

In 1999, 13-year-old Paulina became pregnant after she was raped. Paulina decided to get an abortion... but public officials deceived her into withdrawing her request. They imposed their choice on her: to become a teenage mother as a result of rape.

In 2000, the Grupo de Información en Reproducción Elegida (Information Group on Reproductive Choice) published the first part of this story: *Paulina: In the Name of the Law*. As of 2004, her case still has not been resolved, compelling us to publish *Paulina: Five Years Later*.

This new edition of TOPICS FOR DISCUSSION includes information on the most relevant events in Paulina's life and her case in the last five years. Her case has become emblematic because it clearly signals the limitations of public policies guaranteeing access to abortion for rape victims in Mexico.

## Topics for Discussion

# 4

# Paulina

## Five Years Later



GIRE

Grupo de  
Información en  
Reproducción  
Elegida, A.C.

# Paulina

## Five Years Later

[Information Group on Reproductive Choice]



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# Paulina Five Years Later: Collective Debts

Norma Ubaldi Garcete

Paulina was raped on July 31, 1999, when she was 13 years old, and reported the crime shortly thereafter. Subsequently, it was confirmed that she was pregnant as a result of the rape and she decided to have an abortion, as allowed under Article 136 of the Penal Code of the State of Baja California, where these events took place. The Attorney General's Office authorized the abortion but public health officials deceived her into withdrawing her request for an abortion. They imposed their choice on her: *to become a teenage mother as a result of rape.*

At that point the Paulina case became public. It would not exist if her right to choose had been respected, and if the law permitting abortions in cases of rape and

the constitutional rights of the individual—including reproductive freedom, freedom of religion, and the right to live in a secular state—had not been violated.<sup>1</sup> Nor would it exist, in all probability, if the victim and her family were not poor, because poverty is also a fundamental part of this story.

In 2000, the Grupo de Información en Reproducción Elegida (GIRE) published the first part of this case.<sup>2</sup> As of 2004, her case has not been resolved, compelling us to publish *Paulina: Five Years Later*.

## Institutional Weakness

The chronology included in this edition of TOPICS FOR DISCUSSION reconstructs facts and events that cover the period from the birth of Paulina's son (April 2000) to the

latest development in her life: returning to work (January 2004). This section highlights the meeting (in October 2003) of the Inter-American Commission on Human Rights (IACHR)<sup>3</sup> where Alaide Foppa and GIRE of Mexico, and the Center for Reproductive Rights (CRR) of the United States, illustrated the ongoing reproductive rights violations in Latin America through the example of the Paulina case.

The events described in the timeline undeniably verify the weakness of the rule of law, of prosecutorial offices and systems for the administration of justice, of the defense of human rights, and of the process to create law.

*An Attorney General's Office that does not investigate public officials when they violate human rights*

On November 12, 1999, Paulina and her family filed a report against officials from the Attorney General's Office and public health officials for violating the adolescent's right to an abortion. At that time a preliminary inquiry was opened. Almost two years later (August 2001), the Attorney General's Office determined they would not prosecute, *although none of the officials under investigation had made statements*. Subsequently, almost a year passed before the investigation was reopened at the request of Paulina's mother. To date, only Juan Manuel Salazar

Pimentel, ex-Attorney General of Baja California, has made an "official statement" for which he had to be summoned.

The lack of interest in prosecuting the officials for their obstruction of Paulina's rights is evident. The Attorney General's Office has the minimum obligation of investigating a report of a rights violation. The halo of impunity within which certain public officials continue to act is worrisome. To be both "judge and jury" is not a good formula since it violates core legal norms of impartiality, particularly in a weak democracy like Mexico.

*A legislative branch that avoids creating laws to close legal voids*

Another striking fact was the voices of state and federal legislators who, at that time, established their disagreement with the treatment Paulina received. The media collected public statements of members of the legislative branch demanding that:

- Paulina be indemnified
- The government accept the recommendation of the Attorney General's Office of Human Rights and Citizen Protection of the state of Baja California
- The public officials allegedly responsible appear before the state legislative branch

But neither the men nor the women of the legislature realized that Paulina's case is also about their duty par excellence: *creating laws*. It is important to remember that, although the Baja California Penal Code establishes some requirements for abortion in cases of rape,<sup>4</sup> it does not establish an enforcement process to protect a woman's right to terminate a pregnancy resulting from a rape or which public institution should authorize this procedure. For example, the lack of such an enforcement mechanism allowed members of the Sociedad Médica del Hospital General de Mexicali (Medical Society of the Mexicali General Hospital) to state that "they were not obligated to perform a legal abortion" without any legal repercussions. And while the legislature's declarations were in "good conscience" and "politically correct," they were not enforced. Paulina became a "good cause," as a public showcase, but no one promoted the kind of legal reform, such as an enforcement mechanism, to prevent this type of injustice from recurring.

*A Human Rights Commission that can only make recommendations*

On September 18, 2000, the National Human Rights Commission (CNDH, for its initials in Spanish) issued Recommendation 18/2000, which ratified the recommenda-

tions that the Attorney General's Office of Human Rights and Citizen Protection of the State of Baja California (PDH, for its initials in Spanish) had proffered months earlier. The CNDH document restates the need to indemnify Paulina for the harm caused her, the need to duly process the preliminary inquiry against the public officials, and the urgent need to ensure the enforcement of the law. Although the state government "accepted" this recommendation, it also stated that there was no legal basis for the creation of a trust fund for Paulina as recommended by the PDH.

The highest national human rights body recognized that Paulina's fundamental rights had been violated. However, in practice, there has never been full institutional compliance with the recommendation. The suspiciously slow official investigation of the state officers involved is indicative of the general institutional non-compliance with the recommendation. Likewise, the health care that Paulina and her son received from the Social Security and Services Institute for State Workers (ISSSTE, for its initials in Spanish) was given only on a temporary basis; the new state government argued that it had no documentation that would guarantee the continuation of these services. In summary, the CNDH's recommendation was politically important when

issued, but, with the passage of time, has become only symbolic.

The fragility of human rights for the poor in Mexico is a well-known phenomenon. The need, in 1990, to create an independent authority charged with monitoring government compliance with human rights, is a recognition —lamentable for any government— of this situation. Even in the context of the Paulina case, which has gained national and international attention, not even a recommendation from the CNDH has made the government of Baja California assume its responsibilities, underscoring the severity of the problem. In particular, the Mexican government's failure to indicate whether it will provide reparations for victims of human rights violations through the CNDH is troublesome.

### **The Other Alternative: the International Route**

In 2002, the quest for comprehensive reparations for the harm done to Paulina went international. The organizations Alaíde Foppa and Epikeia, from Mexico, and the CRR, based in the United States, as Paulina's legal representatives, filed a complaint on her behalf with the IACHR. The complaint condemns the Mexican government for its responsibility in violating Paulina's human rights. (See appendix)

Why was it necessary to bring the case to the IACHR? It is undeniable that there is no resolution for the case at the national level, and there is neither interest nor political will to reach one. From this perspective, the need to resort to a regional human rights body (a circumstance any government should be ashamed of) is the direct result of the lack of interest demonstrated by institutions in Baja California in indemnifying Paulina and her child.

However, in response to requests for information about the Paulina case, the Mexican government has petitioned the IACHR not to admit the case because Paulina has failed to exhaust all domestic remedies. If, supposedly, domestic remedies have not yet been exhausted, why then is the preliminary inquiry (opened in 1999!) to investigate the conduct of certain public officials stalled? Unfortunately, the Paulina case has not yet been admitted by the IACHR.

### **Lessons Not Learned**

As previously mentioned, following the Paulina case, Baja California has failed to institute laws that would enforce the mechanisms permitting abortion in the case of rape. The Baja California government could have used Paulina's case as an impetus to reform the state Penal Code and Penal Procedural Code so as to explicitly contain



procedural guarantees for women who become pregnant as a result of rape to exercise their rights. In contrast, five years after Paulina was raped, the regulatory voids in the Baja California system remain unchanged:

- Which public body should perform a legal abortion is “unknown.” This precision is necessary, given the possibility that state health officials may be reluctant to perform the procedure
- Baja California law does not clearly delineate the public health sector’s obligation to perform legal abortions, although Article 4 of the Constitution recognizes reproductive freedom as a right that the state must protect
- There are no regulations on conscientious objection by health care providers in the public sector, although this was one of the main obstacles preventing Paulina from obtaining a legal abortion
- Baja California law fails to expressly define abortion in cases of rape as free of charge
- Emergency contraception,<sup>5</sup> used to prevent pregnancy, is not offered to rape victims

## Lessons Learned

Although the laws have not changed in Baja California, the Paulina case has put officials in other states on notice. For example, in the city of Los Mochis, in the state of Sinaloa, a 12-year-old girl was denied a legal abortion after her father raped her. When her mother went to the authorities in Culiacán, they decided to perform the abortion to avoid another “Paulina case.”

Additionally, what happened in Baja California has influenced lawmakers in other states to change laws and to create specific norms to give practical effect to the right to an abortion in the case of rape. Mexico City is an important example of advances in this area.<sup>6</sup> In Mexico City, from 2000 to date, officials have resolved, at least on the surface, the main limitations present in the laws in Baja California.<sup>7</sup>

One of the most striking changes in Mexico City is the newfound balance achieved between the rights of victims and those of health care providers who must perform legal abortions. The striking of such a balance stemmed from the recognition that abortion (whether legal or not) is a moral issue and, as such, cannot be avoided. Accordingly, regulating conscientious objection becomes crucial when the right at stake is a woman’s right to terminate a pregnancy resulting from rape. An

article on this topic is included in this edition of TOPICS FOR DISCUSSION.

Whether the state should provide emergency contraception to rape victims is another central question in the debates stemming from the Paulina case. Hanging on the door of the Attorney General's Office, where Paulina filed her rape report, was a poster detailing the preventative effects of emergency contraception. Socorro Maya, a lawyer who represented Paulina, realized this fact only months after Paulina had filed the report. However, the staff of the Attorney General's Office failed to inform Paulina about the option of emergency contraception. If they had, this booklet might have never existed. Unfortunately, it didn't happen that way.

In 1999, emergency contraception was a relatively unknown method of preventing pregnancy in Mexico. Although, starting in the early 1990s, many non governmental organizations (NGOs) had been conducting educational campaigns on emergency contraception, public authorities had not listed this method among family planning options. Today, emergency contraception has been officially recognized—it was included in the list of methods of family planning in the Official Mexican Norm. In addition, this modification was published in the Official Gazette on January 21, 2004. We hope that this newfound recognition of emergency contraception will allow many

more women, especially rape victims, to have access to this option.

### **Mexico's International Commitments**

2004 marked the ten-year anniversary of Mexico's signing of the International Conference on Population and Development Programme of Action (ICPD). Mexico recently reaffirmed its commitment to population and development programs at the Economic Commission for Latin America and the Caribbean (ECLAC) Open-ended Meeting of the Presiding Officers of the Sessional Ad Hoc Committee on Population and Development in Santiago, Chile, on March 10th and 11th, 2004.<sup>8</sup>

The ICPD Programme of Action recognizes that reproductive rights are human rights and establishes, among other things, that "in circumstances where abortion is not against the law, it should be safe."<sup>9</sup> Despite this statement, Mexico has failed to fully recognize abortion as a woman's legal right, as demonstrated by the Paulina case. Mexico's failure in this area explains the United Nation's and the Organization of American States' recent recommendations to the Mexican government, one of which stipulates "that all Mexican states review their legislation so that, when appropriate, they guarantee women's prompt and easy access to abortion."<sup>10</sup>

Today, ten years after Mexico signed the ICPD conference, and five years after it denied Paulina access to an abortion, there

remains much work to be done by the Mexican government in the area of reproductive rights, particularly for victims of rape.

*Paulina: Five Years Later* is a story not only of the violation of rights but also, fortunately, of collective efforts for justice. The selection of news articles for this edition of TOPICS FOR DISCUSSION reflects the entirety of the story. The “attention” that the government of Baja California gave to the Paulina case would surely have been different if the media had not followed the case, not only reporting, but *defending* an otherwise helpless victim.

The Paulina case demonstrates that reproductive freedom is a right that is violated not only when a woman becomes pregnant against her will, but when the state and state institutions, responsible for protecting this right, violate it as well. We hope that this *recounting of the harms caused* by institutional misbehavior stimulates not only reflection and analysis, but more fundamentally, also underscores the demand for reproductive freedom and freedom of conscience for women victims of rape who become pregnant as a result.

## Notes

<sup>1</sup> Mexican Constitution, Articles 4, 24 and 130, respectively.

<sup>2</sup> GIRE, *Paulina: In the Name of the Law* (Mexico: 2000). This publication includes a timeline (from the date of the rape to the birth of Paulina's child) and an excerpt from Recommendation 2/2000 from the Attorney General's Office of Human Rights and Citizen Protection of the State of Baja California.

<sup>3</sup> The IACHR is an important and independent body of the Organization of American States (OAS), whose mandate stems from the OAS Charter and the American Convention on Human Rights, and that represents the member countries of the OAS.

<sup>4</sup> These requirements are that the rape is reported, that the Attorney General's Office confirms the crime and that the pregnancy is under ninety days of gestation.

<sup>5</sup> Emergency contraception is named as a contraceptive method that women can use immediately after unprotected intercourse (such as in the case of a rape)

during the subsequent 120 hours (five days) with the intent of avoiding an unwanted pregnancy. Levonorgestrel pills or combination pills of estradiol and levonorgestrel are used. Both contain the same hormones that are regularly used as contraceptives.

<sup>6</sup> See *Gaceta Oficial del Distrito Federal [Mexico City Official Gazette]*, "Circular/GDF-SSDF/02/02. Lineamientos generales de organización y operación de los servicios de salud relacionados con la interrupción del embarazo en el Distrito Federal" ["General Guidelines on Organization and Operation of Health Services Related to the Termination of Pregnancy in Mexico City"], 12, no. 57 (April 23, 2002): 22-25; *Gaceta Oficial del Distrito Federal [Mexico City Official Gazette]*, "Acuerdo número A/004/2002. Lineamientos para la actuación de los Agentes del Ministerio Público, para autorizar la interrupción del embarazo cuando sea resultado de una violación o de una inseminación artificial no consentida de conformidad con lo

establecido en el Artículo 131 Bis del Código de Procedimientos Penales para el Distrito Federal” [“Agreement no. A/004/2002. Performance Guidelines for Officials of the Attorney General’s Office, to Authorize the Termination of Pregnancy that is a Result of Rape or of Non-consensual Artificial Insemination in accordance with Article 131 bis of the Penal Procedural Code for Mexico City”], 12, no. 93 (July 11, 2002): 2-3; Secretaría de Salud del DF [Secretary of Health of Mexico City], *Manual de procedimientos para la interrupción legal del embarazo en las unidades médicas* [Procedural Manual for the Legal Termination of Pregnancy in Medical Units] (Mexico, 2002); *Gaceta Oficial del Distrito Federal* [Mexico City Official Gazette], “Decreto que reforma los Artículos 145 y 148 del Nuevo Código Penal para el Distrito Federal y se adicionan los Artículos 16 Bis 6 y 16 Bis 7 a la Ley de Salud para el Distrito Federal” [“Decree reforming Articles 145 and 148 of the New Penal Code of Mexico City and adding Articles 16 bis

6 and 16 bis 7 to the Health Law of Mexico City”], 14, no. 7 (January 27, 2004): 6-7.

<sup>7</sup> See GIRE, *Leyes sobre el aborto. Los avances en la Ciudad de México* [Abortion Laws: Advances in Mexico City] (Mexico, 2004).

<sup>8</sup> <http://www.eclac.cl/celade/noticias/noticias/9/14399/DSC-1-esp.pdf> (accessed April 5, 2004).

<sup>9</sup> See Paragraph 8.25 of the *Programme of Action adopted at the International Conference on Population and Development* (United Nations, s/l, 1998): 84.

<sup>10</sup> See Recomendación 245, en Secretaría de Relaciones Exteriores [Recommendation 245 of the Secretary of Foreign Affairs], *Compilación de recomendaciones a México de los mecanismos internacionales y los comités de derechos humanos de las Naciones Unidas y de la Organización de los Estados Americanas* [Compilation of Recommendations to Mexico from International Mechanisms and Human Rights Committees of the United Nations and the Organization of American States] (Mexico, 2003).

# Chronology of the Paulina Case

Mónica Maorenzic Benedito

This chronology describes the most pertinent facts relating to the Paulina case since the birth of her son: her life; the criminal proceedings against her rapist; and the suit against the officials who denied her right to an abortion. Her suit against state officials has been a process full of inefficiencies and delays that, to date, has prevented the correct processing of the preliminary inquiry. This timeline will then examine the local and federal human rights commissions' recommendations on her case. The state authorities' treatment of her case with such contempt and disinterest eventually obligated Paulina to appeal to the Inter-American Commission on Human Rights (IACHR) for assistance, given that she has not yet received the justice she deserves.

