



United Mexican States

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I. Introduction

“... the right to life does not exist, or better, life is not a right. Nobody has the right to life – every human being is alive... and that’s it! A very different thing is that, stemming from that pre-legal reality, the Constitutions acknowledge the right to protection of health, to protection of our physical integrity, to an appropriate environment, to food, to self-defense, etc. Thus, as Joseph Raz states, life is an assumption that will let us have access to everything valuable and to exercise all our rights”³

The right to life is usually used to refer to that primary and essential right without which no other right could exist. More specifically, with regard to this right, the Inter-American Court of Human Rights has stated that it is a “fundamental right, and its exercise is a prerequisite for exercising every other right. If it is not respected, all other rights are meaningless. By virtue of the fundamental character of the right to life, any approach restricting it is inadmissible”.⁴ This

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3 Translation from the original: Francisco VAZQUEZ GÓMEZ BISOGNO, “El voto de minoría a favor de la vida. Un relato de las incongruencias de la sentencia mayoritaria que constitucionalizó el aborto en México”, in Victor Manuel MONTOYA RIVERO and Diana ORTIZ TRUJILLO, “En defensa de la vida: un voto de minoría sobresaliente. Homenaje al Ministro Sergio Salvador Aguirre Anguiano, Premio Ramón Sánchez Medal 2010”, Mexican Commission on Human Rights, NPO, México, 2010, 177.

4 Case “Niños de la Calle (Villagrán Morales y otros) contra Guatemala”, Ruling of November 19, 1999, Set C, N° 63, Par. 144.

means that the value of life is so important that it is granted a certain supremacy over the rest of the rights acknowledged by the positive legal system.

Then the question is whether it is correct to speak of “the right to life”. If life is a necessary assumption for the existence of any other right, the commonly used terminology seems wrong. It is not a right *per se*, but a pre-legal reality, with a fundamental value universally acknowledged. If there is no life, there is no right owner and, therefore, no right to life.

However, regardless of the pertinent terminological details regarding the expression “right to life”, the truth is that there is consensus as to its meaning, the importance of the value of life, and consequently, the need to protect it in law.

This chapter will describe the current state of the protection of this *right* in the United Mexican States at a legislative national level, as well as the international commitments and the jurisprudential development.

II. The Right to Life

A. Political and Legal Organization of Mexico

The Mexican form of government is that of a representative, democratic and federal republic, made up of a Federal District and states united in a Federation, remaining autonomous in everything related to their domestic regime.

The parts that make up the Federation are the States of Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosi, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán, Zacatecas and the Federal District.

The national sovereignty originally lies in the people, who always have the inalienable right to alter or change the form of government. The sovereignty is exercised by means of the Powers of the Union, which are divided into Executive, Legislative and Judicial; the jurisdictions of these powers and the states’ domestic regimes are provided for by the Federal Constitution and the State Constitutions, which cannot contravene the Federal Pact⁵ under any circumstances.

The City of Mexico, Federal District, is the seat of the Powers of the Union. The Legislative Power rests in the General Congress, consisting of two Chambers: the Deputies’ Chamber and the Senate (Art. 50 of the Constitution); the Executive Power rests in only one individual named President of the United Mexican States

5 Federal Constitution of Mexico.

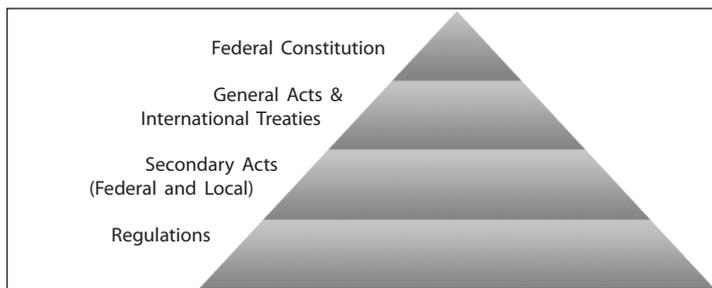


(Art. 80 of the Constitution); and the Judicial Power rests in the Supreme Court of Justice, the Electoral Tribunal (Tribunal Electoral), the Circuit Bench and Unitary Tribunals (Tribunales Colegiados y Unitarios de Circuito) and the District Courts (Juzgados de Distrito) (Art. 94 of the Constitution).

With regard to the states, article 116 of the Federal Constitution establishes their organization, respecting the tripartite principle of the division of powers. Article 115 of the Constitution establishes that the form of government of the states—for the purposes of their domestic regime—shall be republican, representative and popular, and their territorial division and political organization shall be the free Municipality.

Article 133 of the Federal Constitution sets forth the hierarchy of laws, stating that the Federal Constitution, the laws issued by the Union's Congress emanating from the Constitution, and the international treaties that are in accordance with the Constitution, signed by the President of the Republic and passed by the Congress, shall be the Union's Supreme Rule.

In this regard, the Supreme Court of Justice of Mexico has maintained that, in accordance with the mentioned rule, the principle of constitutional supremacy governs the Mexican legal system; according to this principle, the Federal Constitution is in the apex of the rules pyramid and, immediately below it are the international treaties and general acts, which are issued upon constitutional clauses compelling the legislator to pass them.⁶



6 Cfr. Thesis by the Plenary of the Supreme Court of Justice of the nation, identified as P. VIII/2007, published in the *Semanario Judicial de la Federación* (Weekly Judicial Publication of the Federation), vol. XXV, April 2007, p. 6. General acts are, for example, the General Act on Health, the Federal Act on Labor, the General Act on Education. General Acts are those whose creation and/or existence stem directly from an article of the General Constitution of the Republic. The Constitution thereby establishes very specific bases to be provided for and respected by general acts; the latter's provisions affect the three levels of government: federal, state and municipal.

Thus, the Constitution, the international treaties and the general acts are the Supreme Rule of Mexico, constituting a general superior legal body. Below this general superior legal body or constitutional block are the secondary acts—either federal or local—the regulations and the circular letters.

B. The Role and the Content of International Treaties Signed by Mexico

Mexico, by a decision of the President, with the Senate’s approval, has entered into several. The binding force of said treaties is dependent upon their due publication in the Official Gazette of the Federation (i.e. in the official journal).

Some of those treaties are:

- American Convention of Human Rights, published in the Official Gazette of the Federation on May 7, 1981.
- International Covenant on Civil and Political Rights, published in the Official Gazette of the Federation on May 20, 1981.
- Convention on the Rights of the Child, published in the Official Gazette of the Federation on January 25, 1991.

American Convention of Human Rights

Article 4.1 of the treaty establishes that:

“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

It should be noted that, on March 24, 1981, the Organization of American States’ General Secretariat received an instrument—which included an Interpreting Declaration—by which the Mexican State adhered to the Pact of San José under the following terms:

“Regarding article 4.1, it is considered that the expression ‘in general’ does not bind the states to adopt or keep in force the legislation protecting life ‘from the moment of conception,’ since this matter is reserved to the states dominion.

