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

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I. Summary

Each year, thousands of girls and women in Mexico get pregnant as a result of rape. Having already suffered one traumatizing violation of their physical and moral integrity—the rape—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, actual access to safe abortion procedures is made virtually impossible by a maze of administrative hurdles as well as—most pointedly—by official negligence and obstruction.

At the core of this issue is a generalized failure of the Mexican justice system to provide a solution for rampant domestic and sexual violence, including incest and marital rape. Many of the girls and women Human Rights Watch interviewed had not even attempted to report the abuse they endured, seeing the impunity for rape in the justice system. Often the interviewees had personal experience with indifference and mistreatment by public prosecutors and public health system personnel. In desperation, some pregnant rape victims abandon efforts to go through legal channels and instead seek clandestine abortions. As countless studies have showed, such clandestine abortions are generally far more dangerous than legally regulated procedures. Some women and girls die as a result. Others endure grave injury from unsafe abortions: infection, uterine perforation, pelvic inflammatory disease, hemorrhage, and other injury to internal organs.

Mexico’s legal framework for the treatment of domestic and sexual violence in many states is seriously deficient. Seven states do not penalize domestic violence specifically, and seventeen states only sanction “repeated” violence in the family. In thirteen states, intercourse with a minor through seduction (so-called estupro) is only criminal if the minor was “chaste” or “honest,” and in eleven states “estupro” is not penalized if the perpetrator subsequently marries the underage victim. Incest is defined as “consensual” sex between parents and children or between siblings. Since incest, by this definition, is a crime against the family, and not against the physical integrity of the child, underage incest victims are penalized at the same level as their parents or older siblings. Pregnant victims of incest and “estupro” are also, by law, denied the right to a legal abortion.

The criminalization of children’s sexual behavior—even where they may be victims of abuse—is the more troubling because of a generally low age of consent in Mexico. In two jurisdictions, children are considered capable of consenting to sexual relationships once they reach puberty with no age specified. In twenty-one of Mexico’s thirty-two

jurisdictions, children are considered capable of consenting to sexual intercourse at the age of twelve, in one jurisdiction the age is thirteen, in seven jurisdictions it is fourteen, and only in one it is fifteen.

But even the existing inadequate protections are not properly implemented. Police, public prosecutors, and health officials treat many rape victims dismissively and disrespectfully, regularly accusing girls and women of fabricating the rape. Specialized public prosecutor's offices on sexual violence, where they exist, are often in practice the only place to report sexual violence, further impeding access to justice for rape victims in more remote locations. Many victims of violence fear retribution from the perpetrator, especially if he is a family member. As a consequence, the vast majority of rape victims do not file a report at all. Generous estimates suggest 10 percent of rape victims file an official complaint. The real proportion is likely even less.

For rape victims who become pregnant but do not report the rape, legal abortion is ruled out. All jurisdictions in Mexico treat abortion as a crime—and some states indeed jail women who have illegal abortions—though access to legal abortion is considered a rape victim's right everywhere. Only three of Mexico's thirty-two independent jurisdictions have issued detailed legal and administrative guidelines on how to guarantee this right, and all require that the victims report the rape as an essential first step. In the remaining twenty-nine jurisdictions, confusion reigns.

When pregnant rape and incest victims do report the assault and insist that they want an abortion, they are sent on a veritable obstacle-course that materially diminishes their possibility of obtaining a legal abortion. The worst abuses occur in jurisdictions without administrative guidelines, where the void of guidance seems to terrify officials into inaction and leaves justice and health officials free to claim they have no mandate to facilitate access to legal abortion.

The full horror of what rape victims go through in their attempt to obtain a legal abortion—often including humiliation, degradation, and physical suffering—is in essence a second assault by the justice and health systems. Some girls, like “Graciela Hernández” 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. Others, like “Marcela Gómez” seventeen-year-old daughter 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 interrupted safely and legally. Others are threatened

with jail for procuring a legal abortion, and many are told, without cause, that an abortion at any time during the pregnancy could kill them.

Public officials at times aggressively discourage abortion after rape, including for very young rape victims. A social worker in Jalisco told Human Rights Watch: “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.”

There has been a marked improvement in at least two of the three jurisdictions that have promulgated procedures for access to legal abortion in recent years—this research did not cover the third. The guidelines have succeeded in reassuring public health and justice officials, enabling them to facilitate access to legal abortion without fearing administrative sanctions such as fines. Public authorities in the two jurisdictions with guidelines covered by the study—Morelos and the Federal District (Mexico City)—showed a clear political will to take responsibility for guaranteeing access to abortion after rape.