If this compilation of information seems excessive or overwhelming, it is because it attempts to locate the events of Paulina's case within a national context. In 2000, there was an intense domestic debate about legal abortion among the different political parties in Mexico; the congresses in the states of Mexico, Guanajuato, Morelos and Mexico City modified their penal codes regarding abortion. In the ensuing national debate, many pointed to the Paulina case as an example of the deplorable attitude displayed by officials from the National Action Party (PAN for its initials in Spanish), who ignored and even violated the reproductive rights of Mexican women.



### **April 6, 2000**

Accompanied by her mother, her older brother, and Socorro Maya, her lawyer, Paulina Ramírez Jacinto signs a report against officials from the Attorney General's Office and public health sector for violating her right to an abortion. The report alleges "abuse of authority, improper handling of documents, conspiracy by public health providers, torture and illegal privation of liberty." The officials named in the report are Juan Manuel Salazar Pimentel, Attorney General of Baja California; Juan Manuel García Montaña, state Deputy Attorney General; Norma Alicia Velázquez Carmona, public prosecutor for the Attorney General's Office; Carlos Astorga Othón, Director General of the Institute of Health Services for the State of Baja California (ISESALUD, for its acronym in Spanish); and Ismael Ávila Íñiguez, Director of Mexicali General Hospital (MGH). This statement, which Paulina signed, was based on Preliminary Inquiry 488/99/104, initiated on November 12, 1999.

### **April 13, 2000**

Paulina's son is born.

The local Congressional Health Commission waits for a copy of the case records,

and the president of the commission, Héctor Baltazar Chiprés, states that, having found negligence and omission, "we will seek to have those responsible punished." During the regular session of the state congress, Antonio Cano Jiménez, acting for the Institutional Revolutionary Party's (PRI, for its initials in Spanish), requests that the head of state fully comply with Recommendation 2/2000 of the Attorney General's Office of Human Rights and Citizen Protection of the State of Baja California (PDH, for its initials in Spanish) in the Paulina case. In addition, he requests that a trust fund be established to indemnify Paulina for state authorities' failure to enforce Paulina's legal right to an abortion. The congress considers the possibility of calling Juan Manuel Salazar Pimentel, Ismael Ávila Íñiguez and Carlos Astorga Othón to appear before the plenary session "to explain their participation in disregarding the authorization for the termination of a pregnancy of a raped minor."

The General Director of the Workers' Social Security and Services Institute for State Workers (ISSSTE, for its initials in Spanish), Socorro Díaz, describes the actions of the authorities of Baja California as "in contempt of an order," and says that Paulina "was twice victimized."

In a press conference, the Baja California Network of Women asks for the

dismissal from office of both Juan Manuel Salazar Pimentel and Carlos Astorga Othón.

#### **April 16, 2000**

In an interview with *Proceso*, Federico García Estrada, deputy Attorney General of Human Rights of Baja California, affirms, “[i]t is very dangerous when the operation of public offices is determined by religious beliefs. This implicitly breaks from what the separation of church and state has meant historically [...] [T]he Paulina case alerts us to the importance of ensuring [that] this separation is paramount, and independent of the religious beliefs held by officials.”

#### **April 17, 2000**

It is revealed that, with the agreement of Governor Alejandro González Alcocer, Carlos Astorga Othón has served as both general director of ISESALUD and head of the State Department of Health since April 7.

Many newspaper articles publish information about a bank account, opened with a donation from Alaíde Foppa and administered by Paulina’s mother, for donations to support Paulina.

#### **April 19, 2000**

During a press conference, the Ramírez Jacinto family gives the details of the report filed against the justice and health

officials who denied Paulina’s right to an abortion. The report names Attorney General Salazar Pimentel for abuse of authority for taking Paulina to see a Catholic priest, as well as doctors Astorga Othón and Ávila Íñiguez for allowing non-health sector personnel to intervene in the case in an attempt to coerce a minor.

#### **April 22, 2000**

Tijuana Alderwoman Juana Laura Pérez Floriano, of the PRI, calls PAN representative Martín Domínguez Rocha, “politically myopic” for submitting a bill to the congress of Baja California to reform Article 136 of the state Penal Code, and to modify Article 4 of the Constitution to prohibit abortion in all circumstances. Pérez Floriano states that “it is reactionary to make religious and anachronistic reforms to the law.”

#### **April 23, 2000**

*La Jornada* publishes the first of four parts of an article by Elena Poniatowska about Paulina. This article is a precursor to the book Poniatowska publishes in September of the same year.

#### **April 26, 2000**

The First Criminal Court announces the start of the period to submit evidence in the Paulina case. During this period, testi-



mony, actions, as well as technical chemical and biological evidence, including DNA, will be considered in order to determine the relationship between Paulina's son and Julio César Cedeño, the alleged rapist.

#### **April 27, 2000**

At a press conference, Attorney General Salazar Pimentel admits for the first time his participation in Paulina's case: "[t]his office sees many cases where the only thing to do is find out who killed people. So, when someone comes here with a pulse, I have to consider his right to live. I have to give my best [...] so that that person is not added to the death statistics."

Francisco García Burgos, state leader for PAN, supports the Attorney General by stating that Juan Manuel Salazar Pimentel was not responsible for an abuse of power. Rather, "[Burgos] simply worked in accordance with his conscience to convince Paulina and her family to not have the abortion, but he never used force to impose his belief."

#### **April 28, 2000**

The Catholic church attempts to prevent Silvia Reséndiz of Alaíde Foppa from becoming godmother to Paulina's son. The vicar-general of the Diocese of Mexicali, Raúl Enríquez Ramírez, argues that "if

[Reséndiz] is in favor of abortion, which goes against the church's defense of the right to life from fertilization, she no longer belongs to the church."

#### **April 30, 2000**

On the Day of the Child, Cardinal Norberto Rivera Carrera declares his support for protection of the minor from the moment of conception. He states, "[n]o one deserves death, not even for being the result of rape." He further argues that, "the Catholic church, conscious that Jesus was a poor child, is the first defender and protector of the most disadvantaged children, [...] but also in light of the anti-child mentality that has spread among the populace, the church must protect the unborn child, because he is the poorest, most vulnerable, and most defenseless."

#### **May 1, 2000**

In the Labor Day parade in Mexicali, a contingent marches with a "gigantic banner" demanding that Alejandro González Alcocer comply with the recommendation of the PDH.<sup>1</sup> Silvia Reséndiz gives the governor a document, signed by the Citizens in Support of Paulina, which asks: "[w]ould Paulina want us to celebrate her this May 10th? (Mother's Day in Mexico) [...] Could Paulina celebrate the Day of the Child? [...] [N]ot

only Paulina should ask these questions, especially after the statement made by the Deputy Secretary of the Interior, Cervantes Govea, in Tijuana. In this statement, Govea opined: ‘All women who have been raped will want the government to support their children. Soon all women are going to want the government to support them.’ These statements demonstrate the degrading and despicable ideas these officials have about women in Baja California.” Similarly, a day earlier, the local representative and Secretary of the Congressional Committee on Action and Complaints, Olivia Villalaz Becerra, criticized the statements of both the governor and the Deputy General Secretary of the Interior, José Cervantes Govea. Both of these officials rejected the idea of creating a trust for Paulina and her child as “insensitive, irresponsible and disrespectful.” In particular, Becerra stated that “it is time to protect the rights and freedoms established in the laws before significant setbacks occur that could endanger the social equilibrium and respectful coexistence of Baja Californians.”

After the parade, in a conference attended by the media, the spokesperson for the state government, Alfredo García Medina, requests that reporters “ask about other issues,” because “the government’s position [on the Paulina case] has already

been stated.” Nevertheless, the governor makes a statement on the Paulina case in response to the reporters’ insistence. Likewise, Alejandro González Alcocer confirms his decision not to comply with the PDH’s recommendation, and categorically rejects the possibility of dismissing the Attorney General. With regards to the Chamber of Deputies’ agreement to sanction his administration, González Alcocer states, “They should legally review the question and we will fight, with the law on our side.” Regarding possible assistance for Paulina, González Alcocer comments that as soon as the family makes a request, Paulina and her family will be aided “by regular programs, like any other citizen.”

Similarly, Carlos Astorga Othón called the PDH’s actions “perverse” because of his certainty that “the health sector complied 100% with the law” in the Paulina case. Moreover, the head of ISESALUD emphatically states that he will not dismiss Doctor Ismael Ávila Íñiguez “because it would be tantamount to accepting a responsibility we do not have.”

### **May 6, 2000**

Francisco Olvera Nájera, a PDH consultant, reports that among the complaints received in the period between November 1998 and December 1999, the total num-

ber of complaints against the public health system, —including the Mexican Social Security Institute (IMSS), ISSSTE, and the State and Municipal Workers of the State of Baja California Social Security and Services Institute (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Gobierno y Municipios del Estado de Baja California (ISSSTECALI)) and the [Mexicali] General Hospital— ranked in third place.

### **May 10, 2000**

Paulina says, in an interview with *La Voz de la Frontera*, “[t]hanks to the government, instead of celebrating the Day of the Child, I have to celebrate Mother’s Day. For everything [government officials] did to me, I now ask only that they comply with the recommendation [to establish a trust fund] so I can support my son [...] and that people realize what the governor of Baja California and the General Hospital here in Mexicali are like. [I hope] that they realize what it’s like here, so they focus on voting because if Fox wins, we’ll all be messed up.”

### **May 16, 2000**

*La Voz de la Frontera* writes that “since the Medical Society’s strike that brought the General Hospital to a halt, and which culminated in the naming of Ismael Ávila Íñiguez as director, doctors are gaining

political clout that includes direct access to the governor.” Proof of this statement is embedded in the letter, sent by the MGH Medical Society to Governor Alejandro González Alcocer, which *gives the Medical Society’s version of the events surrounding the Paulina case and insists that they were not required to perform a legal abortion.*

### **May 17, 2000**

Rubén Fernández, the federal representative for the PAN and President of the Chamber’s Commission on Population, demands in a letter, subsequently published nationwide in newspapers, that the governor recognize that “not only were the adolescent’s human rights violated, but from the beginning [they] acted with negligence” in the Paulina case.

### **May 19, 2000**

Paulina expands on her statement in the rape report before the First Criminal Court. She confirms that “she clearly identified the rapist [Julio César Cedeño Álvarez] by his voice, tattoos and the way he smelled.”

### **May 20, 2000**

The officials summoned to make statements to the Attorney General do not appear. Carlos Astorga Othón and Ismael Ávila Íñiguez request a new date to present

their statements citing “work-related reasons” to explain their failure to appear on the previously scheduled date. Ávila insists on confirming his previous statement made during Preliminary Inquiry 488/99/104, and during a report presented to the PDH on November 23, 1999, that “[Paulina] withdrew her request for an abortion without any pressure from medical personnel.”

### **May 27, 2000**

It is announced that eight representatives of the Federal Congressional Committee on Equality and Gender urged the governor in a signed document to “order the appropriate persons to indemnify the victim Paulina del Carmen Ramírez Jacinto for moral damages caused by preventing the exercise of her rights as soon as possible... and to create a trust fund, guaranteeing [Paulina’s] and her newborn child’s rights to health care, education, clothing, housing and general support until they are in a condition to support themselves, that would thus allow them to fully exercise their right to a dignified life.”

### **May 28, 2000**

On the International Day for Women’s Health, Pilar Sánchez Rivera, a member of Catholics for the Right to Decide, states that “the church in Baja California must adhere

to the concepts of the Jubilee (peace, love and forgiveness) and not demonize a decision that is within the law.”

### **June 6, 2000**

In New York, María Antonieta Alcalde, representing the Mexican Youth Network for Sexual and Reproductive Rights, speaks about the Paulina case during the international meeting “Women 2000: Gender Equality and Equity, Development and Peace in the XXI Century.”

### **June 11, 2000**

PAN representative Héctor Baltazar Chiprés, president of the Health Commission in the XVI local legislature, states in a radio interview that Carlos Astorga Othón will be invited to respond to questions before the plenary regarding the latter’s actions in the Paulina case. Baltazar Chiprés acknowledges that it is necessary to modify the law in order to avoid future cases similar to Paulina.

### **June 16, 2000**

The press in Baja California publish discussions among members of the local congress concerning the type of assistance that can be given to Paulina. PAN representative Martín Domínguez Rocha, president of the Commission on Internal Regulations

and Parliamentary Practices, explains that this committee is working on a proposal that must be submitted for consideration by the plenary to create a trust fund for Paulina. He states that “the legal requirements and the sums” do not allow for the creation of the trust fund recommend by the PDH. In response, Olivia Villalaz Becerra proposes that each representative contribute one thousand pesos as part of a larger proposal to create the trust.

### **June 21, 2000**

The Baja California Bar and Law School Federation announces that on July 12 it will present to the state congress a request for a political suit against the public officials who committed violations in the Paulina case. Carlos Atilano Peña, president of the group, states that the violations documented are contrary to the Federal Constitution, and the Penal Code, in particular, to the Code’s prohibition on “conspiracy of public servants.” In addition, the actions of the officials in the Paulina case run counter to the General Law on Religion. He adds that possible sanctions of the officials responsible include dismissal from office or disbarment from holding a public office. The Mexican Federation of Public Accountants and the Tijuana Civic Alliance support the measure.

### **July 31, 2000**

Mayra Topete and Marcela Vaquera, the Pro-Life members who visited Paulina in the hospital, do not appear in court on the date scheduled to make their statements to the Attorney General. It becomes apparent that there is no specific information available on how to locate these two women.

### **August 3, 2000**

The national papers cover the story of Carlos Astorga Othón’s recent appointment to the transition team of President-elect Vicente Fox. In the following days, the papers publish information that the state PAN advisor and contender for Secretary of Health continues to act as the head of the Baja California Secretary of Health, although he works in Mexico City. Articles also bring to light bad financial management under his administration.

### **August 4, 2000**

PAN representatives in the Guanajuato Legislature pass a bill to reform Article 163 of the state Penal Code so as to criminalize abortion in the case of rape, and to establish a prison sentence for women who seek abortions.<sup>2</sup> This bill passes with 17 votes in favor and 16 against. The opponents of the bill are from the PRI, the Democratic Revolution Party (PRD for its initials in Spanish),

the Labor Party (PT for its initials in Spanish) and the Mexican Green Party (PVEM for its initials in Spanish). Immediately after the passage of this bill, women's groups, parliamentary factions, intellectuals and artists raise their voices in protest throughout the country. The PAN initiative in Guanajuato spurs an intense national debate on abortion.

### **August 6, 2000**

María Elena Jacinto Raúz protests before the Guanajuato congress during Governor Ramón Martín Huerta's presentation. She holds a sign that reads, "I am Paulina's mother, who was pregnant at 13 because she was raped."

### **August 8, 2000**

Six legislators from Guanajuato, who voted in favor of the controversial reform, submit a bill to consider certain "extenuating circumstances" in the criminalization of abortion as a result of rape: for minors, mentally challenged women, and victims of incest.

### **August 9, 2000**

*El Universal* publishes an interview with Paulina. Regarding the bill submitted in Guanajuato and the three year prison term for women who have abortions, she comments, "[t]his is bad because women also have rights, women and men are equal before the

law, and [the representatives] are not the ones who should decide [...] Men do not know what women feel or what we want." Paulina says she is willing to speak in front of the legislature against the abortion ban.

### **August 9 and 10, 2000**

In Buenos Aires and Sao Paulo, Vicente Fox expresses his disagreement with the decision of the Guanajuato Congress. He states that his government would not promote "any initiative that would change the circumstances defined in the laws on abortion." Prompted by the PRI and PRD, the Permanent Committee of the Federal Congress issues a "call" to the Guanajuato government and legislature to reconsider the reform to the Penal Code.

### **August 10, 2000**

It is revealed that Governor Arturo Montiel of the state of Mexico sent an initiative to eliminate the recently added fourth paragraph of Article 251 of the state's Penal Code to the local congress in March. This provision established the non-penalization of abortion in cases of serious fetal abnormalities.<sup>3</sup>

### **August 14, 2000**

PAN legislator Miguel Delfín announces that PAN representatives in Baja California,

the Catholic church, and pro-life groups will offer recognition to the doctors at the General Hospital who denied Paulina's abortion. These groups state that not sending this acknowledgement "would seem as if we are ashamed to defend the moral values of society." The doctors named in this recognition include Ismael Ávila Íñiguez, José Rojas Serrato (gynecologist), and Eduardo Vértiz Cordero (anesthesiologist); the latter two doctors had been assigned by the hospital director to assist with the abortion procedure.

