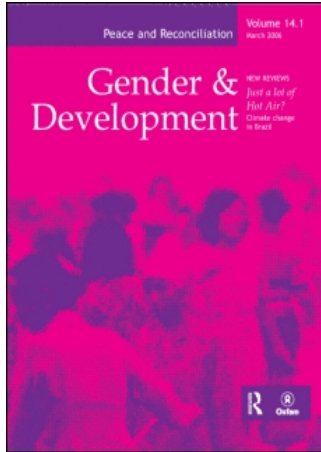


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## The decriminalisation of abortion in Mexico City: how did abortion rights become a political priority?

María Luisa Sánchez Fuentes, Jennifer Paine, and  
Brook Elliott-Buettner

*In the last decade, there has been a clear tendency toward liberalising abortion laws at the international level. In April 2007, this trend reached the Federal District of Mexico City. Landmark legislation decriminalised abortion on demand up to 12 weeks of gestation. In a region where abortion is still legally proscribed and stigmatised to the detriment of women's health, lives, and rights, what explains Mexico City's historic decriminalisation of abortion? How and why did this issue become a political priority? To analyse this question, we propose applying a framework (developed by Jeremy Shiffman and Stephanie Smith) on the generation of political priorities for global health initiatives to the case study of the decriminalisation of abortion in Mexico City. We find that such an analysis of the Mexico City process, using Shiffman and Smith's four categories, combined with our perspective as NGO activists, offers a compelling and comprehensive explanation of this historic advance toward the recognition of women's abortion rights.*

### Introduction

On 24 April 2007, the Mexico City Legislative Assembly passed landmark legislation on abortion. The legislation was approved by 46 of the 66 Legislative Assembly representatives (from five distinct parties). The legislation puts the Federal District of Mexico City at the forefront of abortion liberalisation in the country, and in the Latin America/Caribbean region. Only Cuba, Guyana, and Puerto Rico have similar laws.

While ahead of abortion policy in most Latin American countries, the new law is in line with international trends. In the last decade, a clear tendency toward liberalising abortion laws has been witnessed in all regions of the world.<sup>1</sup> Although the USA seems to be inching backwards by restricting certain abortion procedures, many countries are taking steps to liberalise abortion laws and policies. In spite of a generally repressive climate for abortion in Latin America, abortion has been debated in a number of countries in the past few years. Different countries in the region have taken steps

towards liberalisation, or toward increasing restriction. In Colombia, for example, the Constitutional Court ruled in 2006 to allow abortion, in cases of risk to women's health, rape, incest, and severe foetal malformations. Previously, abortion was prohibited without exception.<sup>2</sup> Nicaragua, on the other hand, banned abortion altogether in 2006, even to save the woman's life, with fatal consequences (Human Rights Watch 2007).

### Information Group on Reproductive Choice

The Grupo de Información en Reproducción Elegida (GIRE, Information Group on Reproductive Choice) is a non-profit NGO which was established in Mexico in 1992. During its 15 years, GIRE has developed into one of the leading organisations working on reproductive rights in Mexico and Latin America, recognised for its high-quality advocacy strategies, public-interest litigation, and technical assistance to all levels of governments.

GIRE aims to contribute to the recognition, respect, and defence of reproductive rights – in particular, abortion rights – and to uphold the principle of women's free choice in a secular state. Mexico is a country which has legally enshrined the separation of church and state. In a secular country with true freedom of religion, the decision to have an abortion should be a matter of individual conscience. GIRE starts from the view that the beliefs of a specific religious group, particularly those related to sexual and reproductive decision-making, should not trump individual conviction. GIRE seeks to raise awareness of abortion as a public-health and social-justice issue, in the wider context of women's reproductive and human rights. To do this, GIRE targets decision-makers and public officials from the three branches of government, as well as opinion leaders and the media. Among other achievements, GIRE has fostered public debate on the issues in the media, turned the spotlight on a series of reproductive-rights violations, advocated for justice via litigation, and trained government officials, including policy makers and decision-makers, in reproductive and sexual rights.

