

The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico

Each year, thousands of girls and women in Mexico become pregnant as a result of rape. Having already suffered one traumatizing violation of their physical and integrity, rape survivors often think their situation cannot possibly get any worse. And then some discover they are pregnant. Mexico's laws, at least on paper, take the only humane response: they permit legal abortion after rape. For many rape survivors, however, a maze of administrative hurdles as well as official negligence and obstruction render safe abortion procedures virtually impossible to obtain. For those who were impregnated by their brothers or fathers, through incest, there is an additional obstacle: the law only allows for abortion if a public prosecutor can prove that the intercourse was forced.

In Mexico, administrative hurdles, official negligence, and obstruction make access to legal abortion after rape virtually impossible.

In 2005, Human Rights Watch conducted more than one hundred interviews with lawyers, doctors, prosecutors, public officials, and rape victims in Mexico, revealing a generalized failure of the Mexican justice system to remedy rampant domestic and sexual violence, including incest and marital rape. The laws on domestic and sexual violence in many states in Mexico are seriously deficient; and even the existing inadequate protections are not properly implemented. The resulting impunity reinforces itself: less than 10 percent of rape victims file a report at all, often because they perceive justice as unattainable. Even fewer rape victims know they have a right to a legal abortion.

When pregnant rape victims do report the assault and seek an abortion, they are sent on a veritable obstacle-course that materially diminishes their possibility of obtaining the legal abortion. The full horror of this process—including

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humiliation, degradation, and physical suffering—is in essence a second assault by the justice and health systems.

Mexico's experience highlights the inherent problem with partial decriminalization of abortion. By criminalizing abortion in general, the law contributes directly to a particularly pronounced distrust of pregnant rape victim testimony. Routinely, police or doctors aggressively question a woman about whether the intercourse was really involuntary, whether she somehow provoked or deserved the assault, and whether she is reporting a “rape” solely in order to access a legal abortion. Ultimately, the remedy to this perverse dynamic is for Mexican authorities to de-link rape and abortion through laws providing access to abortion for all who want it (or some such language). Even under the current legal regime, however, it is essential to ensure that pregnant rape victims are able to exercise their right to a legal and safe abortion.

Abortion is generally considered a crime in Mexico, but rape victims have a right to a safe and legal abortion.

Violence Is Underestimated and Ignored

At least every four minutes in Mexico on average, a girl or woman is raped. Only a fraction of these women report their rapes to the authorities. In fact, aside from the policy response to the hundreds of cases of mutilation and murder of women in Ciudad Juárez, public officials tend to minimize violence against women. These officials share the widely held but demonstrably false notion that violence is a problem confined largely to poor, uneducated, unemployed, or otherwise marginalized people. In addition, a 2005 government survey concluded that one in four Mexican men believes women are raped because they provoke it. These general attitudes permeate the justice system and act as a deterrent to women and girls reporting abuse.

Pervasive Distrust of Rape Victim Testimony

Authorities generally meet the girls and women who report rape with suspicion, apathy, and disrespect. For pregnant rape victims who want to terminate the pregnancy, this reaction is even more acute. Public prosecutors, doctors, social workers, and police ignore or actively silence rape victims in flagrant disregard for their human dignity and their rights to nondiscrimination, due process, health, and equality under the law. The distrust of rape victim testimony is sometimes taken to an extreme, ultimately impeding fair trials.

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Marta Chávez, a fourteen-year-old girl who was raped repeatedly by her uncle experienced this first hand. An NGO worker who accompanied Chávez through the justice system said: “The public prosecutor confronted the girl, saying things like: ‘Let’s see, tell me the truth: what did you do, eh? ... Admit that you are jealous, because your uncle looked at your [eleven-year-old] sister!’ He was referring to the fact that the uncle had abused the sister [too] and that [Chávez] would be reporting [the rape] out of jealousy.”

Obstructing Access to Legal Abortion after Rape

Abortion is a crime in Mexico, and women and girls in some states continue to be prosecuted. At the same time, all states and the federal district permit legal abortion for rape survivors. Every single public official Human Rights Watch interviewed conceded that abortion after rape is a woman’s right. In addition, public opinion polls consistently show that the majority of the Mexican population supports this right.

