



## **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.

## II. Selected Rape Victim Testimonies

“Blanca Valdés” was forty-one when she was raped by a cab-driver in Mexico City in 2005. She did not report the rape to the authorities, even after she discovered that she was pregnant, because she previously had been insulted and ignored by public authorities when she reported that her husband had beaten her. She told Human Rights Watch how deeply this imposed pregnancy affected her. Valdés ultimately obtained an abortion through unofficial channels.

You know, there are jokes: “If you are raped, lie still and cooperate.” But it is not possible. It is not physical, what really hurts is the anger. ... At first [after the rape], I locked myself up in my house. I cleaned it over and over again. And when I felt bad, I would wash myself as many times as was necessary. And the last thing on my mind was that I could be pregnant. ... [I did a pregnancy test] and that’s when the whole situation hit me. ... I thought: “Who is going to help me now?” ... I thought: “Every time I see that baby, I am going to think about what happened.” ... My other two children were desired. ... It would be so different if you had to have the result of something so ugly, so dirty. And then you have to take care of it, because it is your baby. ... I thought that if I keep this child, I will not be able to save the other [two], and not even myself. ... It was a part of me, but a part that I did not want, a part that I had not asked for. ... I have had bad experience with the justice system. One time my husband hit me. ... I told the officer that [my husband] had hit me with a hammer in the stomach. And the officer said that he had not hit me hard [and did nothing]. ... [After the rape] my father said: “Let’s go to the police, my girl.” And I said: “What for? So that everyone will know [that I was raped]? So that they can mistreat me again? So that they can make fun of me because I am alone?” ... I felt afraid. Afraid to die, afraid to bleed to death.<sup>1</sup>

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<sup>1</sup> Human Rights Watch interview with Blanca Valdés, Mexico City, October 2005.

“Marcela Gómez” is the mother of a mentally disabled girl who was seventeen years old when she was raped and got pregnant. Gómez reported her daughter’s rape to the public prosecutor’s office in her state, and insisted that the pregnancy be interrupted. But instead of assisting Gómez and her daughter, public prosecutors and doctors repeatedly bounced her from one institution to another without giving her a final answer. Gómez filed a petition with a judge, who refused to authorize the abortion despite its legality under prevailing state law, noting that he was under no obligation to do so because an abortion would result in the death of the fetus. The judge, however, also did not prohibit the abortion. The intervention was finally granted by state authorities under the dual conditions that it did not appear in hospital and other records as a legal abortion after rape, and that Gómez and her daughter did not divulge information about the case to the public. Gómez told Human Rights Watch of her ordeal:

The DIF [Integrated Family Services agency, social services] sent us to the public prosecutor’s office, to the sexual crimes unit. ... So we did that, and then the [criminal] investigation was opened, and something like a month went by. ... They still didn’t arrest the guy. ... Something like two months went by, and I saw that [my daughter] didn’t get her period. ... The man from the public prosecutor’s office said that it was alright [to have an abortion] because it was rape. ... [There were also medical reasons] the pregnancy could not go ahead. ... But when I went to ask in the Ministry of the Interior [of the state], in the public hospitals, they all denied [her] access. ... The public prosecutor said to me that we had every right in the world [to have an abortion], but that unfortunately no one would want to carry it out. ... Then they minimized it, as if what happened to her was nothing. ... [Finally, Gómez’ daughter was allowed to have an abortion provided by the state, but covertly]. It was “under the table.” ... They did it like she had had a miscarriage because of her medicine. ... In the DIF they didn’t treat us like they should have. ... I felt they didn’t give importance to the case. ... A public prosecutor told me... well, I no longer remember what she said, harsh words. ... I went back to the DIF and they said: “You are not one to decide that [your daughter should have an abortion]. You can give it up for adoption.” They got angry.<sup>2</sup>

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<sup>2</sup> Human Rights Watch interview with Marcela Gómez, [state withheld], December 2005. The rape occurred within recent years (Gómez spoke on the condition that all identifying information about her daughter’s case be withheld, including her name and the exact year of the occurrence). The information given by Gómez was corroborated by current and former state officials.

“Graciela Hernández” reported her father’s systematic rapes against her in Guanajuato in 2002 when she was sixteen years old. As the result of the rapes, Hernández became pregnant and declared unequivocally that she wished to terminate her pregnancy. According to representatives from nongovernmental organizations who provided emotional and legal support for Hernández, the public prosecutor later persuaded the adolescent girl to change her accusation against her father from rape to incest—in order for the father to get a shorter jail sentence, as incest is considered a less serious crime than rape. Since abortion in Guanajuato only is legal after rape and not after incest the abortion was not authorized, and Hernández was forced to carry the pregnancy to term. The official record describes her distress:

Then my father took me to a hostel. ... And there my father said to me that I should take all my clothes off ... and my father took all his clothes off ... And my father started to caress my legs and all of my body. And he penetrated me, and it hurt a lot when he penetrated me. I cried and I said to my father that it hurt a lot. ... And I asked him if I was no longer a virgin, and my father said that before he penetrated me, yes, but no longer. ... After that time, it was every week that my father took me to different hotels outside the city of [name withheld]. And we had sex. ... And with regard to my pregnancy, I want to declare that I am certain that the child that I am expecting is my father’s ... because I never had [sex] with anyone else. ... And I want to declare that I don’t want to have the child that I am expecting, because I will not be able to love it. Because it is my father’s, I will not be able to love it. And I also don’t know how it will come about, if [the pregnancy] will go wrong. And I also don’t want it because I didn’t want to be pregnant, and that’s why I want you to help me to have an abortion, because as I already said, I don’t want to have this child, because it is my father’s and I don’t want it.<sup>3</sup>

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<sup>3</sup> Official testimony before a public prosecutor from Graciela Hernández, sixteen-year-old rape victim, state of Guanajuato, on file with Human Rights Watch.