From our perspective as activists with first-hand advocacy experience with GIRE on the issue of abortion in Mexico City, we set out in this article to analyse the factors that led to abortion becoming a political priority in Mexico City. In a region where abortion is generally legally prohibited and stigmatised, what explains Mexico City's historic decriminalisation of abortion during the first 12 weeks of gestation? This is a step without precedent in the region in the last 30 years. How, and why, did this issue become a political priority? To analyse this, and identify other relevant factors in the historic decriminalisation, we use a conceptual framework developed by Jeremy Shiffman and Stephanie Smith which identifies how political priorities are formed around global health initiatives.<sup>3</sup>

We hope our analysis will serve to guide other advocates to develop their strategies and actions, overcome challenges, and most importantly, generate the political priority

and attention that abortion and other similar issues merit. Abortion and maternal mortality are issues of international concern that have increasingly focused on by international agencies, governments, private donors, and civil society around the world. We see the growing emphasis on these issues as a key part of the process that led to decriminalisation in Mexico City, along with the political and social timing (also undeniably linked to global trends). In addition, the feminist movement had worked to frame unsafe abortion as a social-justice and public-health problem – in other words, to define it in such a way that public discourse about abortion had to address those issues.

### Abortion and development

Abortion is a highly important public-health and social-justice issue in Mexico, as in all countries where it is severely restricted by law. Illegal, unsafe abortion is among the leading causes of maternal mortality in Mexico. A large proportion of poor, and young, women are forced to risk their health and lives in the appalling conditions under which many (though not all) clandestine abortions are practised. The health and economic costs of unsafe abortion are very high, in common with other preventable illnesses. In addition, those costs are higher for poor women. Only women with economic means and sufficient information can access abortion under safe medical conditions in Mexico, or travel to foreign countries where abortion is legal.

The need for access to safe and legal abortion fits uniquely into the development agenda. Restrictive abortion policies not only limit women's individual autonomy and self-determination, but force women on a low income to choose between an unsafe illegal medical procedure, and bearing unwanted children. Such policies create structural social and economic inequality (Lamas 2007b).

Sexual and reproductive rights have achieved a special relevance to the development community through two international UN conferences that established that health, reproduction, and sexual self-determination are human rights. These were the 1994 International Conference on Population and Development (ICPD, or 'Cairo'), and the Fourth World Conference on Women in 1995 ('Beijing').

Following Cairo and Beijing, international bodies have recognised that maternal mortality is one of the most critical indicators of a country's inequality and poverty. According to a study published by the World Health Organization (WHO) (2007), 67,000 women die every year due to unsafe abortions, and the vast majority of those deaths occur in developing countries. The Guttmacher Institute also published a study in 2006 in the medical journal, *The Lancet*, that discusses unsafe abortion in terms of its impact on countries attempting to comply with the Millennium Development Goals, and notes that the vast majority (33 out of every 35) of induced abortions in Latin America and the Caribbean are unsafe (Sedge *et al.* 2007).

International bodies are recognising and addressing the need to empower women to make their own choices in matters of reproductive and sexual health, and for access to safe abortion services. The UN's International Covenant on Economic, Social and Cultural Rights calls for the right to the highest standard of health, while the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) recognises the need for access to abortion services in cases where abortion is legal, and calls for a review of the laws where abortion is illegal. These issues are specifically mentioned in the CEDAW Committee recommendations to the Mexican State in 2006.<sup>4</sup> CEDAW encourages states to enact measures that ensure access to health care for women as a matter of gender equality. Mexico, as a signatory to UN treaties and conventions, is bound to these standards.

### What does the new law say?

Abortion is illegal in Mexico as a whole, except under specific, severely restricted, indications. Because of Mexico's federal system, each state has its own penal code, and indications for legal abortion differ from state to state. Abortion of pregnancy as a result of rape is the only indication for legal abortion in all 31 Mexican states, as well as in the Federal District of Mexico City. Other states have additional indications for legal abortion, such as to safeguard the woman's life or health, or in case of foetal malformations.<sup>5</sup> Yet many women are unaware of the circumstances under which they have the right to legal abortion.<sup>6</sup> At the same time, access to services, even when abortion is legally permitted, has been severely limited by ignorance of the law, the unwillingness of local public officials to become involved, and a lack of clear procedures to enable women to gain authorisation for, and access to, abortion (Human Rights Watch 2006).