On the other hand, the Government of Mexico maintains that article 12.3 comprises the limitation that establishes that every religious legal proceeding shall take place in the temples, as set forth by the Political Constitution of the United Mexican States”.



Also, on April 9, 2002, the Mexican Government notified the Organization of American States' General Secretariat of its intention to partially take back the reservation and interpreting declarations, keeping only the Interpreting Declaration related to the following conditions:

“Interpreting Declaration

Regarding article 4.1, it is considered that the expression ‘in general’ does not bind the states to adopt or keep in force the legislation protecting life ‘from the moment of conception,’ since this matter is reserved to the states dominion”.

Additionally the Vienna Convention on the Law of Treaties establishes, on the one hand, that a state cannot formulate a reservation and/or interpreting declaration that is incompatible with the object and purpose of the treaty (art. 19, par. c), and, on the other hand, that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (art. 31, par. 1).

Therefore, the interpreting declaration mentioned can be considered to be completely invalid, since an interpretation made in good faith and in accordance with the ordinary meaning to be given to the terms of the American Convention proves that it protects life from the moment of conception. Indeed, article 4.1 expressly states that life shall be protected “from the moment of conception;” thus, an interpretation that goes against its express wording contradicts its object and purpose.

Moreover, article 31, par. 2 of the Vienna Convention on the Law of Treaties establishes that its preamble is part of the context that shall be taken into account for the purpose of the interpretation of treaties. In this regard, the Preamble of the American Convention of Human Rights reaffirms the intention to guarantee to the maximum extent possible all human rights acknowledged to every man, regardless of him being a national of a certain state; thus, if a state restricts this right, it violates this Treaty. The Preamble of the American Convention establishes the following:

“Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection

in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters, ...”

Finally, article 29, par. a) of the American Convention of Human Rights establishes that “no provision of this Convention shall be interpreted as permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein”. This means that the very text of article 4.1 of the Convention does not support a restrictive interpretation of the right to life acknowledged therein, or an interpretation that completely denies it.

However, the Mexican Supreme Court of Justice has not addressed the validity or otherwise of said Declaration.

On the other hand, article 5.1 of the Pact of San José protects the person’s physical integrity:

“Every person has the right to have his physical, mental, and moral integrity respected”.

International Covenant on Civil and Political Rights

Article 6.1 of this Covenant establishes that:

“The right to life is inherent in the human beings. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.



Convention on the Rights of the Child

It is especially worth referring to the provisions set forth in articles 1, 2 and 6 of this Convention:

“Article 1. For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under according to the law applicable to the child, majority is attained earlier”.

“Article 2. 1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.

“Article 6. 1) States Parties recognize that every child has the inherent right to life.

2) States Parties shall ensure to the maximum extent possible the survival and development of the child”.

Moreover, in this regard, the Convention preamble establishes the following:

“Bearing in mind that, as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.’”

The connection between the Convention text and its preamble derives from the application of the Vienna Convention on the Law of Treaties—to which Mexico is a State Party—since the latter, in its article 31.2, states that for the purpose of the interpretation of a treaty, its preamble shall be considered part of the text.

As is clear from the statements above, the Convention on the Rights of the Child, including its preamble, establishes that every child has the inherent right to life and, due to his physical and mental immaturity, needs special legal protection and safeguards, without making any distinction between born and unborn children. Indeed, the Convention expressly points out that said protection covers every child, “before as well as after birth”.

International Treaties in the Light of the Latest Constitutional Amendment

On June 10, 2011, one of the most important amendments since 1917 was published in the Official Gazette of the Federation, changing the name of Title I, Chapter I of the Constitution to “On Human Rights and Their Guarantees”.

The most significant changes introduced by the amendment were:

- The constitutionalization of the human rights acknowledged in international treaties of which the Mexican State is a State Party (art. 1). It is important to mention that what was included in the Constitution were the human rights, not the international treaties.⁷ As a matter of fact, as mentioned before, the Mexican Constitution is the Supreme Law of the United Mexican States, as established in article 133 of said document. No legislation—in the broad sense of the word, which includes international treaties—is above the Federal Constitution (i.e. not even the international commitments undertaken by the Mexican State have, at a national level, a superior hierarchy than the constitutional provisions).

Despite the foregoing and according to the Mexican Constitution’s text in force, human rights acknowledged in international treaties are part of the constitutional text and must be interpreted in accordance with the provisions contained in the Constitution. However, an international treaty’s provisions which do not refer to a human right are not part of the Mexican Constitution.

- The constitutionalization of the pro hominem principle, which establishes that human rights shall be interpreted and construed in the way that better favors human beings.⁸
- The express acknowledgment of the right to life. In this regard, article 29 of the Federal Constitution reads: “No decree shall restrict or suspend the exercise of the rights to non-discrimination, to recognition

7 The current wording of article 1.1 reads: “In the United Mexican States, every person shall be entitled to the human rights acknowledged by this Constitution and the International Treaties of which the Mexican State is part, as well as to the guarantees that protect them; the exercise of said guarantees shall not be restricted or suspended, except in the cases and under the circumstances established by this Constitution”.

8 The current wording of article 1 reads: “the standards relating to human rights shall be interpreted in accordance with this Constitution and the International Treaties dealing with this matter, always favoring the person’s widest protection”.



as a person before the law, to life, to personal integrity, to family protection, to a name, to the nationality; the rights of childhood; the political rights; the freedom of thought, conscience and religion; the principle of legality and retroactivity; the prohibition of death penalty; the prohibition of slavery and servitude; the prohibition of forced disappearance and torture; or the essential judicial guarantees to protect such rights”.

All in all, the 2011 constitutional amendment incorporated into the Constitution the protection of every human being’s right to life, and reinforced the amendments to the local Constitutions, which will be mentioned below. The Mexican Constitution also returns to a natural law position, by which the Constituent and/or the Amending Power of the Constitution “acknowledges”—instead of “grants”—the human rights referred to by the constitution and protected by the international treaties.

In this regard, it should be mentioned that no international treaty establishing human rights has ever left the human being—born or otherwise—unprotected. For example, no treaty grants a right to abortion.

III. The Right to Life and Abortion

It is clear—according to what has been analyzed above—that Mexico protects the human right to life as a fundamental right, acknowledging it in several international treaties, and in its Constitution.

However, the way criminal law protects this right—particularly by punishing the crime of abortion as a violation to the unborn’s right to life—varies from one state to the other, and has been modified by different legislative amendments.

Below we will analyze the different justifying excuses provided for by each state, as well as the peculiar situation of the Federal District, which, in 2007, incorporated the “voluntary abortion” within the first twelve weeks of gestation as a case of permitted abortion.

