved the inclusion of more than 50 women, their vision, and ways of working.¹⁸⁶ Other groups, such as Sbelal Kuxlejalil, in addition to working for the political participation of indigenous women in Chiapas through training and community awareness, seek the recognition of gender violence as a problem that also exists within the Tzeltal Mayan legal traditions.¹⁸⁷

¹⁸²Aluna Acompañamiento Psicosocial. Website: <https://www.alunapsicosocial.org/>.

¹⁸³Mujeres al borde. Website: <https://mujeresalborde.org/>.

¹⁸⁴Pilar Eriene de Prada, "Justicia comunitaria como justicia originaria," *Estudios sobre justicia comunitaria en América Latina. Reflexiones críticas*, Carol Proner and Charlotte Back (coords.), Valencia, Tirant lo Blanch, 2019, pp. 103-127.

¹⁸⁵Boaventura de Sousa Santos, *Construyendo las epistemologías del sur: para un pensamiento alternativo de alternativas*, Maria Paula Meneses et al. (comps.), Ciudad Autónoma de Buenos Aires, CLACSO, 2018.

¹⁸⁶Tequio Jurídico. Website: <https://tequiojuridico.org/>.

¹⁸⁷Sbelal Kuxlejalil. Website: <http://caminoparaelbuenvivir.blogspot.com/>.

Economic justice: Building sustainable forms of life and feminist social relations

Economic justice focuses on the structural causes that have forged the conditions of exploitation, plunder and control of natural goods, production, and reproduction. This type of justice seeks to place the sustainability of life and the defense of rights at the center in such a way as to guarantee optimal conditions for a life worth living. Economic justice emphasizes social protection and responsibility towards nature. At the same time, it seeks to recognize the interdependence of the productive and the reproductive worlds, particularly around care economy, the sexual division of labor, and the environment.

This conceptualization of economic justice is based on feminist economics, an intellectual tradition built on anti-patriarchal, anti-capitalist, and anti-neoliberal critiques and reflections around market-centered economicist dogmatism. Its contributions to economic thought in the region have existed since the 1970s, although its production has gained more strength at the beginning of the 21st century.¹⁸⁸

In Mexico, feminist groups have recently pushed for economic justice by recognizing care work and creating community care systems. This is the case of the Centro de Derechos Humanos Victoria Diez's work in precarious urban contexts in Guanajuato.¹⁸⁹ There is also an example of the promotion of fair and responsible trade networks in the work of the organization Vinculación y Desarrollo Agroecológico en Café de Veracruz with coffee-growing communities as a strategy to transcend the capitalist system;¹⁹⁰ or in Talachas girl, an organization working in Mexico City and the State of Mexico, on the construction, remodeling, plumbing, electricity and waterproofing sectors, and promotes access to decent work, self-determination, and autonomy in economic decision-making among women and the LGBT+ community.¹⁹¹

Environmental and climate justice: Caring for, protecting, and sustaining life

Environmental and climate justice is related to the care, protection, and sustainability of ecosystems in an era of depredation and dispossession. It is a type of justice that allows us to look at and understand the different forms of life interrelation on the planet. It highlights how these have been based on anthropocentric paradigms that privilege (white and heterosexual) men.

In the Latin American region, the processes of territorial exploitation have been intertwined with the occupation, invasion, and colonization of the minds and bodies of vulnerable populations. This has had major consequences on the lives of women and indigenous communities in the most impoverished countries, through ecocide, displacement, forced migration, assassinations of territorial defenders, militarization processes, and so on.

Throughout history, various approaches and social movements have tried to define what environmental and climate justice means. However, the plurality of knowledge, cosmovisions, and political commitments has made this task difficult. Within ecological and climate justice paradigms, concepts such as ecofeminism, ecology, environmentalism, sustainable development, and body-land-territory are relevant. Even so, both the theoretical approaches and the strategies of social movements agree that these paradigms have gained strength since the 1990s, particularly in the face of the urgency of the environmental and climate crisis.


In Mexico, environmental and climate justice strategies for the recovery and conservation of the environment are inspired in feminist movements. For example, the Escuela para Defensoras En Derechos Humanos y Ambientales Benita Galeana, an organization that contributes to the care and defense of the

188 Alejandra Santillana Ortiz et al (comps.), *Economía para cambiarlo todo. Feminismos, trabajo y vida digna*, Quito, Friedrich-Ebert-Stiftung Ecuador, 2021. Available at: <https://library.fes.de/pdf-files/bueros/quito/17428-20210323.pdf>.

189 Centro de Derechos Humanos Victoria Diez. Website: <https://www.cdhvictoriadiiez.com/>.

190 Vinculación y Desarrollo Agroecológico en Café. Website: <https://vidaycafe.org/>.

191 Talachas girl. Website: <https://www.instagram.com/talachas.girl/?hl=es>.



bodies and territories of girls and women, facilitates training in community vegetable gardens, exchanges of knowledge on medicinal plants, stove making, and training in environmental conservation in the state of Jalisco.¹⁹² Another case is Muuch-Kambal in Campeche, an organization of Mayan women that, among its many activities, works to contain deforestation and the use of toxic agrochemicals and transgenic crops. This is done through community awareness and the construction of sustainable agricultural models.¹⁹³ A final example is the case of the Instituto Mexicano para el Desarrollo Comunitario. This organization has documented and denounced the impact that recent megaprojects in Jalisco have on the physical and psychosocial health of the communities.¹⁹⁴

Final thoughts

Both philanthropy and feminist movements emerge from specific political, social, economic, and cultural systems that permeate their members' visions, interpretations, and actions for social change. The invitation of this essay is to learn about projects and strategies developed by feminist groups in recent years in Mexico and the Latin American region that promote alternative forms of justice. The aim is to contribute to creating other notions and meanings of justice, breaking with the tendency to favor strategies based on criminalization that exists within some sectors of feminism and philanthropy.


The structural changes targeted by alternative justice models do not manifest themselves in the short term. They are also difficult to quantify and often require a process of experimentation and learning. Therefore, the philanthropic organizations that fund these projects must take a long-term perspective to build sustainable movements that foster innovation and, ultimately, promote emancipation.

We live in a context of global uncertainty in which inequality seems to be widening, and the violence against historically vulnerable subjects and communities is deepening and diversifying. Feminist groups have shown an enormous capacity for change towards a more just and diverse world. In the current scenario, it is essential to recover their teachings.

¹⁹² Escuela para Defensoras en Derechos Humanos y Ambientales Benita Galeana. Website: <https://www.facebook.com/escuelaecofeminista/>.

¹⁹³ Muuch-Kambal. Website: <https://www.facebook.com/Muuch-Kambal-AC-103406198289795/>.

¹⁹⁴ Instituto Mexicano para el Desarrollo Comunitario. Website: <http://www.imdec.net/>.



15 Money invested in the Armed Forces and not in equality

Regina I. Medina and Estefanía Vela Barba

At Intersecta, we first came to the study of militarization looking for policies aimed at reducing femicides in Mexico that were not dependent on the criminal justice system. We eventually found that one factor contributing to the exacerbation and complexification of the murders of women in the country is the military deployment that has grown since the six-year term of President Felipe Calderón.¹⁹⁵ In many ways, militarizing public security is the best example of a public policy, initially designed to solve a social problem, with unintended negative consequences. What was supposed to protect us not only fails to do so but puts us at greater risk.