### **August 15, 2000**

Rosario Robles, mayor of Mexico City, presents a bill to reform the Mexico City Penal Code to decriminalize abortion on two additional grounds: one, when the pregnancy puts the health of the woman at risk; and, two, for serious fetal abnormalities.<sup>4</sup> Additionally, the bill proposes new procedures to guarantee access to abortion in case of rape.

### **August 18, 2000**

The Mexico City Legislative Assembly approves Rosario Robles' bill with 41 votes in favor (from the PRD, PRI, PT and the Democratic Centrist Party) and 7 votes against (from the PAN). The Penal Code includes three new indications for legal abortion: in cases of

pregnancy that pose a risk to the woman's health; for serious congenital or genetic fetal abnormalities; and, for artificial insemination without consent. This last addition was included in the proposal of PRD representative Virginia Jaramillo.

### **August 21, 2000**

The Cineteca Nacional Theater shows "*En el país de no pasa nada*" ("*The Country where Everything's Okay*") at GIRE's request to raise funds for Paulina's 15th birthday. GIRE announces that filmmaker Maricarmen de Lara will make a video about the Paulina case. The filmmaker explained her decision as based on a desire to "leave a testimony about [Paulina's] humiliation, because women who are raped have a face, a voice, a life [...] [W]hat most impressed me about Paulina's case is the strength of this girl who, even though she did not have access to much information about her rights, [...] kept going forward with her decision to report her case."

### **August 23, 2000**

Mexico's Secretary of Health, José Antonio González Fernández, states that in cases in which abortion is legal, such as in the case of rape, *public health doctors must perform the abortion*. In addition, he calls for the prosecution of the doctors who vio-

lated Paulina's rights by refusing to perform her abortion.

### **August 25, 2000**

It is announced that the Vatican designated the city of Mexicali as a "Cathedral of Life" in May for its fierce opposition to abortion. Archbishop Javier Lozano Barragán explains that "this title was granted after various members of Mexicali's Catholic community succeeded in preventing a minor's abortion."

The Population Council's and the University of Guadalajara's surveys, the latter contracted by the Guanajuato government, show that more than 60% of the population in Guanajuato disapproves of legislative reform that would punish women who have an abortion after having been raped. These surveys also indicate that 84% of people surveyed believe that legislators should make laws without basing them on their own religious beliefs.

### **August 29, 2000**

After learning of the results of the University of Guadalajara's survey, the governor of Guanajuato, Ramón Martín Huerta, vetoes the reforms to the state Penal Code that attempt to punish abortion in case of rape.

### **August 30, 2000**

In Morelos, PRD and PRI representatives, opposed by the PAN, approve two new indications for legal abortion: when the fetus has serious abnormalities and when the pregnancy is the result of artificial insemination without consent.<sup>5</sup>

### **September 1, 2000**

Paulina turns 15. She celebrates with a mass in the church Our Lord of Clemency and a Oaxacan-style party.

### **September 18, 2000**

The CNDH, headed by José Luis Soberanes Fernández, issues **Recommendation 18/2000**, which supports and ratifies the recommendation of the PDH and confirms that state officials violated Paulina's human rights.<sup>6</sup>

The document outlines four general recommendations. First, it urges Governor Alejandro González Alcocer to make reparations to Paulina for the negligence of public servants. Second, it urges the government to reimburse Paulina's family for expenses incurred as a result of state officials' failure to enforce Paulina's right to an abortion. Third, it urges the legislature or other government entity to take measures to create a trust fund or a similar instrument to guarantee support, housing, schooling



and health care for Paulina and her son until they can support themselves. Fourth, it urges the judiciary to duly process Preliminary Inquiry 488/99/104 in order to determine the responsibility of the public servants involved in the Paulina case. In addition, the document makes two specific recommendations:

1. Based on the observations contained in this document, issue orders to the appropriate personnel to **obey in full the specific points of Recommendation 2/2000, issued March 3, 2000 by the Attorney General's Office of Human Rights and Citizen Protection of the State of Baja California**, in view of its legal admissibility.
2. Send instructions to the appropriate personnel that, for the reasons stated in the document, they take the necessary measures **to process Preliminary Inquiry 488/99/104** in the period given by law. Likewise, grant the internal control office authority to determine the responsibility of administrative officials involved in the previously mentioned inquiry.

In accordance with the law, the recommendations offered by the document are “public and [are] issued with the fundamen-

tal purpose of making a statement regarding the irregular conduct of public servants in the exercise of their faculties, expressly conferred on them by the law.” In addition, the document is aimed “to ensure that the investigation of the officials in administrative agencies or any other competent authorities proceed in a manner whereby they apply the appropriate sanctions and rectify the irregularities among their arbitrations.”

### **September 25, 2000**

PAN and PVEM members present an unconstitutionality action against the additions on abortion to Mexico City's Penal Code and Penal Procedures Code before the Federal Supreme Court (SCJN, for its initials in Spanish). These additions include the decriminalization of abortion in cases of severe fetal abnormalities, and the enhanced power of the Attorney General to authorize an abortion in cases of rape or artificial insemination without consent.

### **September 26, 2000**

Governor Alejandro González Alcocer states that the CNDH document on the Paulina case seems “imprecise and contradictory.” For this reason, he will send the Paulina case to the Governmental Administration for Control and Evaluation for follow-up and, ultimately, to resolve the case. Days later, the spokes-

person for the Mexican Episcopal Conference, Onésimo Cepeda, speaks against the CNDH for its recommendation that the doctors who refused to perform the abortion be prosecuted: “[a]nyone who favors abortion is an idiot, no matter the situation.”

### **September 28, 2000**

On the Day for the Legalization of Abortion in Latin America and the Caribbean, Elena Poniatowska’s book *Las mil y una ... (la herida de Paulina) [A Thousand and One... (Paulina’s Wounds)]* is presented. The Director of GIRE, Marta Lamas; Father Enrique Maza; the Director of Catholics for the Right to Decide, María Consuelo Mejía; and Mayor Rosario Robles attend the book launch. The author, Poniatowska, states: “I view this book as a report on the case of a girl who trusted the authorities [...] who in turn deceived her. [...] I view this report as a spearhead in the decision to support Rosario Robles’ proposal in favor of the decriminalization of abortion.” Maricarmen de Lara’s video *Paulina: In the Name of the Law* is also shown.

### **October 1, 2000**

After presenting his Second Government Report, Alejandro González Alcocer responds to criticism from representatives David Gutiérrez Piceno (PRI) and Efrén

Macías Lezama (PRD), who both urge him to comply with PDH Recommendation 2/2000: “[f]rom the state government’s perspective the recommendation violates the legal framework in the state.”

### **October 6, 2000**

Governor Alejandro González Alcocer responds to the CNDH via Official Letter 079-79/3942. He argues that Recommendation 18/2000 does not coincide with the PDH’s recommendation in reference to the creation of a “trust fund,” and, *accepts under “the terms proposed”* [by the state government]. The terms of the proposal accepted become public knowledge when Carlos Reynoso Nuño, Deputy Secretary of the Interior, announces the following to the media on October 19:

- The state “in compliance with the recommendation” will award Paulina “a one-time economic assistance, not to exceed 50,000 pesos”
- The state government has offered land with the foundation for a house, food coupons, health care through ISSSTE, as well as a scholarship to Paulina and her son
- The governor has already instructed the Comptroller General, José Guadalupe Zamorano Ramírez to begin the appropriate administrative procedures

- Attorney General Salazar Pimentel was instructed to halt processing of PI 488/99/104
- Secretary of Health Astorga Othón was notified that the recommendation was accepted

At that point, drawn-out negotiations begin between government officials and Paulina’s family, during which the authorities ignore her lawyer, Socorro Maya.

**November 22, 2000**

The governor of Baja California, during a congressional appearance and questioning by PRI Representative Antonio Cano Jiménez, denies all responsibility in the Paulina case. Instead, he states that he had offered her assistance, but she had not replied to his offer.



**February 25, 2001**

Socorro Maya issues a statement, at the defense’s request, requesting that samples be taken for a DNA test to establish if a relationship exists between Julio César Cedeño Álvarez (Paulina’s alleged rapist) and Paulina’s son.

**March 11, 2001**

The DNA test results are announced: Julio César Cedeño Álvarez is not the father of Paulina’s child. Based on this information, the defense will seek his exoneration “for lack of evidence.” Rafael Romo Muñoz, bishop of Tijuana, states that Paulina has been manipulated. Specifically, he says, “[w]e never attacked anyone, we only support, [...] but we wish to express our discontent with any case in which it has been proven that the alleged perpetrator is not the perpetrator.” The Bishop of Mexicali, José Isidro Guerrero Macías asks that the issue be left in peace, because “the child is here, is happy and loved.” He cautions, “[d]o not involve anyone else, do not judge anyone else, this boy overcame it all.” Pro-Life also adds to the wave of anti-Paulina commentary.

In response to the slander against Paulina and the attempt to obtain the rapist’s release, Socorro Maya categorically states that the charges brought against Cedeño are based on rape, and not paternity. The examinations by experts, performed the same day as the rape, certified that Paulina’s hymen had recently been broken. Additionally, in her first statement to the Attorney General, Paulina indicated that she was raped twice. Specifically, she said that she had heard the first rapist say to another

person, “[h]ey man, there’s nothing here.” After hearing this statement, Paulina was raped again. The Attorney General of Human Rights of the State of Baja California, Raúl Ramírez Bahena, states that the DNA evidence from the paternity test does not call into question the facts of the rapes as reported by Paulina.

### **March 13, 2001**

The governor of Baja California adds to the heated comments in response to the results from the DNA test, stating that the issue “was manipulated by feminist groups.” Interpreting the case as closed, he stresses that for him “the most important thing is that the child was not the result of rape, which is of primary concern for me...[A]n injustice or a crime would have been committed if anything else had happened.” Alejandro González Alcocer also expresses his doubts about Paulina’s honesty in his statements: “[t]he important thing is to clarify things, that the truth comes out and I think Paulina knows what really happened and that is what we need to find out.” He adds that, “in spite of everything,” the state government will give to Paulina the “social support it should offer.” Similarly, the state Secretary of Social Development, César Mancillas Amador, affirms that “for us, the proposal has not changed. We will help her;

we will give her what we said.” According to the Secretary, this amount is 104,000 pesos in cash, plus 210,000 to pay for a house. He further comments, “[t]his week she is going to decide which house she likes.” Finally, he states that Paulina and the boy will be enrolled in ISSSTECALI until they turn 18.

### **March 14, 2001**

Paulina says that she is sure of her accusation against Cedeño Álvarez because “I will never forget his voice or his smell.” She also mentions that she is upset by the governor’s statements, which suggest that she knew the father of her child. Her lawyers note that they will push for a second DNA test because they lack confidence in the results of the first one, performed by the Diagnostic Center of Ohio. In an interview with *El Universal*, Paulina says, “I feel bad, I’m very upset by the things they are saying about me, that I’m a liar, that maybe I wasn’t a virgin [...] They are slandering me a lot.”

### **March 15, 2001**

In Baja California the creation of the Women’s Institute incites heated confrontations between pro-life and feminist groups. Olivia Villalaz, PRI representative and supporter of the Institute, states that the bill to

establish the Institute was approved by the three congressional factions until the Bishop of Mexicali, Isidro Guerrero, began a campaign to stop it.

### **March 16, 2001**

GIRE holds a press conference and reiterates that the subject of the criminal case is rape not paternity. It emphasizes that the legal authorities confirmed the rape, that Paulina was a virgin and that the preliminary inquiry states that there were two counts of rape. GIRE notes that “gaps, blunders and irregularities in the judicial process of this case cannot be used as a pretext to justify denying Paulina’s rights nor to forget that the officials involved in the case, through deception, failed to comply with the responsibilities assigned to them by the law.”

### **March 18, 2001**

*El Universal* reports: “The criminal inquiry into the rape of Paulina [...] states that there were two people involved in the crime; however, since there was no accusation against the second, the Attorney General of Baja California detained only Cedeño Álvarez, who was located by the victim’s brothers.”

### **April 4, 2001**

Paulina’s lawyers issue a statement that, due to its lack of confidence in the results of the first test, the First Criminal Court of Tijuana will allow the Attorney General of Mexico City to perform a second DNA analysis.

### **April 8, 2001**

Paulina’s son is baptized. The godparents are Silvia Reséndiz and Federico García Estrada, ex-deputy attorney general of the PDH.

### **May 2, 2001**

The results of the second DNA test, confirming the first test, are released. Detractors again accuse Paulina of lying to authorities. However, her lawyers remind the public that in Paulina’s report to the Attorney General’s Office on July 31, 1999, she stated that there were two people present during the assault. Socorro Maya clarifies that “the responsibilities of the authorities are not changed [by the DNA test]; it only shows that the Attorney General incorrectly processed the warrant from the beginning and that the rapist is free. Now, more than ever, Paulina should receive reparations.” Paulina’s lawyer announces that she will start her own investigation, and that she will award 5,000 dollars to anyone who gives her information about the second rap-

ist. The governor repeats that “we continue to wait for them to take what we have offered; we have no problem with it.”

### **May 29, 2001**

In a press release, Epikeia and Alaíde Foppa announce the beginning of a campaign to find the second rapist.<sup>7</sup>

### **June 8, 2001**

In the conclusions presented before Judge Cenaida Tafolla, the Attorney General asks for the maximum sentence for the accused rapist. In addition, the Attorney General includes, for the first time in the trial, the fact that there was a second rapist who has not been identified.

### **June 13, 2001**

Paulina and her family accept the offer from the Baja California government of 300,000 pesos for the purchase of a house. Socorro Maya clarifies that the family decided to accept the money offered by the government due to circumstances of extreme poverty, but that this acceptance does not mean either that Paulina has received sufficient reparations from the government or that her family will withdraw from legal actions to gain due reparations.

### **July 2, 2001**

Paulina finishes secondary school. Subsequently, she will enroll in her first semester of preparatory school, which she will eventually drop out of to work.

### **July 8, 2001**

Elections are held in Baja California for governor, five municipal presidents and 25 representatives.

### **July 10, 2001**

The Preliminary Election Results Board confirms an overwhelming majority vote for the PAN. An abstention rate of 64% is recorded. Eugenio Elorduy Walther (PAN) is elected governor with 49% of the votes. The mayoralties of Mexicali and Tijuana also remain in the hands of the PAN.

### **July 14, 2001**

Almost two years after the preliminary inquiry was filed, the Court issues a verdict against Julio César Cedeño Álvarez for aggravated rape. Judge Cenaida Tafolla sentences him to 16 years in prison; a fine of 240 days at minimum wage (more than 11,000 pesos); 24,000 pesos in reparations for the harm caused; and return of the cellular phone and 1,000 pesos he stole when he assaulted Paulina and her sister. Alvarez’ lawyer is notified of the verdict on July 16,

and files an appeal that same day. Paulina comments on the verdict: “[i]t will help to clear my reputation because everyone was going around saying that I probably knew who the father of my child was, and, therefore, that I hadn’t been raped.”

**July 24, 2001**

The Superior Court of Justice of the state of Baja California admits the appeal presented by Cedeño’s defense.

**August 13, 2001**

The Attorney General decrees that criminal action will not be pursued in Preliminary Inquiry 488/99/104. The inquiry was filed almost two years earlier (in November 1999) against the public officials involved in the violation of Paulina’s rights. Not one of the officials made a statement during the investigation process.

**October 16, 2001**

Two months after the Attorney General announces his resolution not to pursue criminal action against public officials involved in the Paulina case in PI 488/99/104, María Elena Jacinto Raúz [Paulina’s mother], is notified.

**October 25, 2001**

The Fifth Criminal Court accepts the petition for review against the permanent closure of PI 488/99/104 presented by Paulina’s lawyers.

**November 1, 2001**

The newly elected state officials take office. The regime change delays legal proceedings. Paulina’s lawyers attempt to establish new agreements with the new authorities because, although Alejandro González Alcocer accepted CNDH Recommendation 18/2000, he did not leave any written agreement guaranteeing the compliance of the new administration.

**December 20, 2001**

The Fifth Criminal Court finds that the Attorney General must process PI 488/99/104 since there is evidence, particularly ex-Attorney General Salazar Pimentel’s statement about Paulina’s case, that had not been examined.



**January 25, 2002**

The Superior Court of Justice of Baja California confirms the sentence of 16 years in prison issued to Julio César Cedeño Álvarez in the first instance by Judge Cenaida Tafolla.

His attorney announces that he will request a legal stay.

Socorro Maya responds that “the first stage is over regarding the rapist; now the individuals who denied Paulina’s right to an abortion must be brought to justice.” In order to accomplish this goal, she explains that advocates for Paulina will attempt to bring her case before the Inter-American Commission on Human Rights (IACHR).