### III. Impunity for Sexual and Domestic Violence

At least every four minutes in Mexico on average, a girl or a woman is raped.<sup>4</sup> Only a fraction of these rapes are reported to the authorities. In even fewer cases are the rapists held responsible. In the rare cases where girls and women seek justice for the sexual abuse they have suffered, they generally meet with suspicion, apathy, and disrespect. This situation is even more pronounced when girls and women who are pregnant as the result of a rape want to terminate the pregnancy. Often, prosecutors, doctors, and social workers ignore them. Sometimes, government officials actively silence rape victims with insults and threats, in flagrant disregard for their human dignity and their rights to nondiscrimination, due process, health, and equality under the law.

Impunity for sexual and domestic violence in Mexico is rooted in three main problems:

- 1) Underreporting and underestimation of the extent of domestic and sexual violence;
- 2) An inadequate legal framework for prevention, protection, and punishment; and
- 3) Lax implementation of existing legal standards.

These three issues are mutually reinforcing: lax implementation of the law means victims are less likely to report the crimes and underreporting undercuts pressure for necessary legal reforms. It is no coincidence that the most nationally and internationally visible expression of violence against women in Mexico—the largely unsolved cases of mutilation and murder of women in Ciudad Juárez in the state of Chihuahua<sup>5</sup>—is also the one that has elicited the strongest government response.<sup>6</sup> In fact, barring Ciudad

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<sup>4</sup> This calculation is based on a government estimate that some 120-130,000 rapes occur annually in Mexico. The real number is likely much larger.

<sup>5</sup> For more information on the situation in Ciudad Juárez see, for example, Amnesty International, "Mexico: Ending the brutal cycle of violence against women in Ciudad Juárez and the city of Chihuahua," *AI Index: AMR 41/011/2004*, March 8, 2004 [online] <http://web.amnesty.org/library/index/engamr410112004> (retrieved January 6, 2005).

<sup>6</sup> For example, in 2003 the national government established a commission under the interior ministry to prevent and eradicate gender-based violence in Ciudad Juárez, Chihuahua. This commission is not mandated to investigate or report on violence against women in any other state, or indeed on patterns of violence against women occurring in the country as a whole. It should be noted that several independent reports have found the policy response to the violence against women in Ciudad Juárez inadequate. See Amnesty International, "Mexico: Ending the brutal cycle of violence against women in Ciudad Juárez and the city of Chihuahua," *AI Index: AMR 41/011/2004*; Special Rapporteur on women's rights of the Inter-American Commission on Human Rights, "The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination," OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003; United Nations, "Special Rapporteur on Violence against Women Ends Visit to Mexico," Press Release, March 2, 2005; and CEDAW Committee, "Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under

Juárez, violence against women tends to be downplayed by public officials, especially at the state level, who share the widely held but demonstrably false misconception that it is a problem confined largely to poor, uneducated, unemployed, or otherwise marginalized people.

### ***Sexual and Domestic Violence: Underreported and Underrepresented in Government Crime Estimates***

Most public officials acknowledge that domestic and sexual violence is underreported. According to NGO representatives, this underreporting has led violence against women to be grossly underestimated in government figures, in particular in the case of sexual violence and rape. Few officials Human Rights Watch met with expressed awareness or concern that the official estimates on rates of violence likely fall far short of reality.

A 2003 government survey concluded that 46.6 percent of Mexican women over fifteen (approximately 24.5 million women and girls if extrapolated to the total population) had faced some form of violence in their home during the twelve months prior to the study. This 46.6 percent includes economic threats and emotional violence. The same study concluded that approximately 9.3 percent (almost 5 million women and girls) were found to have suffered physical violence within the past twelve months.<sup>7</sup> Another government survey published in 2004 found that 9.8 percent of women and girls suffered physical violence at the hands of their current husband or partner.<sup>8</sup> Representatives from nongovernmental organizations (NGOs) that work directly with victims of domestic violence told Human Rights Watch that rates of violence are undoubtedly much higher and that, in their experience, domestic violence seems to be becoming more common. NGO representatives from several states agreed that reliable statistics on this issue were hard to come by, notably because domestic violence still was not seen as a government priority despite some positive legal and policy moves.

The prevalence of sexual violence is difficult to estimate since very few rape victims report the crime to the authorities. “Sexual crimes are some of the least reported crimes,” said Aurora del Rio Zolezzi, deputy director of the gender equity office at the National Health Ministry. “A couple of years back, about 3.5 complaints were filed a day

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article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico,” *U.N. Doc. CEDAW/C/2005/OP.8/MEXICO*, January 27, 2005.

<sup>7</sup> INEGI, *Encuesta nacional sobre la dinámica de las relaciones en los hogares 2003: Estados Unidos Mexicanos* [National Survey on Relationship Dynamics in the Homes 2003: United States of Mexico] (Aguascalientes, Ags.: Instituto Nacional de Estadística Geografía e Informática (INEGI), 2004).

<sup>8</sup> INSP, *Encuesta nacional sobre violencia contra las mujeres 2003* [National Survey on Violence against Women 2003] (Mexico City: Instituto Nacional de Salud Pública, 2003), p. 67.

for rape in Mexico City. ... It was estimated that this was about 10 percent [of all cases].<sup>9</sup> On this basis, the government estimated that approximately 120-130,000 rapes (affecting the equivalent of 0.23-0.25 percent of the female population) occurred annually in all of Mexico.<sup>10</sup> However, a number of recent government surveys indicate the likelihood that this represents only a fraction of actual rapes committed against girls and women in Mexico on an annual basis.<sup>11</sup>

### ***Inadequate Legal Framework for the Prevention and Punishment of Violence against Women***

Mexican state laws do not adequately protect women and girls against violence and abuse, despite recent positive policy developments at the federal level. The federal nature of the Mexican system of government gives the thirty-one states and the Federal District (Mexico City) relative autonomy on legal and policy responses to violence against women,<sup>12</sup> though state laws and their interpretation have to conform to the

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<sup>9</sup> Human Rights Watch interview with Aurora del Rio Zolezzi, deputy director, gender equity unit, National Health Ministry, October 11, 2005.

<sup>10</sup> Ibid.