Nevertheless, substantial obstacles continue to restrict women’s and girls’ access to abortion after rape in Mexico. A central issue is the lack of clear legal or administrative guidelines. Twenty-nine of thirty-two independent jurisdictions in Mexico (comprising the federal states and the federal district) have failed to implement guidelines to guarantee access to safe and legal abortions for rape victims.

While obstacles that restrict women's and girls' access to legal abortion after rape in Mexico are present everywhere, they are most pronounced in states without policies regulating access.

Regardless of the jurisdiction where the woman lives, Mexican NGOs have reported—and Human Rights Watch's research has confirmed—that women and girls with fewer financial resources are most adversely affected by administrative obstacles to legal abortion. Those rape victims who can afford an "up-scale"—as opposed to a back-alley—clandestine abortion, are already free to ignore official channels (and obstacles) to obtain a publicly provided abortion without necessarily risking their health and lives. The obligation on the part of the public health care system to provide free abortion services for rape victims is law in some Mexican jurisdictions, such as Mexico City and Morelos. National legislation should not fall short of this level of protection.

Rape victims who cannot afford a private abortion are forced to endure insults and obstacles in the public sector or potentially risk their lives in underground clinics.

States with No Administrative Guidelines

In states without administrative guidelines for access to legal abortion after rape, public officials effectively stone wall rape victims who request an abortion. Some public officials deny that cases of unwanted pregnancy after rape exist at all. Officials from various states told Human Rights Watch that access to legal abortion services was mostly a theoretical issue since few, if any, rape victims had ever petitioned for such services. While it most likely is true that only a fraction of pregnant rape victims who have abortions ask the authorities for assistance in procuring them, the situation is the consequence of, rather than the reason for, ignoring rape victims' right to legal abortion.

At times, the highest officials in the public agencies most responsible for enforcing the right to legal abortion opposed even the very concept that abortion is legal in some cases. The health minister of the state of Jalisco, expressed this view: "Of

course women have a right [to abortion after rape] ... [but] let's not give them access!" Such opposition and denial both contributes to the social stigma surrounding abortion and may inhibit any progress toward adopting administrative guidelines for access to legal abortion.

With little information to guide them, some courageous pregnant rape victims in Mexico still ask the authorities for assistance in terminating their unwanted pregnancy. Human Rights Watch found that in institutions designated to assist pregnant rape victims, social workers and public prosecutors actively discouraged women and girls from seeking legal abortion services.

The discouragement of rape victims from obtaining a legal abortion takes many forms. One method is for police officers and public prosecutors to discourage victims from filing a legal complaint at all, either through distrust or by suggesting that the rape victims should marry the perpetrator. Another is for public officials to provide misinformation about the health consequences of abortion, in particular for adolescent rape victims. These officials often claim, without cause, that an abortion can be lethal at any time during the pregnancy. Sometimes it includes aggressive anti-abortion counseling. A social worker said: "We ... had the case of an eleven or twelve-year-old girl who had been raped by her brother. ... She came here wanting to have an abortion, but we worked with her psychologically, and in the end she kept her baby. Her little child-sibling."

In fact, most rape victims are not allowed to exercise their right to a voluntary legal abortion. Some girls, like Graciela Hernández (pseudonym), who was made pregnant by a father who raped her in hotel rooms every week for more than a year, lose access to legal abortion when prosecutors charge a perpetrator with incest instead of rape. (Mexican law does not

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allow legal abortion after incest). Others, like one seventeen-year-old girl who was raped by a stranger, are passed from one public agency to another, as none want to authorize the abortion. Some are bounced back and forth until the pregnancy is too advanced to be terminated safely and legally. Some public officials—even public prosecutors and defenders—threaten rape victims with jail for procuring a legal abortion.

States with Administrative or Legal Guidelines

Only three independent jurisdictions in Mexico have implemented specific procedures for access to abortion after rape: Baja California Sur, Mexico City (the Federal District), and Morelos. These procedures can and at times do improve rape victims' access to services.