Although the new legal development in Mexico City is progressive, abortion laws had been untouched since 1931, until a series of legal reforms were implemented to liberalise abortion policy starting in 2000. These reforms culminated in the 2007 law that decriminalised abortion during the first 12 weeks of gestation. In 2000, the grounds on which legal abortion could be obtained in Mexico City were expanded to include foetal malformation, risk to the health of the pregnant woman, or in the case of non-consensual artificial insemination. These reforms were challenged, and later validated, at the level of the Mexican Supreme Court. The Supreme Court's resolution moved the Ministry of Health and the Attorney General to set up public policy which enables women who have been raped to gain access to abortion services and authorisation from a doctor for them to have abortions. The change in the law in Mexico City created a ripple effect in other progressive states, some of which began to advance abortion legislation and procedural guidelines for legal abortion in the case of rape.

In 2003, legislative changes were introduced that reinforced women's reproductive freedom in the city. Penalties for forcing a woman to have an abortion were increased, and the Ministry of Health was mandated to provide free, high-quality abortion services within five days of receiving a request for an abortion. In addition, the issue of medical staff with conscientious objections to abortion was regulated, allowing individual doctors to claim this status, but preventing entire public-health institutions from doing so. This meant that all public institutions were obligated to have doctors on staff at all times who were *not* conscientious objectors. In addition, providing legal abortions was officially decriminalised.

The biggest change, however, came in April 2007, with the passing of the Mexico City Law. Abortion is now permitted on demand up to 12 weeks of gestation, through several changes to the city's penal code and health law. Abortion services are now free of charge in public hospitals for Mexico City residents (approximately one quarter of the country's population), and available for a moderate fee for women from other states or countries. The law decriminalises abortion during the first 12 weeks. It also includes other components. The most innovative aspect is that the law redefines the term 'abortion'. With this change, an abortion is the legal termination of a pregnancy of 13 weeks of gestation or more. During the first 12 weeks of gestation, the procedure is labelled the 'legal termination of pregnancy'. In addition, the term 'pregnancy' was officially defined as beginning when the embryo is implanted in the endometrium. This point is important, because it helps to determine gestational age and implicitly legitimises any post-coital contraceptive method, including emergency contraception, as well as legitimising assisted reproduction (including infertility treatments such as IVF) and stem-cell research. Sentences are reduced for women who have an illegal abortion, and the penalty for anyone forcing a woman to have an abortion against her will, including her partner or a physician, is increased. If violence is involved, the penalty is even higher. Finally, the law explicitly states that sexual and reproductive health are a priority in health services, with the goal of preventing unwanted pregnancies and sexually transmitted infections (STIs).<sup>7, 8</sup>

### What made the law reform possible?

In this section, we analyse the key forces that made such a huge leap forward in Mexican reproductive-rights policy possible, based on Shiffman and Smith's theoretical framework. Within this framework, Shiffman and Smith outline four categories: a) the strength of the actors involved; b) the power of the ideas they use to portray the issue; c) the nature of the political contexts in which they operate; and d) the characteristics of the issue itself.

### *a) Actors unite*

Shiffman and Smith begin discussion of their framework by highlighting the importance of the power of the actors involved to garner support and make a given issue a political priority. They suggest that this occurs via four complementary factors: the policy community, and its level of coalescence; leadership of individuals who are identified as champions of the cause and have the power to unite the policy community; the guiding institutions that effectively co-ordinate and lead the initiative; and the mobilisation of civil society.

### The policy community

In the case of the Mexico City abortion reform, the policy community (including the centre-left political parties; the Mexico City government, represented by the Mayor's Office; the local Ministry of Health; and the local Human Rights Ombudsman), along with academics, opinion leaders, and leading scientists was very much united, and vocal in support of decriminalisation. Mexico City's mayor declared, 'this is a women's cause, but it is also the city's cause'.<sup>9</sup> Manifestations of support for the bill came in the form of public announcements by public figures, printed in national newspapers, which are a key means of influencing public opinion and debate in Mexico, as well as via press declarations, and interviews. Particularly important was a public announcement published on 17 April by the Academy of Bioethics, which outlined the reasons why the proposed decriminalisation up to 12 weeks was not contradictory to scientific evidence, affirming that an embryo at this stage has not developed a cerebral cortex or nerve endings, does not feel pain, and is not a human being or person. This bioethics perspective had a critical impact on the discourse surrounding the debate. The strength of these declarations left little doubt that the policy community supported the decriminalisation of abortion.

