



MEXICO AND CANADA

The Second Assault

Obstructing Access to Legal Abortion after Rape in Mexico

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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 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. Furthermore, survivors of incest are not granted access to legal abortion unless a public prosecutor can and is willing to prove that the intercourse was nonconsensual.

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 a legal abortion. The full horror of this process—including humiliation, degradation, and physical suffering—is in essence a second assault by the justice and health systems.

Less than 10 percent of rape victims report the crime to the authorities.

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 safe, free, and legal access to abortion for all women facing crisis pregnancies. 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

Based on official conservative estimates, a girl or woman is raped in Mexico every four minutes on average. 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 discussion about 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 treat girls and women who report rape with suspicion and disrespect, or sometimes apathy: they are actively hostile or just do not care. 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, access to justice, redress, due process, health, and equality under the law. The distrust of rape victim testimony is sometimes taken to an extreme, ultimately impeding prosecution of perpetrators.

Those who report rape to the authorities are met with suspicion, disrespect, or just plain apathy, ultimately impeding prosecution of perpetrators.

Marta Chávez (pseudonym), 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 implying 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 admitted 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. 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 stonewall 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 rejected the very notion that abortion should be legal in any context. 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 contributes to the social stigma surrounding abortion and inhibits any progress toward adopting administrative guidelines for access to legal abortion.

One state health minister said: “Of course women have a right [to abortion after rape]. ... But let’s not give them access!”

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 abortion services.

The discouragement of rape victims from obtaining an abortion, although legal, 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 fatal for the girl or woman 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 her father who raped her in hotel rooms every week for more than a year, lose access to legal abortion when prosecutors charge the perpetrator with incest instead of rape. (Mexican law does not deem incest a ground for legal abortion.) 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.

Most rape victims are not allowed to exercise their right to a voluntary 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.

Consequences of Restrictions on Abortion after Rape

Obstructing access to legal abortion after rape has severe consequences for 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 internal injuries from botched abortions, depression, and drug or alcohol addictions.

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

The continued stigmatization of rape and abortion at times results in the denial of access to legal abortion, even when the rape survivor has obtained all necessary approvals.

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 a girl under the age of 18.

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 bodies 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 abortion for rape survivors.

What you can do:

Write Mexico's President-elect, Felipe Calderón, and urge him to guarantee access to safe abortion services where abortion is permitted under Mexican law. Tell Mr. Calderón to implement the recommendations issued in 2006 by the UN Committee on Economic, Social, and Cultural Rights (CESCR) and the UN 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 rape victims' access 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 allocate sufficient resources for these purposes.

You can find a model letter at

<http://hrw.org/english/docs/2006/10/10/mexico14376.htm>

Needs Ignored

Restrictions on Access to Abortion in Canada

In 1988, the Supreme Court of Canada struck down the law that criminalized abortion in Canada. Almost two decades later, and despite the medical need for abortion services, access to such services is subject to more and more programmatic restrictions across the country. Policy makers have put in place an increasing number of barriers for women who seek this medical service, the number of providers is declining, and some hospital staff function as gatekeepers.

In Canada, despite their legality, abortion services are increasingly inaccessible.

Today, there is arguably no medical service that is subject to so many programmatic and economic restrictions. No other medical service in Canada is open to such levels of state interference.

Abortion Is A Medically Necessary Procedure

Based on the fact that abortion is a procedure that, in Canada, must be performed by a medical doctor, abortion has been declared a “medically necessary” procedure by all provincial and territorial Colleges of Physicians and Surgeons. Therefore, under the *Canada Health Act* (1984), abortion must be covered by Medicare in compliance with the five principles of the *Act*.

On paper, it thus appears that women with fewer financial resources should face fewer barriers in accessing abortion services in Canada than they might face in countries where abortion services are not provided by the state. However, the reality is that abortion services are not as readily available to women in Canada as the law would suggest.

In fact, abortion is the only medical procedure in Canada that does not meet the most basic requirements of the *Canada Health Act* (1984). The Act sets out five principles that must be complied with by all provincial and territorial governments in the provision of state funded health care services: portability, accessibility, comprehensiveness, public administration and universality.