¹⁹⁵In May 2019, the organization Data Cívica published, together with the Sexual and Reproductive Rights Area of the Centro de Investigación y Docencia Económicas (CIDE), the report *Claves para entender y prevenir los asesinatos de mujeres en México*. Available at: <https://media.datacivica.org/pdf/claves-para-entender-y-prevenir-los-asesinatos-de-mujeres-en-mexico.pdf>. It is an analysis of the data recovered by the National Institute on Statistics and Geography (INEGI) regarding homicides. It shows how, at the beginning of 2007, there was not only an increase in the number of murders of women in Mexico but also a change in the patterns: From being mostly committed at home, the street became the most common place of death; firearms as a cause of death went from representing 3 out of 10 murders to 6 out of 10. In the report, the authors put forward a hypothesis based on the information available at the time: Perhaps the increase in these type of homicides was due to the militarization of public security. Intersecta tried to prove that hypothesis. We worked together with professor Laura Atuesta of CIDE's Drug Policy Program. Together we published the report *Las dos guerras*, showing that where there were confrontations between the Armed Forces and alleged criminal groups, murders not only did not decrease but increased. This affected not only men but also women. Intersecta, *Las dos guerras*, Mexico, September 2020. Available at: <https://bit.ly/LasDosGuerras>.

The Armed Forces have exerted violence, directly and indirectly, towards groups that have been historically discriminated against. Despite evidence of this violence, military power in Mexico is increasing: Both in terms of responsibilities—the government assigns more and more tasks to the Armed Forces—and of human and financial resources. This has enormous implications for constructing non-punitive solutions to address the problems of violence and discrimination in Mexico. Why? Because every second, every person, every peso that goes to the Armed Forces is a second, a person, and a peso that is not destined to imagine, build, and implement redistributive and restorative public policies.

Beyond promises, a government's priorities can be told by observing where it allocates the money and where it does not. In this essay, we are interested in putting the Mexican military power in numbers.¹⁹⁶ How much money is going to the Armed Forces in Mexico?¹⁹⁷ How much personnel has been assigned to them? How does this investment contrast with other institutions, particularly those seeking wealth redistribution (such as health or education services) or those that exist in the name of women (such as the National Institute of Women)? We want to contribute to a discussion on the current allocation of public resources in Mexico and point out where else these resources could go. Do we want a society with more soldiers or more nurses, more tanks or more schools, more guns or more medicine, more barracks or more

day-care centers? An analysis of public resources shows how the recent Mexican governments have solved these questions.

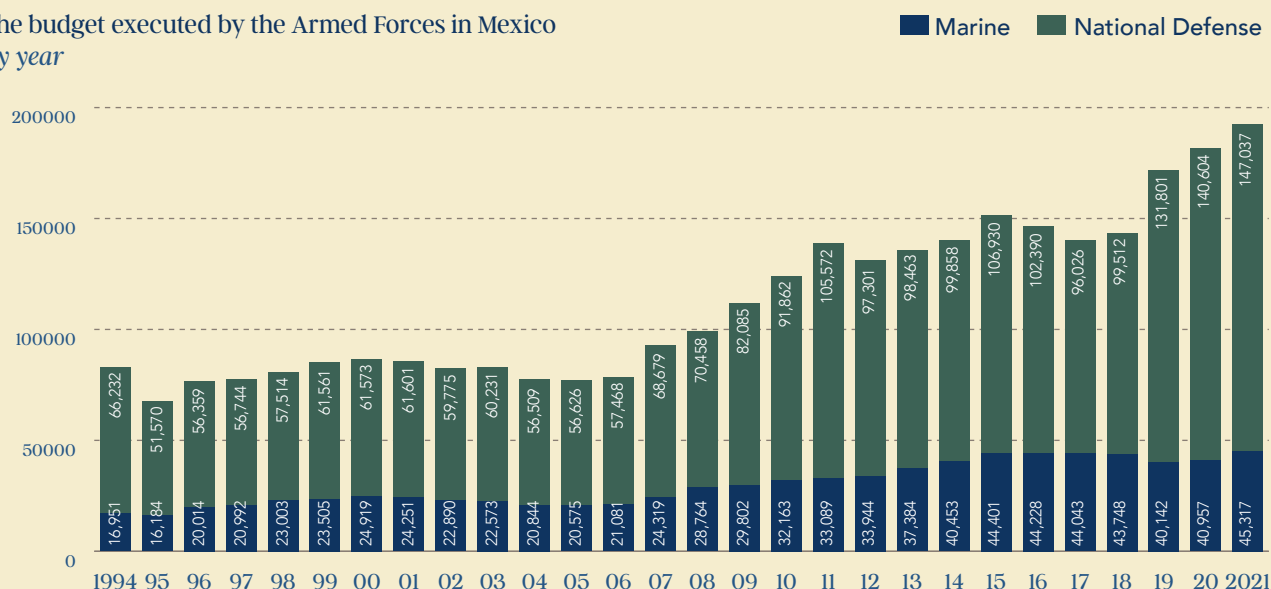
Two types of databases allow us to outline where the resources of the Mexican government go: The Federal Expenditure Budget database—from the approved budget to the executed budget, which is reflected in the Public Account—and the database of the personnel assigned in the Federal Public Administration.¹⁹⁸ The first database contains information on the money, and the second on the number of people the Federal Public Administration formally assigns to each institution. What do they tell us about the resources allocated to the armed institutions?

196 This essay is a summarized version of a previously published report. See: Intersecta, *Dinero para reducir la violencia hay, pero ¿en qué lo invierte el Estado?*, Mexico, 2022. Available at: <https://www.intersecta.org/dinero-hay-en-que-lo-invierte-el-estado/>.

197 For those interested in delving deeper into the resources received by the Armed Forces, two reports were published in 2022 that address the budget from different perspectives: México Unido Contra la Delincuencia, *El negocio de la militarización en México*, México, 2022. Available at: <https://www.mucd.org.mx/wp-content/uploads/2022/09/El-negocio-de-la-militarizacion-version-web.pdf>; Leonardo Núñez González and Jorge Andrés Castañeda, *Los militares y la Guardia Nacional: recursos en aumento, simulación, discrecionalidad y opacidad*, Mexico, Mexicanos Contra la Corrupción y la Impunidad, 2022. Available at: https://contralacorrupcion.mx/wp-content/uploads/2021/09/los-militares-y-la-guardia-nacional.pdf?utm_source=site&utm_medium=button&utm_campaign=mcci.

198 Both sources are published by the Ministry of Finance and Public Credit (SHCP) in an open data format. It is important to clarify that both databases contain only federal information. This implies that the budgets of municipalities and states are left out. The second relevant clarification is that, while the budget database is used to analyze the budget of the entire federal government—including the three branches of government and the autonomous constitutional bodies—the database of positions only allows for the analysis of the Federal Public Administration (PEF). For example, the budget database contains information on the Legislative and Judicial Branches of the Federation; the database of posts does not. Why exclude the state and municipal levels from the budget analysis? Because there is no public base equivalent to that of the PEF that would allow us to account for everything that is spent by the entities. There is a massive problem of budgetary opacity. The same can be said for the government posts. Although INEGI has tried to account for the size of governments through annual (Federal and State) and biannual (Municipal) censuses, the contrast is still difficult.

The budget executed by the Armed Forces in Mexico By year



For data from 1994 to 2007, the source is: Estadísticas Oportunas de Finanzas Públicas

For data from 2008 to 2021, the source is: transparenciapresupuestaria.gob.mx/es/PTP/Datos_Abiertos/

The data was processed by Carlos Brown and by Intersecta (intersecta.org).