### Leadership

Leadership on the issue of the decriminalisation of abortion came from Marta Lamas, an anthropologist, academic, journalist, and well-known feminist activist (co-founder and former GIRE director) who has for years been a leading voice in support of women's rights and, particularly, abortion rights in Mexico and Latin America. Leadership was also provided by an alliance of well-known NGOs, including GIRE, which, since 2000, have joined forces to press for abortion reform. These NGOs provided the left-wing Party for a Democratic Revolution (PRD) with technical assistance and arguments, and the PRD played a cohesive role in consolidating support within the Legislative Assembly.

### Civil society

For years, women's-rights organisations have been building alliances with both women and men in other sectors, including the health and scientific communities, bioethicists, lawyers, constitutional experts, journalists, artists, intellectuals, writers, academics, opinion leaders, young people, and social and political actors. This support was strong and evident during the debate last year. At the same time, NGOs focusing specifically on reproductive and sexual rights developed a range of strategies. These included informing and educating the public, decision-makers, the health sector, and the judicial branch; framing and reframing abortion as an issue of social justice and public health, and advancing other arguments; and providing data and research to expose the public-health tragedy of unsafe abortion and denial of legal abortion services. Civil society and the policy community united to support the reform of abortion laws in Mexico City.

### *b) Ideas hold sway*

During the four-month public debate over the bill, numerous arguments to define, portray, and describe the decriminalisation of abortion were employed. The plethora of arguments used in Mexico City ensured that many players in the policy community felt personally and professionally engaged by the debate, and that the necessity of legal abortion resonated with the public.

The Latin American women's movement has carefully crafted a public discourse that frames the issue in terms of both women's rights and health concerns. Through the years, the discourse was refined to reflect the Latin American context, including a conscious resolution to use the verb 'to decide' instead of the noun 'choice', to reflect that in most countries in the region, women cannot 'choose' to have an abortion, because of the restricted legal context. Rather, they can 'decide' whether to carry an unwanted pregnancy to term or not. In a context in which abortion is not legal and accessible, many will decide to terminate the pregnancy nevertheless, putting both their lives and health at risk.

Additionally, in the last 15 years GIRE has taken this discussion further, to include the point that no one is 'in favour' of abortion: we all want the need for abortions to end. This argument has been criticised severely by feminists in certain developed countries, for continuing the stigmatisation of abortion as terrible and shameful. Yet in Mexico, where the Catholic Church and conservative forces wield incredible power over social norms and political positions, this discourse has allowed the women's movement and anti-choice forces to find common ground. In fact, as mentioned above, the new law's focus on preventing unwanted pregnancy was an element that even the centre-right party had to support.

Historically, GIRE and allies have used arguments centred on the public- health and social-justice repercussions of unsafe abortion. This has meant calling attention to the devastating impact of restricted abortion on women's lives and health, particularly



for poor women who do not have access to the expensive and illegal, but safe, abortions which are widely available from private physicians. These lines of argument highlight the costs of unsafe abortion to the public-health system – women who undergo unsafe abortions and suffer complications or even death represent the fourth highest cause of hospital admissions in Mexico's public hospitals (Billings *et al.* 2007). Figures from the year 2000 showed that unsafe abortion was the third leading cause of maternal mortality in Mexico City, and the fifth leading cause nationwide (National Population Council 2000).

In the spring 2007 debate, GIRE and allies developed other arguments more specific to the proposed law. We emphasised that the proposed law would not force anyone to have an abortion against her own beliefs. Moreover, we stressed that decriminalisation would expand freedom for those who choose to exercise this right. Women will always have abortions, even if the procedure is illegal, even if they risk their lives. We emphasised that legalising abortion would not necessarily increase the number of abortions, but rather would ensure that women end their pregnancies under safe conditions, without endangering their health or lives. The pro-choice movement also strategically appropriated the word 'life'; we asserted that we are in favour of the right to life, since we value each woman's life, judgment, and ability to make the right decision about her reproductive life. We also pointed out that abortion was already 'socially decriminalised' in Mexico; very few women are in jail for having aborted illegally, which suggests that no one is reporting these 'crimes'.

At the national level, the Mexican Constitution and other laws also provided a strong framework for the legislative reform. Article Four of the Constitution states, 'All individuals have the right to make free, responsible and well-informed decisions on the number and spacing of their children'. Furthermore, the separation of church and state is enshrined in the Mexican Reform Laws of 1859. The lay character of the Mexican state, and the prohibition against its elected or appointed authorities using their personal or religious beliefs to influence public policy, is clearly established.