Yet even where guidelines exist, serious obstacles remain. The procedures are long and complicated, requiring reviews by at least three separate state agencies (attorney general’s office, health sector, and forensic experts). Despite explicit time limits for authorizing legal abortion in law and guidelines, there are often delays, a fact acknowledged by public officials. Some public prosecutors display a clear lack of understanding of the guidelines and—in particular—of rape victims’ plight: in various cases, pregnant rape victims were told to wait several weeks for a definite answer on the requested authorization for abortion, because the public prosecutor assigned to their case was going on vacation or had a full schedule. Waiting for an authorization for legal abortion is a luxury a rape victim cannot afford, particularly since most jurisdictions limit the time period for legal abortion to three months of gestation.

Most troubling, harassment of rape victims seeking abortion and those who assist them continues, even in jurisdictions where guidelines for access to legal abortion exist. In Mexico City, a rape victim was told by a doctor at the public hospital to bring a hearse and a coffin for the aborted fetus. In Morelos, social workers and legal advisors who facilitate access to abortion for rape victims are at times referred to as “stork-killers.”

One reason for this continued harassment is that the administrative guidelines in Morelos and the Federal District have not been implemented with a view to overcoming the deep social stigma attached to both abortion and rape. Some officials have taken

extreme measures to keep the legal abortion process virtually “clandestine,” such as deploying secret “commando” doctors to carry out legal abortions in places where they normally do not work. These measures reflect a fear of protest and harassment which is based on concrete experience. However, they also reinforce the stigma and contribute to keeping women, girls, and even public officials in the dark regarding legal abortion. A 2003 survey in Mexico City showed that 74 percent of low-income women did not know abortion is legal in some circumstances.

For Mexico to comply with its international human rights obligations, it must ensure access to safe and legal abortion after rape. Since the 1990s, U.N. treaty bodies have repeatedly emphasized that access to safe and legal abortion can save women’s lives and that under international human rights law governments should ensure that women have access to adequate abortion information and services, whether they were raped or not. These treaty bodies have been particularly emphatic that abortion should be legal, safe, and accessible after rape and incest, and have specifically recommended facilitating access to abortion in Mexico.

Human Rights Watch urges the Mexican federal government as well as the state governments to proactively investigate and discipline public officials—including public health personnel, prosecutors, and police—who are abusive or neglectful in their provision of services to victims of domestic and sexual violence. Negligent conduct, which should be sanctioned, includes failure to inform all rape victims of the possibility of legally terminating a potential pregnancy. Human Rights Watch also urges the governments of those twenty-nine states that do not provide specific guidelines on access to legal abortion to do so immediately, and the governments of all states to review guidelines continually to ensure their effectiveness and appropriateness. Further, all state governments in Mexico should provide adequate and continuous training for public officials on the obligation to facilitate access to adequate information regarding legal abortion and access to abortion services.

Mexico’s experience highlights the inherent problem with partial decriminalization of abortion: by placing the essential decision-making power for abortion after rape with medical doctors and public prosecutors, procedures and formalities gain more legitimacy than a woman’s right to decide voluntarily with regard to her pregnancy. While this report focuses on access to abortion after rape and incest, Human Rights Watch advocates for women’s right to decide independently in matters related to abortion without interference from the state or others in all cases.

The Second Assault is based on field research in Mexico in October and December 2005, as well as prior and subsequent research conducted by Human Rights Watch throughout 2005 and the beginning of 2006. Human Rights Watch conducted more than one hundred interviews with lawyers, doctors, prosecutors, public officials, rape victims and their families from Baja California Norte, Chiapas, the Federal District (Mexico City), Guanajuato, Jalisco, Morelos, Nuevo León, San Luis Potosí, and Yucatán.

We interviewed more than sixty doctors, social workers, and government officials. We also interviewed more than twenty legal representatives for rape victims, who provided official legal documents from numerous cases involving legal abortion, some granted and some denied, as well as representatives from nongovernmental organizations and help-line workers who provided us with first-hand accounts of cases. All documents cited in this report are either publicly available or on file with Human Rights Watch, as noted.

While we investigated dozens of cases, the report draws most heavily on in-depth Human Rights Watch interviews with ten rape victims who became pregnant as a result of the rape (seven women and three girls) and eleven family members of these victims, and on detailed trial transcripts from five other cases. The relatively small sample size serves to illustrate the level of stigmatization of this issue: many women and girls who had confronted imposed pregnancies after rape were too afraid or declared themselves too traumatized to testify. Unless otherwise noted, all names and identifying information of the rape victims and their families have been changed to protect their privacy.