The Mexican military through the years

The use of military institutions for public security functions in Mexico was common throughout the 20th century.¹⁹⁹ Particularly since the 1970s, the “war against drugs” became the legal and political basis for much of the Armed Forces’ actions in the country.²⁰⁰ There is evidence, however, that this strategy

intensified in the six-year term of Felipe Calderón (2006-2012). The country saw an increase in the number of soldiers patrolling the streets with the mandate to fight organized crime.²⁰¹ As seen in the following graph, the budget spent by the Armed Forces in this period also increased, particularly when contrasted with the six-year terms of Vicente Fox (2000-2006) or Ernesto Zedillo (1994-2000).²⁰² The militarization of public security implied a change in the deployment, strategy, and resources allocated to it.²⁰³

199 Thomas Rath, *Myths of Demilitarization in Postrevolutionary Mexico, 1920-1960*, Chapel Hill, The University of North Carolina Press, 2013; Mariano Sánchez Talanquer, “Las defensas rurales del Ejército y las raíces históricas de la militarización,” Mexico, CIDE. Program for the Study of Violence, October 29, 2020. Available at: <https://www.cide.edu/pev/2020/10/29/las-defensas-rurales-del-ejercito-y-las-raices-historicas-de-la-militarizacion/>; Jorge Javier Romero, “Los militares nunca se fueron,” *nexos*, January 2021. Available at: <https://www.nexos.com.mx/?p=52073>.

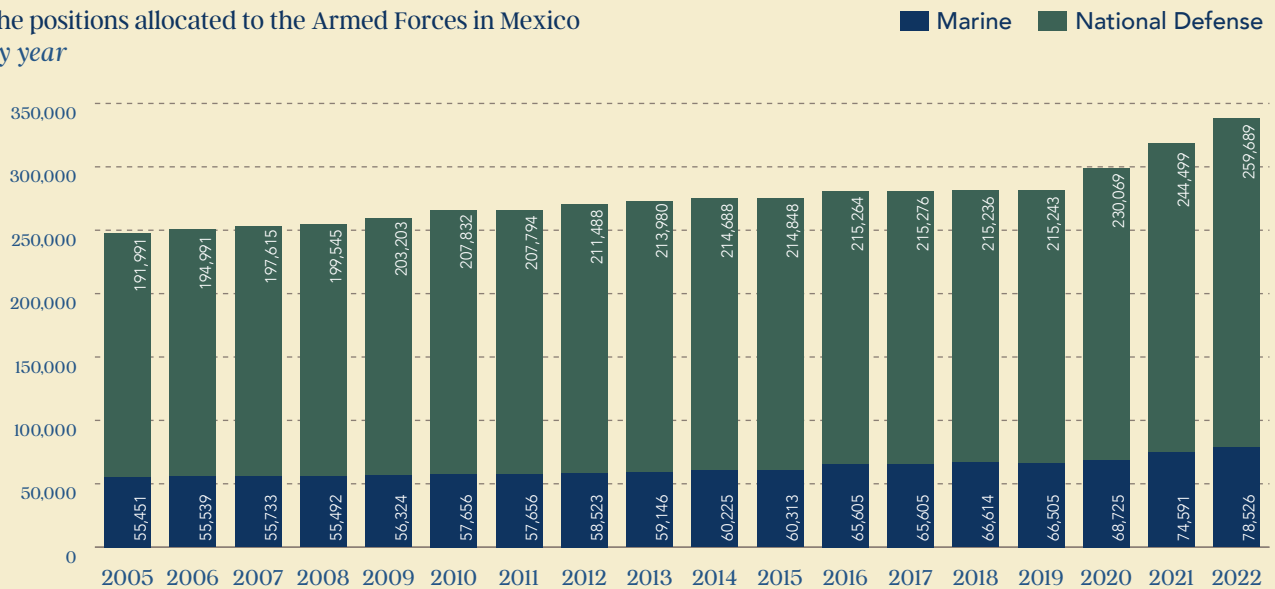
200 In addition to the budget, which shows a significant increase in resources for the Armed Forces since Calderón, in Intersecta we have found a change in detentions. In the specific case of detentions, we have data from 2001 to 2022. Between 2001 and 2006, the average annual number of arrests made by the Ministry of National Defense was 2,182. In Calderón’s six-year term, the average was 7,012. (Sedena’s responses to Requests for access to public information numbers 0000700008921 and 0000700203820).

201 Objective no. 8 of the National Development Plan 2007-2012 of the Federal Government stipulates that it was necessary to “recover the strength of the State and security in social coexistence through a frontal and effective fight against drug trafficking and other expressions of organized crime.” Available at: https://www.gob.mx/cms/uploads/attachment/file/707911/Plan_Nacional_de_Desarrollo_2012-2012_DOE.PDF. For an analysis of the discourses regarding the militarization of public security of Fox, Calderón, Peña Nieto and López Obrador, see Rebeca Calzada Olvera, *Making Enemies: A Discourse Analysis of the Militarization of Public Security in Mexico*, Thesis for the degree of Master in Politics and Society, Maastricht University, 2019.

202 It is essential to clarify that the public account includes two categories: approved budget and executed budget. That is, how much the ministries are authorized to spend and how much they end up spending. In this essay, we focus on what the Armed Forces actually spent. That is also why we limit ourselves to the year 2021, which is the last year for which there is data on what was actually spent. Since 2008, the Armed Forces have spent annually more than what Congress originally approved for them. For this reason, in this essay, we privilege the category of budget exercised rather than budget approved. On the other hand: all figures reported correspond to pesos of 2022.

203 The Ministry of Finance and Public Credit publishes the “Gasto programable del sector público presupuestario” (Programmable Expenditure of the budgetary public sector). How much does the expenditure represent in relation to the Gross Domestic Product? In the last series published by the ministry,

The positions allocated to the Armed Forces in Mexico By year



Source: Analytical Data on Positions and Remuneration in the Federal Public Administration.
Data processed by *intersecta.org*

While the militarization of public security intensified during Calderón's six-year term, the strategy was sustained by presidents Enrique Peña Nieto (2013-2018) and Andrés Manuel López Obrador (2019-2024). In this last administration, military power has expanded beyond the realm of public security. Currently, the Armed Forces are "increasingly present in the building of public works and as contractors; taking care of nurseries and productive plants; participating as primary actors in health and social welfare policies; guarding public works and institutions; eradicating illicit crops and even guarding televisions."²⁰⁴ This can be seen in the annual government budget. In 2019, the Secretariat of National Defense (Sedena) exercised 32.5 % more resources than in 2018. This is the most significant annual growth since 1994. Growth continued in 2020 and 2021, which is the last year for which we have data.