In addition, the right to freedom of conscience rang true to the general public. GIRE and allies, such as Catholics for the Right to Decide (CDD) in Mexico, stressed that a woman's decision to have an abortion is not taken lightly, but often involves serious ethical dilemmas. It is usually to avoid greater harm, and can in fact bring well-being and diminish suffering for many women and their families. After considering all the consequences, women make this decision responsibly, following their conscience. CDD also confirmed that Catholic doctrine establishes that Catholics must follow their consciences on moral issues, since there has been no official statement by the Catholic Church that converts moral teachings into dogma. Given that over 80 per cent of the Mexican population self-identifies as Catholic, this clarification on the Church's position gave many individuals, and particularly legislators, courage and solid arguments to stand up to the Catholic hierarchy's threat of excommunication if they

voted for the bill. This attempt by the Church to influence politics was illegal under the above-mentioned Reform Laws of 1859.

We also framed abortion rights as basic human rights, demanding the Mexican state comply with the international human-rights framework, as well as treaties and conferences to which Mexico is a signatory. Recommendations from treaties, conventions, and conferences are the basis on which the UN and governments promote gender equality, including women's empowerment, the Millennium Development Goals, and the defence of the reproductive and sexual health of all individuals. The positions on abortion of respected international bodies, such as WHO, also provided a key frame from which we promoted decriminalisation.

### *c) Policy windows and political context align*

Shiffman and Smith discuss the necessity of alignment between political context and priority for change to take place. The new law in Mexico City reflects just such a grouping of a number of key factors at a particular moment in time. The political context in Mexico City made the timing ripe for such a reform; social conditions made the change increasingly possible; and global political priority was clear in the increasing recognition by international bodies of the need for legal abortion services to diminish maternal mortality rates worldwide.

#### **Political context**

A critical aspect of the political context that made the new law possible was the timing. In the last presidential election, in mid-2006, a conservative candidate from the National Action Party (PAN) won the election by an infinitesimal percentage, and the progressive PRD candidate claimed fraud. This caused severe polarisation between the two parties and indeed, within Mexican society in general. Because the PRD lost the presidential election, but maintained control of the local legislature and Mayor's Office in Mexico City, it had nothing to lose – and much to gain – by demonstrating the differences between the left- and right-wing parties in the reproductive-rights context by supporting the change in the law. The left-wing PRD has promoted reform on three social issues: gay rights (a same-sex civil union bill was passed in 2006 in Mexico City), euthanasia (currently under debate), and abortion. The PRD claimed these three pillars of a progressive society as its own, thus translating their ethical convictions into legislative actions (Lamas 2007a).

Once opposition parties presented two distinct bills, the left-wing party could easily have pushed the bill through on its own majority, but demonstrated great political savvy by allowing the bills to be publicly debated for four full months by legislators and the public. The Legislative Assembly organised public hearings, involving advocates in favour of and against the reform, along with numerous other events. These allowed the issue to be fully and openly debated. As mentioned above,

the law included modifications to the health law to explicitly prioritise the prevention of unwanted pregnancies, which was critical to the success of the law, and allowed consensus-building among a wide spectrum of political and ideological positions. In addition, the law had broad, high-level political support from within the Mexico City government. The Mayor of Mexico City was a vocal supporter, as was the local Minister of Health. The support of both was critical to the political viability of the law. The lengthy public debate gave the sponsoring parties a chance to build cross-party support for the reform, and pushed right-wing discourse toward open discussion of contraception, and education on sexuality, to prevent unwanted pregnancy. It also put abortion on the front pages of the newspapers and debates in interviews were featured on television and radio for months.

In addition, the Mexican State had implicitly recognised abortion access as a human right in 2006. This had happened when it signed a friendly agreement with civil-society legal representatives, including GIRE, regarding the Paulina Case, before the Inter-American Commission on Human Rights. In this case, a young girl who became pregnant as the result of rape was denied her legal right to abortion by public authorities. Her case, litigated by GIRE and allies,<sup>10</sup> became emblematic of the real-life situation of women who seek abortions, and the details of the case undoubtedly shaped the Mexican public's views on abortion rights (GIRE 2004; GIRE 2008). The outcomes of the negotiations were favourable, and Paulina received damages. In addition to bringing about recognition of abortion as a human right, the case paved the way for discussion of abortion in Mexico by putting a human face on the issue in combination with poverty and discrimination. It has become an indelible reference point in the long process of building public knowledge and discourse around abortion rights in Mexico, and across Latin America.<sup>11</sup> After the Paulina Case, GIRE created a publicity campaign called 'Abortion in Cases of Rape is Legal', which helped create space on the public agenda to talk about abortion issues.