A. The Creation of Legal Excuses Absolving the Crime of Abortion

As mentioned before, Mexico is a federal state. This is the reason why the powers to regulate criminal law fall on the federative states, in their respective scopes of jurisdiction. This means that each state has full authority to regulate this matter.

Nonetheless, the Federal Criminal Code still contains some provisions

relating to abortion,⁹ which were applicable in the federal territories and the Federal District. However, these provisions are almost irrelevant, since nowadays said federal territories no longer exist and the Federal District is empowered to legislate on abortion through its Legislative Assembly.¹⁰

Regarding the situation in each state, abortions practiced at any time during the gestation period are punished by the Criminal Codes of 31 federative entities in Mexico. The exception is the Federal District where abortion is punished after the twelfth week of pregnancy, unless it is performed without the woman's consent, in which case it is punished at all times. However, there are absolving excuses varying in their range and sense, depending on each state. Said absolving excuses acquit and exempt some cases of abortion that would be otherwise punishable.

Those exceptions—which are not justifications but acquittals¹¹—take place when abortion is caused by the woman's negligence, or it is considered a “therapeutic” or “eugenic” abortion, or pregnancy is the result of rape or non-consensual artificial insemination, or when the abortion is performed for economic reasons.

i. Abortion Caused by the Woman's Negligent Conduct

Abortion caused by the pregnant woman's negligent conduct is not punished in: Aguascalientes, Baja California (Sect. 136, Criminal Code), Baja

9 Sections 329 to 334 of the Federal Criminal Code punish abortion, though no punishment is applied when abortion is caused by the woman's negligence or guilt, or when pregnancy is the result of a rape, or when the woman's life is at risk.

10 The last two federal territories disappeared on October 8, 1974, when Quintana Roo and Baja California Sur became autonomous Federal States. Regarding the Federal District, in 1997 the Legislative Assembly of the Federal District started to function, having its own, autonomous legislative jurisdictions. There are, however, special cases in which the Federal Criminal Code still applies; for example, when there are boats subjected to the federal jurisdiction.

11 There is a fundamental difference between the “justification causal” and the “acquittal causal” of a crime. The “justification causal” determines that there is no crime, since there is no unlawful or unjust conduct. Usually, such is the case of the self-defense that results in the death of the attacker. The “acquittal causal,” on the other hand, is based on the premise that the crime actually occurs since there is typical, unlawful and guilty conduct; however, for one reason or another, the law decides not to punish the crime's author. It can be seen that the difference between them lies in the fact that the “justification causal” does not accept a crime, while the “acquittal causal” recognizes that a crime has occurred but exempts it of the corresponding punishment.



California Sur (Sect. 252), Campeche (Sect. 298), Coahuila (Sect. 361), Colima (Sect. 190), Chiapas (Sect. 136), Chihuahua (Sect. 219), Federal District (Sect. 148), Durango (Sect. 352), Guanajuato (Sect. 163), Guerrero (Sect. 121), Hidalgo (Sect. 158), Jalisco (Sect. 229), Mexico (Sect. 251), Michoacán (Sect. 290), Morelos (Sect. 119), Nayarit (Sect. 338), Nuevo León (Sect. 331), Oaxaca (Sect. 316), Puebla (Sect. 343), Querétaro (Sect. 142), Quintana Roo (Sect. 97), San Luis Potosí (Sect. 130), Sinaloa (Sect. 158), Sonora (Sect. 270), Tabasco (Sect. 136), Tamaulipas (Sect. 361), Tlaxcala (Sect. 279), Veracruz (Sect. 154), Yucatán (Sect. 393) and Zacatecas (Sect. 312).

Morelos requires that the pregnant woman's conduct be "noticeably" negligent (Sect. 119, Criminal Code).

Morelos justifies this provision by asserting that the moral suffering the woman experiences as a result of the abortion is considered sufficient as a substitute for government imposed punishment.

ii "Therapeutic" Abortion

Therapeutic abortion (as defined pursuant to the various state laws discussed below) is not considered a non-punishable abortion in the States of Guanajuato, Guerrero and Querétaro.

The rest of the states do provide for it, so long as the decision to perform the abortion is supported by the opinion of the doctor assisting the woman. (The practitioner is also instructed to consult another doctor if possible.)

Some states require that there be *serious death risk*: Aguascalientes (Sect. 9), and Quintana Roo (Sect. 97, Criminal Code); while other states require that there be *death risk*: Baja California (Sect. 136), Campeche (Sect. 299), Coahuila (Sect. 361), Colima, Chiapas, Chihuahua, Durango, México, Morelos (Sect. 119, Criminal Code), Oaxaca (Sect. 316), Puebla (Sect. 343), San Luis Potosí (Sect. 130), Sinaloa (Sect. 158, Criminal Code), Sonora (Sect. 270), Tabasco (Sect. 136), Veracruz (Sect. 154), and Yucatán (Sect. 393).

On the other hand, the states that add, in addition to the existence of *risk of death*, *the risk of seriously affecting the woman's health* are Baja California Sur, Federal District, Hidalgo (Sect. 158), Jalisco, Michoacán (Sect. 291), Nayarit (Sect. 339), Tamaulipas (Sect. 361), Nuevo León (Sect. 331), Tlaxcala (Sect. 280) and Zacatecas (Sect. 313).

However, the criteria of "risk to woman's health" turns out to be somewhat problematic. The threat of "seriously affecting the woman's health" leads to various interpretations since the concept of "health" may include many situations. Due to this inaccuracy, the practice can lead to broadening the scope of the exception, allowing the performance of abortions based on "social" or "emotional" health reasons; in

fact, every abortion could be classified within this category. Requiring the doctor's opinion may somewhat counteract this excess, though only to a limited extent.

iii. Abortion in Cases of Pregnancy Resulting from Rape

Regarding abortion in cases of pregnancy resulting from rape, some states authorize it without further requirements. Such is the case of the States of Campeche (Sect. 298), Federal District (Sect. 148), Durango (Sect. 352), Guanajuato (Sect. 163), Jalisco (Sect. 229), Mexico (Sect. 251), Michoacán (Sect. 290), Morelos (Sect. 119), Nayarit (Sect. 338), Nuevo León (Sect. 331), Puebla (Sect. 343), Querétaro (Sect. 142), San Luis Potosí (Sect. 130), Sinaloa (Sect. 158), Sonora (Sect. 269), Tabasco (Sect. 136), Tamaulipas (Sect. 361), Tlaxcala (Sect. 279), Yucatán (Sect. 393), Zacatecas (Sect. 312).

Other states have temporal requirements. For example, the State of Hidalgo (Sect. 158) requires that the pregnancy has not reached the 75th day, while others require that this period be 90 days or 3 months, such as Coahuila (Sect. 361), Colima (Sect. 190), Chiapas (Sect. 136 bis), Chihuahua (Sect. 219), Oaxaca (Sect. 316), and Quintana Roo (Sect. 97).