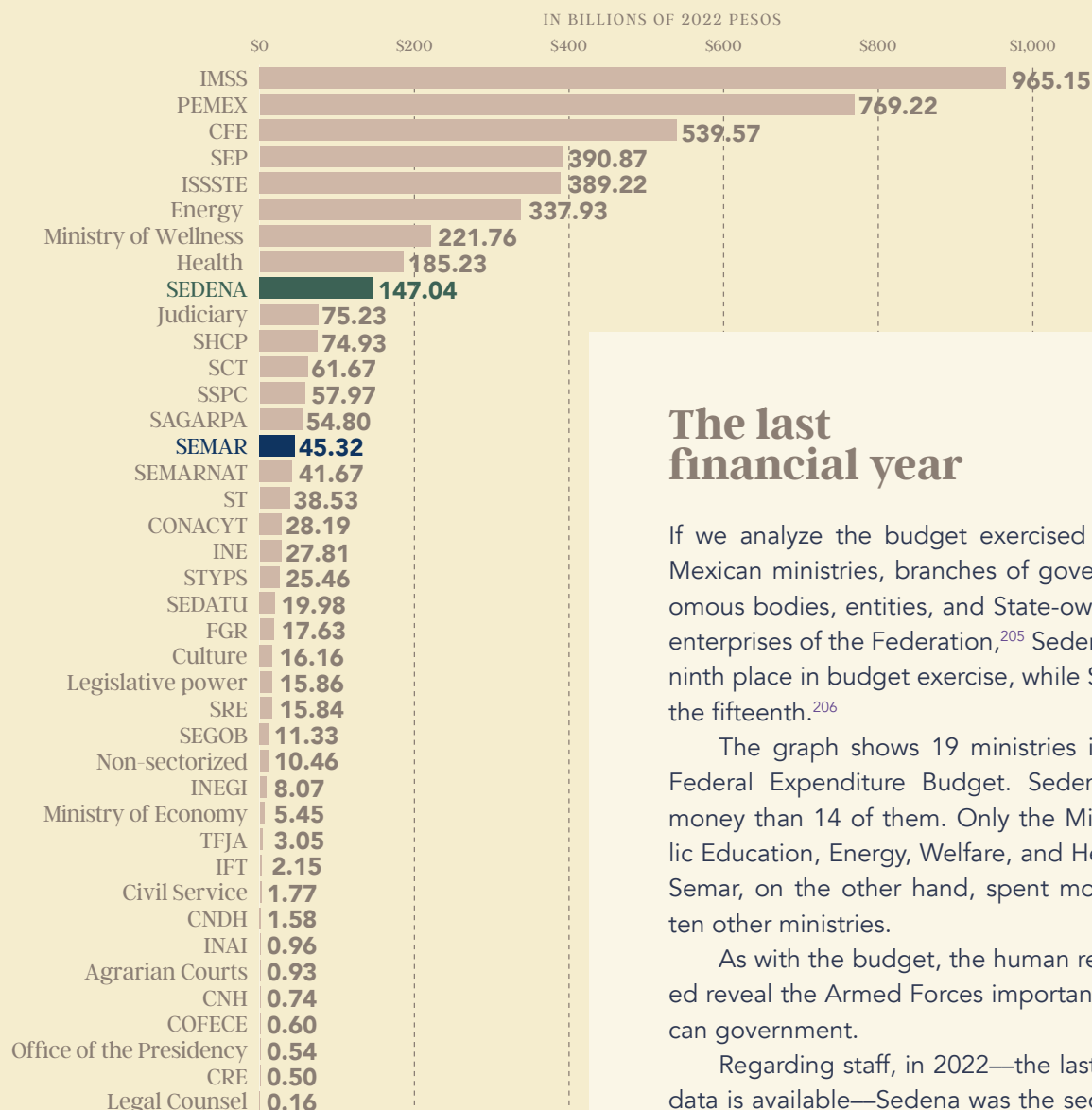
Although there is no information on the amount of personnel before 2005, from then until today, there has also been a constant increase in the personnel that the Armed Forces are authorized to hire. As with the total budget, there was an immense leap during López Obrador's six-year term. In 2018, Sedena was authorized to have 215 000 work positions. By 2022, the figure rose to almost 260 000. That is an increase of 45 000 job posts in just three years. In the case of the Secretariat of the Navy (Semar), the increase was of 12 000 positions in the same period. In total, a personnel of 338 000 individuals was authorized for the Armed Forces in 2022.

These data reveal the growth of the financial and human power of the Armed Forces in Mexico in the last six years. How does it compare with that of other institutions?

with data covering from 1990 to 2021, it can be seen how, from 2009 on, Sedena's spending increased as a proportion of GDP just from 0.3 %, to 0.4 %. In the case of Sedena, the next leap was in 2020 when the expenditures rose to 0.5 %. In the case of Semar, the leap occurred in 2014, when it went from 0.1 % to 0.2 %. In 2021, spending on the Armed Forces represented 0.6 % of GDP. See: <http://presto.hacienda.gob.mx/EstoporLayout/estadisticas.jsp>.

204 Sara Velázquez, Estefanía Álvarez, Catalina Pérez Correa and Alejandro Madrazo Lajous, *Inventario Nacional de lo Militarizado. Una radiografía de los procesos de militarización en México*, Mexico, CIDE. Programa de Política de Drogas, 2021, p. 20. Available at: <https://ppdata.politicadedrogas.org/PPD/INM/files/INM-Report.pdf>.

How much budget did federal institutions execute in 2021?
For programmable spending, by institution



Source: Public Accounts of the Ministry of Finance
and Public Credit (SHCP)
Available at https://transparenciapresupuestaria.gob.mx/es/PTP/Datos_Abiertos
Data processed by intersecta.org

The last financial year

If we analyze the budget exercised in 2021 by all Mexican ministries, branches of government, autonomous bodies, entities, and State-owned productive enterprises of the Federation,²⁰⁵ Sedena occupies the ninth place in budget exercise, while Semar occupies the fifteenth.²⁰⁶

The graph shows 19 ministries included in the Federal Expenditure Budget. Sedena spent more money than 14 of them. Only the Ministries of Public Education, Energy, Welfare, and Health surpass it. Semar, on the other hand, spent more money than ten other ministries.

As with the budget, the human resources invested reveal the Armed Forces importance to the Mexican government.