### Social context

Paedophilia scandals had tarnished the Catholic Church hierarchy's image for a period of time before the bill was presented, and its public presence had lost credibility. During the debate, the hierarchy's discourse became increasingly threatening, especially to legislators, who were threatened with excommunication if they voted in favour of the law.

Many people saw these last-ditch efforts as bullying and disrespectful. The Church leaders' belligerence forced legislators and the Mayor of Mexico City to take a more severe stance, emphasising the separation of church and state, and the state's exclusive right to legislate and govern the city. At the same time, the anti-choice community had lost much of its public influence since legal action is being taken against the national 'ProLife' organisation for misusing the equivalent of more than \$3m of public funding.

While these two ultra-conservative actors were discredited in this debate, society had moved toward concern for secular democracy and individual rights. After a previous debate on abortion in 2000, Lamas and Bissell explained that 'the media carried criticism of the extremism of the president of ProLife and the archbishop in editorials and cartoons: their blanket condemnations, expressions of intolerance and lack of tact have cost them credibility in a society that is increasingly concerned about threats to the secular state, and recognisant and respectful of diversity' (Lamas and Bissell 2000, 20). This characterisation of the state still rings true. Mexican society has undergone a gradual secularisation; many Mexicans self-identify as Catholic, but do not follow Church teachings exactly. For example, many use birth control, live in civil unions, have abortions, and do and accept things that are officially proscribed by the Catholic Church. It is quite common to be Catholic, but not follow the entirety of Church doctrine.

These elements of the political and social climate, which created an unequalled policy window, were also aided by the global governance structure.

#### Global context

In addition to the international human-rights framework, as established in treaties and conferences, international organisations also play a large role in bringing attention to the issue. Human Rights Watch highlighted women's challenges to accessing even legal abortion in Mexico, with publication of its report 'The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico' (Human Rights Watch 2006). The report focused on the obstacles faced by women who have become pregnant as a result of rape. Another indication of the growing international attention to abortion issues was the landmark Marie Stopes International Global Safe Abortion Conference in London in October 2007. Although this event came after the decriminalisation of abortion in Mexico City, it is evidence of the increased presence of the movement for safe and legal abortion at the global level. Another demonstration of this trend is the international indignation against the USA's restrictive aid policy for reproductive-health projects, termed the Mexico City Policy or, as activists prefer to call it, the 'Global Gag Rule'. In direct response, a number of European countries started the Safe Abortion Access Fund, to fill the gap left by the Global Gag Rule<sup>12</sup>.

#### *d) Characteristics of the issue*

A final factor in Shiffman and Smith's analysis of political priority is the nature of the issue itself. Shiffman and Smith posit that issues are most likely to get attention if they are easily measured, severe and harmful, based on objective measures, and lend themselves to simple, inexpensive solutions (Shiffman and Smith 2007). John Kingdon's analysis of the nature of problems that are likely to attain political attention is quite similar (Kingdon 1984). According to this analysis, abortion is a severe

public-health problem in Mexico, based on the widely accepted measure of maternal mortality indices, and has an arguably simple and cost-effective solution: legalisation or decriminalisation of abortion.

The severity of the issue as a public-health problem, as discussed above, has become more internationally recognised since the early 1990s. Not only have many international bodies officially recognised the dangers of restrictive abortion policies to women's lives and health in general, but even more are focusing on the detrimental effects those policies have on poor women, and the shocking differential between outcomes in developed and developing countries (Grimes *et al.* 2006). Since abortion is one of the safest medical procedures, death due to unsafe abortion is completely preventable (World Health Organization 2003).

Even widely recognised indicators on maternal mortality due to unsafe abortion are generally understood to be underestimated, due to the social stigma attached to abortion, and to the tendency to misclassify deaths caused by complications from unsafe abortions where abortion is penalised. According to Walker *et al.* (2004), deaths due to a variety of complications which arise from unsafe abortions are misclassified in autopsy reports. Given that maternal mortality due to unsafe abortion is already tragically high, such under-registration underlines the severity of unsafe abortion and maternal mortality.