<sup>11</sup> A 2003 government household survey concluded that 7.8 percent of Mexican women over fifteen had suffered sexual violence in twelve months prior to the study (4 million women and girls). INEGI, *Encuesta nacional sobre la dinámica de las relaciones en los hogares 2003: Estados Unidos Mexicanos* (Aguascalientes, Aguascalientes, Ags.: Instituto Nacional de Estadística Geografía e Informática (INEGI), 2004). Another government survey, published in 2004, concluded that this figure was 7 percent. INEGI, *Encuesta nacional sobre la dinámica de las relaciones en los hogares 2003: Estados Unidos Mexicanos* [National Survey on Relationship Dynamics in the Homes 2003: United States of Mexico] (Aguascalientes, Ags.: Instituto Nacional de Estadística Geografía e Informática (INEGI), 2004). In household surveys from around the world, the ratio of rape to sexual or physical assault is generally three to four times as many assaults (sexual and other) as rapes, with rapes often representing an even higher proportion of physical or sexual assaults. See, for example, Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002* [Dominican Republic: Demographic and Health Survey 2002] (Calverton, Maryland: Measure DHS+, 2003) [rapes constitute 23.2 percent of all assaults]; Demographic and Health Surveys, *Salud Sexual y Reproductiva en Colombia 2005* [Sexual and Reproductive Health in Colombia 2005] (Calverton, Maryland: Measure DHS+, 2005) [rapes constitute 71.9 percent of assaults, probably anomaly due to internal conflict]; and Demographic and Health Surveys, *Kenya: Demographic and Health Survey 2003* (Calverton, Maryland: Measure DHS+, 2003) [rapes constitute 33.1 percent of all assaults]. Further, a 2002 survey from Mexico published by the World Health Organization (WHO) found that 300,000 women reported having been a victim of either attempted or completed coerced sex during their lifetime in the state of Durango alone (42 percent of the female population in that state). World Health Organization, *World Report on Violence and Health*, (Geneva: World Health Organization, 2002), p. 152. The public official who shared this government estimate of 120-130,000 rapes/year with Human Rights Watch readily conceded that the figure might be significantly inaccurate. Human Rights Watch interview with Aurora del Rio Zolezzi, deputy director, Gender Equity Unit, National Health Ministry, October 11, 2005.

<sup>12</sup> The Federal District (Mexico City) has a special status under Mexican law and is not considered a state. However, for the purposes of policy and lawmaking its processes and powers are comparable to those of the thirty-one states. In the following, unless otherwise indicated, where we refer to "states," "state laws," or "state penal codes," we will be referring to the thirty-one states and the Federal District. The federal nature of Mexico is established in article 40 of the Political Constitution of the United States of Mexico, which reads: "Es voluntad del pueblo mexicano constituirse en una República representativa, democrática, federal, compuesta de estados libres y soberanos en todo lo que concierne a su régimen interior; pero unidos en una federación

Federal Constitution, federal laws, and international treaties.<sup>13</sup> As a consequence of Mexico's federalism, the definition and punishment of crimes is generally left to the state-level authorities, while the national penal code regulates federal crimes, such as drug trafficking, and common crimes committed on exclusively federal territory. Domestic violence is not considered a federal crime, unless committed on federal territory,<sup>14</sup> though the federal government has urged state governments to improve their response to violence against women.

At the federal level, Mexico took some positive steps between 2000 and 2005 toward bringing its policy and legislation in line with international human rights standards on sex equality and the prevention and punishment of violence against women. For example, in 2001, the Federal Constitution was amended to prohibit all forms of discrimination, including on the basis of sex.<sup>15</sup> Also in 2001, the government created the National Women's Institute (INMUJERES), a government agency with ministerial rank mandated to foster gender equity.<sup>16</sup> The government also promulgated a national program for the promotion of equality, which prioritizes the prevention of violence against women.<sup>17</sup> On international women's day in 2002, all national ministers signed a National Agreement for Equity between Men and Women, which requires all state and national government agencies to implement this program.<sup>18</sup> Under the auspices of the

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establecida según los principios de esta ley fundamental." [It is the will of the Mexican people to organize themselves as a representative, democratic, and federal Republic, composed of free and sovereign states in everything that has to do with their internal regime; but united in a federation that is established according to the principles set out in this fundamental law [i.e. the Constitution].]

<sup>13</sup> Political Constitution of the United States of Mexico, article 133: "Esta Constitución Política, las leyes del Congreso de la Unión que emanen de ella y todos los tratados que estén de acuerdo con la misma celebrados y que se celebren por el Presidente de la República, con aprobación del Senado, serán la Ley Suprema de toda la Unión. Los jueces de cada estado se arreglarán a dicha constitución, leyes, y tratados, a pesar de las disposiciones en contrario que pueda haber en las constituciones o leyes de los estados." [This political constitution, the federal laws from the National Congress that emanate from [the Constitution], as well as those treaties that are consistent with the [Constitution] and that have been entered into by the President of the Republic or that will be entered into by him or her, and ratified by the Senate, shall be the Supreme Law of the Union. The judges in each state will work according to this constitution, these laws and treaties, despite any contradictory provisions that may exist in state laws and constitution.]

<sup>14</sup> Domestic violence is sanctioned under articles 33 bis, ter, and quáter, in the Federal Penal Code.

<sup>15</sup> Political Constitution of the United States of Mexico, article 1. Amended through official decree on August 14, 2001. Since 1974, the Constitution has also included the right to equal protection under the law for men and women, as well as the right to decide on the number and spacing of children. Political Constitution of the United States of Mexico, article 4.

<sup>16</sup> Ley del Instituto Nacional de las Mujeres [Law on the National Women's Institute], January 12, 2001, article 4.

<sup>17</sup> *Programa nacional para la igualdad de oportunidades y no discriminación contra las mujeres* (Proequidad) [National Program for Equality of Opportunities and Nondiscrimination against Women], specific objective 7. Available [online] at [http://cedoc.inmujeres.gob.mx/documentos\\_download/100160.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100160.pdf) (retrieved on January 9, 2006).

<sup>18</sup> "Acuerdo Nacional por la Equidad entre Hombres y Mujeres," [online] [http://cedoc.inmujeres.gob.mx/documentos\\_download/100209.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100209.pdf) (retrieved on January 9, 2005).