As to proving that rape occurred, some states demand that a criminal proceeding be initiated, like Aguascalientes (Sect. 9). Others maintain that neither a judicial ruling nor the initiation of a criminal proceeding is necessary, and that the "verification of the facts", which can be carried out by the corresponding administrative authority, is enough. Such is the case in the States of Baja California (Sect. 136), Guerrero (Sect. 121), Hidalgo (Sect. 158), San Luis Potosí (Sect. 130), and Tabasco (Sect. 136). In Quintana Roo, on the other hand, reporting of the crime is required (Sect. 97).

Finally, the following States require authorization by the administrative authority or a judge prior to the abortion: Aguascalientes (Sect. 9), Baja California (Sect. 136), Baja California Sur (Sect. 252), Guerrero (Sect. 121), and Hidalgo (Sect. 158).

iv. Abortion in cases of Pregnancy Resulting from Non-Voluntary Insemination

In Baja California Sur (Sect. 252), Chihuahua (Sect. 219), Colima (Sect. 190), Federal District (Sect. 148), Guerrero (Sect. 121), Morelos (Sect. 119), San Luis Potosí (Sect. 130), Tabasco (Sect. 136), and Veracruz (Sect. 154), abortion is not punished when it aims to terminate a pregnancy caused by unauthorized artificial insemination.

Chihuahua (Sect. 219) and Veracruz (Sect. 154) require, in addition, that the pregnancy be no greater than 90 days.



v. “Eugenic” Abortion

Eugenic abortion (as defined in the various state laws discussed below)¹² is accepted in the States of Baja California Sur (Sect. 252), Coahuila (Sect. 361), Colima (Sect. 190), Chiapas (Sect. 136 bis), Chihuahua (Sect. 148), Guerrero (Sect. 121), Mexico (Sect. 251), Morelos (Sect. 119), Oaxaca (Sect. 316), Puebla (Sect. 343), Quintana Roo (Sect. 97), Veracruz (Sect. 154), and Yucatán (Sect. 393).

In some of these states, abortion can be practiced when undefined and subjective “serious eugenic causes” are genetically present, without any further requirements. Such is the case of Oaxaca (Sect. 316), and Puebla (Sect. 343).

Other states require that there be genetic or congenital disorders that cause serious physical or mental defects: Baja California Sur (Sect. 252), Coahuila (Sect. 361), Colima (Sect. 190), Chiapas (Sect. 136 bis), Guerrero (Sect. 121), Mexico (Sect. 251), Morelos (Sect. 119), Quintana Roo (Sect. 97), Veracruz (Sect. 154), and Yucatán (Sect. 393).

Finally, the Federal District (Sect. 148) requires that these genetic defects put the unborn’s survival at risk.

However, the existence of this exception to abortion prohibitions is an expression of ideas typical of totalitarian regimes, as it represents an overt violation to the right to life. As a matter of fact, one may well ask, how can a person’s deprivation of life be justified by “serious eugenic causes”, or proven mental deficiencies, or the risk of survival after birth? There is no satisfactory justification. “Human rights” entail that a person be considered an end in itself, and not a mere means. Thus, the unborns’ lives have an inherent value, which is not altered by the presence of “eugenic deficiencies” or low survival probabilities. Therefore, a state that fails to protect said person is seriously failing to comply with its duty of protecting human beings, which should generate international consequences.

In this sense, and by signing the Convention on the Rights of the Child, Mexico undertook to adopt all the measures necessary to make the rights of the children effective.¹³ However, this kind of “acquittal” does not guarantee the unborn’s right to life, as Mexico is required to.

12 A eugenic abortion is performed in order to prevent a being with serious physical and/or mental disability from being born.

13 The first part of Article 4 of the Convention on the Rights of the Child expressly establishes that the “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”.

vi. Abortion for Economic Reasons

The State of Yucatán establishes that abortion for *serious and justified economic reasons* shall not be criminally punished, provided that the pregnant woman has at least three children who have already been born (Sect. 393).

The lack of economic resources of the family in which the child would live cannot be a justification for suppressing a life. There are several solutions to situations of economic needs, ranging from social welfare regimes to placing the child to adoption. What a state cannot legally do is to leave the child conceived in poverty unprotected, only because he was conceived under said circumstances.

B. The Decriminalization of Abortion in the Federal District within the First Twelve Weeks of Pregnancy

The legislation of the Federal District deserves to be analyzed alone, since it is the only state that has decriminalized abortion within the initial twelve weeks of pregnancy.

Indeed, on April 24, 2007, the Legislative Assembly of the Federal District passed an act that provides for the so-called “voluntary abortion”, published in the Official Gazette of the Federal District on April 26, 2007, enforceable since April 27, 2007.¹⁴

This act amended sections 144 to 147 of the Criminal Code as well as the Act on Health of the Federal District.

The former text of section 144 of the Criminal Code defined abortion as “the death of the product of conception, anytime during pregnancy”. The terminology used was clear in stating that the legally protected interest was the unborn’s life from the moment of conception (i.e. the “death” of the “product of conception” was punished). Now, after the amendment, the crime of abortion is defined as the “termination of pregnancy after the twelfth week of gestation”. This means that not only the concept of abortion is modified, –considering the death of the child before the initial twelve weeks of gestation is no longer a criminal conduct– but also the legally protected interest has changed. The text has moved from the “death” of the unborn, to the “termination of pregnancy”, which seems to mean that the interest intended to be protected is not the “gestating life” any more, but rather the “woman’s pregnancy”.

14 This amendment was questioned at a judicial level, by means of two actions of unconstitutionality (146/2007 and 147/2007) filed before the Supreme Court of Justice of Mexico. Please see “Legal Precedents Relating to Cases of Non-Punishable Abortions” in this paper.



This means that abortion practiced during the initial three weeks of pregnancy is not considered a crime, so long as it is performed with the pregnant woman's consent, since section 146 of the Criminal Code of the Federal District penalizes as "forced abortion" the one performed at any time of pregnancy without the woman's consent.

"Section 146. Forced abortion is the termination of pregnancy performed at any time without the pregnant woman's consent. For the purposes of this section, any person who causes an abortion through any means without the woman's consent shall be punished with five to eight years' imprisonment. Should the abortion be coerced through physical or moral violence, the punishment shall be eight to ten years' imprisonment".

This means that:

- a) Voluntary abortion is not a crime if practiced within the first twelve weeks of gestation.
- b) According to section 148 of the Criminal Code, abortions practiced after the twelve weeks are justified in the following circumstances:¹⁵
 - When pregnancy is the result of rape or non-consensual artificial insemination
 - When a pregnant woman's health may be seriously affected
 - When there are genetic or congenital defects that may cause physical or mental harm, or even threaten the unborn's survival
 - When the pregnant woman acts in a negligent manner.
- c) When abortion is performed without the pregnant woman's consent ("forced abortion"). In this case, abortion is considered a crime at all times.