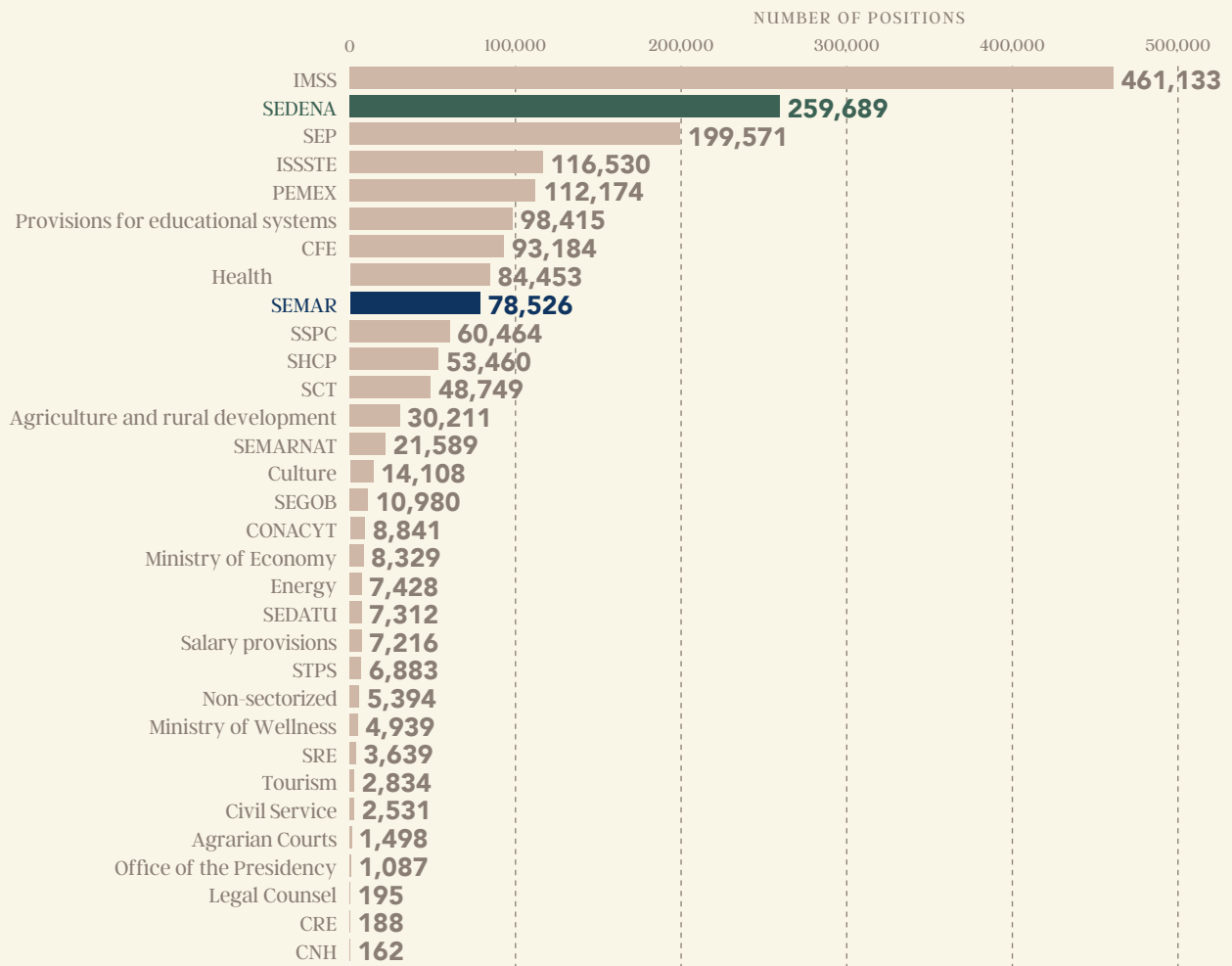
Regarding staff, in 2022—the last year for which data is available—Sedena was the second largest institution in the Federal Public Administration. Of all

²⁰⁵ The categories excluded from the analysis were: Social Security Contributions; Salary and Economic Provisions; Public Debt; Contributions to Federal Entities and Municipalities; Federal Contributions for Federal Entities and Municipalities; Debts from Previous Fiscal Years; Expenditures for Programs to Support Savers and Bank Debtors. All the branches included are shown in Figure 1.

²⁰⁶ Together, the two Armed Forces institutions spent 192.3 billion pesos in 2021. This amount represented 4 % of the spending of all Mexican ministries, branches of government, and autonomous bodies. If we consider the resource exercised by the other federal security, criminal and carceral institutions, such as the Attorney General's Office (FGR) or the Secretariat of Security and Citizen Protection (SSPC), the amount rises to 267.9 billion pesos, equivalent to 5.8 % of the spending mentioned above.

Number of approved positions in 2022

By organization



Source: Analytical Data on Positions and Remuneration in the Federal Public Administration of the Ministry of Finance and Public Credit (SHCP). Data processed by *intersecta.org*

federal government agencies, only the Mexican Social Security Institute (IMSS) had more personnel positions planned than Sedena.²⁰⁷ In turn, Semar was the ninth institution with the most personnel. This means that the Armed Forces together have more people

working for them than practically any other branch of the Federal Public Administration. Sedena even beats the Ministry of Public Education.²⁰⁸

Analyzing the federal personnel database is essential because it allows us to know the specific type

²⁰⁷ During the last year of Calderón's six-year term, Sedena was the institution with the fourth largest number of positions. It was during Peña Nieto's six-year term that it moved into second place. This has not changed with López Obrador. What has happened with López Obrador is that the gap between the IMSS, the largest institution and the Sedena, the second largest, is closing. For example, if one contrasts the positions assigned in 2019 with those authorized in 2022, the big winner of the entire Federal Public Administration is the Sedena, with almost 45 thousand positions. The second institution that received the most personnel was the IMSS, with just 24 thousand additional positions acquired during this six-year term. Although the IMSS remains number one, the Sedena is closing in on it.

²⁰⁸ We also highlight that the Armed Forces have more posts than the Secretariat of Security and Citizen Protection (SSCP), which reaffirms that the Armed Forces have displaced civilian security institutions in security tasks. Considering the latest reforms that passed control of the National Guard to the Sedena, this will only increase. Estefanía Vela Barba and Nuria Valenzuela, "Ahora sí: guardia militar," *Animal Político: Blog de Intersecta*, September 8, 2022. Available at: <https://www.animalpolitico.com/blog-de-intersecta/ahora-si-la-guardia-militar/>.



of job posts that each public institution has available. For example, among the positions assigned to the Armed Forces are those that correspond to the troop: soldiers and sailors who occupy the lowest ranks of the military hierarchy. They are the ones who patrol the streets and come into direct contact with the citizens. If we contrast the number of troop members with the number of personnel that are in direct contact with citizens in institutions designed to reduce poverty, inequality, and discrimination, the numbers are very revealing.²⁰⁹ For the latter we considered nursing personnel, who are in charge of providing care in public health institutions; teaching personnel in charge of making educational policies a reality in the classroom; social work personnel who serve as liaisons between citizens and multiple public institutions—like hospitals, schools, prisons—; and personnel who carry out legal inspection work—be it labor, health, environmental, or economic— in different institutions.

A contrast of the allocated positions in 2022 in the Federal Public Administration shows that:



For every person **employed as a nurse** there are **2.2 members of the military**.



For every person **employed as a teacher** there are **2.3 members of the military**.



For every person **employed as a social worker** there are **10 members of the military**.



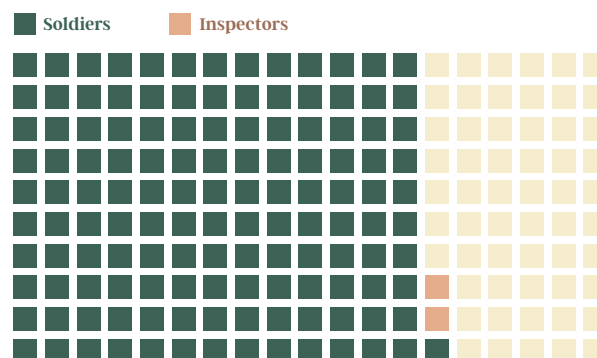
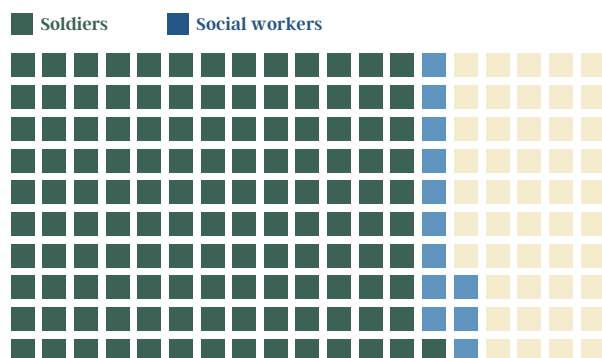
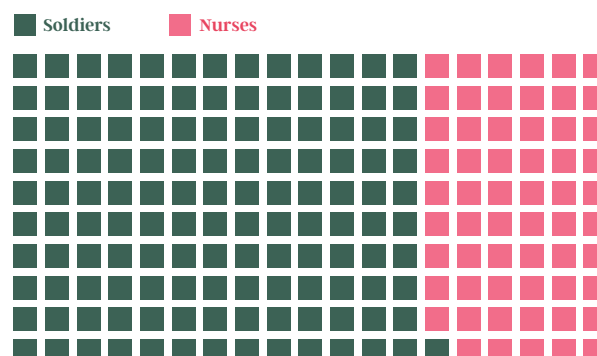
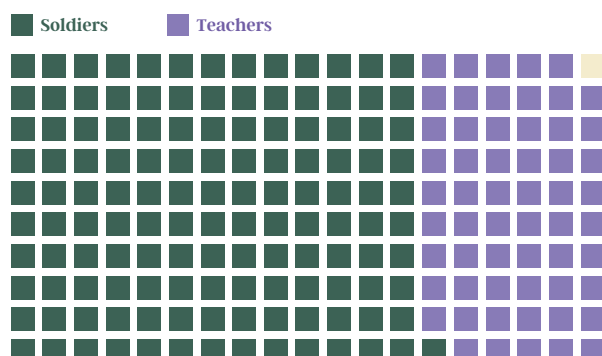
For every person **employed as an inspector** there are **50 members of the military**.