National Agreement, the federal government in 2002 also launched a five-year plan focused specifically on violence against women.<sup>19</sup> These developments came about largely as the result of decades of pressure from the organized women's movement in Mexico.

### ***State Law and Policy on Domestic Violence***

In several states, law and policy inadequately address the issue of violence against women, and existing protections fall short of Mexico's international obligation to adopt all necessary penal, civil, and administrative provisions to prevent, punish, and eradicate violence against women.<sup>20</sup> In seven of Mexico's thirty-two independent jurisdictions, there is no specific law on the prevention and punishment of domestic violence.<sup>21</sup> Seven states do not recognize domestic violence as a crime.<sup>22</sup> Of the twenty-five states where domestic violence is penalized, fifteen state penal codes require women to suffer "repeated" violence in the family in order for it to be criminal.<sup>23</sup> In eleven states, domestic violence is considered an infraction of the state civil code in addition to a criminal offense,<sup>24</sup> though seven of these states again require the violence to be repeated to merit sanctions.<sup>25</sup>

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<sup>19</sup> INMUJERES, *Programa nacional por una vida sin violencia* [National Program for a Life Without Violence], (Mexico City: INMUJERES, 2002) [online] [http://www.inmujeres.gob.mx/principalesp/Vida\\_sin\\_Violencia.pdf](http://www.inmujeres.gob.mx/principalesp/Vida_sin_Violencia.pdf) (retrieved January 21, 2006).

<sup>20</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted on June 9, 1994, and entered into force on March 5, 1995. The Convention of Belém do Pará was ratified by Mexico on November 12, 1998. Article 7(c) reads: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate such violence, and undertake to: ..(c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish, and eradicate violence against women and to adopt appropriate administrative measures where necessary."

<sup>21</sup> Aguascalientes, Baja California Sur, Chihuahua, Hidalgo, Nayarit, Nuevo León, and Yucatán. Chihuahua, Hidalgo, and Nuevo León all have bills pending in the local congresses that would create specific legislation on domestic violence.

<sup>22</sup> Baja California Sur, Campeche, Colima, Hidalgo, Querétaro, Quintana Roo, and Tlaxcala. Lesions and assault are criminalized under all state penal codes and these provisions also apply to violence in the family. However, due to the entrenched acceptance of violence against women in Mexican society—as expressed by all interviewees—specific legislation is needed to prevent and eradicate this form of violence. Moreover, violence in the family requires a comprehensive policy response, including social services, health services, and access to justice.

<sup>23</sup> Baja California, Coahuila, Durango, Guerrero (violence must be repeated and "intentional"), Jalisco, Morelos, Nayarit, Nuevo León (violence must be reiterated and "grave"), Puebla, Sinaloa, Sonora (violence must be repeated and "intentional"), Tamaulipas, Veracruz, Yucatán, and Zacatecas. Additionally, in Tabasco, while domestic violence does not have to be "repeated" to be criminal, it does have to "make conjugal life impossible."

<sup>24</sup> Aguascalientes, Chiapas, Chihuahua, Federal District, Durango, Michoacán, Quintana Roo (Quintana Roo is the only state that does not mention domestic violence in its penal code, but does consider it an infraction of its civil code), Sinaloa, Sonora, Tamaulipas, and Veracruz.

<sup>25</sup> Aguascalientes, Durango, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Veracruz.

In addition to cumbersome legal definitions of domestic violence in some states, public officials at times invent further requirements for victims to comply with. For example, where the law requires domestic violence to be “repeated,” public officials told Human Rights Watch that a victim would have to file at least three reports in order for the assault to merit sanctions as domestic violence.<sup>26</sup> Such a reporting requirement is not included as a condition for sanctions in the state penal codes or criminal procedure codes in any of the seventeen states where the penal or civil codes require violence to be “repeated.”

Many interviewees further lamented the narrow concept of violence prevalent among public officials, also not mandated by state laws. Where domestic violence is criminalized specifically, the sanctions generally apply to emotional violence as well as physical violence, though, according to experts working on domestic violence, only physical violence is taken even somewhat seriously by public officials. “Insofar as there are no clear marks on the body, nobody sees the problem,” said Marta Gómez Silva, a psychologist who treats victims of violence for an NGO in Mexico City.<sup>27</sup> Leslie Alonzo Pérez, a legal advisor from the state Integrated Family Services agency (DIF) in Morelos, exclaimed: “[Many public prosecutors] don’t understand that family violence isn’t just physical, so if they don’t see a black eye, they send them [the victims] away.”<sup>28</sup>

Moreover, even where the violence is physical and the signs of it are visible, women and girls say that public prosecutors and police often fail to investigate complaints of domestic violence. “Ana Díaz,” a twenty-nine-year-old woman from Yucatán, had experienced this first hand: “One time I had gone to declare against my [now] ex-husband, and I was all black and blue, all beaten up. And they said to me that there wasn’t enough proof. ... They took my declaration and did nothing.”<sup>29</sup>

In the health system, the response to domestic violence is more adequately and evenly regulated than in the justice system. This happens notably through a national norm on medical assistance to victims of domestic violence, which is mandatory for all public and

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<sup>26</sup> Human Rights Watch interviews with Armando Villarreal, Attorney General, Attorney General’s Office of Yucatán, Mérida, Yucatán, December 12, 2005; and with María de los Angeles Rosales Grahanda, Titular de la Agencia Especializada en la Investigación de Delitos contra el Orden Familiar [Head of the Specialized Agency for the Investigation of Crimes against the Family Order], Attorney General’s Office of Eastern Morelos, Cuautla, Morelos, December 15, 2005.

<sup>27</sup> Human Rights Watch phone interview with Marta Gómez Silva, psychologist, Ambar, Mexico City, August 18, 2005.