By means of the Federal District Criminal Code amendments—by which abortion was decriminalized—the Act on Health Care of the Federal District was also amended, establishing that health care services "shall provide information to any woman who requests to terminate her pregnancy, as stated in the last paragraph of Section 148 of the Federal District Criminal Code" (Sect. 16 Bis, Par. 8). Said information is related to "the proceedings, risks, consequences and effects; as well as existing support and alternatives, so pregnant women can make a free, well-informed and responsible decision" (Sect. 148 of the Criminal Code).

¹⁵ Please see "The Creation of Legal Excuses Absolving the Crime of Abortion" in this paper.

After this act was passed, changes were also made to the “*Lineamientos Generales de Organización y Operación de los Servicios de Salud para la Interrupción Legal del Embarazo en el Distrito Federal*” (“General Guidelines of Health Care Services’ Organization and Operation for the Legal Termination of Pregnancy in the Federal District”), previously included in Circular Letter GDFSSDF/01/06. In this sense, some precautions were established. One of them concerns the informed consent, which requires that pregnant women who request the legal interruption of their pregnancies express their consent in writing, after receiving objective, sufficient and understandable information about the procedures, risks and consequences of abortion (guideline 3, II). Counseling was also regulated, and it was established as a compulsory procedure (guideline 3, IV). Finally, a medical report was also included as a requirement, so as to certify the gestational age of the fetus, and thus, to corroborate that it is within the first twelve weeks.¹⁶ It also regulates the facilities in which this service can be offered, authorizing the medical and surgical procedures necessary to perform an abortion.¹⁷

However, it must be emphasized that this situation seriously violates the unborn’s inherent human right to life. Article 4.1 of the American Convention of Human Rights—in force in Mexico since 1981—establishes that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

The right to life exists from the moment of conception. Thus, the rules that do not protect it whatsoever during the first twelve weeks of pregnancy seriously violate it. The state has failed to fulfill its duty regarding the protection and maximization of human rights acknowledged by international standards, especially when considering that, by virtue of the *pro hominem* principle, they must be interpreted and exercised in the widest and most favorable way possible, as established in article 1 of the Constitution.

In this regard, one must note the appalling (and legally incoherent) statement made by Luz Patricia Mejía,¹⁸ this past July 14, 2011, in the public hearing in the Argentine National Congress regarding the debate on the legalization of abortion. She maintained that legalizing abortion does not contradict human rights, alleging that “the Convention makes reference to the general protection of the right to life from the moment of conception”, which “does not prohibit” the legalized

¹⁶ Cfr. amendments to guidelines 3, 4 bis and 5.

¹⁷ Cfr. amendment to guidelines 12 and 14, respectively.

¹⁸ Special relator of women’s rights in Argentina, Bolivia and Ecuador; former president of the Inter-American Commission on Human Rights of the Organization of American States.



abortion. In the Criminal Legislation Committee meeting, Mejía even claimed that: “The Inter-American Commission on Human Rights of the OAS does not claim that legal abortion is prohibited by the Pact of San Jose [American Convention on Human Rights]”.

Of course, despite Mejía’s claims, Mexico is bound by the international treaties signed by the President of the Republic and passed by the Senate, not by a mere opinion. Moreover, it is the Inter-American Court, not the Commission, the one empowered to interpret the Convention’s provisions,¹⁹ and the Inter-American Court has not yet pronounced any ruling or opinion in this regard.

The criterion referred to by Mejía—when alleging that legal abortion does not violate article 4.1 of the Pact of San José, which protects every person’s life, because said right is protected by law and, in general, from the moment of conception—is illogical and senseless. When considering that article 1.2 of the Convention defines “person” as “every human being”, it cannot be validly argued that “legal” abortion—which entails depriving a human being of his life—does not violate the right to life which this Convention acknowledges to every person.²⁰

To Mexico, the scope of the right to life after the constitutional amendment mentioned is clear. Indeed, article 1 of the Constitution now establishes:

“In the United Mexican States, every person shall enjoy the human rights acknowledged by this Constitution and by the international treaties to which the Mexican State is a party (...)

(...) rules relating to human rights shall be interpreted in accordance with this Constitution and with the international treaties on human rights ensuring the widest protection possible to every person.

Every authority, within his competences, is bound to promote, respect, protect and ensure human rights in accordance with the principles of universality, (...) and progressivity (...)

All kinds of discrimination based on (...) any other [cause] that threatens human dignity and aims to annul or reduce a person’s rights and freedoms are hereby prohibited”.

We can thus conclude that the amendment to the Federal District Criminal Code overtly threatens the right to life acknowledged not only by the Federal

19 Article 62.3 and 64.1 of the American Convention of Human Rights.

20 To read about the interpretation of article 4.1 of the American Convention, please see “The Role and the Content of International Treaties Signed by Mexico” in this paper.

Constitution, but also by the international treaties ratified by Mexico, in particular, the American Convention of Human Rights.

C. Legal Precedents Relating to Cases of Non-Punishable Abortions

On two occasions, the Supreme Court of Justice of the Nation decided the constitutionality of acts amending the criminal legislation on abortion in the Federal District. These rulings took place: (i) in 2002, to amend sections 332 and 334 of the Federal District Criminal Code, known as “Robles Act;” (ii) in 2007, to amend sections 144 and 147 of the Federal District Criminal Code, already mentioned.

i. Objection to the So-Called “Robles Act”

On August 24, 2000, an amendment aiming to include so-called “eugenic abortion” as a case of non-punishable abortion was published in the Official Gazette of the Federal District. Indeed, this amendment—known as “Robles Act”²¹—established that abortion would be non-punishable “when the product of conception has congenital or genetic defects”.

In January 2002, some members of the Legislative Assembly of the Federal District promoted an unconstitutionality action (10/2000) before the Supreme Court of Justice with the purpose of objecting the act mentioned.

Based on the consideration of several rules of international law and the Constitution, the Court’s ruling stated that the Constitution protects human life from the moment of conception.