In all cases, there are more than twice as many soldiers and marines than federal bureaucrats in non-militaristic, redistributive, and care giving tasks.

²⁰⁹ Scholars refer to, individuals employed by the government who interact directly with citizens and are responsible for implementing public policy as “street-level bureaucrats.” See Michael Lipsky, *Street-level bureaucracy: Dilemmas of the individual in public service*, New York, Russell Sage Foundation, 2010.

What positions are prioritized in the Federal Public Administration? According to the base of Analytical Data on Positions and Remuneration in the Federal Public Administration for 2022.

1 square = 1,000 people



Institutions for equality

The budgetary discussion implies a discussion about the type of society we aspire to create—a society in which more people are dedicated to teaching than to managing weapons. To understand how close we are to such a society in Mexico, we can contrast the public resources received by the Armed Forces with those obtained by institutions and policies created to protect women and other groups that have been historically discriminated against, under the paradigm of human rights, in general, and for equality and non-discrimination, in particular.²¹⁰ Some of these institutions have

broad mandates. To take the example of the National Council for the Prevention of Discrimination (Conapred): according to the Ley Federal para Prevenir y Eliminar la Discriminación (Federal Law to Prevent and Eliminate Discrimination), this organ has the attribution of coordinating the actions of all the agencies and entities of the Federal Executive Branch that aim to prevent and eliminate discrimination. In addition, it has to promote various measures for the same purpose and is an instance created to receive and resolve complaints about discrimination nationwide.

How much personnel did Conapred have in 2022? 108 people. This limited amount of human resources appears more so when considering that,

²¹⁰We refer to the National Women's Institute (Inmujeres), the National Commission for the Prevention and Eradication of Violence against Women (Conavim), the National Center for Gender Equity and Reproductive Health, the National Council for the Prevention and Elimination of Discrimination (Conapred) and the National Center for the Prevention and Control of HIV/AIDS (Censida). Except for Censida, whose origins date back to 1988, all are 21st-century institutions. Government of Mexico, "Antecedentes del Consejo Nacional para la Prevención y el Control del sida (Conasida)," February 16, 2015. See: <https://www.gob.mx/censida/documentos/antecedentes-del-consejo-nacional-para-la-prevencion-y-el-control-del-sida-conasida>.

under the paradigm of “republican austerity” of the current administration, the number of external persons hired for professional services in public institutions and their income has been cut.

The Armed Forces, in contrast, have not experienced austerity. As said before, the Secretariat of the Navy (Semar) had 78 000 men and women working for them. This means that one Semar is equivalent to 727 Conapreds. One Sedena is equivalent to 2 404 Conapreds. With the personnel of one Sedena, we could ensure that almost every municipality in the country would have a Conapred office.

The positions in the Federal Public Administration in 2022 *Some comparisons*

SEDENA	259,689
SEMAR	78,526
Federal Consumer Protection Agency	2,515
National Institute of Indigenous Peoples	2,180
National Commission against Addictions	1,103
Executive Commission for Attention to Victims	388
National Women's Institute	251
National Center for Gender Equity and Reproductive Health	202
National Council for the Prevention of Discrimination	108
National Center for the Prevention and Control of HIV/AIDS	90
National Commission to Prevent and Eradicate Violence against Women	48

*Source: Analytical Data on Positions and Remuneration in the Federal Public Administration
Data processed by intersecta.org*

The situation of the National Women’s Institute (Inmujeres) is another example of where the Mexican government’s budgetary priorities are located. According to the Law of Inmujeres, this institution has to “promote and foster conditions that enable non-discrimination, equal opportunities and equal treatment between genders, as well as the full exercise of all women’s rights and their equal participation in the political, cultural, economic and social life of the country.”²¹¹ However, this institution’s budget in 2021 barely amounted to 727 million pesos. Semar’s budget is 50 times larger. Sedena’s is 183 times larger. In terms of

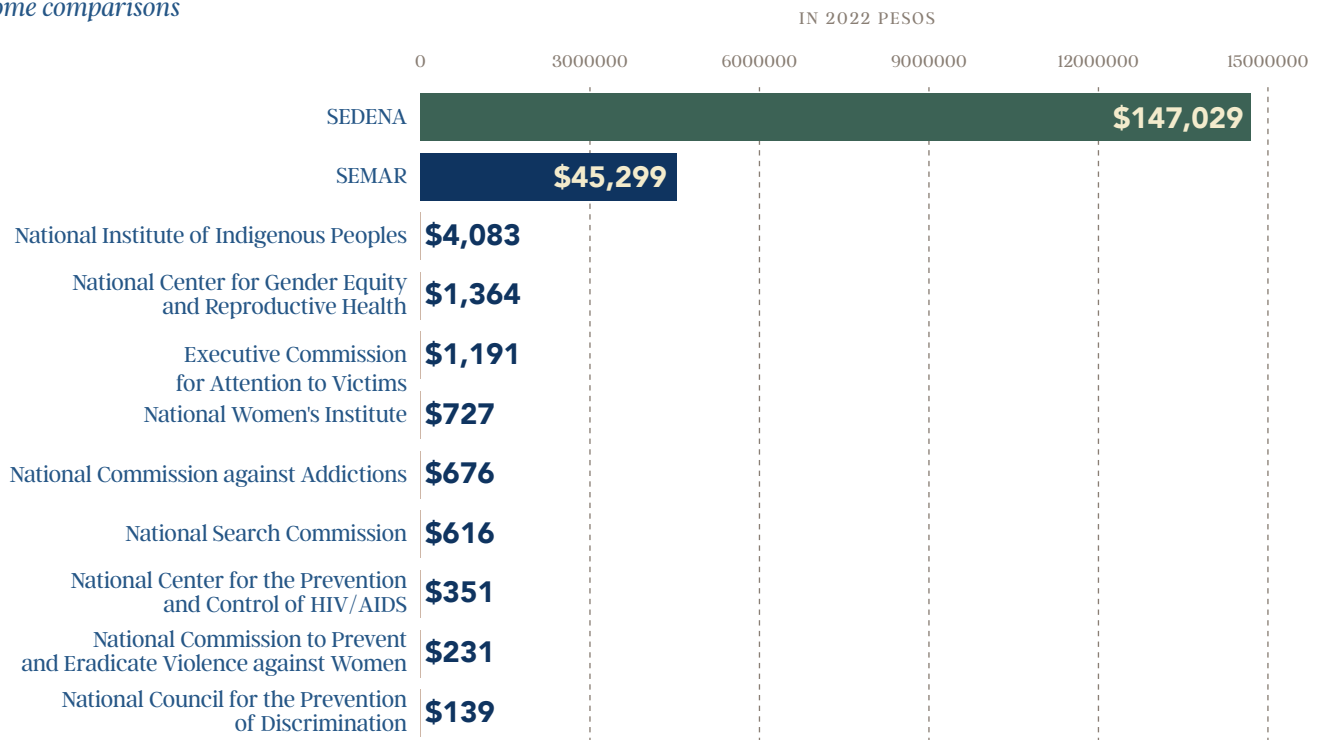
²¹¹ Article 4, Law of the National Women’s Institute.