Lack of Accessibility

Many women have problems accessing abortion services, in particular if they seek abortions through the public healthcare system. A research report produced by the Canadian Abortion Rights Action League in 2003 showed that only 17.8 percent of all Canadian hospitals provide abortions. The vast majority of abortion services are only available in urban areas. To access these services, many women have to travel long distances from their communities at their own expense.

In Prince Edward Island, for example, the state does not provide any abortion services at all and to the knowledge of Human Rights Watch and Action Canada for Population and Development there are no private providers. In New Brunswick, abortions are available in two public hospitals that fall within the

provincial healthcare system. However, for security reasons, one of these two hospitals does not advertise or even acknowledge to the public that they provide abortions. Women who call the hospital seeking information about services are not told that the hospital provides abortions. Women seeking this service need a referral to the hospital from two different doctors. Quebec and New Brunswick are the only Canadian provinces with private abortion clinics where the government does not pay for abortion services performed outside of public hospitals, despite intensive lobbying by women's equality groups, and despite a successful class action suit in Quebec which noted that the state must reimburse women for the cost of certain abortion services incurred in private clinics.

The failure of provincial governments to cover the cost of abortions performed in clinics can be dangerous to a woman's health since she may be unable to obtain an abortion at a provincially funded hospital, due to anti-choice staff, long wait times that may interfere with gestational limits, and the non-provision of abortion services at many state funded hospitals.

Furthermore, some provinces have placed abortion on the list of excluded services for reciprocal billing with other provinces. This means that a woman who has an abortion outside of her province of residence—which a number of women do every year—may have to pay fees, in many cases over \$500 (Canadian), and is often not able to be reimbursed by her province of residence, in potential contravention of the “accessibility” requirement of the *Canada Health Act*.

Conscientious Objection Curtails Access

Even in those provinces that do provide abortion services for free in publicly funded hospitals, or that cover the cost of abortions in private clinics, women may have difficulties accessing information on abortion or getting referrals to abortion providers. The *Canada Health Act* allows medical providers to refuse to participate in the care of a patient seeking an abortion. Due to a

“conscience clause” contained in the *Act*, physicians can refuse to perform or refer for an abortion for a variety of reasons and hospitals can refuse that their facility be used for the provision of abortion services.

NGOs who work closely on access to abortion in Canada note that, in their experience, some physicians who oppose abortion often refuse even to provide referrals to providing hospitals. In many cases, a doctor’s referral is needed in order for a woman to have access to an abortion in a public hospital. Also, NGOs have documented cases where family doctors in communities with few medical providers have threatened women seeking abortion services with having their name and the name of their family withdrawn from the doctor’s list of patients.

Hospital staff members are not always sensitized to the issue of abortion. Some women have stated that after an abortion at a hospital, nurses have yelled, “You must be happy, you have killed a human being” at them. Hospital receptionists or switchboard operators also serve as gatekeepers. In some cases, NGOs note that such personnel provide inaccurate information to women calling to inquire about abortion services or refer them to counseling centers with an anti-choice bias.

When hospitals merge in a community, Roman Catholic institutions sometimes become the primary health care provider. Roman Catholic hospitals are required to follow the “Ethical and Religious Directives for Catholic Health Care Services”, adopted by the National Council of Bishops. These directives prevent Roman Catholic hospitals from offering birth control, sterilization, infertility treatments and abortions. This means that many hospitals that were formerly providing these services under a secular Board of Directors are no longer providing them.

Lack of Trained Professionals

Many younger doctors are not trained in abortion techniques. Not all obstetrician and gynecology residency programs train residents in abortion procedures. The preliminary results of a study conducted by Medical Students for Choice in both the US and Canada found that nearly 40 percent of the schools surveyed in both countries do not teach any aspect of abortion in the pre-clinical years. The same study found that on average, more class time is dedicated to the study of Viagra than to abortion procedures, pregnancy options counseling, and abortion law and policy combined.

According to Medical Students for Choice, medical schools in Canada spend an average of less than 1 hour teaching about abortion throughout a four-year curriculum. Of the 10 Canadian medical schools, 3 dedicate fewer than 20 minutes of teaching time to all aspects of abortion. First-trimester surgical abortion techniques are discussed in only one-half of Canada's medical schools. As a consequence, students graduating from medical school have little or no abortion education, and they are unlikely to gather experience during residency. Even where younger doctors may wish to provide abortion services, they might therefore not be able to do so safely.