### **January 29 and 30, 2002**

The SCJN declares the Mexico City reforms regarding abortion constitutional.<sup>8</sup>

### **February 7, 2002**

The Fifth Criminal Court admits the petition for review filed by Paulina’s mother and orders the Attorney General to reopen PI 488/99/104.

### **February 14, 2002**

The Attorney General summons the ex-Attorney General of Baja California. Since Salazar Pimentel no longer lives in Mexicali, it is necessary to issue a petition to the Attorney General of Tijuana (issued February 18 and received March 1) to summon Pimentel in his new home.

In order to present a complaint against Mexico to the IACHR for the violation of her daughter Paulina’s rights, María Elena

Jacinto Raúz names the Center for Reproductive Rights (CRR), [then known as the Center for Reproductive Law and Policy], Socorro Maya of Alaíde Foppa, and Regina Tamés of Epikeia as Paulina’s legal representatives.

Mónica Roa, a lawyer at CRR, reports that in presenting Paulina’s case to the IACHR, she and the rest of Paulina’s legal team will seek a declaration of the state’s violation of Paulina’s rights under international human rights norms in addition to a judgment against state officials for their involvement in her case.<sup>9</sup> She confirms that on March 8, International Woman’s Day, the case will be filed with the regional body. She says that “this is a strong case” because it aims to hold the Mexican state responsible for the lack of regulation in the Penal Code on the right to legal abortion due to rape. Further, she says that the state must comply with its ratification of various international treaties, such as the American Convention on Human Rights, the Convention of Belem do Pará, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

### **February 16, 2002**

Paulina begins working to support her son. Her first job is inspecting pieces of plastic in a maquiladora. She works with-



out benefits and on the night shift (from 11 PM to 6 AM).

### **March 8, 2002**

CRR, Alaïde Foppa and Epikeia file a complaint with the IACHR against Mexico for its violation of the American Convention on Human Rights with respect to Paulina. They ask the IACHR to *admit* the case, establish measures for comprehensive reparations for harms incurred by Paulina, and order the Mexican state to guarantee that such violations will not be repeated. (See appendix)

The presentation of the case before the Inter-American body receives broad coverage in the American press. If the IACHR were to admit the petition, it would be the first case to come before the Commission on access to legal abortion as a human right. Rebecca Cook, professor of human rights at the University of Toronto says “this is not a case about abortion, in reality it is a case about a woman’s access to the care to which she has a right.”<sup>10</sup>

### **April 4, 2002**

The Inter-American Commission requests more information on the case from the organizations representing Paulina.

### **April 8, 2002**

The head of the Attorney General’s Specialized Agency on Patrimonial Crimes, Francisco Javier Hinojosa Robles, orders that the steps necessary to continue processing PI 488/99/104 be taken.

### **May 1, 2002**

The organizations representing Paulina issue a response to the IACHR’s April 4 request for more information on the case. In this document, the organizations repeat their petition for admission to the Inter-American Commission. (See appendix)

### **May 20, 2002**

The IACHR sends Mexico the complaint filed on behalf of Paulina. The state has two months to file a response to the complaint. The document sent to the Mexican government notes that the sending of this document is not an indication that the IACHR has decided to admit the case.

### **May 30, 2002**

Three months after the order to locate ex-Attorney General Salazar Pimentel is issued, the Specialized Agency on Patrimonial Crimes of Tijuana processes it.

**May 31, 2002**

A summons to appear in court is issued to the judicial police to comply with the above-mentioned order to locate Salazar Pimentel.

**June 5, 2002**

In order to respond to the IACHR, the General Directorate of Human Rights (DDH) of the Secretary of Foreign Affairs (SRE for its initials in Spanish) requests detailed information on the Paulina case from the Attorney General of Human Rights and Citizen Protection of the State of Baja California, Raúl Ramírez Baena. Although the document DDH-CIDH-01684 is labeled “urgent,” it is received by the PDH fifteen days later, on June 20.

**June 12, 2002**

*La Voz de la Frontera* reports that a summons was sent to ex-Attorney General Salazar Pimentel’s home in Tijuana, and that he must appear before the Attorney General’s Office on June 24.

**June 24, 2002**

Juan Manuel Salazar Pimentel does not appear before the Attorney General as ordered in the summons.

Some of the names of aspiring candidates for the federal delegations are released, including Carlos Astorga Othón for the PAN.

**July 8, 2002**

Paulina is refused medical care by ISSSTECALI on the grounds that the previous administration did not leave any documents guaranteeing such care, even though ISSSTECALI, in compliance with the CNDH’s recommendation, had been providing such care for a year.

**July 16, 2002**

The Attorney General of Human Rights responds to the SRE regarding the petition for information about the Paulina case. In document PDH/TIJ/1146/02, the state human rights organism notes some irregularities in the case. (See appendix)

**September 3, 2002**

The IACHR sends the organizations representing Paulina an excerpt from “the pertinent parts of the Mexican government’s observations” on Petition P161/02 (the Paulina case). In this document, the Mexican government asks the commission “to refrain from deciding on the admissibility of the issue.” (See appendix)

**October 2, 2002**

The organizations representing Paulina write to the IACHR in response to the Mexican government’s observations on Petition P161/02. Their response states that “the lack

of judicial protection constitutes one of the principal rights violated, and is the fundamental basis for the petition before the IACHR.” (See appendix)

### **October 6, 2002**

Rebecca Cook speaks about the Paulina case during the Second International Meeting on Women’s Sexual and Reproductive Rights and Teaching at the National Academy of Medicine of Mexico. She explains that the Mexican government must ensure the application of international laws and implement policies against discrimination in the area of health. She notes that the high maternal mortality rates resulting from illegal abortions reflect the government’s lack of interest in women’s health.

### **October 11, 2002**

Socorro Maya makes a written request to the Attorney General of Baja California, Eduardo Martínez Luna, for his intervention to accelerate the processing of Preliminary Inquiry 488/99/104 (almost three years after it was issued). In addition, the request calls upon Luna to compel former Attorney General Salazar Pimentel to make a statement in court.

### **November 15, 2002**

For the second time, the IACHR sends the organizations representing Paulina the “pertinent parts” of the Mexican government’s response to their initial petition on Paulina’s behalf. In this document the Mexican government argues that domestic recourses for the provision of justice have not been exhausted, and that it is therefore premature to determine the Mexican state’s responsibility internationally or to appeal to the Inter-American Commission. (See appendix)

### **November 29, 2002**

The Attorney General of Mexicali issues a petition to the Attorney General of Tijuana to “summon or, if necessary, present by means of the state judicial police, Juan Manuel Salazar Pimentel so that a statement can be taken” from him in order to finish processing Preliminary Inquiry 488/99/104.

### **December 13, 2002**

The organizations representing Paulina again proffer arguments to rebut the Mexican government’s response, sent to them by the IACHR on November 15. The NGOs reiterate the lack of a simple and effective recourse available to Paulina. (See appendix)



**January 20, 2003**

Juan Manuel Salazar Pimentel appears before the Tijuana Attorney General Unit on Patrimonial Crimes. He states, “I reserve my right to make a statement and I hereby request a copy of all the evidence included in the petition in order to formulate my written statement at a later date.”

**February 1, 2003**

Paulina starts working as a cashier in a mall. She quickly receives two promotions. However, in July, she has to quit because of health problems.

**February 21, 2003**

The Attorney General of the Specialized Agency on Patrimonial Crimes in Mexicali receives Salazar Pimentel’s written statement. In this statement, Pimentel requests certified copies of all of the documents pertaining to the preliminary inquiry to plan his defense. In addition, he designates private lawyers and requests “that the criminal action be resolved with no further legal actions in accordance with the law.”

**February 28, 2003**

Socorro Maya is named deputy attorney general of the PDH of Mexicali.

**April 23, 2003**

The Mexican government issues another response to the IACHR on the Paulina case. It insists both that there are resources within the Mexican system capable of remedying the violations in the Paulina case, and that it was her mother who withdrew the request for the abortion.

**May 10, 2003**

In an interview with *El Universal*, Paulina says, “I became a mother because God and the PAN government of Baja California wanted it that way.” She says she loves her son, but would request an abortion again: “I am not sorry. If the same thing happened again, I would ask for the same, because it is not fair for the child or for me; that I had to drop out of school, that I have to work.”

**May 22, 2003**

Luisa Cabal, lawyer for the CRR, is named as one of 21 Leaders for the Twenty-first Century for her representation of Paulina before the IACHR. The award, given by *Women’s E-News*, was announced in January and awarded in May in New York.

**May 23, 2003**

The organizations representing Paulina respond to Mexico’s most recent observations (April 23). They insist both that there

are no suitable recourses under Mexican law, and that Paulina's mother's withdrawal of Paulina's right to an abortion was "invalid consent" because state officials gave her incorrect information.

### **August 1, 2003**

The newspaper *La Voz de la Frontera* reports that Francisco Vera González, Secretary of Health and General Director of ISESALUD of Baja California, officially names Ismael Ávila Íñiguez as the new director of the Mexicali General Hospital.

### **September 1, 2003**

Paulina turns 18 and is therefore recognized as an adult under Mexican law. She says, "[n]ow that I am an adult I am going to continue fighting for my rights more than ever because I don't want what happened to me to happen to other women in the future." The suits against the officials are still open, although the state still refuses to comply with the PDH and CNDH recommendations.

### **September 4, 2003**

At Casa Lamm in Mexico City, GIRE, Alaíde Foppa and CRR hold a press conference to announce that in October they will again request that the IACHR admit the case for the violation of Paulina's human rights. Their stated goals are to have the Inter-

American Commission mediate so that Mexico will agree both to make reparations to Paulina and to guarantee that the circumstances that led to her case will not occur again.

The same day, *La Jornada, Reforma* and *El Universal* publish an insert addressed to the IACHR, signed by 70 organizations in Latin America, asserting civil society's concern for the constant violations of Mexican women's human rights, of which the Paulina case is emblematic.

### **September 23, 2003**

Seventy Latin American organizations send the IACHR a letter requesting that it give special attention to the Paulina case. (See appendix)

### **October 20, 2003**

In a hearing before the IACHR on sexual and reproductive rights in Latin America, advocates emphasize that the Paulina case is emblematic of the obstruction of access to legal abortion in Mexico and throughout Latin America. Participants include Luisa Cabal, Legal Adviser for Latin America and the Caribbean of CRR; Marta Lamas, anthropologist and Director of GIRE; and Elsa Ancona, GIRE lawyer.



### **January 2004**

Paulina begins working in a maquiladora making television tubes. Her schedule is from 7 PM to 7 AM. She has not been able to return to school, but says that she wants to finish high school in the public system.

### **January 21, 2004**

The Official Gazette publishes a modification to the Official Mexican Norm on Family Planning (NOM-005-SSA2-1993), which includes, for the first time, emergency contraception.

### **February 8, 2004**

In the PAN district convention, Carlos Astorga Othón (ex-director of ISESALUD and one of the officials implicated in violating Paulina's rights) is elected as a PAN candidate to the local delegation for the First District of Mexicali.

### **March 2004**

The IACHR fails to consider the admissibility of the Paulina case during its first yearly session. CRR hopes the case will be heard in the second session of meetings, in October.

CRR, Alaide Foppa, GIRE and many other organizations hope that the IACHR will admit the Paulina case so that Mexico will consent to the possibility of negotiations regarding reparations for the young woman; an explicit recognition that her human rights were violated; and a commitment to promoting public policies that guarantee that there will be no more cases such as this one, by establishing, for example, procedures within penal codes that allow for effective and prompt access to legal abortion or protocols that the Attorney General, upon receiving a rape report, would immediately offer the woman information about emergency contraception.



## Notes

- <sup>1</sup> Recommendation 2/2000 was issued on March 3, 2000. On March 13 of the same year, the governor announced his refusal to comply with the five recommendations (make reparations to Paulina, create a trust fund for the minor and her child, pursue criminal procedures to determine the responsibility of the officials involved in the case, cover Paulina's expenses for her stay at the MGH and organize courses in medical ethics for service providers in the public health sector).
- <sup>2</sup> The Guanajuato Penal Code, one of the most restrictive in the country regarding abortion, allows only two grounds for exoneration: accidental abortion and pregnancies resulting from rape.
- <sup>3</sup> The Penal Code for the state of Mexico allows three grounds for exoneration for the crime of abortion: accidental abortion; when the woman's life is in danger; and rape. On March 20, 2000, a fourth indication was added, for serious fetal abnormalities, but on March 27, Governor Montiel sent a bill to the state congress to repeal it. The bill remains at a standstill.
- <sup>4</sup> Until this point, criminal law in Mexico City allowed three exonerating grounds: accidental abortion; rape; and when the pregnancy put the woman's life at risk.
- <sup>5</sup> Grounds for rape, when the woman's life is in danger, and accidental abortion already exist.
- <sup>6</sup> The news was published on September 26 in 13 newspapers with national distribution, revealing the importance of the issue in public opinion. The entire text of the recommendation can be found on the CNDH's web site: <http://www.cndh.org.mx>, under "recommendations".
- <sup>7</sup> This campaign was not effective. Although rape is a prosecutable crime, judicial authorities have not opened an inquiry to locate the second rapist.
- <sup>8</sup> Access to legal abortion in Mexico City is regulated by two documents: *Lineamientos generales de organización y operación de los servicios de salud relacionados con la interrupción del embarazo en el Distrito Federal* [*General Guidelines on Organization and Operation on Health Services*]

*Related to the Legal Termination of Pregnancy in Mexico City*], issued by the Mexico City Secretary of Health, Asa Cristina Laurell, April 23, 2002; and *Lineamientos para la actuación de los Agentes del Ministerio Público, para autorizar la interrupción del embarazo cuando sea resultado de una violación o de una inseminación artificial no consentida* [Performance Guidelines for Officials of the Attorney General's Office to Authorize the Termination of Pregnancy that is a Result of Rape or of Artificial Insemination Without Consent], issued by PGJDF [Attorney General of Mexico City], July 11, 2002. These guidelines, which regulate service providers' performance, con-

stitute a meaningful advance in ensuring that legal abortion is safe abortion.

<sup>9</sup> The IACHR is an autonomous body of the Organization of American States (OAS). Its function is to serve as an intermediary in cases of human rights violations in order to facilitate agreement between the petitioners and the respondent state.

<sup>10</sup> If the case is admitted by the IACHR, a period of talks will begin between Mexico and the organizations that filed the complaint in an attempt to establish a "friendly agreement." The Paulina case would become a model for advocates for women's human rights before the Inter-American Commission.



# Sources

This timeline was created with information from articles in local, national and foreign press. In addition, documents from the National Commission on Human Rights (CNDH), Alaíde Foppa, the Center for Reproductive Rights, and the IACHR were used.

## Local

- *La Voz de la Frontera*, Mexicali, B.C.
- *La Crónica*, Mexicali, B.C.
- *El Mexicano*, Ensenada, B.C.
- *El Pionero*, Mexicali, B.C.
- *Mayor* (weekly), Mexicali, B.C.
- *Siete Días* (weekly), Mexicali, B.C.
- *Cambio*, Tijuana, B.C.
- *Frontera*, Tijuana, B.C.
- *El Sol de Tijuana*, Tijuana, B.C.
- *Zeta* (weekly), Tijuana, B.C.

## National

- *La Jornada*
- *El Universal*
- *Ovaciones*
- *El Día*
- *La Crónica de Hoy*
- *Reforma*
- *El Sol de México*
- *El Sol de Medio Día*

- *El Herald*
- *Milenio Diario*
- *Excélsior*
- *Unomásuno*
- *La Prensa*
- *Novedades*
- *El Economista*
- *Diario de México*
- *Esto*
- *Proceso*
- *Impacto*
- *Época*
- *Énfasis*

## United States

- *Women's E News*
- *The Orlando Sentinel*
- *Copley News Service*
- *The New York Times*
- *The San Diego Union Tribune*

# Conscientious Objection: Between Duty and Rights

César Vicente Montiel

The main reason Paulina was unable to obtain the abortion she had requested and for which she had already obtained the Attorney General's authorization was the refusal to perform the procedures by doctors at the Mexicali General Hospital (MGH). It was an obstacle that Paulina and her mother could not overcome. Clearly, another factor was that they were poor women with little education. Information is power, and the doctors in question were seemingly very aware of the vulnerability of these women when they acted as they did.

The doctors at the MGH not only refused to perform the abortion Paulina had requested, but they also prevented her, through deceit, from exercising her right to have an abortion. Additionally, they violated Paulina's freedom of conscience, the same right, paradoxically, that they claim allowed them to refuse to perform a legal

abortion. Impotent against the intolerance of a group of doctors, whose power was not based on medical knowledge, but rather *inspired* by rigid ideological structures, Paulina was forced to withdraw her request for the exercise of her legal right to abortion.

