

THE ABSOLUTE PROHIBITION OF UNIONS IN ADOLESCENCE IS NOT IN THE BEST INTERESTS OF CHILDREN

Mexico, 16 March 2023

- Civil society organisations identified discrimination, empowerment and adult-centric protectionism in the bill approved by the Mexican Chamber of Deputies and Senate.
- The initiative does not address the causes of these practices and criminalises consensual unions between adolescents, preventing the exercise of their rights.

To the legislators of the Mexican Congress of the Union, the Mexican Federal Executive, the National Human Rights Commission - Mexico and the interested public:

On 15 March 2023, the draft decree reforming and adding various provisions of the Federal Criminal Code on forced marriage of minors was unanimously approved by the Senate.

The opinion included two reform initiatives presented by deputies Eufrosina Cruz and Karen Michel González and promoted by the secretary of the Justice Commission, Lizbeth Mata Lozano, members of the Parliamentary Group of the National Action Party (GPPAN) and the Parliamentary Group of the Institutional Revolutionary Party (GPPRI). In this, the creation of a new criminal offence called "forced cohabitation" is approved, which establishes prison sentences for anyone who forces, coerces, induces, solicits, manages or offers one or more of these individuals to unite informally or consuetudinary, with or without their consent, with someone of the same condition or with a person over eighteen years of age, in order to live together in a constant and comparable manner to that of a marriage. In the opinion of the petitioners, this would be a legislative measure that would prevent forced unions among girls and adolescents, addressing the situation of violence against them, school dropouts and teenage pregnancy.

Undoubtedly, forced marriage and unions are a problem that violates the human rights of girls and adolescents in Mexico, which demands immediate actions and policies on the part of the State to prevent and eliminate them. However, the signatory organisations are concerned that the proposed criminalisation does not address the causes of child, early and forced unions and criminalises consensual relationships between adolescents, denying their decision-making capacity and autonomy to enter into relationships free from violence and to make decisions about their sexual and reproductive lives with people of their own age, which violates their human rights.

From a vision of adult-centric protectionism, the proposed criminal offence ignores the best interests and progressive autonomy of adolescents to exercise their human rights in the development of peer relationships, by equating marriages and informal unions between minors with child and forced marriages. In addition, we note that the penalties are aggravated if one of the parties belongs to an indigenous or Afro-Mexican community or people, which promotes a negative connotation that stigmatises groups of the population that have historically faced discrimination, inequality and violation of their rights.

The approval of the Decree in the Senate in its current terms implies criminalising adolescents and young people who have mutually agreed to union as their life plan. **This prevents adolescents from having the right to make autonomous decisions about their life plan, their goals, and their sexual and reproductive life.** Furthermore, the proposed aggravating circumstance would generate double discrimination on the grounds of age and belonging to indigenous or Afro-Mexican peoples and communities, which would create conditions conducive to the **disproportionate criminalisation** of these populations, paving the way for various violations of their human rights.

Therefore, as a civil society that defends the human rights of women, dissidents, adolescents and youth, we point out the main shortcomings of the draft decree and our position in this regard:

1. **We are against all forms of punitive populism.** It has been demonstrated on several occasions that adopting punitive laws does little to prevent, eliminate, or deter people from committing certain behaviours, while they can be a way of contributing to aggravating the situation of people in vulnerable situations. Furthermore, the principle of ultima ratio in modern criminal law implies that prison sentences are the last of the state's instruments to prevent attacks on the fundamental goods and values of society; consequently, their implementation to address social problems should be as minimal as possible. Finally, we particularly reject the use of punitive measures that facilitate the imprisonment of persons under 18 years of age or of persons who self-identify as indigenous or Afro-Mexican, since the criminal charge is a double form of violating their rights.
2. **Instead, we advocate for comprehensive public policies that address the causes of child, early and forced marriages and unions based on social contextual analysis and evidence.** We urge the Mexican State to generate comprehensive responses to address forced marriages and unions, prevent violence against girls, adolescents and young women and guarantee the exercise of their sexual and reproductive rights. These measures should have an impact on the change of social and cultural norms, the modification of public policies for the expansion of services and the generation of opportunities, as well as the existence of mechanisms for access to justice.
3. **We demand that in the construction of legislative measures focused on guaranteeing and protecting the rights of the adolescent population, the principles of the best interests of the child and progressive autonomy** in the exercise of their rights be respected, from a perspective of human rights, gender equality, interculturality, youth and non-adult-centredness.

We express our position against this opinion and the punitive reforms that have as a consequence the criminalisation of the autonomous exercise of the rights of children, adolescents and young people. The prohibition by means of criminal law ignores the fact that adolescents can make decisions in the exercise of their autonomy, in addition to the fact that it could place them in a situation of significant lack of protection.

We urge legislators to reconsider the implications that these reforms have on adolescents and to consider **the aforementioned connotations in order to include in**

the reflection a gender and youth perspective where the recognition and guarantee of human rights prevails, the Executive Branch to consider this analysis prior to the publication of the reform decree, and the National Human Rights Commission to consider ways to call for reconsideration of the publication of this reform.

Yours sincerely,

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Centro de Estudios y Fortalecimiento Comunitario Mano Vuelta A.C

Elige Red de Jóvenes por los Derechos Sexuales y Reproductivos, A.C

Fundación Mexicana para la Planeación Familiar A.C.

Girls Not Brides: la Alianza Global para Terminar con el Matrimonio Infantil

Ipas Latinoamérica y el Caribe

Intersecta Organización para la Igualdad, A.C.

Instituto Mexicano de Investigación de Familia y Población, A. C. -Yo quiero Yo puedo

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