<sup>28</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

<sup>29</sup> Human Rights Watch interview with Ana Díaz, Yucatán, December 2005.

private health providers.<sup>30</sup> The consultation process leading up to the issuing of this norm in 1999 included participation by NGOs that work directly with victims of violence, and that were able to insist on the inclusion of a number of helpful provisions. For example, this norm specifically requires health professionals to seek to determine whether or not a pregnancy can be assumed to be the result of rape or abuse in the family.<sup>31</sup> According to the norm, all health centers and hospitals must establish internal guidelines for referring each presumed victim of domestic violence to the appropriate authorities, including the attorney general's office.<sup>32</sup> The national norm on medical assistance for victims of domestic violence further requires that all health institutions register each case of domestic violence for the purpose of estimating the extent of the problem.<sup>33</sup>

Yet the effectiveness of the norm is undercut by several factors. First, focusing exclusively as it does on domestic violence, it does not address any form of violence that occurs outside the family. At the end of 2005 the norm was under review and Aurora del Rio Zolezzi from the National Health Ministry told Human Rights Watch that this deficiency was likely to be overcome in the revised norm, which in its current draft form focuses on both domestic violence and on sexual violence generally.<sup>34</sup>

Second, the norm is unknown—and therefore not applied—by many health professionals. Most of the state health ministers Human Rights Watch interviewed in the course of this research did not know that their institution was required to keep a register of cases of domestic violence. A study published by the national health ministry in 2003 concluded:

The distribution [of the national norm] and the training of health personnel in the implementation of it have been very precarious. Apart

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<sup>30</sup> Norma Oficial Mexicana NOM-190-SSA1-1999, *Prestación de servicios de salud. Criterios para la atención médica de la violencia familiar*. [Official Mexican Norm NOM-190-SSA1-1999, Provision of health services. Criteria for medical assistance for domestic violence], October 20, 1999. Para. 2 establishes the obligatory nature of the norm.

<sup>31</sup> *Ibid.* Para. 6.5.: "6. Los prestadores de servicios de atención médica deberán observar los criterios que a continuación se indican: ... Para la detección y diagnóstico: ... 6.5. ... Debe determinar si los signos y síntomas que se presentan—incluido el embarazo—son consecuencia de posibles actos derivados de violencia familiar ... ." [6. Health personnel should comply with the following criteria: ... For the purposes of detection and diagnosis: ... 6.5. ... [He or she] must determine if the indicators and symptoms present [in the patient]—including pregnancy—are the result of possible acts of domestic violence ... .]

<sup>32</sup> *Ibid.* Paras. 6.11 and 6.15-6.18.

<sup>33</sup> *Ibid.* Para. 7.

<sup>34</sup> Human Rights Watch interview with Aurora del Rio Zolezzi, deputy director, Gender Equity Unit, National Health Ministry, October 11, 2005.

from laudable exceptions, there are no specific programs to deal with [domestic violence], neither in the public health centers nor in the health centers belonging to the social security system, and health personnel often demonstrate strong resistance to getting involved in an issue that they see as outside their area of competence.<sup>35</sup>

As of January 2006, the national health ministry was distributing a model, first published in 2004, for the application of the national norm to state health ministries, public hospitals, and health centers.<sup>36</sup>

### ***State Law and Policy on Sexual Violence***

Applicable law and policy on sexual violence in Mexico in many states run counter to international human rights standards, notably by defining sanctions for some sexual offenses with reference to the “chastity” of the victim. As with domestic violence, the legal framework on sexual violence varies from state to state. Most states criminalize three types of sexual intercourse: rape (and statutory rape,) incest<sup>37</sup> and “estupro” (intercourse with an adolescent girl through seduction or deceit, as opposed to force). In thirteen states, “estupro” is only a crime when the underage victim is known to live “chastely” or “honestly,”<sup>38</sup> and in at least eleven states “estupro” is not penalized if the perpetrator subsequently marries the underage victim.<sup>39</sup>

Both “rape” and “estupro” are generally considered crimes against the physical or sexual integrity of the victim. Typically “rape” is defined as forced anal or vaginal intercourse involving actual or threatened “physical or moral” violence,<sup>40</sup> while “estupro” is seen as

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<sup>35</sup> INSP, *Encuesta nacional sobre violencia contra las mujeres 2003* [National Survey on Violence against Women 2003] (Mexico City: Instituto Nacional de Salud Pública, 2003), p. 18 (translation by Human Rights Watch).

<sup>36</sup> Human Rights Watch interview with Aurora del Rio Zolezzi, deputy director, Gender Equity Unit, National Health Ministry, October 11, 2005. See also Secretaría de Salud, *Modelo integrado para la prevención y atención de la violencia familiar y sexual* [Integrated Model for the Prevention of and Attention to Domestic and Sexual Violence] (Mexico City: Centro Nacional de Equidad de Género y Salud Reproductiva, 2004).

<sup>37</sup> Children are considered capable of consenting to a sexual relationship once they are above the legal age of consent, even with a parent or a parental figure. Forced sexual relationships between family members is, by law, classified as rape. The age of consent varies from state to state, though a child is most commonly considered capable of consenting to sex when they are twelve years old or older. For a more detailed discussion of the age of consent in Mexico, see below footnotes 46 to 50 and accompanying text.

<sup>38</sup> Aguascalientes, Baja California, Baja California Sur, Coahuila, Colima, Jalisco, Mexico, Nayarit, Querétaro, Quintana Roo, Sinaloa, Sonora, and Veracruz.

<sup>39</sup> Baja California Sur, Campeche, Chiapas, Coahuila, Durango, Guerrero, Jalisco, Mexico, Nayarit, Quintana Roo, and Sonora. Additionally, in Baja California Norte, “estupro” is subject to a higher fine if the perpetrator does not marry the underage victim.