This case allows for reflection into the voids in the majority of the laws allowing abortion in Mexico under certain indications. These voids generally work against women who request a legal abortion.<sup>1</sup>

Afterwards, in the face of the scandal caused by the harm done to Paulina, the doctors justified their behavior by claiming that they were *conscientious objectors*. If we understand this as "the refusal by a person or specific social group to observe a conduct ordered by the law, citing reasons of conscience based in general on religious beliefs,"<sup>2</sup> the objection of a few

doctors to perform legal abortions deserves serious, dispassionate reflection that—above all—should seek a balance between conflicting rights— in this case, Paulina’s right to a legal abortion and the doctors’ right to conscientious objection.

### **Can doctors refuse to offer care based on their individual moral beliefs?**

The Director of the MGH, Ismael Ávila Íñiguez (who was authorized by the Attorney General to terminate Paulina’s pregnancy) called the Attorney General’s requirement that doctors perform a procedure against their principles an “abuse of power.” He further stated that doctors must be allowed to maintain their principles as individuals, rather than as public officials. Ávila added that the Paulina case “represents a controversy between fundamental professional ethics and a judicial order.”<sup>3</sup>

In response to Recommendation 2/2000, which was issued by the state Attorney General’s Office of Human Rights and Citizen Protection (PDH, for its initials in Spanish), and which required that the officials involved be tried both for violating Paulina’s rights as well as for indemnification, then-Governor of Baja California Alejandro González Alcocer stated, “I cannot put a gun to a doctor’s head to make

him perform an abortion.”<sup>4</sup> Given this statement, it is necessary to stress two points: first, there is no consensus within the medical community on the morality or immorality of induced abortion, which is not a new procedure; and, second, in certain circumstances, some doctors refuse to perform legally permitted actions that contradict their ideological or religious principles.

It is true that no person can force another to perform acts that he or she does not agree with; but when a person is of a certain profession or in public office, he or she acquires obligations inherent in the nature of the activities of the profession or office. In these cases, the conflict between doctors’ right (as citizens) to freedom of conscience and the rights of other people, as well as the legal norms that govern social coexistence and the obligations the law places on public officials comes into play.

Can doctors refuse to perform legal abortions? Which women have a right to an abortion? Conscientious objection is a right derived from the freedom of belief (Article 24 of the Mexican Constitution) under which doctors, and health professionals in general, can refuse to perform acts that compromise their beliefs or personal convictions. However, the right to conscientious objection, as with any right, has limitations

—in this case, the rights of others and the search for the common good— and cannot be exercised without restrictions.

The American Convention on Human Rights states:

Freedom to express one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.<sup>5</sup>

Mexican law also regulates the exercise of freedom of belief:

Religious convictions do not exempt in any case compliance with the laws of the country. No one can claim religious reasons for evading legal responsibilities and obligations.<sup>6</sup>

If every person claimed the freedom of conscience to violate the laws of the country, this exercise of freedom would severely alter the social order. For this reason, law must regulate external manifestations of faith or personal convictions in order to prevent official disobedience or violations of other people's rights, as in the Paulina case.

### The risks of recognizing a right

There are individuals who oppose recognizing the right to conscientious objection through laws, because they say it contravenes the principle of equality before the

law, which commands universal respect. Others, opposed to the recognition of abortion as a right, and in favor of freedom of belief without any kind of limit, say that the law discriminates against medical professionals and requires them to perform acts against their personal moral convictions. Still others note the disadvantage caused by the law's failure to recognize the right to conscientious objection in the case of abortion:

There are [medical] professionals who in principle would not have problems of conscience in performing a voluntary termination of a pregnancy as legally permitted, but these professionals see their involvement as difficult because [...] it is not well regarded, and, thus, could damage their professional careers.<sup>7</sup>

In summary, under pressure and censure by superiors or by a majority of doctors in a clinic that opposes performing legal abortions, those who normally would not object to performing them might refuse to offer abortions, claiming conscientious objection. This situation arose in Italy before a law was passed requiring health institutions to have permanent staff that does not object to performing abortions.

The many cases of women who decided to have a legal abortion and never received the necessary authorization, or had to un-

dergo an ordeal to get the authorization, and then could not get the authorized abortion, such as Paulina, show that such regulation is necessary and pertinent.

Many times the laws are not enforced, and because there are no precise guidelines on the matter, we continue without legal certainty and in an undefined legal atmosphere, which is conducive to the violation of rights. The doctors at the MGH, where the Attorney General sent Paulina to have an abortion, could have argued conscientious objection. What is clear is that refusal to perform a legal abortion cannot take place at the institutional level, as it did in the Paulina case by means of official deceit. In this case the fault of the director of the hospital, Ismael Ávila Íñiguez, is clear: he lied to Paulina's mother about the possible consequences of an abortion. The fact that he was able to deceive Paulina and her mother is the hallmark of unclear regulation of institutions that provide these services.<sup>8</sup>

### Mexico City: Vanguard Legislation

Laws and norms endeavor to regulate people's behavior, but they should be in accordance with the social realities they attempt to regulate. However, the Paulina case has failed to catalyze officials to update the laws permitting abortion in Baja

California. This is not surprising, because there has not even been —as noted in the introduction— timely and serious follow-up on the report against the Attorney General officials and the health care providers for violating Paulina's right to an abortion. Many debts remain.

In Mexico City the situation is very different. In July 2002, a memo from the Secretary of Health of Mexico City included explicit recognition of health care providers' right to declare themselves conscientious objectors when faced with performing legal abortions.<sup>9</sup> In December 2003, this recognition became law by virtue of its inclusion in the Mexico City Health Law. Paragraph 7 of Article 16 states:

*In the cases permitted by the new Penal Code of Mexico City, health care providers whose religious beliefs or personal convictions conflict with their obligation to perform legal abortions and, thus, render them conscientious objectors, must refer the woman to a doctor who does not object to performing an abortion. When the termination of a pregnancy is of such urgency as to safeguard the woman's health or life, health care providers cannot invoke the right to conscientious objection. Public health institutions shall be obligated to guarantee the timely provision of abortion services and permanent availability of staff that are not conscientious objectors on the issue.<sup>10</sup>*

This law is valid only within Mexico City. However, it is an important advancement and should be imitated by other governments until comparable regulations on conscientious objection are in effect throughout the country. It is an advancement because it prevents doctors from excesses in exercising freedom of belief. More importantly, it guarantees a woman's right to a legal termination of her pregnancy if and when she so chooses.

The right to conscientious objection is not an absolute right and, as the law above demonstrates, it cannot be exercised in circumstances in which the woman's life or health are at risk. When it is urgent that the procedure be performed, and thus, the option of referring the woman to another doctor is moot, the conscientious objector is obligated to perform what is required by law and what the profession demands.

Another point worth mentioning is that public health institutions must constantly have staff on duty who are *not conscientious objectors in order to guarantee access to legal terminations of pregnancies* for women who have this legal right. This is important because it is an official recognition that *the objection can only be personal and not institutional*. This separation is essential in a secular state whose public policies must favor no religion over another.

In other words, neither the Secretary of Health of Mexico City, nor any other public authority can refuse —as an institution— to perform a legal abortion.

Paulina's life would be very different today if Baja California had regulated conscientious objection and if her doctors had clearly understood that Paulina had a right, similar to their own right to object to performing an abortion in certain circumstances, to demand medical service in accordance with her conscience.

An excellent corollary to this reflection on doctors' rights and obligations is doctor Ruy Pérez Tamayo's commentary:

What should a doctor do when he is conflicted between his religious beliefs and his ethical and professional obligations? [...] What the doctor should *not* do is require a patient who has requested an abortion to continue with the pregnancy against her will. Above all, a doctor should not lie about the short and long term risks of an abortion. Worse still is such deceit when the pregnancy is a result of rape, as in the shameful tragedy of Paulina, the 14 year old girl, who in 1999 was the victim of a doctor's violation of her legal rights —by refusing to perform the abortion, the doctor forced her to live a completely different life, solely because of his religious beliefs [...] In such cases, the doctor acts in accordance with his religion (which teaches

charity and compassion), but, in turn, commits a monstrous failure of medical ethics

when he deceives or abandons his patient without resolving her suffering.<sup>11</sup>

## Notes

- <sup>1</sup> Abuses similar to what Paulina suffered are common in Mexico. Another example: in 2002, in Mexico City there was a situation of a request for an abortion after an assault, with the same problems we are analyzing here. The victim requested a legal termination of her pregnancy, which was authorized after multiple delays by the Attorney General. However, officials at the General Hospital refused to perform the abortion, arguing that the only doctor who performed abortions “was on leave” and that the rest of the staff were conscientious objectors.
- <sup>2</sup> Alberto Pacheco Escobedo, “Ley y conciencia” [“Law and Conscience”] in *Objeción de Conciencia* [*Conscientious Objection*] (Mexico: UNAM-III, 1998): 10.
- <sup>3</sup> Javier Mejía, “Director de hospital detenido por desacato” [“Director Detained for Contempt”] in *La Voz de la Frontera* [*The Voice of the Border*] (Mexicali, Baja California) (October 16, 1999): 1-3.
- <sup>4</sup> Moisés Márquez, “Manipulan caso Paulina: Gobernador” [“Paulina Case Manipulated: Governor”] in *La Crónica* [*The Chronicle*] (Mexicali, Baja California), no. 64 (April 12, 2000).
- <sup>5</sup> *Basic Documents Pertaining to Human Rights in the Inter-American System* (Washington: OAS-IACHR, 2003): 30. Also see <http://www.cidh.org/basicos/basicos2.htm> (accessed March 1, 2004). (<<http://www.cidh.oas.org/Basicos/basic3.htm>>)
- <sup>6</sup> *Ley de asociaciones religiosas y culto público* [*Law on Religious Associations and Public Worship*], Article 1 (Mexico, Secretary of the Interior: 1994): 11. See also <http://www.cddhcu.gob.mx/leyinfo/pdf/24.pdf> (accessed March 1, 2004).
- <sup>7</sup> Statement by Begoña Fernández Fernández, Director of Instituto Asturiano de la Mujer, available at <http://www.revistafusion.com/asturias/2002/septiembre/debate108.htm> (accessed March 1, 2004).



<sup>8</sup> See GIRE, *Paulina: In the Name of the Law* (Mexico: 2000).

<sup>9</sup> “Circular/GDF-SSDF/02/02. Lineamientos generales de organización y operación de los servicios de salud relacionados con la interrupción del embarazo en el Distrito Federal” [“General Guidelines on Organization and Operation of Health Services Related to the Termination of Pregnancy in Mexico City”], in *Gaceta Oficial del Distrito Federal [Mexico City Official Gazette]*, 12, no. 57 (July 23, 2002): 22-25.

<sup>10</sup> “Decreto que reforma los Artículos 145 y 148 del Nuevo Código Penal para el Distrito Federal y se adicionan los Artículos 16 Bis 6 y 16 Bis 7 a la Ley de Salud para el Distrito Federal” [“Decree reforming Articles 145 and 148 of the new Penal Code of Mexico City and adding Articles 16 bis 6 and 16 bis 7 to the Health Law of Mexico City”], in *Gaceta Oficial del Distrito Federal [Mexico City Official Gazette]*, 14, no. 7 (January 27, 2004): 6-7. Emphasis added.

<sup>11</sup> Ruy Pérez Tamayo, *Ética médica laica [Secular Medical Ethics]* (Mexico: FCE-El Colegio Nacional, 2002): 186.

## Selected Opinion Pieces

### **Paulina: Does Morality Exist?**

Arnoldo Kraus

*La Jornada*, April 19, 2000

Morality is a great human invention plagued with thorns. It is a broad, amorphous code with an infinite number of facets. Its guidelines and principles are extensive, and its limits vary among nations, among societies and also, of course, among individuals. Finding consensus on “what is moral” and “what is not moral” is impossible. Maybe for this reason ethics lacks history (each person has their own). Maybe for the same reason each religion imposes its directives (why there are wars). And, in the same vein, the lack of understanding and intolerance between people is the norm. There is no doubt: ethics is the great invention and great failure of human beings.

Paulina, the girl previously anonymous and now a public figure, is an example of these multifaceted trajectories of morality. Paulina the girl, now Paulina the woman, after having been raped and impregnated, was also condemned, manipulated and subdued by some parts of society: a second rape. Paulina’s biographical summary is brief but conclusive. Woman (first point). Minor: 14 years old (second point).

Oaxaca is the place of origin, and is synonymous in Mexico with the North (third). Raped by a heroin addict and pregnant in a country where injustice rules (fourth). Scarcity of all types of resources to decide whether or not to continue the pregnancy (fifth). Lack of medical support in Mexicali to provide the desired abortion (sixth). Intervention by the Attorney General of Baja California against the abortion (seventh). Very little education and her parent’s lack

of voice —the *voiceless*— prevented them from protesting against the pressure of organizations like Pro-Life (eighth). And lastly, but predominant, poverty as manifest destiny (ninth).

From the rape to the caesarian section, Paulina's journey is proof that morality is applied in different ways to the rich and the poor. It is impossible to find a case where the need to perform an abortion is clearer than with this young girl. Unless Paulina or the fetus had been infected with AIDS as a result of the rape, it is difficult to think of a more dramatic scene. In the circumstances described, the Penal Code guarantees procedure: Article 136, paragraph II establishes that abortion is not punishable when the pregnancy is a result of rape.

Paulina was psychologically tortured when she and her family were shown videos of what happens to a fetus during an abortion. Likewise, the case shows official abuse of authority, since private morality prevailed over public morality: the Attorney General took Paulina's mother to a priest to dissuade her from the abortion. Religion has forgotten God: excommunication is a latent threat. In addition, this clearly demonstrates the realities of social injustice: those who can pay, with or without religion, get an abortion.

It is evident that the religious "ethics" of the doctors and the Attorney General of Baja California, a PAN-controlled institution, together weighed much more heavily in the violation of Paulina's right to an abortion than the morality of those who struggle for human rights and consider it humane for a raped minor to have an abortion. In the context of the girl Paulina, an abortion would protect the *child-mother* as well as the child from a bleak future. Abortion is a painful and disagreeable procedure. No doctor should favor abortion as a method of birth control nor do women have abortions for pleasure. Independent of the discussions on when life begins, and if the human being is or is not autonomous, as well as of the painful images of destroyed fetuses, there are other movies no less painful, whose reality and effect remind us of Paulina.

Street children as testimony of unwanted pregnancies, the narrow-mindedness of PAN officials in Baja California as both judge and jury on the fate of two minors, and the manipulation of vulnerable people —the *voiceless*— are urgent realities that wait for an answer. The Paulina *affaire* has reinvented another morality. Paulina and her child are synonyms for sadness. The stories of these two minors are ephemeral, common and plagued by public amnesia like so

many other Mexican scenes. With Paulina, the ethics designed for the poor worked—these ethics, created in the cupolas of power, but void of morality, are exercised or self-imposed by the powerful and rich. There is no doubt: morality is a great human invention. As great as it is useless.



### **Lessons from the Paulina Case**

Enrique Maza

*Zeta*, April 28, 2000

In the last few days, the first long stage of the terrible and tragic Paulina case has ended: the rape, as well as the legal, psychological and moral struggle; and finally, the withdrawal of the request for an abortion, the caesarian section, and the birth of the child.

The second and long stage of this child's growth has just begun —his education in poverty, if he does not have hereditary defects from the drug-addicted rapist, as well as all of the work and pain of a fourteen-year-old mother.

The past has no remedy. But it does leave important lessons about the behavior of a polarized, intolerant and domineering society. These are the most important lessons.

On abortion there is only one issue up for debate: whether such a procedure is or is not the murder of a human being:

- \* If it is murder, abortion is immoral.
- \* If it is not murder, abortion is moral.

In order to determine murder, it is necessary to examine and officially document a human cadaver. Therefore, the issue that should be discussed is whether this mass of cells that are extracted during an abortion, or the contents of the biological process that is interrupted, is or is not a human being and at what point and how the fetus becomes a person. That is, what is the essential essence of a human being that makes a fetus become a person? What is it to be a person? What makes a human being a human being?

This is the key point. If this is not clarified, there is no way to know if abortion is murder.

But there is no way to resolve this debate. No one has the answer and everyone has it— i.e. there are many theories, but no certainty. The answer depends on each philosophical school or theory, as well as on each psychological, anthropological, sociological, theological, biblical, and hermeneutical school.

In my opinion, there are two basic responses:

\* The first response conceives of a human being as body and soul, two distinct and separable components:

One, corporal and ephemeral, conceived and procreated by a man and a woman.