personnel: With one Sedena, we could have a thousand Inmujeres. Even with the women working at Sedena alone, who represent barely 12 % of the institution—which is one of the lowest figures for the percentage of women employed in the Federal Public Administration—there could be 125 Inmujeres.²¹²

In 2021, Sedena had more money—418 million pesos— for its “Program for equality between women and men,” than the entire National Commission to Prevent and Eradicate Violence against Women (Conavim): 231 million pesos. In other words, the budget allocated for gender equality at the military is almost double than that of an agency created to coordinate the State policy against gender violence throughout Mexico.

The budget executed in 2021

Some comparisons



Source: www.transparenciapresupuestaria.gob.mx/es/PTP/Datos_Abiertos/
Data processed by intersecta.org

²¹²Sedena's response to Request for access to public information number 0000700336419.

While the government's budget databases do not contain much detail on specific expenditures, some of the comparisons we were able to make, based on what the Armed Forces spend versus what institutions for equality do, are as follows:

In 2021, Sedena spent 75 million pesos on animal food. That is half of the entire budget that Conapred exercised that year.

In 2021, what the Armed Forces spent on uniforms—523 million pesos—was more than the entire budget of the National Center for HIV and AIDS Prevention and Control: 351 million pesos.²¹³

In 2021, the total budget of Inmujeres was 727 million pesos. Semar exercised four times more money—a total of 4.2 billion—only covering “sobrehaberes,” which are “additional remunerations for active military personnel.”²¹⁴ And Sedena? It spent 12.5 billion pesos on this salary bonus for soldiers.

The bonuses received by the members of the Armed Forces, which amounted to a total of 16.7 billion pesos in 2021, were almost twice the entire budget of Inmujeres, Conavim, CEAV, Conapred, the National Search Commission, Censida, the National Center for Gender Equity and Reproductive Health and the National Institute of Indigenous Peoples combined (all of which amount to just 8.7 billion pesos).²¹⁵ In fact, more money is invested in the salary bonus for soldiers than in IMSS daycare centers (the latter have 11 billion pesos).

What the Armed Forces spent on travel stipends—459 million pesos—is more than what the entire federal government invested in shelters for women victims of violence: 415 million pesos.

These figures reveal what we already knew: Women and other groups that have been historically discriminated against are not a priority for the Mexican authorities. While resources to attend to our needs are scarce, the Armed Forces enjoy abundance. While it is true that Mexico needs a fiscal reform to increase tax collection, resources are currently being squandered on armed institutions while those that implement redistributive policies are undermined.

Again, in the government of austerity, more is invested in military trips abroad than in shelters for women that are victims of violence.

213Censida is the permanent public institution responsible for “coordinating the public, social, and private sectors to promote and support actions to prevent and control the human immunodeficiency virus, human immunodeficiency syndrome, and other sexually transmitted infections.” Government of Mexico, National Center for the Prevention and Control of HIV and AIDS. See: <https://www.gob.mx/censida/acciones-y-programas/consejo-nacional-pa-ra-la-prevencion-y-el-control-del-sida-conasida>

214In the 2021 budget, the concept of “sobrehaberes” only appears in the Armed Forces budget. We were unable to find a similar concept for the other institutions. Sedena, “Percepciones de personal militar,” last updated October 15, 2022. See: https://www.gob.mx/cms/uploads/attachment/file/771768/INAL_TABLA_HABERES_15_Oct_2022.pdf.

215In 2021, the Mexican Congress authorized the Armed Forces to have 319 090 work posts. Due to the Armed Forces' size alone, the percentage allocated to salaries -including bonuses- will be much higher. In any case, it seems to us that the point holds: Certain institutions have been privileged to grow more than others. And those institutions are guaranteed incredible benefits that few others have.

Final thoughts

Mexico is experiencing an intensification of militarization in public life. This is the conclusion of a process that has been going on for more than five decades in which civilian institutions have been weakened to privilege the Armed Forces. Military powers have expanded not only in security areas, but also in activities related to infrastructure, commerce, aviation, finance, and more. The changes to the Mexican Constitution are not the only evidence of these new attributions; the increase in the budget and the personnel of the Armed Forces is an excellent testimony of the consolidation of a scheme that delegates public services to the military.

In a context where the federal government has implemented fiscal austerity policies, reviewing how the money is spent is essential. As the numbers in this essay show, the Armed Forces have not seen budget cuts, on the contrary, they have received substantial increases in money and personnel. The allocation of public resources to finance the Armed Forces implies the Mexican government is not investing in institutions and personnel that implement redistributive public policies and care. An example is the “National Care System” that feminism has been pushing for in the past years. One of the major arguments against its installation is its cost.²¹⁶ How closer would we be to the ideal of a more egalitarian and less violent society if instead of barracks for the Sedena, for example, daycare centers were built; if instead of soldiers we had personnel dedicated to the care of older people; if the government took responsibility for the tasks of care that have historically been delegated to women?

²¹⁶According to a UN Women study, “the configuration of a universal, free and quality child care system considering an implementation period of 5 years has an average annual cost of 1.16 % of the 2019 GDP.” In that year, the Armed Forces budget represented 0.57 % of GDP. With the resources of the Armed Forces, half of that system could be financed. UN Women, *Costos, retornos y efectos de un Sistema de cuidado infantil universal, gratuito y de calidad en México*, 2020. Available at: <https://mexico.unwomen.org/es/digiteca/publicaciones/2020-nuevo/diciembre-2020/costos-retornos-y-efectos-de-un-sistema-de-cuidado-infantil-universal-en-mexico>.



Epilogue

As feminists, we advocate for the transformation of the realities surrounding us. We are constantly searching for less oppressive and more inclusive spaces where justice, respect, and freedom are not the exception but the rule. The more we think about the social crises we are going through, the greater the need to collectively reflect and build alternatives. On this occasion, we have been brought together by a shared concern: The increase of criminalization as a solution to social problems. We seek to trigger a public discussion on how State punitivism has permeated the policies supposedly erected to protect the rights of women and other groups that have been historically discriminated against. The essays gathered in this book seek to show some of the unintended consequences of punitive policies, but also of those more progressive policies that nevertheless fail to solve social problems due to the way punitive logic informs them. This vicious circle adds to the mistakes in implementation, the corruption, and the inefficiency of the Mexican justice system .

Punitivist logic—like patriarchal logic—is deeply normalized in our societies. The examples we have gathered in this book (attention to obstetric violence, implementation of the federal regulation to access abortions due to rape, Women’s Justice Centers, prisons’ conditions, social reinsertion, sexual practices in adolescence, registration of sexual aggressors, etc.) are just a small sample of how criminal logic permeates in all spaces. It does not cease to amaze us how, in an effort to find solutions and paths for action, it is so easy to confuse punishment, shame, and revenge with justice and reparation.