<sup>40</sup> “Moral” violence is generally understood to mean psychological violence or any form of non-physical violence.

intercourse with an adolescent girl<sup>41</sup> obtained through seduction or deceit. “Incest,” on the other hand, is typically not considered a crime against the physical or sexual integrity of the victim, but rather against the family, and is generally defined as “consensual” sex between parents and children or between siblings. Because the crime is defined as an assault on the family unit and because the sexual intercourse is legally defined as consensual, both parties are subject to criminal penalties (including victims under eighteen).<sup>42</sup>

Most states criminalize forced intercourse between family members as rape with extenuating circumstances—as opposed to “consensual” intercourse between family members which under Mexican law would be “incest.” However, Human Rights Watch found that at least in some cases, public prosecutors assume that incestuous sexual relationships are consensual, even when they involve very young children. In Guanajuato, “Ximena Espinosa,” for example, was systematically raped and sexually abused by her father for as long as she could remember and at least since the age of six. As of October 2005, the state was investigating incest charges against her. The charges had apparently been brought after her father accused Espinosa of incest, when he was arrested during investigations into his systematic rapes of her sister. Espinosa’s husband, “Claudio López,” told Human Rights Watch: “The public prosecutor [told us]: ‘Don’t even come down here, because I will call two police officers to arrest her.’”<sup>43</sup>

It should be noted that “incest” as defined in Mexican state laws may include situations that qualify as sexual exploitation or abuse under international law. In its handbook on the implementation of the Convention on the Rights of the Child,<sup>44</sup> the U.N. Children’s Fund (UNICEF) notes that “the definition of sexual abuse of children [for the purposes of the Convention on the Rights of the Child] covers more than non-consensual activities, including sexual activities with children below the age of consent, whether or not they appeared willing or even initiating partners.”<sup>45</sup> This comment would seem to

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<sup>41</sup> The definition of “estupro” generally stipulates that the victim must be within a specific age-bracket. This age-bracket varies from state to state. Generally the victim must be between twelve and eighteen (sometimes sixteen) years old. In some states, such as Colima and Guanajuato and there is no lower age limit.

<sup>42</sup> In this definition, both parties to the sexual relationship have “violated” the family unit. Only underage victims under the age of consent, which differs from state to state, would escape penal responsibility for the crime of “incest.”

<sup>43</sup> Interviews with Ximena Espinosa, Claudio López, and Nadine Espinosa (Ximena Espinosa’s sister), Guanajuato, December 2005.

<sup>44</sup> The Convention on the Rights of the Child (CRC) was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20 1989, and entered into force on September 2, 1990. It was ratified by Mexico on September 21, 1990.

<sup>45</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (New York: UNICEF, 2002), p. 513.

ring particularly true where the sexual relationship in question is between a child and a person in a position of trust or authority, such as a parent, a guardian, or an older sibling. In these situations it is particularly worrisome that Mexican law, instead of protecting the child against this sexual abuse, criminalizes the child's behavior.

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.<sup>46</sup> In twenty-one of Mexico's thirty-two jurisdictions, children are considered capable of consenting to sexual intercourse at the age of twelve,<sup>47</sup> in one jurisdiction the age of consent is thirteen,<sup>48</sup> in seven jurisdiction it is fourteen,<sup>49</sup> and in only one it is fifteen.<sup>50</sup>

While the Committee on the Rights of the Child has not proposed a specific age at which the child has a right (and an ability) to consent to sexual activity, it has, in its concluding observations to specific countries, expressed concern with situations where the age of consent is not defined by law at all,<sup>51</sup> and has, in other reports, recommended that it be set at least at thirteen.<sup>52</sup> The Committee has further expressed concern with inadequate protections from sexual exploitation for older adolescents.<sup>53</sup> Similarly, a UNICEF's handbook concludes:

[Limits on the age of consent] need to be judged against the overall principles of respect of the child's evolving capacities, and for his or her best interests and health and maximum development. Sexual exploitation of children may well continue beyond any set age for

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<sup>46</sup> Nayarit and Querétaro.

<sup>47</sup> As based on the definition of statutory rape or the age under which the victim is assumed to be below puberty. Aguascalientes, Baja California Sur, Campeche, Coahuila, Chiapas, Federal District, Guanajuato, Guerrero, Hidalgo, Jalisco, Michoacán, Morelos, Oaxaca, Puebla, San Luís Potosí, Sinaloa, Sonora, Tabasco, Tampaulinas, Yucatán, and Zacatecas.

<sup>48</sup> Nuevo León.

<sup>49</sup> Baja California Norte, Colima, Chihuahua, Durango, Quintana Roo, Tlaxcala, and Veracruz.

<sup>50</sup> Mexico state.

<sup>51</sup> See, for example, Committee on the Rights of the Child, "Concluding Observations of the Committee on the Rights of the Child: Sweden," *U.N. Doc. CRC/C/15/Add.2*, January 28, 1993, para. 8.

<sup>52</sup> See, for example, Committee on the Rights of the Child, "Concluding Observations of the Committee on the Rights of the Child: Philippines," *U.N. Doc. CRC/C/15/Add.29*, February 15, 1995, para. 18.

<sup>53</sup> See, for example, Committee on the Rights of the Child, "Concluding Observations of the Committee on the Rights of the Child: Sweden," *U.N. Doc. CRC/C/15/Add.101*, May 10, 1999, para. 22.

consent, and the protection of article 34 [protection against sexual exploitation] exists up to the age of 18.<sup>54</sup>

In the course of this research, many public officials expressed to Human Rights Watch a seemingly wholesale acceptance of all children's ability to consent to sex, even with a parent, guardian, or sibling, after the age of twelve. Such a perception is not consistent with the protections contained in the Convention on the Rights of the Child. It is, however, partially condoned by Mexican law. Most Mexican state penal codes distinguish between statutory rape (intercourse with a child under the age of consent); "incest" (entirely voluntary intercourse between a parent and a child over the age of consent or between siblings over the age of consent); rape (intercourse imposed through moral or physical violence or threat of violence); and rape with extenuating circumstances (rape committed by a parent or a parental figure). This means that a parent, under current Mexican law, only is subject to penal sanctions for intercourse with his or her child if the child is under the age of consent or if a prosecutor is able to establish the use of psychological or physical violence.

In addition, husbands could until recently demand intercourse with their wives for purposes of procreation without being charged with rape. In 1994, the Supreme Court of Justice of the Nation ruled that forced sexual relations within a marriage could not be considered "rape," but rather an undue exercise of conjugal rights, because the purpose of marriage was procreation.<sup>55</sup> The Supreme Court clarified that imposed intercourse between spouses was rape if it was "against nature," defined as "not within those [forms] permitted for purposes of procreation." This decision was overturned by the same court in November 2005—the Supreme Court now says that forced intercourse in marriage is rape.<sup>56</sup> While this development is positive, the implications of the new jurisprudence will likely not be felt in women's lives for some time. Some married women who report sexual violence in the home to the authorities are still told to go home, sort it out with their husbands, or stop provoking rape.<sup>57</sup>

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<sup>54</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (New York: UNICEF, 2002), p. 513.