The other, spiritual and immortal, called soul, created directly by God and instilled in the ovum at the exact moment of conception, according to current doctrine. However, throughout the majority of the church's history, it was maintained that God instilled the soul when the fetus had human form and organs.

A human being, thus, body and soul, becomes a person by the soul created and instilled by God from the moment of conception, the fertilization of the ovum by the spermatozoid. This theory is based, fundamentally, on Aristotelian philosophy, otherwise known as scholastic philosophy, which is used to express the Catholic church's central doctrine and to formulate its dogmas. The doctrine of the soul does not belong to the dogmatic definitions of the church, but to the traditional doctrine. But in this country there are other churches, other religions, other ethnicities and other cultures, as well as other moral and ethical references, and other anthropological-philosophical conceptions. It

seems to me, however, that the idea of men as body and soul is quite generalized in the West and in Mexico, although there are extensive and profound divergences.

\* The second response conceives of a human being in terms of his higher functions, intelligence and love, which unite and translate in his capacity to form intellectual, human, interpersonal and loving relationships. According to important hermeneutics, the biblical conception of man is that he is a relation; the specific component that constitutes man is relationships. According to this interpretation, the Bible not only does not know the soul, but also does not accept that man is made of two separable parts. Man is indivisible, fertile soil, strengthened in his life by relationships. This seems to be the conception of many philosophical schools and other modern sciences like psychology, anthropology and biology.

In this case, given that there is no soul, the relationship depends on the body. Therefore, there can be no capacity for relationships while the relationships of the cerebral cells remain unformed and unestablished. At that point, you can speak of a human being— that in the maternal womb there is a specifically human life. Before, there is only a cellular or biological process toward the formation of a

human being, rather than a human being itself, because the conditions for relationship do not yet exist, which is the essential constitution of a human being. This ability forms only between the fifth and sixth months of pregnancy.

\* There may be other conceptions, equally respectable, related or not with a faith or a religion, agnostics or atheists. I think that one way or another all of these groups relate the human essence with the higher functions (spiritual, intellectual, willful, imaginative, creative, decision-making) of man or woman, because they distinguish human beings from other species with bodies, such as animals. Some derive these functions from the soul, while others locate them in the live human body. For this reason, when we say life is sacred, it does not mean merely biological, vegetable or animal life, but life, specifically human, is uniquely sacred.

If the first theory is true, a voluntary termination of pregnancy from the moment of conception is murder, because a human being exists, absent extenuating circumstances. According to this theory and moral, all deliberate deaths of human beings are murder. Consequentially, whoever maintains and believes this theory can never abort or permit an abortion; without exception, without permissible grounds.

If the second theory is true, one cannot speak of a human being before the seventh month of pregnancy. In the last three months of a pregnancy, there is a reasonable possibility of a specifically human life. Consequentially, abortion is permissible during the first six months and not in the last three, during which it is probable that a human being exists, to be sure to not risk a human life.

In reality, neither of these two theories is absolutely certain, nor do their respective advocates agree. Neither of the two theories produces an argument that convinces the other. It cannot be known, or is not yet known, what the element is that transforms a fetus into a human being. Within the Catholic church itself —without speaking of other religions or philosophies, such as eastern ones— these two theories exist. Some biblical scholars maintain the idea that the ability to form relationships is constitutive of human beings. This seems logical since the Hebrews were not Aristotelian nor was the Hellenic philosophy the essence of their beliefs or religious expression. This is true in spite of the Hellenic influence that began with the conquest of Alexander the Great, and which caused divisions in the times of the Maccabees. There are books in the Bible, including in the Old Testament, that clearly have a Hel-

lenic influence. But it does not appear that Hellenism was the vehicle of anthropological and philosophical expression of the Hebrews.

The Catholic church has not defined the existence of the soul. It would be the equivalent of defining scholastic philosophy as dogma, as the only truth, and suppressing biblical anthropology. It would be the equivalent of defining as dogma anthropological, philosophical and scientific questions.

If the two theories are valid —I am not aware of any incontrovertible evidence to the contrary— we will have to face the consequences.

—First. A state that legalizes abortion on certain grounds discards the first theory. If abortion is murder, there can be no legitimate grounds for abortion. If there are, abortion is not murder. The Mexican state has made a choice: abortion is not murder of a human being and is permissible under certain circumstances. One may ask: why is it not permissible during the time the fetus is not yet a human being —that is, until the fifth or sixth month? Here is an incongruity or a political compromise, possibly rendered as not to offend the Pope, the bishops and the Catholic majority.

—Second. Those who believe in an immortal soul, which constitutes the

essence of a human being and which God instills at the moment of conception, cannot get an abortion, or perform an abortion under any circumstance because they would then commit the sin of murder, resulting in excommunication from the church. Excommunication is owed for depriving the unborn of baptism and eternal salvation. According to official church doctrine, man is born with original sin, contained within the soul that has been instilled in the ovum, and this sin is washed away by baptism. Abortion prevents baptism and the soul maintains the sin, which, in turn, prevents eternal salvation. This is the reasoning that supports the penalty of excommunication for having an abortion.

—Third. Therefore, those who believe in an immortal soul cannot participate in the performance of an abortion nor have one. But civil law declares the legality of abortion on certain grounds, among them rape, and therefore, in any public hospital —never mind private hospitals which are also governed by the law— anyone in this situation has the legal right to an abortion, if they wish to do so and request it. They cannot be refused, because to do so would deny their legitimate right to an abortion.

Therefore, doctors, nurses, hospital officials and administrators, if they believe in good conscience that abortion is murder, cannot, also in good conscience, accept any government office in places where people who have the right to an abortion go for related services. If they become doctors, directors or nurses in these hospitals they have the legal obligation to accept abortion in the cases permitted, and if they refuse, the government has the obligation to punish them for violation of a legal right.

—Fourth. Tolerance for those who believe differently from you is necessary and morally required. Tolerance is required by those that accept abortion for those who do not accept it, as well as by those that do not accept it for those that do accept it.

—Fifth. In order not to desire to impose one's own conscience on others in either of the two directions, it is necessary to have maturity, openness and humility. Freedom of religion as proclaimed by the Second Vatican Council and the Mexican Constitution implies not only the freedom to choose and practice a religion, but also the right to see oneself free both of moral or religious coercion and of all imposition of religious norms of whatever type.

In the Paulina case, the following is true about the girl raped in Mexicali:

1. The girl had every legal right (her mother as well) to terminate her pregnancy, resulting from a rape, especially such a humiliating rape by an abnormal person.

2. The director of the hospital and the doctors had the legal obligation to perform this abortion.

3. They accepted their positions and responsibility in this hospital, while knowing that the law permitted abortion in cases of rape, and that the girl had a legal right to an abortion.

4. They should never have accepted their positions because they were not able to fulfill what the law required of them. Once they accepted, they had the legal and moral obligation to perform this abortion.

5. They violated the law, violated a person's legal right and caused far-reaching and life-long harm to the girl. Anyone who refuses to comply with this law and perform legal abortions must be brought to justice, punished and dismissed from public hospitals. Interpreters of the law must decide if this applies to private hospitals.

6. If they did not cause other people to intervene, they allowed outside intervention, and allowed the psychological coercion of the mother and daughter.

7. The state government and the authorities responsible for complying with the law



must bring the perpetrators of these illegal acts to justice.

8. The state government, regardless of individual members' beliefs, must not assign people who are not willing to comply with the law given their personal beliefs to public hospitals. No one can impose his or her conscience on others. The government does not exist only for Catholics, and therefore, it cannot impose a Catholic law on all its subjects. Among the governed, there are those who do not believe that abortion is immoral. The government must govern everyone, not only believers of the same faith. And the government does not have the right to impose its faith on all of its citizens. Civil legislators do not legislate for their conscience, but for society; they do not have the right to universalize their private consciences.

9. The women who clandestinely visited the girl and psychologically coerced her should come forward. They should not fall into pharisaic or fanatic attitudes. If what they did was right, they should say so publicly, not hide in anonymity. The authorities should investigate their identities and punish them if appropriate. Their actions had very serious consequences. Such an investigation is necessary so that the hospital authorities do not hide them.

10. The state government, or whoever is responsible, should cover all costs that are the consequences of its actions.

11. In a plural nation like ours, in which so many religions, beliefs, cultures, ethnicities, languages, types of education and lifestyles coexist, the only common ground for social harmony and survival is the law, which is precisely what was violated and broken in this case.

**Conclusion:** The problem with this discussion is that everyone was either for or against abortion and, from that position, judged and condemned the rest. Society has divided into camps, when the only thing in play in the Paulina case was enforcement and compliance with the law and respect for one person's legitimate decision. The religious wars of intolerance are being repeated, on a small local scale, but with an equivalent fanaticism— Moors and Christians, Protestants and Catholics, Muslims and Jews, Catholics and Jews, inquisitors and thinkers, Muslims and Hindus, and so many others. And the fanatical ethnic and racial wars: whites and blacks, Chinese and Vietnamese, Spanish and Indians, English and red skins, Serbs and Kosovars. Regardless of the damage and hate that they cause, problems are never resolved in this way.

Now there are moralizing wars, with equivalent damages and with the same in-

terminable consequences. The source is the same— intolerance for the other: because he thinks differently, because he has a different morality, because he has a different faith, because he has a different conscience, because he belongs to another religion or party.

We have, we live and we proceed by the trauma of indifference. We do not tolerate what is different. And we want, similar to the Inquisition, to impose on everyone our own way of thinking, our own faith, our own conscience. I know the truth; everyone else is wrong and is reprehensible. According to my conscience, the only correct one, everyone else's conscience is wrong.

And we continue living with this intolerance in supposedly modern societies, which are, and continue to become, more and more enrichingly pluralistic. Political leaders and all religious and social leaders govern and act in plural societies, whose only hope of peaceful survival is obeying the law, effective tolerance, and respect for the differences of others.

The problem is not the contraposition of equality with difference, because the

opposite of equality is inequality, not difference. We attempt to remove the inequalities, not the differences. All human beings are equal, even with the thousands of differences between us: color, height, intelligence, virtue, race, religion, sex, economics, social class, education, ideology, political affiliation, language. The dissimilarities among human beings are many. And all, or almost all, have been the object of intolerance, discrimination, hate and even war, as all religious and ideological wars, repressive dictatorships, racial discrimination, and the exclusion of women have been. Equality as addressed here, in contrast, is the condition of all individuals having the same rights and options, not only theoretically, but in fact. Equality is also where religious, moral, social, intellectual differences and differences of conscience do not cause a problem, nor do the other dissimilarities between human beings. Two of humans' greatest intolerances are ideological and religious intolerances. And two indispensable needs of our pluralistic society are tolerance and respect— above all respect for the law and for others' differences.



## **Opportunism and Obscurantism**

José Blanco

*La Jornada*, August 15, 2000

Paulina's misfortune woke up the sensibilities of many Mexicans throughout the country and provoked their indignation and condemnation for the progress-opposing collusion of the Attorney General of Baja California, doctors in public hospitals and other officials of the National Action Party (PAN) government against a girl who became pregnant as a result of violence. The actions of the Attorney General, who brought the girl to a priest to dissuade her from having the abortion she wanted and was seeking, were extravagant and irresponsible. This is an example of an Attorney General who does not understand that his job is to oversee the Attorney General's Office, make sure the law is obeyed, and above all, obey it. The girl had completed the necessary legal process and had a judicial order for her request for the abortion. But the Attorney General and doctors were not aware that the laws of a secular state have nothing to do with priests' clothes.

In this state of alarm and indignation among citizens, the sharp political insight of the representatives of the Guanajuato PAN brought them to the intelligent and civilized conclusion that it was time to make their individual clerical morality into punitive law for women who are the victims of rape, who become pregnant as a result of this violence, who have decided not to accept the result of an act of an animal. Besides outrage at the rape, women must add the humiliation of the PAN's law.

As one would expect, public opinion's sensibility on the issue has increased and has been energetically expressed in condemnation of the representatives' vileness. They, however, were undaunted and, in a sham gesture of clemency, proposed to "mitigate" their insult: they will decrease the punishments they would impose on women who are raped. These representatives' insanity emphatically must be ended by Mexican society. And these representatives must be prevented from ever holding public office again.

This same context of increased public sensibility about the criminalization of abortion resulted in the Democratic Revolution Party (PRD) government of Mexico City introducing (now it's okay) new exceptions to the penalization of abortion in the Penal

Code, which previously only included two: abortion of a pregnancy that is the result of rape, and when, if the abortion is not performed, the pregnant woman or the fetus run the risk of death (articles 333 and 334).

The PRD initiative is not exempt from opportunism. Recently, when women's organizations and others attempted to persuade the Assembly to incorporate new exceptions to the penalties in the Penal Code, the PRD representatives preferred to wink at the church, maintain their votes, and be inconsistent on a position that at other times they had touted.

Parties put their own interest first, ahead of society's interests. Now, in the face of the new PRD coup, the PRI and PAN distance themselves from each other and, in the process, prevent a new extraordinary assembly period. It doesn't matter that this part of the Mexico City Penal Code has greater defects than many other state codes; it doesn't matter that an active part of society is demanding that the process of decriminalization of abortion continue. Now these parties, supported by priests, politically attack the PRD; the Archdiocese of Mexico predictably said that this was a move to impose pro-abortion projects "against the will of God." The Mexican Episcopal Conference, the Metropolitan

Curia and every religious institution are in the same boat.

"Decisions are not made by the majority but by what God dictates," they say. Surely God revealed to Mexican priests his wishes that the exceptions to the barbaric penalization of abortion in the Mexico City Penal Code not be reviewed and that the law not advance in the direction of the laws that regulate the majority of the planet's population. These medieval absurdities have no place in today's society in Mexico.

With a total lack of "mental clarity" these misogynistic parochialists are incapable of understanding that the Penal Code and its possible reforms do not "approve abortion." Rather, they merely refrain from applying an additional punishment to women who, pregnant because of rape, do not want the result of this violence, or for other worldly reasons. Not punishing someone for her actions does not mean the approval or disapproval of those actions. The church, eternal inquisitor, can excommunicate its female parishioners if it desires, but it should not have an opinion on the Penal Code. Morality is an individual's private issue. Catholic morality is one among many. It should not be imposed on everyone. Quite simply, those of us who are not Catholic do not accept it.



## **Pastoral Negligence in the Paulina Case**

Juan Guillermo Figueroa Perea\*

*Reforma*, September 13, 2000

When we speak of medical negligence or negligence in some professions, we are referring to the negative consequences of a professional task, of which the person was supposed to have certain knowledge and, by not having it, caused harm that could have been avoided. Or despite having this certain knowledge, generated a negative consequence, abusing his or her position of authority.

In this situation, there is a dimension of pastoral negligence by the priest who threatened Paulina (the teenager who was raped and then denied the opportunity to terminate the pregnancy, although she had a judicial order authorizing the procedure on legal grounds) with excommunication for trying to get an abortion. The church subsequently argued the need to excommunicate those who supported Paulina in the pro-

cess of demanding her right under the secular laws of the state in which we live. But the church's threats contradicted the religious value of defending one's dignity and acting in accordance with one's conscience.

The individuals who refused to perform the abortion, arguing risk of death without scientific basis, were medically negligent; those charged with securing justice were negligent and abused their authority; and all involved (Attorney General, doctors, priests and persons resorting to fundamentalist interpretations in the Catholic tradition) are morally responsible for harms suffered to Paulina's dignity.

Some things can be compensated through reparations for the harm caused, but it is impossible to accept that these types of people continue to distort with impunity the interpretation of what it means to respect a person's dignity. They confuse a religious tradition's criteria for interpretation, which they say they defend, and systematically violate the legal framework of the secular state in which they perform their respective activities.

In agreement with the basic values of the Catholic church and of a state that has

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assumed a commitment to respect human rights, a secular state offers the possibility of supporting respect for individuals' dignity and of ensuring that individuals act according to their consciences, and that they can practice freedom of belief and exercise their basic freedoms.

However, abusing institutional authority, minimizing individuals' decision-making capabilities and imposing one way of interpreting reality infringes on human rights and is also a violation of the Catholic church's governing agreements made, for example, during the Second Vatican Council. In this council, the church committed to reviewing its teachings regarding advances in science and also recognized that if there is no scientific certainty on any issue that is the subject of moral dilemma, a believer's freedom of conscience should be privileged.

Some studies in Catholic countries in Latin America have shown that Catholic women feel betrayed in some way by religious leaders who propose strict models that do not take into account their sexual and reproductive lives; however, what is interesting is that before abandoning their religion these women seek secular models of interpretation that help them face ethical dilemmas, and most importantly, ensure their dignity as individuals and their reconciliation with their consciences.

The Catholic church has taught them that they can act according to their consciences. Acting according to one's conscience is also recognized in various human rights treaties, which offer a framework that regulates social agreements.