The Court maintained that “the Constitution (...) protects every individual’s right to life, since said rule considers it a fundamental right, without which neither the existence nor the exercise of any other right would be possible”.²²

It also claimed that “upon examining the provisions of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights,... which application is compulsory as established by Article 133 of the National Constitution, it becomes clear that they establish, first, the protection of the child’s life before as well as after his birth; second, the protection of the

21 The amendment has been named after the then-Chief Minister of the Capital City: Rosario Robles.

22 Translated from the original: Legal precedent identified as P.J. 13/2002, by the Plenary of the National Supreme Court of Justice, published in the *Semanario Judicial de la Federación y su Gaceta* (Weekly Judicial Publication of the Federation and its Gazette), volume XV, February 2002, p. 589.



right to life as a right inherent to every human being. [Moreover,] after studying the Federal Criminal Code and the Federal District Criminal Code, as well as the Federal Civil Code and the Federal District Civil Code, it can be noted, on the one hand, that they provide for the protection of human life –from its physiological gestation– as a legal interest, since they consider the unborn as a living being and they punish those who cause his death, and on the other hand, that the product of conception is protected from that moment and can be appointed heir or done. [It was thus finally concluded that] the protection of the product of conception's right to life stems from the Political Constitution of the United Mexican States as well as the international treaties and the federal and local acts".²³

However, the ruling did not pronounce the unconstitutionality of the Robles Act, since the Court decided that the classification of abortion as a criminal act had not been modified. In the Court's opinion, what the Act had done was to create an "absolving excuse", preventing the crime from being punished: even if the legal view that abortion was a crime remained unchanged, there was, in the legislature's opinion, a reason for not punishing the crime.

ii. Objection to the Decriminalization of Abortion within the First Twelve Weeks of Pregnancy

As mentioned before, the 2007 amendment to the Federal District Criminal Code decriminalized abortion within the first twelve weeks of gestation, provided that the pregnant woman consents to it, though any abortion practiced without the woman's consent remains punished (section 146 of the Federal District Criminal Code).²⁴

Both the President of the National Committee of Human Rights and the Public Prosecutor of the Republic separately filed proceedings challenging the constitutionality of the amendment.

Said unconstitutionality proceedings were processed under file number 146/2007 and its appendix 147/2007, and were decided by a majority of eight to three votes, by the Plenary of the Supreme Court of Justice of Mexico on August

23 Translated from the original: Legal precedent identified as P.J. 14/2002, by the Plenary of the National Supreme Court of Justice, published in the *Semanario Judicial de la Federación y su Gaceta* (Weekly Judicial Publication of the Federation and its Gazette), volume XV, February 2002, p. 588.

24 Please see "The Decriminalization of Abortion in the Federal District within the Initial Twelve Weeks of Pregnancy" in this paper.

25, 26, 27 and 28, 2008, stating that the legal provision were constitutional.²⁵

Nonetheless, the majority did not agree on the reasons for the decision; instead, each of them based his vote on different reasons. Moreover, the final text of the sentence did not include the arguments of the majority, but published only the arguments of the judge in charge of drafting it, who said that the right to life was not protected by the Mexican Constitution.²⁶ This consideration was not shared by the other judges.²⁷

Legal experts have referred to this “majority” as a “false majority”. For example, the expert Francisco Vázquez–Gómez Bisogno stated that “the arguments swelling the ruling that the majority of the Supreme Court of Justice of the Nation approved, is not shared by said majority, to the extent that each of the ministers (judges), in order to put forward their reasons for constitutionalizing abortion, issued their own concurring votes in which they made their own viewpoints clear”.²⁸

25 The majority was reached by the votes of the Ministers Cossío Díaz, Luna Ramos, Franco González Salas, Góngora Pimentel, Gudiño Pelayo, Valls Hernández, Sánchez Cordero de García Villegas and Silva Meza. On the other hand, the Ministers who voted in favor of the unconstitutionality of the decriminalization of abortion were Judges Sergio Salvador Aguirre Anguiano—the speaking Judge—Guillermo I. Ortiz Mayagoitia and Mariano Azuela Guitrón.

26 The wording of the sentence was in charge of Judge José Ramón Cossío Díaz.

27 As a matter of fact, Judge Juan N. Silva Meza himself, who was part of the majority, in his concurring opinion questioned the binding force of the decision by stating that: “... Affirming that the right to life is not constitutionally protected was not an opinion supported by the majority of the members of the Plenary Tribunal that voted in favor of the constitutionality of the challenged rules. Rather than said judgment is contrary to the majority’s consensus, which considered that the right to life is acknowledged, though implicitly, at a constitutional level. Including this issue in the ruling without the majority’s support to this opinion may eventually cast doubt on the decision’s binding force...”. Translation of the concurring opinion by the Minister Juan N. Silva Meza with regard to the ruling pronounced in the unconstitutionality proceeding 146/2007 and its appendix 147/2007, p. 3, quoted by Francisco VAZQUEZ GÓMEZ BISOGNO, “El voto de minoría a favor de la vida. Un relato de las incongruencias de la sentencia mayoritaria que constitucionalizó el aborto en México”, in Victor Manuel MONTOYA RIVERO and Diana ORTIZ TRUJILLO, “En defensa de la vida: un voto de minoría sobresaliente. Homenaje al Ministro Sergio Salvador Aguirre Anguiano, Premio Ramón Sánchez Medal 2010”, Mexican Committee on Human Rights, NPO, Mexico, 2010, p. 189.

28 Francisco VAZQUEZ GÓMEZ BISOGNO, “El voto de minoría a favor de la vida. Un relato de las incongruencias de la sentencia mayoritaria que constitucionalizó el aborto en México”, in Victor Manuel MONTOYA RIVERO and Diana ORTIZ TRUJILLO, “En defensa de la vida:



Thus it appears to be the case that the case-laws 13/2002 and 14/2002 previously approved,²⁹ which acknowledge and defend life from the moment of conception, and which consider that the National Constitution effectively protects the right to life, were not interrupted but, on the contrary, are still in force and fully binding.³⁰ This is quite clear when one understands that, in order to interrupt them, it is necessary that a determination be made by the Supreme Court of Justice establishing that they do not meet the criterion. That did not happen. Thus they have not been overruled by the Court.

Another aspect of the decision that has been effectively criticized is that the majority “contradicted itself, both in considering that the value of the life of the conceived does not stem from the Constitution since there is no provision expressly protecting it, and in accepting, despite the foregoing, that women are entitled to the right to self-determining their bodies when the Constitution does not expressly contain said right either; that is, the majority rejects that the protection of life be implicitly stated in the Constitution, but accepts the existence of a right—to which it grants a value axiologically greater than the conceived’s life—which the ‘majority’ found to be implicitly stated”.³¹

Based on the previous facts, it can be concluded that, although the Mexican Supreme Court of Justice did not decide that the amendment to the Federal District Criminal Code was unconstitutional, it is still valid to criticize it for the lack of complete and coherent published opinion.³² Despite this decision, there is no doubt that rulings 13/2002 and 14/2002—by which it was decided that the right to life is protected by the Constitution—have not been modified, all of which is confirmed by the latest constitutional amendment which expressly acknowledges it.³³

D. Reactions of the Local Constitutions

After the Supreme Court of Justice decided on the unconstitutionality proceedings 146/2007 and 147/2007 above mentioned, a national movement

un voto de minoría sobresaliente. Homenaje al Ministro Sergio Salvador Aguirre Anguiano, Premio Ramón Sánchez Medal 2010”, Mexican Commission on Human Rights, NPO, México, 2010, 186.

29 Please see Footnotes N° 22 and 23 in this paper.

30 *Ibid.*, p. 193.

31 *Ibid.*, p. 194.

32 *Ibid.*, p. 215.