Hospital mergers between Roman Catholic and secular institutions that have resulted in a single Roman Catholic hospital have also contributed to the lack of training opportunities and to the decreasing number of facilities offering abortion services. The decrease in hospitals that offer abortion services negatively affects the education of medical students and residents, who receive the majority of their training in hospital settings.

Intimidation and Other Reasons for Care Shortage

The National Abortion Federation has estimated that since 1977 there have been more than 120,000 incidents of violence and disruption against abortion clinics and providers in Canada and the United States. These incidents of violence include, but are not limited to, bombings, acid attacks, arson, anthrax, and murder. Such violent intimidation is likely to have contributed to the reduction of abortion services, which has declined significantly over the past decade.

Many providers have retired and many of the doctors who are currently performing abortions are over 50 years old. Since there are few doctors taking the place of retiring abortion providers because of lack of training and reports of violent intimidation, it is expected that the number of providers will continue to decline.

The care provision shortage expands further than physicians. Many nursing programs do not adequately prepare students to care for women having abortions. This contributes to a shortage of nurses who are willing and trained to assist abortion providers.

Medical Students for Choice highlights “commitment” as another reason explaining the shortage of providers. According to MSFC, “many of today’s providers are pioneers whose commitment to safe, legal abortion was shaped by having witnessed the effects of botched illegal or self-induced abortions. Younger physicians have not been exposed to the horrors of unsafe abortion.”

In Canada, practice dictates that abortions be performed by a doctor and in many hospitals, by an obstetrician or gynecologist. In response to the provider shortage, some groups are starting to explore the possibility of having other health professionals such as midwives and nurse practitioners perform early term abortions. In fact, even the American College of Obstetricians and Gynecologists is recommending that non-physicians be trained to perform abortions.

Conclusion

Women and girls in Canada increasingly find that abortion services are inaccessible to them, either because there are no providers nearby, or because they do not have the information or financial resources to access services. These obstacles persist despite the legality of abortion and its standing as a medically necessary service that the state must provide. Canada should bear in mind that while abortion excites strong and deeply held opinions, access to safe abortion is first and foremost a human rights issue.

Moreover, NGOs with experience in advocacy on abortion access in Canada caution that prevailing conservative trends pose a real risk to women's rights relating to abortion services and that it is essential to continue to work vigorously to maintain and improve access to legal abortions in Canada.

What you can do:

Write to Prime Minister Harper and to your Members of Parliament urging them to safeguard and improve access to safe, accessible, and state funded abortion services in Canada.

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

For more information on abortion services in Canada,
visit the website of Action Canada on Population and Development
<http://www.acpd.ca>
or
Canadians for Choice
<http://www.canadiansforchoice.ca>

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

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Obstacles to Safe Abortion in Mexico and Canada

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 integrity—the assault—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: abortion is permitted after rape. Actual access to safe abortion procedures for rape survivors, however, is made virtually impossible by a maze of administrative hurdles as well as—most pointedly—official negligence and obstruction. Even very young girls, often raped by family members, are denied access to a legal and safe abortion.

Women and girls who seek abortion after rape are in essence assaulted twice. Once by the perpetrator who raped them, and the second time by institutionalized disregard for their right to a legal abortion. In desperation, some pregnant rape victims abandon efforts to go through legal channels and instead seek clandestine abortions, which—in Mexico, where abortion generally is illegal—often are unsafe. Several studies have shown that some women die as a result of such clandestine abortions. Others endure grave injury.

Women and girls in Canada increasingly find that abortion services are inaccessible to them, either because there are no providers nearby, or because they do not have the information or financial resources to access services. These obstacles persist despite the legality of abortion and its standing as a medically necessary service that the state must provide. Canada should bear in mind that while abortion excites strong and deeply held opinions, access to safe abortion is first and foremost a human rights issue.

A twelve-year-old mentally disabled pregnant rape victim reacts to questions about her pregnancy at her home in Los Mochis, Sinaloa, in Mexico. She conceived after she was raped by her father. This girl confronted a number of obstacles before she finally, after months of back-and-forth, obtained an abortion. The legality of her abortion was never publicly acknowledged by the authorities.

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