<sup>55</sup> Supreme Court of the Nation, 10/94, reprinted in *El Universal* on November 4, 2005 [online] [http://www.eluniversal.com.mx/nacion/vi\\_131641.html](http://www.eluniversal.com.mx/nacion/vi_131641.html) (retrieved January 12, 2006).

<sup>56</sup> Carlos Avillés, "La violencia sexual en el matrimonio será delito" [Sexual violence in marriage is now a crime], *El Universal* [Mexico], November 4, 2005.

<sup>57</sup> Human Rights Watch interviews with Andrea Sánchez, Guanajuato, December 2005; Ximena Espinosa, Guanajuato, December 2005; and with Ana Díaz, Yucatán, December 2005.

## ***Lax Implementation of Legal Standards***

Even the existing inadequate laws for the prevention and punishment of violence against women are often not properly implemented. NGO representatives, lawyers and even public officials mentioned three main problems in this regard:

1. A pervasive distrust of rape victims' testimony;
2. The inaccessibility of attorneys general's specialized agencies on sexual crimes; and
3. Lack of training on gender-based violence for public prosecutors, forensic doctors, and other expert witnesses.

In 2005, U.N. Special Rapporteur on Violence against Women Yakin Erturk, conducted a mission to Mexico and confirmed the prevalence of these problems. She added that police and prosecutors often are noticeably reluctant to receive and follow up on complaints related to violence against women.<sup>58</sup>

## ***Pervasive Distrust of Rape Victim Testimony***

*Generally, [rape victims] are very scared and very angry because of how they have been treated at the public prosecutor's office. ... They come here as survivors. Not only of the rape but of all of those people [from the authorities]. ... [Sometimes] they are blamed, even by the [forensic] psychologist: what were they doing outside at that time of night, why were they wearing a mini-skirt, why did they not scream.*

—Nurse at a public hospital in Morelos<sup>59</sup>

Human Rights Watch research indicates that rape victim testimony often is treated as highly suspicious by prosecutors and courts, more so than testimony on other types of crimes. Routinely, women are aggressively questioned on whether the intercourse was really involuntary, whether the victim somehow provoked or deserved the assault, and whether the assault occurred at all. Fair trial standards, of course, require that convincing evidence be presented to prove all elements of a crime, but the distrust of victim's rape testimony seems to be taken to an extreme, ultimately impeding fair trials. "They treat you according to how they see you, how you dress, if you dress

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<sup>58</sup> United Nations, "Special Rapporteur on Violence against Women Ends Visit to Mexico," Press Release, March 2, 2005.

<sup>59</sup> Human Rights Watch interview with Rosalena Cabañas, nurse, General Hospital Sí Mujer, Cuautla, Morelos, December 16, 2005.

provocatively,” said “Blanca Valdés,” who had decided not to report a rape because the police and public prosecutors all but ignored her when she tried to file a complaint against her husband after he hit her with a hammer. “They minimized everything I said,” she continued. “And them minimizing me is part of [the injustice].”<sup>60</sup>

“Marta Chávez,” a fourteen-year-old girl in Mexico state who was raped repeatedly over three years by her uncle and cousin, personally experienced mistrust and mistreatment at the public prosecutor’s office in 2005, leading ultimately to the denial of a legal abortion. Chávez was assisted by representatives of a nongovernmental organization, Network for Sexual and Reproductive Rights in Mexico (ddeser, Red por los Derechos Sexuales y Reproductivos en México [ddser is not capitalized]). A ddeser representative, who was present during Chávez’ interviews with the public prosecutor, said:

The public prosecutor [who took down the complaint] confronted the girl, saying things like: ‘Let’s see, tell me the truth: what did you do, eh? Because listen, you are fourteen years old, and you knew what [sex] was from you were ten.’ ... He also said to her: ‘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.<sup>61</sup>

In her 1997 report to the U.N. Commission on Human Rights, then-Special Rapporteur on Violence against Women Radhika Coomaraswamy described this type of dismissive and disparaging attitude toward rape victims by public authorities as a form of discriminatory behavior that “greatly influence[s] whether the woman victim will pursue her complaint.”<sup>62</sup>

José Manuel López, president of an NGO that has worked with victims of violence in Jalisco since 1989, told Human Rights Watch that he routinely witnessed the mistreatment of rape victims due to skepticism about their testimony. Some years back,

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<sup>60</sup> Human Rights Watch interview with Blanca Valdés, México City, October 2005.

<sup>61</sup> The public prosecutor denied Chávez a legal abortion, because, he argued, if Chávez had the abortion, her father would lose custody over her and her sister. There is nothing to sustain this claim in the law. E-mail message from Lydia Miranda, assistant to the director, Equidad de Género: Ciudadanía, Trabajo y Familia [Gender Equity: Citizenship, Work, and Family] to Human Rights Watch, November 10, 2005 [including information on seven cases of women and girls seeking legal abortions in Mexico City, Mexico state, and Morelos. All seven rape victims were personally accompanied by representatives for ddeser].

<sup>62</sup> Commission on Human Rights, “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy,” U.N. Doc. E/CN.4/1997/47, February 12, 1997, paras. 24-25.

he personally witnessed the mistreatment of an elderly rape victim at the attorney general's office in Guadalajara:

[A]n old, poor woman came in to report a rape, and the public prosecutor [taking her statement] gets up. He says: "Old woman, how do you expect me to believe that you were raped? Hey, so-and-so [signaling a male colleague], look at her: would you feel like raping her?" And the woman got so upset, she left [and didn't report the crime].<sup>63</sup>

López continued that he at times felt conflicted about encouraging victims of violence to seek justice "considering how they are treated [by the authorities]."