The solution to the public-health tragedy of unsafe abortion is fairly clear. Relatively high rates of unsafe abortion are strongly correlated to restrictive abortion policies (Grimes *et al.* 2006). Maternal mortality due to complications from abortion is far higher in countries where abortion is illegal, whereas 'increased legal access to abortion is associated with improvement in sexual and reproductive health' (*ibid.*, 69). Decriminalisation of abortion is increasingly accepted as something which is obviously needed to curb maternal mortality, and is a cost-effective strategy. According to cost estimates recently published by the Institute of Development Studies, the cost to public hospitals of treating complications of unsafe abortions is far higher than providing abortion services, and the decriminalisation of abortion in Mexico City has the potential to reduce government costs by 62 per cent, and save up to \$1.6m a year (Levin *et al.* 2007).

Contrary to what would normally be assumed, the controversial nature of the issue of abortion was a key component in the success of this process. Abortion is an extremely contentious issue that sharply divides public opinion in most societies. Even though compelling research on the severity of the consequences of unsafe abortion exists, controversy on this issue continues, reflecting the utterly ideological bent of the arguments used against abortion. However, in Mexico City, the controversial nature of the subject may actually have worked in favour of the reform. Though abortion is usually viewed as a politically risky subject by legislators, in this case, the left-wing political party identified it as a pillar of a democratic, secular, and progressive society, and used it to define their values in contrast to the right wing.

## What the future holds

Soon after the passage of this law, two key public agencies, the National Human Rights Commission and the federal Attorney General's Office, part of the executive branch, presented challenges to the law's constitutionality before the federal Supreme Court. While the challenges were not surprising, it was disappointing, to say the least, that the Ombudsman for the National Human Rights Commission presented a suit. The Ombudsman presented this challenge without consulting his Board of Advisors, making his suit of questionable validity. At the same time, the Mexico City Human Rights Commission is highly supportive of the new law, demonstrating the contradictory nature of the federal Commission's claims.

The Court is expected to gather arguments about the new law and issue its decision in spring 2008. GIRE is currently co-ordinating *amicus curae*<sup>13</sup> briefs from allied national NGOs, including GIRE, CDD, and Ipas Mexico, as well as international groups such as Catholics for Choice, the Centre for Reproductive Rights, Engender Health, the Guttmacher Institute and Women's Link Worldwide, among others. Arguments are also expected from several renowned universities in Mexico and internationally, including the National Autonomous University of Mexico and the University of Toronto.

Based on past decisions and the current composition of the court, we are cautiously optimistic that the reform will be upheld. A super-majority of 8 of the 11 justices would be needed to overturn the law. The Mayor of Mexico City is also confident; he has said that it would be inconceivable for the Court to restrict a right that has already been established.<sup>14</sup>

The final resolution of the Supreme Court will be absolutely critical to accelerate the process of reform in other Mexican states. If the law is declared constitutional, the future of abortion rights across Mexico will rest on the political will of public officials in each state and the social demand for abortion rights. A favourable Supreme Court decision would show that there is no constitutional barrier to allowing women to make decisions over their reproductive lives.

## Conclusion

The Mexico City reform process is an exemplary demonstration of how political priority is generated. As shown above, varied and powerful actors made public declarations of support for the decriminalisation of abortion, and strong leadership had been developed over the past decades. Civil-society actors used highly effective discourse to frame the issue of abortion, and to build public support for decriminalisation. Although civil society did not have control over the political context, GIRE and allies were organised and well-prepared to act when the policy window arose. Our actions were intentionally gradual, aiming to gain ground over time. Finally, the

controversial nature of abortion actually contributed to its becoming a political priority for the left wing.

Taking the above into consideration, GIRE considers the political and social context as the most important factor in achieving the historic decriminalisation of abortion in Mexico City. The three other components (the strength of the actors involved, the arguments they used, and the characteristics of the issue itself), have either stayed the same or solidified in recent years, and, obviously, provided a critical foundation during the debate process, but the decisive factor was the timing – a critical policy window opened due to the political context.

Based on this experience, GIRE would advise civil-society advocates for abortion rights, or any social justice cause, to prepare ahead of time, as much as possible, for a potential policy window opening. There are several important factors to consider in building the necessary conditions to take advantage of such a window. For example, strong leadership, careful discourse and arguments, high-quality information, and clear evidence-based research are all necessary. It is also important to build relationships with key actors and sectors, including government entities. Another key aspect of our success was our partnership with allied NGOs, which allowed us to avoid duplicating efforts by strategically dividing labour. Last, but not least, processes like these always include an element of patience and consistency.