Moreover, public authorities in the two jurisdictions with guidelines covered by Human Rights Watch's 2005 study—Morelos and Mexico City—showed a clear political will to take responsibility for guaranteeing access to abortion. Nevertheless, the existence of the formal procedures and information about these procedures has not guaranteed unobstructed access to safe and legal abortion for all pregnant rape survivors. Human Rights Watch documented three main reasons for this:

- the procedures are long and complicated, with multiple tests and interventions by at least three public entities;
- procedures do nothing to overcome the deep-seated stigma attached to both rape and abortion; and
- officials who violate applicable law and procedures (e.g. who ignore or misinform rape victims) are not disciplined.

Clear procedures help, but have not guaranteed access to safe and legal abortion for all pregnant rape victims.

Consequences of Restrictions on Abortion after Rape

Obstructing access to legal abortion after rape has severe consequences for the rape victims, for their families and communities, and for Mexican society as a whole. The rape victims we interviewed mentioned many reasons they wanted

to end the pregnancy, including mental health, physical health, poverty, and the possibility to get on with their lives after a traumatic experience.

In light of the obstacles they are likely to face, many women and girls opt for clandestine and typically unsafe abortions. Some rape victims told Human Rights Watch that the rape and pregnancy had left them with permanent or semi-permanent health consequences, including depression, internal injuries from botched abortions, and drug or alcohol addictions.

The continued stigmatization of rape and abortion at times result in the denial of access to legal abortion, even when the rape survivor has express official permission.

Obstructing access to legal abortion after rape has additional adverse consequences for girls. Underage rape victims we interviewed who were not able to procure an abortion told us that headmasters, teachers, or family members had pressured them to leave school without graduating. Other child victims were thrown out of their homes by their families, or threatened with eviction, often with nowhere to turn. This is doubly problematic because law and practice require that a family member consent to the abortion for any girl under the age of eighteen.

Conclusion

An unwanted pregnancy is distressing under any circumstances. When it is the result of rape or incest, the pregnancy turns into a constant physical reminder of the violation of physical integrity that the woman or girl has already suffered. When state officials deny rape victims their right to voluntarily terminate an unwanted pregnancy, they not only deny women's right to choose independently in matters related to abortion but also their right to justice and redress – their right to human dignity. In Mexico, public authorities at the state level have in many cases converted the denial of these rights into institutional policy. At the federal level, abortion after rape is not seen as a priority, and certainly not as the essential human rights issue that it is.

For years, international human rights entities have asked Mexico to remedy the persistent and pervasive impunity for domestic and sexual violence in the country, and to provide adequate redress and judicial remedies for these crimes. Such redress, in Mexican law and under authoritative interpretations of international human rights law, includes unobstructed access to safe, legal, and free abortion after rape. Mexico has the infrastructure and resources to provide such redress and should do so immediately.

Mexico has the infrastructure and resources to provide full redress for violence against women—including access to legal abortion.

What you can do:

Write Mexico's President-elect, Felipe Calderón, to urge him to guarantee access to safe abortion services where abortion is currently permitted under Mexican law. Tell Mr. Calderón to implement the recommendations submitted in 2006 by the United Nations Committee on Economic, Social, and Cultural Rights (CESCR) and the United Nations Committee for the Elimination of Discrimination against Women (CEDAW). These expert committees have asked Mexico to:

- implement a comprehensive strategy that ensures effective access to safe abortion in situations provided for under the law; and monitor the full access of rape victims to legal abortion;
- harmonize legislation pertaining to abortion at the federal and State levels; and
- ensure full access by everyone to reproductive health services and education, and to allocate sufficient resources for these purposes.

You can find a model letter at <http://xxxxx>

Not Just in Mexico: Obstacles to Safe Abortion in the United States

Restrictions on women's access to safe abortion are not limited to Mexico. Even in the United States, where abortion is legal, services are not readily accessible. In fact, many women and girls face serious legal or financial obstacles to accessing safe abortion services because of burdensome regulations, lack of providers, insufficient funding or political opposition.