33 In accordance with article 29 of the Federal Constitution.

Baja California	Article 7 of the State Constitution establishes that “this fundamental rule protects the right to life by stating that, from the moment an individual is conceived, he is protected by the law and is considered born for all the corresponding legal effects, until his natural or non-induced death.”
Chihuahua	Article 5 of the State Constitution establishes that “every human being has the right to have his life legally protected from the moment of conception.”
Durango	Article 1 of the State Constitution establishes that “the State of Durango acknowledges, protects and guarantees every human being’s right to life, by expressly stating that, from the moment of fertilization, he is protected by the law and is considered born for all legal purposes, until his natural death, saving the exceptions provided by the law.”
Guanajuato	Article 1 of the State Constitution establishes that “For the purposes of this Constitution and the laws originating herefrom, a person is every human being from the moment of conception until his natural death.”
Oaxaca	Article 12 of the State Constitution establishes that “From the moment of fertilization, every human being is protected by the law and is considered born for all legal purposes until his natural death.”
San Luis Potosí	Article 16 of the State Constitution establishes that the State of San Luis Potosí acknowledges human life as the foundation for every right to which the human beings are entitled, and thus respects and protects him from the moment his conception begins.”
Yucatán	Article 1 of the State Constitution establishes that “the State of Yucatán acknowledges, protects and guarantees every human being’s right to life, by expressly stating that, from the moment of fertilization, he is protected by the law and is considered born for all legal purposes, until his natural death, regardless of the exemption of responsibility provided for by the Criminal Code of the State of Yucatán.”

began to emerge, through which the legislatures of the different states started to amend their local constitutions to shield the right to life, expressly recognizing its protection from the moment of conception.

The states currently protecting the right to life from the moment of conception



in their local constitutions are Baja California, Campeche, Chiapas, Chihuahua, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Veracruz and Yucatán. For the purpose of illustration in the next page are the texts of some of the local constitutions.

It is worth noting that, from September 26 to September 29, 2011, the Supreme Court of Justice of Mexico—in Full Session—solved the unconstitutionality proceedings identified as 11/2009 and 62/2009.

The 11/2009 proceeding was filed by the Prosecutor for Human Rights and Citizens' Protection of the State of Baja California, who challenged the validity of article 7, par. 1 of said state's Constitution. The 62/2009 proceeding, on the other hand, was filed by Deputies of the 59th Legislature of the Congress of the State of San Luis Potosí, who challenged the validity of article 16 of said state's Political Constitution.

After several days of debate, on September 28, 2011, the Plenary Tribunal rejected the unconstitutionality proceeding filed against article 7 of the Political Constitution of the State of Baja California and, on September 29, the Court dismissed the proceeding challenging article 16 of the Political Constitution of the State of San Luis Potosí.

The result was that seven judges voted in favor of the proceedings claiming the unconstitutionality of the provisions mentioned³⁴ and 4 against these proceedings.³⁵ The proceeding was thus dismissed on the grounds that the minimum required to pronounce the unconstitutionality of the provision challenged is 8 votes.

Therefore, the minority Judges understood that the provisions of the State of Baja California and San Luis Potosí were not contrary to the Mexican Federal Constitution since the latter protects the right to life from the moment of conception, and does not acknowledge or grant an alleged right to abortion.

In this regard, Judge Pardo Rebolledo stated that articles 4 and 23, Section A, Subsections V and XV, and Section B, Subsection I of the Mexican Constitution do protect the unborn's right to life, and that said protection does not apply to pregnant women only, since these Subsections makes a distinction between, "...on the one hand, (...) the greatest guarantee to protect workers' health and

34 Judges Olga María del Carmen Sánchez Cordero Davila, Arturo Zaldivar Lelo de Larrea, José Ramón Cossio Díaz, Luis María Aguilar Morales, Sergio Armando Valls Hernández, and Juan N. Silva Meza.

35 Judges Margarita Beatriz Luna Ramos, Guillermo I. Ortíz Mayagoitia, Sergio Salvador Aguirre Anguiano and Jorge Mario Pardo Rebolledo.

lives; and, on the other hand, the product of conception in the cases of pregnant women”³⁶.

The result of these unconstitutional proceedings is particularly important, since it has allowed to maintain the power of Federal States to protect the right to life from the moment of conception in their constitutions.

E. The Role of International Human Rights Treaty Bodies

On several occasions, some of the international human rights bodies have made suggestions to Mexico that are contrary to the appropriate protection of the unborn child’s right to life.

The Committee on the Elimination of Discrimination against Women and the Office of the United Nations High Commissioner for Human Rights have suggested that abortion be legalized in Mexico.

In the final observations of the 2006 report about Mexico, the CEDAW Committee requested that the country reconcile the legislation on abortion at the federal and state levels, as well as apply a broad strategy that includes the effective accessibility to safe abortion services under the circumstances provided for by the law and to a wide range of emergency contraceptive methods.³⁷

Later, the Office of the United Nations High Commissioner for Human Rights in Mexico updated Chapter 5 of the diagnosis on the situation of human rights in Mexico, which refers to women.³⁸ Said document pointed out that the integrity of a secular state is a basic foundation to respect the sexual and reproductive rights, stating that there have been important advances in this regard, such as including the “emergency contraception” and expanding the cases in which abortion is not punished in the Federal District, Morelos and Baja California.

36 Judge Pardo Rebolledo’s interpretation is especially relevant since, when the 146/2007 and 147/2007 unconstitutional proceedings were solved against the amendments decriminalizing abortion until the twelfth week of gestation in the Federal District, some majority Judges (such as José Ramón Cossío) stated that the protection granted by articles 4 and 23, Section A, Subsections V and XV, and Section B, Subsection XI of the Federal Constitution only applies to pregnant women, thus considering the product of conception merely as a constitutionally protected interest.

37 Cfr. Sixth Periodic Report on Mexico (CEDAW/C/MEX/6) in sessions 751 and 752, held on August 17, 2006.

38 Cfr. Office of the United Nations High Commissioner for Human Rights in Mexico, *Diagnóstico sobre la situación de los derechos humanos en México*, Iprint, Mexico, 2003.



However, there is no national constitutional provision in Mexico that subjects the domestic constitutional standards to international standards and to international bodies interpretation of the domestic standards. This makes the above recommendations non-binding.

F. Non-Governmental Organizations Pursuing the Decriminalization of Abortion

Some non-governmental organizations or institutions that openly pursue the decriminalization of abortion publicly stand out in Mexico.

One of them is the **Grupo de Información en Reproducción Elegida, A.C.** or GIRE (Group of Information about Chosen Reproduction, NPO).³⁹ This group is in favor of abortion. It seeks the legalization of abortion throughout the Republic, as per the Federal District Criminal Code which decriminalizes abortion within the initial twelve weeks of pregnancy, and allows different types of abortion after said period, such as therapeutic abortion—in cases of death risk or of seriously affecting the woman's health—eugenic abortion, and abortion in case of pregnancy resulting from rape or non-consensual artificial insemination.