These Catholic women have found support and generosity in the feminist discourse; ironically, this is the same discourse that has often been unilaterally and indiscriminately demonized by the hierarchy of the Catholic church.

An international examination of the experiences of Catholic countries contrasts the teachings expressed in documents of Catholicism with the practice of Catholic men and women (lay and religious) with regards to three activities linked to reproduction: contraception, abortion and divorce.

This review concluded that within the Catholic church the transgression of norms, as well as the reinterpretation and non-compliance with the literal interpretation of texts, is common practice among the majority of Catholics.

Therefore, one may ask: could it be that the majority of believers do not understand what is expressed in these norms, which are presented as constant and inflexible throughout time? Or have the leaders and official interpreters of this religious tradition ignored their commitment to learn from

other members of the Catholic church, for example, the believers?

If the second case is true, isn't it a very serious moral irresponsibility to ignore the need to update the teachings? And shouldn't they have to imagine ways to make reparations for the harm they have caused to the dignity of many believers? Don't the members of this church have an obligation to refute fundamentalist interpretations of Catholic morality used by right-wing groups and by different members of the Catholic hierarchy?

It is not sufficient to ask forgiveness centuries later, but rather, it is necessary to prevent the situations that later may be repented. However, the person to whom the harm was done can never be fully indemnified.

In addition to providing the full emotional, psychological and economic support to which Paulina and now her small son have a right, there is an urgent need to construct a social agreement that contributes to reducing rape and that penalizes the perpetrators.

Additionally, it is necessary to ensure comprehensive support, through the implementation of new social mechanisms, for the victims in their recovery from this type of crime. Mechanisms need to be established to support the full exercise of every person's human rights.

No institutional authority or religious leader is exempt from this commitment in the measure that they form part of the secular state and the rule of law. If they do not assume their responsibility, they should be punished. Their individual punishments should be evaluated according to the aggravating circumstances represented by their abuse of authority by exerting moral influence over people who have rights.



### **The Left in Baja California, to the Right of the Extreme**

Jaime Martínez Veloz

*Proceso*, April 29, 2001

There is a recurring phenomenon in Baja California that is symptomatic of the chronic illness of the Left. An understandable disinclination to walk the long and complex road of constructing a political project is distorting the PRD in the eyes of the voters and even worse, in those of the citizens and the entire society of the state. The party's endemic suffering reflects, naturally, the peculiarities specific to Baja California, just as in turn it was reflected in the elections of Zacatecas, Nayarit, Baja California Sur and Tlaxcala.

The electoral processes seem to contribute to the recurring disorder of the invalid, and a clinical diagnosis of symptoms between good and bad. In the long run, these are signs of a degeneration of the Left nationally gathered in the institution of the Aztec sun, PRD's symbol. The political electoral atmosphere in Baja California is hot right now, due to the coming elections on July 8. This Sunday, five municipal presidents, 25 representatives and the governor are up for election. The state is a fortress and bastion of the PAN, and is the first territory in the country where the Right has established a camp within the public administration. Neither the PRD nor the PRI has been able to reverse its advance, nor even halt it.

This process of *right-wing institutionalization* in the government is accompanied by a natural phenomenon: the elimination of the political structures of an immense network of social groups that have been informally operating, but as a result of the current government's method of operation, are increasingly disaggregated in a mix of indifference, hopelessness and disenchantment with community organizing. Under the illusion of an incipient pseudo-consolidated economic bonanza, Baja California's industry, increasingly more sensitive to the economic malaise of our colossal neighbor

to the north, suffers the large macroeconomic changes the same as anywhere.

It is here that the application of a Value Added Tax (VAT) to food and medicines would severely impact the purses (not just wallets) of the most impoverished, in addition to creating multiple negative impacts, complete and amplified, throughout the economic chain of state activity. This sort of economic offering or penitence prescribed by the PAN throughout the country would dismantle even more of the natural support conduit of the community that, at least in Baja California, has had 12 years of right-wing debate with the result of installing in this land (this valley of tears) *the kingdom of the fittest*. This poorly understood Social Darwinism excludes by its logic all undesirables, the poor, the marginalized, the pariahs, the untouchables.

The exclusionary PAN project in the state aggravates social conflicts, and for its victims the state's compensatory mechanisms used to meet its ethical and political obligation to assist the dispossessed are non-existent. Encouraged by selfish conduct learned from American individualists, the governing political class in Baja California ignores and rejects those who have not achieved a place in society for lack of influence, of relationships, of illustrious family names and voracious love of power and



money. These are all characteristics that appear to be requisites for growth with quality, so venerated by the new mandarins of the government.

The PAN's intrinsic philosophy guides this exclusionary project and somberly permeates the social conscience; a shrewd observer can perceive many examples of it in the streets of Tijuana. The PAN exclusionary project is clear in the resounding citizen approval of expelling vagabonds and the homeless from the luminous tourist-filled streets in the city's Avenida Revolución. It manifests also in the police watchmen who keep indigenous children, tiny children who ask for money with one hand and with the other sell gum, away from the same street, as well as in the seizure of a street vendor's flowers. The authorities excuse themselves with a pretext worded in legalese: a street vendor *must* have a license from city hall. When it is convenient, capitalists call the underemployed a microbusinessman; when it starts to annoy them, he is violating the law. The free market is for large private corporations, not for the dispossessed. Consequently, the market has its natural mechanisms for exclusive operation.

This process of conservative influence on citizens' views in some sectors of Baja Californian society is not strange. It is an atmosphere that favors the appearance of phenomena like the harassment of Paulina, who was denied her right to decide by the native Abascals.<sup>1</sup> It is an atmosphere that attempts to create a Law Against Vagrancy (!!!!!), an attempt fortunately frustrated, but which illuminates the invention of ridiculous criminal concepts and indicators. For example, government documents have begun to officially quantify the *length of residence* in the state of ... for prisoners. Based on prejudice, there are people who accuse those *from outside* of being responsible for the state's structural violence and criminality. They barely think about the fact that Baja California is a state of migrants and that many of us who live in and love this land were born somewhere else.

To this petri dish we add the strong correlation between the rise of PAN to the government and the escalation in structural violence and criminality in the state—a situation to which we have previously called attention. We have also warned that the phenomenon of violence tends to become

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<sup>1</sup> Reactionaries.

*institutionalized*— that is, to be perceived in the collective imagination as a daily phenomenon to which we can (and should) adapt and assume to be a *normal* situation.

Without making this descriptive model of the daily pulse of the government even more complicated: what is the current snapshot of the electoral party pulse and of the Left, specifically? Incapable of agreeing on a solid strategic action and lacking attractive political action, the PRD has become a party franchise. Feeding itself on disconnected PRI members (seemingly, present in our institute here in the state) it offers expelled, discontented or disenchanting PRI members (or PAN members) candidacies for Sunday, July 8.

The state PRD is suspicious of constructing party alliances to confront the National Action Party, but is not ashamed of sheltering turncoat PRI members, who before were demonized for the original mortal sin of

being tricolorists.<sup>2</sup> To be a tricolorist was heresy pardoned only if they *abjured* their membership in the party. The serious sins matter little, like having fiercely repressed the democratic university movements in the time of *Bob* de la Madrid.<sup>3</sup> Or having belonged to the reactionary bourgeoisie and having little ideological affinity with the Left with which they now say they agree. Agreement casually found, after more than 30 years of political militancy and tricolorism fervor. Fervor which was doused when the popular vote in the internal conflict of the past April 8 did not favor *baby*, as they call Manuel Gallego.

Little importance that now Gallego says he agrees *one hundred percent* with the ideology of the PRD. In addition, his verbal excesses, which are confused with misogyny, revealed his true self. Or, when he called the individuals defrauded in El Arbolito, a very popular savings bank here in the north, greedy. The devil in the belfry.

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<sup>2</sup> PRI members.

<sup>3</sup> Ex-governor of Baja California, 1977-1983.

# Appendix

## The Paulina Case in the Inter-American System

MARCH 8, 2002– The Center for Reproductive Rights (CRR), Alaíde Foppa and Epikeia present a **complaint to the Inter-American Commission on Human Rights (IACHR) against the United Mexican States for violating the American Convention on Human Rights** (American Convention) for harm suffered by Paulina del Carmen Ramírez Jacinto.

The rights under the American Convention which are alleged to have been violated are:

- **The obligation to respect and guarantee rights – Article 1**

In the Paulina case, the Mexican state did not fulfill its obligation to guarantee the rights recognized in the American Conven-

tion, primarily through lack of regulation of the law that establishes the decriminalization of abortion in cases of rape.

- **Right to a fair hearing – Article 8**
- **Right to judicial protection – Article 25**

Paulina did not have access to a simple, prompt and effective recourse that would allow her to exercise the right established in Article 136 of the Penal Code of Baja California. The lack of such a recourse caused irreparable harm to the course of her life.

Consequently, other rights, established in the American Convention and other international instruments, are considered to have been violated:

- **Right to personal integrity** – Article 5 of the American Convention; Articles 1, 4 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Pará)

Every person has a right to “physical, mental and moral” integrity. Paulina was unjustifiably held at the hospital, and even though there was an order from the Attorney General for the abortion, the procedure was never performed. Additionally, her mental integrity and her emotional health were assaulted when individuals, not employed by the hospital, violated confidentiality by exposing her to intimidating visual material and when the director of the hospital gave her mother incorrect information about the consequences of terminating a pregnancy.

- **Right to personal liberty and to informed consent** – Article 7 of the American Convention; Article 9 of the International Covenant on Civil and Political Rights (ICCPR); Article 3 of the Universal Declaration of Human Rights (Universal Declaration)

Paulina was denied the right to reproductive self-determination, first, when she

was not provided information on emergency contraception, and later, when she was pressured by public officials to withdraw her request to terminate a pregnancy that was the result of rape. Additionally, she was not given true and timely information about the abortion procedure.

- **Right to protection of honor, dignity and privacy** – Article 11 of the American Convention; Article 4 of the Convention of Belem do Pará; Article 12 of the Universal Declaration; Article 17 of ICCPR

Paulina’s identity and the details of her case were revealed to individuals not employed by the hospital who exposed her to threats and psychological torture.

- **Right to health** – Article 10 of the San Salvador Pact; Article 2 of the Convention of Belem do Pará; Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

By refusing her right to terminate a pregnancy that was the result of rape, Paulina was forced into a pregnancy that violated her well-being and put her life and health at risk due to the fact that she was a pregnant adolescent.

- **Freedom of conscience and religion** – Article 12 of the American Convention

Violating her freedom of conscience, a public official brought Paulina to a Catholic priest who told her that if she terminated her pregnancy, she would be excommunicated.

- **The rights of the child** – Article 19 of the American Convention; Article 9 of the Convention of Belem do Pará; Articles 19, 37 and 39 of the Convention on the Rights of the Child; Article 24 of the ICCPR

International instruments establish that every minor has a right to special protection because as a minor he or she is especially vulnerable to violations of his or her rights. Paulina lacked recourse to a state enforcement mechanism that would have taken into account the serious implications that a forced pregnancy would have on her life and emotional and physical health.

**We request that the Paulina case be admitted by the IACHR** in accordance with Article 46 of the American Convention that establishes exceptions based on **exhaustion of domestic remedies** in accordance with the following considerations:

- In accordance with Article 25 of the American Convention, there must be “simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties”

- The IACHR has established: **“Adequate [as applied to recourses] signifies that the function of these recourses, within the domestic legal system, are suitable for the protection of the infringed right. In all domestic systems there are multiple recourses, but not all are applicable in all circumstances. If, in a specific case, the recourse is not adequate, it is obvious that it is not necessary to exhaust it”**

- “In Mexico there are recourses that can be used to determine a rapist’s criminal responsibility, or the disciplinary and criminal responsibilities of the authorities involved, which are in fact being used. However, they do not constitute a suitable and effective recourse for cases such as the one submitted, since they do not have the capacity to remedy the



- Although it is true that legal action to determine the responsibility of the involved officials has been pursued nationally, **the petition before the IACHR seeks a distinct end: the determination that the petitioned state has violated its international obligations regarding the protection of human rights**



MAY 20, 2002 – The Inter-American Commission informs the Mexican government of the petition about the Paulina case.



JUNE 5, 2002 – The General Directorate of Human Rights of the Secretary of Foreign Affairs requests detailed information on the Paulina case from the Attorney General of Human Rights and Citizen Protection (PDH) of the State of Baja California, Raúl Ramírez Baena, in order to respond to the Inter-American Commission.



JULY 16, 2002 – The PDH responds to the request for information on the case made by the Secretary of Foreign Affairs in order to answer the IACHR’s request. In this document, the PDH summarizes the case,

mentioning the five recommendations made by Governor Alejandro González Alcocer and his refusal to comply with them. Additionally, **it notes some irregularities regarding the case:**

- There are no efforts by the judiciary to locate the second rapist, who was mentioned in the earliest statements of the victims (Paulina and her sister)

- Although the state government accepted the National Human Rights Commission’s (CNDH, for its initials in Spanish) recommendation, the family had not received any amount in reparation for the harm. Additionally, although medical care was initially offered, the State and Municipal Workers of the State of Baja California Social Security and Services Institute (ISSSTECALI, for its initials in Spanish) refused Paulina and her son medical attention, (the money the state government gave her to buy a house was “support,” but they continued to deny that there had been a violation of human rights, and therefore there had been no reparations)

- Preliminary Inquiry 488/99/104, opened to determine the responsibility of each official involved in the case, has not been duly processed



SEPTEMBER 3, 2002 – The IACHR sends Paulina’s representatives an excerpt of “the pertinent parts of the Mexican Government’s observations” on Petition P161/02 (Paulina case). In the appendix to this document, the Mexican government argues the following:

- As a result of efforts by the Attorney General, criminal action was brought against Julio César Cedeño Álvarez, the rapist
- After various attempts by the Attorney General to make the hospital perform the abortion, the minor withdrew her request for the procedure
- Preliminary inquiries have been opened to determine responsibility of the officials implicated in the case
- Since October 2000, the government of Baja California has offered Paulina and her family various types of assistance: land, housing, health care and monthly economic support. In June of 2002, the government changed its initial offering and gave her the sum of 334,000 pesos

- **The Mexican government has assured the IACHR** that it will request that the competent authorities review the case and determine whether or not the minor’s human rights were violated

- **It requests that the IACHR “abstain from deciding on the admissibility of the present issue,** at least until it has discussed the information”



OCTOBER 2, 2002 – The organizations representing Paulina respond to the IACHR regarding the observations made by the Mexican government to petition P161/02:

- Article 136 of the Penal Code of Baja California establishes the decriminalization of abortion in cases of rape
- Paulina’s mother’s withdrawal of her request (that an abortion be performed on her daughter) was due to the deceit, coercion and implicit threats to which she and Paulina were subjected
- The petition does not address the individual responsibility of the officials or the rapist, but the violation of Paulina’s right to a legal abortion



- There are no recourses that function with the necessary promptness and effectiveness to remedy the violations presented. **The lack of legal protection constitutes one of the principal rights violated**

- On November 13, 1999, a criminal report was filed against the public officials involved. **The Attorney General decreed the criminal action would not be pursued on August 13, 2001**, without having adequately processed Preliminary Inquiry 488/99/104

- Paulina and her son have not received any amount as reparation for harms caused

- **The petition seeks comprehensive reparations for the violation of Paulina’s human rights and the adoption of legal measures that guarantee the principle of rehabilitation and non-repetition of cases of this type**



NOVEMBER 15, 2002 – The IACHR again sends the petitioners “the pertinent parts” of the Mexican government’s response to

the case. The document contains the following arguments:

- Regarding the withdrawal of the request for an abortion due to pressure by officials, **“the Mexican government does not deny or confirm, due to its clearly subjective nature”**

- The claim for international accountability of the state for the alleged violation of commitments in international treaties is premature

- At the time the events occurred, there were remedies that could have been exhausted, which were not appealed to

- The government of Baja California is implementing actions to secure legal security for women and minors’ rights. These actions include the Women’s Institute Law (published June 22, 2001) and the law created by the State Commission on Conciliation and Arbitration in the Provision of Health Care in the State of Baja California (issued November 23, 2001)



DECEMBER 13, 2002 – The NGOs again respond to the IACHR regarding the Mexican government’s argument:

- The state’s affirmation that the state officials’ actions can be arbitrated is not demonstrated: “the delaying tactics that public officials employed have already been recognized in the recommendation by the Commission on Human Rights of the state of Baja California as well as by the National Commission on Human Rights”

- Regarding whether there were instances and recourses that were not exhausted: it is reiterated that there was no simple and effective recourse that would have protected Paulina

- **“Paulina’s situation is representative of numerous girls and women who have been obligated to become mothers as a consequence of a sexual assault.** They have been prevented from exercising a right established in the law, leaving the authorities to act in accordance with their personal beliefs and to use their professional training and position to offer incorrect information regarding the risks of termination. In this way, they have impeded the exercise of a legitimate right with the goal of imposing on a minor who has been raped the continuation and culmination of a forced and high-risk pregnancy, com-

mitting by their actions the transgression of various national laws and international treaties that protect women’s human rights”



APRIL 23, 2003 – New observations are released by the Mexican government on the case, which insist that:

- There are recourses in Mexican law capable of remedying the violations of Paulina’s rights
- It was Paulina’s mother who expressed a desire that the abortion not be performed on the girl



MAY 23, 2003 – The petitioners respond to the most recent observations of the Mexican government, reiterating that:

- There are no suitable recourses in Mexican law
- The withdrawal of the request for the abortion was **“invalid consent”** because the victim received incorrect information



SEPTEMBER 23, 2003 – Seventy Latin American organizations send a letter to the IACHR asking the human rights commission to give the Paulina case special attention.