**In the United States,
abortion is legal but
not readily
accessible.**

Unfortunately, the obstacles to safe abortion in the United States seem to be on the rise. Since the landmark Supreme Court decision in *Roe v. Wade* in 1973, which established women's right to decide with regard to abortion as a matter of privacy, both state and federal legislators have taken severe measures to limit access to legal abortion. These roll-back measures generally seek to do one of two things:

1. curtail women's access to legal abortion (such as through mandatory waiting periods or mandatory—and at times manifestly inaccurate—counseling); or
2. limit legal access to abortion to certain populations (such as rape victims or women whose lives are endangered by their pregnancy).

Women with limited economic resources face additional obstacles to safe abortion. Abortion services have been subject to a federal funding freeze since 1977 except in cases of life endangerment, rape, or incest. Furthermore, the majority of states do not provide funding for abortion services that fall outside these exceptions. A safe abortion often costs \$500-\$1,500. As a result, women with limited resources—who have not been raped or whose lives are not endangered by their pregnancy—may be forced to choose between carrying an unwanted pregnancy to term or taking desperate measures that could seriously jeopardize their health.

Regulatory Obstacles to Abortion in the United States

Since 1973, the United States Supreme Court has consistently ruled that an outright ban on abortion is unconstitutional. However, the Court has allowed states to regulate and limit access to abortion, so long as they do not place an “undue” burden on the individual seeking to terminate her pregnancy.

Over the past decade, legislators at the state and federal levels have pushed the limits of this Supreme Court mandate, and at times have imposed regulations with the explicit aim of challenging the constitutionality of legal abortion. Many states implement regulations that often, in fact, may be unduly burdensome. For example, some states require that women and girls who wish to terminate a pregnancy submit themselves to unsolicited and occasionally manifestly or biased unscientific counseling.

State and federal legislators have challenged the constitutionality of abortion. Many states already impose potentially unduly burdensome regulations.

Inaccurate or Imposed Information

According to the Alan Guttmacher Institute (AGI), a nongovernmental research entity, as of September 2006 well over half the states in the United States (32) subject all women seeking abortion to mandatory counseling. Three states require clinics to inform women of a purported link between abortion and breast cancer, which scientific studies has conclusively disproved. Four states also stipulate that women must be told that the fetus might be capable of feeling pain at any point during gestation. Such information, however, is contrary to recent scientific studies that conclude that fetuses cannot feel pain until the twenty-ninth week of gestation. In fact, as 90 percent of abortions in the United States occur in the first twelve weeks of the pregnancy, the mandatory information on fetal pain is not only manifestly wrong, but also irrelevant to the vast majority of abortion patients.

Counseling mandated by some state laws is unscientific and biased. Inaccurate and incomplete health information infringes on women's right to health.

Access to accurate and complete information on medical procedures is an integral part of the human right to the

highest attainable standard of health, and also essential to the principle of informed consent. When health professionals are required to give women and girls one-sided or inaccurate information about medical procedures—as the law mandates in many jurisdictions in the United States—the human right to health is threatened.

Mandatory Waiting Periods Add Cost

According to AGI, 24 of the 32 states that require mandatory counseling also require women and girls to wait for a specific period of time—most often twenty-four hours—between the counseling session and the abortion. In those states where the law requires an in-person counseling procedure (as opposed to over the phone) a mandatory waiting period requires that the patient travel at least twice to the abortion facility. As a consequence, many must leave work for several days, and where there are no abortion facilities nearby—as in 87 percent of U.S. counties (2000 figures, latest available)—the mandatory waiting period may require such additional cost as an overnight stay or several long-distance travels.

Mandatory waiting periods add stress and cost for women who need an abortion.

Added Restrictions for Girls

Many U.S.-based NGOs note that girls typically are subject to more restrictions than adult women regarding access to safe abortion. AGI and NARAL Pro-Choice America note that 44 states had laws on the books requiring some sort of parental consent or notification prior to a minor's abortion. More than 10 states have enforceable laws requiring that a parent must be informed of a minor's intent to have an abortion, and 2 states require that both parents be informed. In addition, more than 20 states enforce parental consent laws—in 3 cases requiring consent from both parents before a minor may obtain a legal abortion.