Another organization is **Católicas por el Derecho a Decidir, A.C.** (Catholics in Favor of the Right to Decide, NPO).⁴⁰ The organization's mission reads that, among other things, it supports "every woman's right to decide on how to solve an unwanted pregnancy", since it alleges that "the decriminalization of abortion saves lives, particularly the lives of women with scarce recourses". The organization was founded in 1994, and is currently present in Mexico, Argentina, Bolivia, Brazil, Colombia, Chile, El Salvador, Nicaragua, Paraguay and Spain. This institution organizes workshops and conferences; promotes "reproductive rights", which include abortion; and works online with other national and international organizations.

IV. The Right to Life and Reproductive Health Programs

A. Description of the Legislation in Force

The Mexican reproductive health system is regulating the standards at different hierarchical levels. Article 4 of the **National Constitution** indicates that: "Every person's right to freely and responsibly decide on the number and frequency of their children's births".

39 www.gire.org.mx

40 www.catolicasmexico.org

This article has been, at the same time, further specified by the **General Act on Population**,⁴¹ which in Section 3, Par. 2, establishes that the Secretariat of the Interior shall be in charge of taking and promoting legal measures for carrying out “family planning programs” through the educational and public health services available. The Secretariat of Interior is required to control said programs and the ones organized by private institutions so they are carried out fully respecting the fundamental rights of men and preserving the dignity of families. All this should be done in pursuit of the explicit goal of “rationally regulating and establishing population growth, as well as making a better use of the human and natural resources in the country”.

In addition, the **General Act on Health**,⁴² in force in the entire Republic, states that every person has the right to have his health protected. Section 27 includes family planning as part of the basic health services, and article 67 establishes that family planning is considered a priority, and shall include “educational information and guidance” for adolescents, young people and adults, about the “inconvenience of a pregnancy before the age of 20 years”, as well as a the “convenience of spacing out and reducing the number of pregnancies by means of the correct contraceptive information”. Among the benefits related to family planning services, the act also includes the distribution of supplies used for family planning (Sect. 68, Par. V). Finally, the act states that the Secretariat of Health is granted jurisdiction to complement the bases of family planning established by the Population National Council.⁴³ The mission of the Secretariat of Health is, in particular, to establish the standards to evaluate contraceptive methods and prepare educational programs appropriate for the national educational system (Sect. 69).

B. Content of the National Programs on Reproductive Health

Framed within the legal context mentioned, the Secretariat on Health prepared the 2007–2012 National Health Program, called “For a Healthy Mexico: Building Alliances for Better Health” (“*Por un México sano: construyendo alianzas para una mejor salud*”, Secretariat on Health, Mexico, Federal District, 2007). One of the program strategies is to “reinforce and incorporate the actions promoting

41 Published in the Official Gazette of the Federation on January 7, 1974. Its latest amendment was published on May 25, 2011.

42 Published in the Official Gazette of the Federation on January 7, 1984. Its latest amendment was published on June 10, 2011.

43 The Population National Council is in charge of the country’s demographic planning, according to section 5 of the National Act on Population.



health, and disease–prevention and control” (Strategy 2), one of its action items being “the promotion of responsible sexual and reproductive health” (Action item 2.7).

The program explains the importance of responsible sexual activity, which should be the axis of a national policy on family planning. Some of the measures to be taken are the organization of campaigns promoting the use of condoms, the spread of information aiming to increase to 75% the proportion of women in fertility age using contraceptive methods, and the reduction of adolescent fertility rate to 58 births every 1,000 women between 15 and 19 years of age.

Previously, as an appendix to the 2001–2006 National Program on Health, the “*Programa de Acción: Salud Reproductiva*” (“Action Program: Reproductive Health”) was prepared. In said documents, it was asserted that unwanted pregnancies, unsafe abortions and sexually transmitted diseases have become a public health problem affecting a greater number of adolescents; it was claimed this situation demands efforts from multiple sectors with a comprehensive focus, to immediately meet the need for sexual and reproductive health. For such purposes, the goal established was to decrease the incidence of “unwanted pregnancies”, induced abortions and sexually transmitted diseases among people between said ages, as well as the unsatisfied demand for family planning services, by systematically offering contraceptive methods and reliable and timely information.

Finally, the National Council on Gender Equity and Reproductive Health focuses, as part of its programs for the 2007–2012 period, on family planning and contraception, and sexual and reproductive health for adolescents. It states its general objective is to “Help the Mexican population to enjoy a satisfactory, healthy and free–from–risk sexual and reproductive life, through quality services on family planning and contraception, fully respecting their rights and free choice”.

It is worth noting that none of the rules mentioned makes reference to abortion as a method of family planning or birth control.

C. Regulating the Offer of Family Planning and “Emergency Contraception” Services

The Mexican Official Rule (NOM) on Family Planning Services (NOM 005–SSA2–1993) standardizes the criteria of family planning services offer in the entire nation. Among the actions it establishes is to provide adolescents and young people with contraceptives.

The NOM eliminates the restrictions of age as to the use of any temporal contraceptive methods, among which are the hormonal contraceptive and the intrauterine device. On January 21, 2004, the NOM was modified to explicitly include the post–coitus hormonal contraceptives—the “emergency”

contraceptives—which are described as the “method that women can use during the three days following unprotected coitus, with the purpose of avoiding an unwanted pregnancy” (Item 5.3).

The NOM emphasizes the importance of counseling and of informed consent which the medical doctor shall offer as part of the contraceptive services and in the cases required.

When considering that the right to life is a human right recognized for every person from the moment of conception, the NOM provision instructing the health care services to provide with post-coitus hormonal contraceptives to any person requesting them becomes questionable. This is so inasmuch as the NOM would be allowing possible abortion by preventing the fertilized ovum—which already is an unborn person—from implanting in the woman’s uterus.

In this regard, the 2007 amendment to the Federal District Criminal Code becomes particularly relevant. Indeed, this amendment not only modified the concept of abortion contained in section 144—defining it as “the termination of pregnancy after the twelfth week of pregnancy”—but also defined “pregnancy”.

Section 144 defined pregnancy as “the part of the process of human reproduction beginning with the embryo’s implantation in the endometrium”. This definition becomes important regarding “emergency contraception”, since abortions practiced with pills that inhibit the implantation of a fertilized ovum is not considered a crime in this context, even when the woman does not consent to it.

If abortion is “the termination of pregnancy”, and pregnancy begins with the “embryo’s implantation in the endometrium”, any previous termination does not fit the criminal type of abortion and, therefore, is exempt from punishment.

This provision is questionable not only because it violates a conceived human being’s right to life, but also because women are deprived of protection, since abortions performed under said conditions without their express consent are not legally punished whatsoever.