OCTOBER 20, 2003 – During a hearing before the IACHR that addressed sexual and reproductive rights in Latin America, the

Paulina case is presented as emblematic of the obstruction of access to legal abortion in Mexico and throughout Latin America.



Below is the letter sent by 70 organizations to the IACHR. Due to space restraints, citations are not included. In the interest of confidentiality, we have not included the names of other individuals involved in cases similar to Paulina's.

September 23, 2003

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Distinguished Ladies and Gentlemen:

We, the signatory non-governmental organizations, respectfully bring to your attention our deep concern about the constant violations of Mexican women's reproductive rights due to lack of access to prompt legal mechanisms addressing this type of violation. We believe that the case of the minor, Paulina Ramírez Jacinto, which is before the illustrious Inter-American Commission on Human Rights (IACHR), to be emblematic of the violations of women's reproductive rights in Mexico and Latin America. Therefore, we request that you give special attention to this case and to this type of violation of girls' and adolescents' human rights which occur every day in our region.

As you know, the petition and documents previously submitted to the IACHR in favor of Paulina Ramírez Jacinto detail how Paulina's legitimate rights were seriously violated. Paulina was 13 years old when she was raped and became pregnant as a result of the crime. Although she had the right to an abortion (Mexican law permits women in this situation to terminate pregnancy), it was denied by public officials and doctors in the state health care system. They prevented her from exercising her right to terminate the pregnancy through threats and pressure, providing her with incorrect information and abusing their positions of authority. During a period of two months, Paulina was pressured and coerced into changing her decision. Finally, the director of the hospital dissuaded Paulina and her mother from terminating the pregnancy by deceiving them into believing that Paulina could die or become sterile as a result of the procedure.

This minor's unfortunate experience is an example of the many cases where women in Latin America have not been able to exercise their fundamental rights, including the rights to life, health and reproductive self-determination, as well as the right of the victim to be protected and cared for; in this case, meaning access to an abortion under safe conditions when allowed by the laws. In the majority of Latin American countries there

are exceptions that allow for the termination of pregnancy. However, these laws contain large voids such as lack of procedures that make possible their application and require public officials to respect these rights. Below we offer information relevant to the Mexican and Latin American context about the lack of access to reproductive health services, the serious implications of illegal abortion, the lack of respect for the law, and the lack of prompt mechanisms and recourses for access to justice.

### **Abortion in the Case of Rape in Mexico**

Cases similar to Paulina's continue to occur in Mexico. In 2001, in the \_\_\_\_\_ case, a 12 year old mentally challenged girl living in Los Mochis, Sinaloa, became pregnant after her father raped her; her mother confronted a series of obstacles and barriers to obtaining the abortion to which the girl was legally entitled. The case became known after the mother reported her difficulty obtaining a legal and safe abortion. Similarly, although with worse consequences, there was the situation of \_\_\_\_\_, a 30 year old woman with the mental age of a 10 year old child, living in Irapuato, Guanajuato, whose mother realized she was pregnant as a result of rape. Her mother then reported the crime and requested an abortion. As in the Paulina case, \_\_\_\_\_ was denied an abortion, was given incorrect information by state officials and as of this date, there has been no legal action to make reparations for the harm suffered by the victim. Other cases of rape that are not reported end in clandestine and unsafe abortions with high risks for the woman's health.

In **Mexico**, various organizations estimate that each year approximately 800,000 unsafe abortions are performed, contributing to maternal mortality. According to official statistics, every day four women die from complications from unsafe abortion and annually 500,000 women terminate their pregnancies. The lack of reliable records precludes accurate information on how many clandestine abortions are performed on women who have not reported being assaulted. According to government sources, in 2001, rape was the seventh most common crime. That year, 3,736 people were held guilty of this crime in the country, and Baja California had the fourth highest number of attacks of this type. If we consider that women who become pregnant as a result of rape often do not report the

crime, and seek unsafe abortions, addressing the problem becomes more urgent. In 1998, complications from abortion represented the fourth leading cause of maternal mortality in Mexico. Officially, abortion is the third leading cause of maternal mortality in Mexico. The risks of illness and death that women incur due to lack of access to safe abortions increase in cases of rape if one takes into account that one of the ways women from low income groups obtain clandestine abortions is by consulting traditional healers and pharmacy employees who are not medically trained, and by injecting drugs or herbal mixtures with high toxicity levels and fatal consequences.

### **Abortion and Young Women in Mexico**

**Adolescents and young women in Mexico** continue to be a vulnerable population due to lack of information on how to prevent pregnancy and lack of access to contraceptive methods. According to the National Youth Survey in 2000, 50% of women between the ages of 12 and 29 have had sexual relations. Of these, the age of first sexual experience varies between 15 and 19 years of age. Of young women between 15 and 19 years of age, 23% are not familiar with any contraceptive method. Considering that the average age of first sexual experience is in this range, this data reveals the need to provide information and methods of preventing unwanted or unplanned pregnancies. Even more serious is the 47.4% of young women who responded that they do not use contraceptive methods during intercourse, as this is a risk factor for unplanned or unwanted pregnancies, many of which possibly end in clandestine and unsafe abortions.

In Mexico, there are 64 births for every 1,000 women between the ages of 15 and 19 years of age. This means that in 2000, there were 351,497 pregnancies among adolescents aged 15 to 19. Given the frequency of unwanted and unplanned pregnancies among young women, unsafe abortion continues to be a threat to their health. The lack of official, effective sex education programs means that in Mexico, young women lack information on how to prevent pregnancy not only during sexual relations but also in the case of rape. It is worth noting that emergency contraception as a basic tool to prevent unwanted pregnancy has still not been incorporated into the Official Mexican Law on Family Planning Services. In addition, neither legal services nor Attorney Gen-

erals' Offices guarantee women who are victims of rape access to this contraceptive method.

### **The Problem in Other Latin American Countries**

Although the Paulina case is not focused on eliminating restrictive abortion laws in Latin America, it does emphasize the lack of access to abortion services when women have the right, and calls attention to the diverse situations women face in countries where there are laws that penalize abortion in all cases. According to the World Health Organization, in Latin America, 4,600 women die from unsafe abortions, the risk of death from an unsafe abortion is 1 in 900, and 21% of maternal deaths are caused by this reason. The United Nations committees that monitor compliance with international human rights treaties, such as the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) or the Human Rights Committee (HRC), have shown their concern for the lack of accessibility to safe abortions in cases of rape. CEDAW has repeatedly noted that the lack of access to contraceptive methods and family planning services, as well as restrictive abortion laws, coincides with the prevalence of unsafe abortion, which, in turn, contributes to high rates of maternal mortality. Likewise, CEDAW and the HRC have criticized restrictive abortion laws as violating the rights to life and health.

Latin American governments continue to ignore these recommendations. In the majority of these countries, information about sexuality, safe sex practices and contraception are not within reach of or do not satisfy the needs of young people, who as a result have a higher probability of having unwanted pregnancies. A portion of these pregnancies will be terminated by abortion, whether safe or unsafe. Of the 19 million unsafe abortions performed throughout the world, almost 4 million are performed in **Latin America and the Caribbean**.

In Central America, abortion is also one of the leading causes of maternal mortality. In **El Salvador**, abortion is the second leading cause of maternal mortality. In 2002, 6,446 abortions and 38 maternal deaths as a result of abortion were recorded. In **Honduras**, abortion is the second leading cause of admission to the hospital, and the principle cause of death among women of reproductive age is maternal mortality (21.7%).

**Guatemala's** Penal Code criminalizes abortion, except when the woman's life is in danger. However, the necessary legal procedures to obtain a legal abortion do not exist. In the Institutional Report of 2002, the Ministry of Public Health and Social Assistance in Guatemala stated that in 1998, 94% of maternal deaths were caused by hemorrhaging and unsafe abortion.

In countries in South America, we can see that in **Colombia**, abortion is the second leading cause of maternal mortality. In addition, at least one fifth of all women in urban areas of Colombia have had an abortion. In **Peru**, more than 40% of young women have sexual relations before marriage and do not use any method of contraception, resulting in a large number of unwanted pregnancies and clandestine abortions. According to studies in **Chile**, abortion is responsible for approximately one third of maternal deaths and therefore is the second leading cause of maternal mortality. Similarly, in **Argentina**, more than a third of maternal deaths among adolescents are the result of clandestine and unsafe abortions.

### **Irrespective of the Law and of Justice**

An essential element in the protection of human rights is, without a doubt, preventing violations in our region by establishing national mechanisms for protection based on the rule of law and judicial protection. In his follow-up report to the World Conference on Human Rights, Sergio Vieira de Mello, United Nations High Commissioner for Human Rights, emphasized that to have greater impact on the condition of women, special attention must be given to the principle of legality and to guaranteeing respect for fundamental human rights norms.

The expectation of justice will continue to be impaired while there is a lack of protection of women's legal rights. Respect for the rule of law, international human rights norms and democracy forms the basis for the dignified and equal treatment of citizens of a state. The Mexican government has a clear obligation under standards of international law to provide protection and compensation for victims. Thus, it must ensure, within the circumstances allowed by law, due access to mechanisms that allow a woman to obtain a safe abortion.



In this case, this guarantee could essentially be obtained through Mexico's commitment to establish legislative, administrative and public policy measures in accordance with Mexican women's rights to terminate a pregnancy that is the result of sexual assault. We believe that the commitment to ensure these rights, including compliance with the law, must receive serious attention. Mexico is fully responsible for its omission in protecting Paulina's rights in accordance with different international conventions and treaties signed and ratified by Mexico. In fact, these instruments are part of domestic law as clearly evidenced in the petition presented before the IACHR by Paulina Ramírez Jacinto's representatives. This petition established an obligation for compensation that could only be decided before international bodies that monitor and protect human rights.

We are convinced that facing international justice will obligate Mexico to comply with its international commitments. By admitting the case, the Commission will be monitoring with integrity the human rights of Latin American women.



Given the cited information and the situation explained above, the organizations named below consider the Paulina case to be emblematic of the situation of the harms suffered by Latin American women who have been the victims both of sexual assault and of rights violations in those countries of the region where the state does not guarantee the necessary legal procedures for them to receive the timely and effective care required under these circumstances. Examples of care include providing emergency contraception to prevent unwanted pregnancies and abortion services when permitted by law.

In the spirit of advocating for women's reproductive rights, which are guaranteed by international conventions, we believe that if the IACHR admits the Paulina case, it will contribute to the struggle against the violations of the rights of women who have been the victims of sexual assault. In addition, admission to the IACHR would lead to the promotion of concrete actions by Latin American governments to reach the goal of reducing maternal mortality as part of the United Nations Millennium Development Goals. The IACHR must be vigilant so the governments of the region recognize the voids in their legal

procedures that claim to guarantee access to legal abortion services in cases of rape. We also believe that it would influence the governments of the region to follow the recommendations of specialized organizations, like the World Health Organization, on safe abortions and construct the necessary legal procedures for women to be able to effectively access abortion in Latin American countries.

We thank you for your consideration of the information contained in this letter.

Sincerely,

Mexico

1. Afluentes—Ciudad de México
2. Alter-Nativos, FZLN
3. Acción Popular de Acción Social—Yucatán
4. Bioética y Desarrollo Humano Integral (BIDE)—Nuevo León
5. CCZ “Resistencia”
6. Casa de Apoyo a la Mujer “Ixim Antsetic”—Palenque, Chiapas
7. Casa de la Mujer del Grupo Factor X—Baja California
8. Católicas por el Derecho a Decidir (CDD)—Ciudad de México
9. Centro de Formación e Investigación Municipal (CEFIMAC)—Quintana Roo
10. Centro de Capacitación para el Desarrollo Comunitario
11. Centro de Organización y Desarrollo para las Mujeres (CODIM)—Guanajuato
12. Centro Las Libres de Información en Salud Sexual Región Centro—Guanajuato
13. Comité Civil de Diálogo “Autonomía y Dignidad,” FZLN—Jalisco
14. Comité Civil de Diálogo “Zapata Vive”
15. Comisión Política Consultiva del Partido de la Revolución Democrática (PRD)—Sonora
16. Consorcio para el Diálogo Parlamentario y la Equidad—Ciudad de México
17. Desarrollo Rural de Guanajuato—Guanajuato
18. El Colegio de la Frontera Norte, Departamento de Estudios Culturales
19. Equidad de Género: Ciudadanía, Trabajo y Familia—Ciudad de México
20. Equidad Política
21. FunDemos

22. Fundación Mexicana para la Planeación Familiar (MEXFAM)—Zacatecas
23. Frente Zapatista de Liberación Nacional—Morelos
24. Gabinete de Enfermeras y Centros de Orientación (GECO)—San Luis Potosí
25. Grupo de Información en Reproducción Elegida (GIRE)—Ciudad de México
26. Grupo de Mujeres de San Cristóbal Las Casas, Chiapas
27. Ipas—Ciudad de México
28. Instituto Superior de Educación Sexual (ISES)—Aguascalientes
29. Letra S, Salud, Sexualidad y Sida
30. Modemmujer, Red de comunicación electrónica
31. Mujeres Arriba
32. Proyectos Laubach de Alfabetización en México—Guanajuato
33. Red de Mujeres Proderechos de Educación y Salud
34. Servicio Educación Sexualidad y Salud (SEEDSSA)—Quintana Roo
35. Servicios y Solidaridad en México, AC—Tijuana
36. Salud Integral para la Mujer (SIPAM)—Ciudad de México
37. Unidad de Atención Sicológica, Sexológica y Educativa para el Crecimiento Personal (UNASSE)—Yucatán
38. Grupo 8 de Marzo—Ciudad Juárez

#### Mexican Networks

39. Asociación de Mujeres Profesionales por el Desarrollo Integral (AMPDI)
40. Bases Magisteriales de Jalisco
41. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) Enlace en Baja California—México
42. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)—Ciudad de México
43. Consejo Nacional Urbano y Campesino
44. Coordinadora Nacional de Mujeres de Organismos Civiles por un Milenio Feminista
45. Coordinadora Poblana de Mujeres de Organizaciones Civiles—Puebla
46. Coordinadora Regional de Mujeres de la Unión General Obrero Campesina y Popular Sonora
47. Foro Nacional de Mujeres y Políticas de Población—Ciudad de México

48. Milenio Feminista Región Centro
49. Milenio Feminista—Jalisco
50. Democracia y Sexualidad (DEMYSEX)—[A network of more than 200 organizations and civil groups]
51. Democracia y Sexualidad—Zacatecas
52. Red de Mujeres de la Península de Baja California

#### Latin America

53. Asociación Desde Nosotras—Tucumán, Argentina
54. Casa de la Mujer de Suba—Colombia
55. Centro de Investigación y Acción de la Mujer Latinoamericana (CIAM)
56. Centro de la Mujer Peruana “Flora Tristán”—Perú
57. Centro Latinoamericano de Sexualidad y Derechos Humanos—Perú
58. Fundación Puntos de Encuentro—Nicaragua
59. Ipas Centroamérica—Nicaragua
60. Marie Stopes International in Nicaragua
61. Secretaría Académica del Instituto de Criminología, Ciencias Penales y Penitenciarias de la Universidad Santiago de Cali—Colombia

#### Latin American Networks

62. Campaña 28 de Septiembre “Día por la Despenalización del Aborto en América Latina y el Caribe”
63. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), Oficina Regional—Perú
64. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)—Argentina
65. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)—Colombia
66. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)—Chile

67. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)—Uruguay
68. Red Colombiana de Mujeres por los Derechos Sexuales y Reproductivos—Colombia
69. Red de Mujeres contra la Violencia, Secretaría—Nicaragua
70. Red de Salud de las Mujeres Latinoamericanas y del Caribe (RSMLAC)—[General Office in] Santiago, Chile

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