Parental consent and notification laws ignore that most girls already seek support and guidance from their parents.

Mandatory parental consent and notification regulations are problematic for a number of reasons, especially in cases

where both parents must consent or be notified. Indeed, the girl in need of an abortion may not have contact with either or both of her parents. Abortion providers in the United States note from experience that the vast majority of teenage girls already seek support and guidance from one or both parents. Therefore, the notification and consent laws seem to target precisely the girls who may be unable to involve their parents in their decision.

Moreover, international human rights law requires governments to prioritize the best interests of children at all times, and to give the child's opinion due weight according to his or her evolving capacities. Either or both parents' declared opposition to abortion should not automatically result in the assumption that carrying a pregnancy to term is in the best interest of the child, especially when the pregnant girl herself declares a desire to terminate the pregnancy. A U.S. Supreme Court precedent mandates that parental consent laws must have a judicial procedure to waive parental consent in specific circumstances. It is incumbent upon states to ensure that this precedent is reflected in law and adequately protects the interests of all children.

All governments—
also that of the
United States—must
protect the best
interests of all
children, including
pregnant teenagers
whose parents
oppose abortion.

Criminalization of Doctors and Family Members

Women and girls who procure abortions are currently not subject to criminal sanctions anywhere in the United States. However, in some states, family members, doctors, nurses, and friends who support women and girls in need of an abortion could soon be.

In July 2006, the U.S. Senate passed a version of the Child Custody Protection Act of which a version had already passed as the Child Interstate Abortion Notification Act in the House of Representatives in April 2005. If this law enters into force, any adult who helps a minor cross a state line to procure an abortion in circumvention of parental consent or notification

regulations in the child's home state would be committing a federal crime.

Furthermore, some states have passed legislation to criminalize medical doctors who perform abortions on certain types of patients. Most prominent is the blanket ban on abortion in South Dakota, signed into law in March 2006, which makes abortion illegal except when the procedure is carried out to save the pregnant woman's life. Nongovernmental advocacy organizations that follow closely the developments of abortion legislation note that several other states—including Georgia, Indiana, Ohio, Louisiana, and Tennessee—have moved to enact similar legislation.

Under proposed federal legislation, family members, doctors, nurses, and friends who support girls in need of abortion could be considered criminals.

Conclusion

Abortion is a highly emotional subject and one that excites deeply held opinions. However, equitable access to safe and legal abortion services is first and foremost a human right. In the United States the legality of abortion co-exists with cumbersome regulations, thinly veiled political opposition to a woman's right to make independent decisions regarding pregnancy and abortion, and a lack of federal and state funding for the provision of abortion services for poor women that seriously hampers a woman's possibility to exercise this right. Until access to safe abortion is guaranteed, the human rights of women and girls across the United States are threatened.

What you can do:

Write a letter to your federal and state Senator or Representative urging them to ensure equitable access to reproductive health services, including modern contraceptive methods, emergency contraception, and voluntary abortion services. A number of bills have already been introduced on these issues. In particular, you should encourage your federal congressperson to support:

- The Compassionate Assistance for Rape Emergencies Act (“CARE” S.1264/H.R.2928). This bill would ensure that survivors of sexual assault are offered the “morning-after” pill in the emergency room.
- The Freedom of Choice Act (“FOCA” S.2593/H.R.5151). FOCA guarantees a woman’s right to choose to bear a child or to terminate a pregnancy without interference by the state or others.

You can find a model letter at <http://xxxxx>]

To download free of charge the text of Human Rights Watch’s full-length report, “The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” go to Human Rights Watch’s website at <http://hrw.org/reports/2006/mexico0306/>

For more information on human rights and abortion, visit Human Rights Watch’s website at <http://www.hrw.org/women/abortion.html>

Pseudonyms are used for all women in this document to preserve their privacy.