Yet, as Shiffman and Smith state, 'political priority alone is not sufficient to address a problem successfully. Effective policies, technology, and implementation systems, among other elements, are also crucial' (Shiffman and Smith 2007, 1370). Civil society in the reproductive-health community is now working at several levels to support, implement, and expand the new law through collaboration with the Ministry of Health. At the institutional level, GIRE and allies are working with the Ministry of Health to standardise procedures in all public hospitals for women who seek abortion, and to train service providers to provide easy-to-access and respectful abortion care.

Women are bravely making use of their right to free abortion services in public hospitals, as the law continues in effect despite the pending Supreme Court resolution. More than 6,000 women have accessed abortion services in ten months, without any complications! 99.6 per cent of these legal procedures have been absolutely complication-free. More than 80 per cent of the women who have sought services are Catholic, and formally educated, which is helping to destigmatise abortion and make it appear normal, influencing public opinion. The legislators who voted in favour of the law, the Mexico City government, Ministry of Health, and the Mexico City Human Rights Commission have become strong and open advocates for women's right to decide, an unprecedented event in Mexico, and one that may soon spread across the country.

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## Notes

- 1 See the recent Center for Reproductive Rights publication 'Abortion Worldwide: Twelve Years of Reform' at: [www.reproductiverights.org/pdf/pub\\_bp\\_abortion\\_laws10.pdf](http://www.reproductiverights.org/pdf/pub_bp_abortion_laws10.pdf) (last accessed March 2008) for a complete list of countries that have liberalised or restricted abortion laws since 1995.
- 2 See [www.womenslinkworldwide.org/prog\\_rr\\_colombia.html](http://www.womenslinkworldwide.org/prog_rr_colombia.html) (last accessed March 2008) for more information on this historic decision.
- 3 Our analysis is based on the framework developed in Shiffman and Smith (2007).
- 4 A complete list of the CEDAW recommendations to Mexico in August 2006 can be found at: [www.un.org/womenwatch/daw/cedaw/cedaw36/cc/Mexico%20cc%20advance%20unedited%20version.pdf](http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/Mexico%20cc%20advance%20unedited%20version.pdf) (last accessed March 2008).
- 5 GIRE's table of legal abortion indications by the Mexican state is available at: [www.gire.org.mx/contenido.php?informacion=196](http://www.gire.org.mx/contenido.php?informacion=196) (last accessed March 2008).
- 6 Based on the results of a poll commissioned by GIRE and conducted by Beltran and Associates in 2003, with follow-up polls conducted in 2005 and 2007.
- 7 For the text of the Mexico City Law in English, see GIRE's website at: [www.gire.org.mx/contenido.php?informacion=187](http://www.gire.org.mx/contenido.php?informacion=187) (last accessed March 2008).
- 8 For a historical look at this reform process, please see Beltran y Puga (2007) 'The Decriminalization of Abortion in Mexico City', [www.despenalizacion.org.ar](http://www.despenalizacion.org.ar) (last accessed December 2007).
- 9 Quote taken from a speech at the interactive forum 'Legal Termination of Pregnancy: An Achievement for Women's Right to Decide', held on 27 September 2007 in honour of the September 28 Campaign, Day to Decriminalize Abortion in Latin America and the Caribbean.
- 10 Allied organisations involved with the case include Center for Reproductive Rights and Alaide Foppa.
- 11 For further information on the terms of the friendly resolution, see [www.cidh.org/annualrep/2007sp/mexico161.02sp.htm](http://www.cidh.org/annualrep/2007sp/mexico161.02sp.htm) (last accessed March 2008)
- 12 See [www.ippf.org/en/What-we-do/Abortion/SAAF+main.htm](http://www.ippf.org/en/What-we-do/Abortion/SAAF+main.htm) (last accessed March 2008) for further information.
- 13 *Amicus curae*, Latin for 'friend of the court', refers to a brief presented by a third party to provide additional information for justices in their decision-making process.
- 14 Quote taken from a speech at the interactive forum 'Legal Termination of Pregnancy: An Achievement for Women's Right to Decide', held on 27 September 2007 in honour of the September 28 Campaign, Day to Decriminalize Abortion in Latin America and the Caribbean.



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