We recognize that debates on justice are endless. We continue to talk and debate what justice is, how to achieve it, and what law, concretely criminal law, does—or should do—in achieving justice. However, we agree that policies that criminalize behaviors have not worked. These do not always bring reparations for the victims and survivors of human rights violations. They do not reduce recidivism nor solve the structural problems that concern us. On the contrary, it has been shown that criminal punishment does not prevent undesirable social behaviors from happening but can even have unexpected negative consequences.

The most common response to the different problems that afflict or concern us as feminists always seems to be a criminalizing response: deploying the Police and the Military, increasing crime catalogs, deepening penalties, seeking imprisonment or some variant of punishment for those who violate the rights of others. But individual punishments do not solve the structural conditions of inequality that are at the root of many of these problems; in fact, they have not been able to prevent “punished” individuals from reoffending. How can we aspire to reparation and non-repetition if the proposed solutions focus on individual punishment and do not address the root causes of violence?

If only the matter with criminalization was that criminal systems are insufficient and ineffective, but the impacts of expanding the criminal system go well beyond that. The tragedy of what we can call “the punitive spiral” is that, in the name of justice, it replicates and intensifies power dynamics, making them invisible and affecting groups that have been historically discriminated against. Punitivism is activated in the name of victims and survivors. Still, it generalizes their needs and singles out specific individuals as ag-

gressors instead of looking at the responsibility of the State. It prioritizes punishment over comprehensive reparation and measures of non-repetition. As if this was not enough, punishment ends up affecting—directly and indirectly—the people who live in contexts of greater discrimination.

It would be naïve not to recognize that feminists in Mexico have also opted for criminal justice alternatives. Frustration with the government’s inaction and rampant violence has driven criminalization to appear as the only solution. Feminism theoretically aspires to freedom, justice, memory, and reparation, but in practice, some sectors of the movement have fallen into the punitive spiral that drives us away from these values.

As in any political movement, in feminism there are inconsistencies and failed strategies that we seek to reflect upon and question. This calls for feminists to be more careful with reproducing criminalization to face situations of violence, inequality, and access to justice. As we show throughout this book, the strategy of individual criminal punishment to prevent and address structural problems is monopolizing. It even eliminates efforts to prevent crime and forgets the few alternatives that our movement has created. Criminalization is yet another expression of patriarchy; it is a strategy for dealing with social problems that limits autonomy and is based on asymmetrical power relations. A strategy where coercion seems to be the primary tool does not modify the oppressive structures we are immersed in but ends up affecting the populations the criminal system claims to protect. This is a strategy that, from our perspective, contravenes feminism.

Fortunately, feminist movements have developed critical tools that allow us to question and dismantle the stereotypes and the inequalities we as a society

have normalized. Feminist movements have shown how societies have normalized violence. Feminism also created a theory that allows us to examine how different intersections build individuals and how there are different ways of understanding and creating justice. Inequalities women face are not only related to gender; it is also essential to understand the interaction of other historical structures of discrimination, including racism, classism, and ableism. In that sense, what, other than feminism, can lead us to understand the way criminalization pierces all social spheres?

We are aware that the punitive paradigm is difficult to counteract and uproot. On the surface, the expansion of the criminal system may seem positive and is extremely popular, as it promises order, excellence, and a way out of complex social problems. But

we, as feminists, refuse to accept it as a solution. This is not to say that we have all the answers. On the contrary, the more we share these reflections, the more doubts arise. Nevertheless, with this book, we seek to show how punitive strategies are not working and are causing clear harm, particularly in vulnerable populations. We advocate to continue identifying and questioning the punitive logic that governs us. Together, we seek to foster the collective creativity that will help us find alternatives. Because putting all our trust in a failed justice system is dangerous, irresponsible, and contrary to the political principles that unite us in the search for gender justice.

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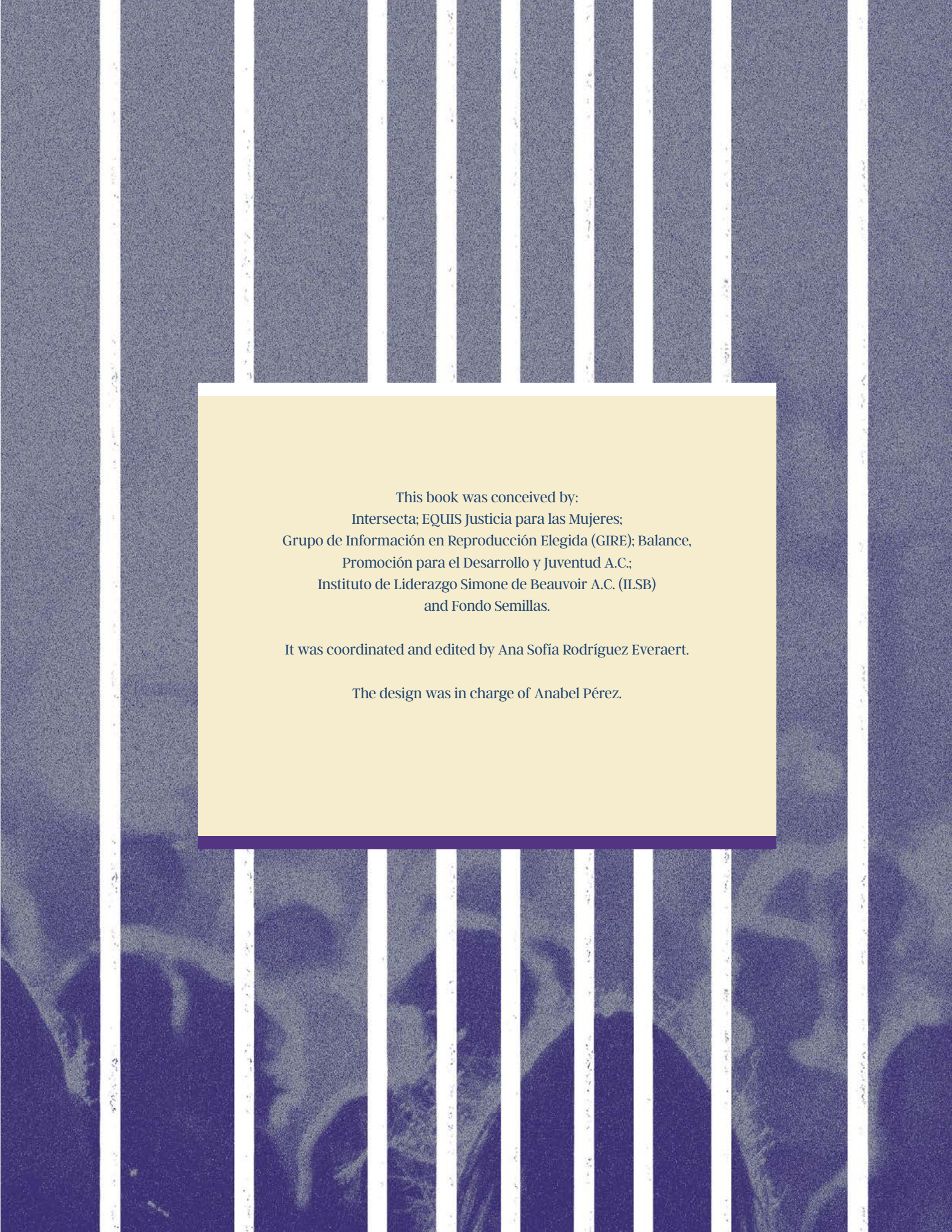
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