Paradoxically, the Mexican legal system which generally criminalizes abortion contributes directly to a particularly pronounced distrust of pregnant rape victim testimony. Lorena Menchaca, state psychological expert witness in Cuautla, Morelos, explained: "With the lawyers, the fear is always that the woman was not really abused but that it is the result of a consensual relationship, and then [abortion] is no longer legal."<sup>64</sup> Ultimately, the remedy to this perverse dynamic is for Mexican authorities to de-link rape and abortion through laws providing broader access to abortion. Even under the current legal regime, however, it is incumbent on prosecutors and other judicial system personnel to give priority to ensuring that pregnant rape victims are able to exercise their right to a legal and safe abortion. The alternative is forcing victims to bear the often devastating consequences.

A common consequence is that the fear of mistreatment at the attorney general's office discourages many rape victims from filing official complaints. Marta Torres Falcón, a professor at the Colegio de México University in Mexico City who has conducted detailed research on access to justice for rape victims, said that some rape victims overcame their fear when they found out they are pregnant, because they wanted to access the legal abortion services they are entitled to by law. But Torres said these rape victims are doubly suspected of lying: "The public prosecutors say that the women are

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<sup>63</sup> Human Rights Watch interview with José Manuel López, president, Centro de Orientación y Prevención de la Agresión Sexual [Center for Education against and Prevention of Sexual Aggression, CIPAS], Guadalajara, Jalisco, December 5, 2005.

<sup>64</sup> Human Rights Watch interview with Lorena Menchaca, forensic psychologist, Cuautla, Morelos, December 16, 2005.

lying. ‘Why didn’t she report this before?’ ... The prosecutors say to me: ‘Eighty percent of the women lie. We have to be very smart to make sure they don’t cheat us!’”<sup>65</sup>

María Luisa Becerril, director of an NGO that works directly with victims of violence in Morelos, agreed: “No one believes the women, not in the judicial system, not in the health sector. ... [Public prosecutors say:] ‘And what if she is lying? What if it wasn’t rape, and she wanted it [the sexual relation].’ ... Very few doctors put themselves in the place of the women to understand that a pregnancy that is the result of rape really must be horrible.”<sup>66</sup>

Moreover, the limitations on legal abortion are sometimes converted into a justification for decidedly unwarranted legal investigations and subsequent delay. In a specific case in Guanajuato, for example, the public prosecutors seized upon the fact that the rape victim already had a child—and therefore obviously was not a virgin—to cast doubt on the involuntary nature of the rape. Verónica Cruz, from an NGO that works for access to legal abortion after rape in Guanajuato, personally provided the rape victim with emotional support and assistance. She recalled: “The issue of [procuring a legal abortion] became secondary, it was all about making them see that this [the rape] was a crime. ... They said that if she already had one child, it was because she wanted [sex].”<sup>67</sup> Cruz noted that the distrust of the rape victim’s testimony in this case effectively made a legal abortion impossible: “Three months went by with this [trying to prove she was lying], and then there was nothing to do [because the pregnancy was too advanced for a safe abortion.]”<sup>68</sup> In this case, the twenty-nine-year-old rape victim was found to have a mental capacity of a ten-year-old girl and incapable of consenting to sexual intercourse, which under Guanajuato’s penal code converted the crime committed against her into statutory rape.<sup>69</sup> Since no one refuted that sexual intercourse had taken place, the authorization for a legal abortion could have been given directly.

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<sup>65</sup> Human Rights Watch phone interview with Marta Torres Falcón, professor, Colegio de México, Mexico City, September 29, 2005.

<sup>66</sup> Human Rights Watch phone interview with María Luisa Becerril, director, Comunicación, Intercambio, y Desarrollo Humano en América Latina [Humane Communication, Exchange, and Development in Latin America, CIDHAL], Cuernavaca, Morelos, August 26, 2005.

<sup>67</sup> Human Rights Watch interview with Verónica Cruz, director, Centro Las Libres [Free Women Center], Guanajuato, October 2, 2005.

<sup>68</sup> Ibid. The rape victim mentioned ended up having to carry the pregnancy to term, and gave the child up for adoption. Human Rights Watch interview with Martha Macias [the rape victim’s mother], Guanajuato, October 2005. The public authorities in Guanajuato maintain that the rape victim, in this particular case, voluntarily opted for an adoption. Human Rights Watch interview with Miguel Valadez Reyes, former attorney general, now advisor to the Governor, Governor’s office of Guanajuato, Guanajuato, Guanajuato, October 6, 2005. The legal file for this case, on file with Human Rights Watch, indicates that the rape victim petitioned for a legal abortion.

<sup>69</sup> Penal code for Guanajuato, article 181.

The notion that women or girls who are not virgins could not possibly have been raped finds its most direct expression in the forensic medical reports used in many states. Generally, during the investigation of a rape, public prosecutors ask a forensic doctor affiliated with the attorney general's office to examine the victim and answer of specific questions.<sup>70</sup> Salvador Díaz Sánchez, a forensic doctor in Jalisco, explained that existing guidelines do not require forensic doctors to check for signs or symptoms of forced vaginal penetration; they require the doctor to evaluate if and when the victim was "devirginized."<sup>71</sup> Other states ask for similar information from forensic doctors, implying a continued focus on rape as an attack on the victim's chastity (and her family's honor) and not on her physical integrity.

### ***Other Barriers to Reporting Rape***

Human Rights Watch found that specialized prosecutor agencies on sexual violence, where they exist, were inaccessible to many rape victims. Such agencies often were designated or seen as the only place to report sexual violence, thus further impeding justice for rape cases.

Armando Villarreal, attorney general for Yucatán, told Human Rights Watch that the only place to report a sexual crime in Yucatán (a state the size of Switzerland) would be in the one specialized agency in that state in Mérida: "There is no other place in the whole state where you can report a crime of this nature."<sup>72</sup> The human rights ombudsperson in Yucatán, Sergio Salazar Vadillo, reflected on this lack of accessibility:

More than 50 percent of [Yucatán's] population lives outside Mérida. ... When a person goes to report a sexual crime in rural areas, they say: "Go to Mérida." ... Already, it is difficult enough to get people to report [sexual violence] in the first place. And to get them to go to Mérida; forget about it!<sup>73</sup>

Salazar told Human Rights Watch that the mother of an adolescent rape victim had filed a complaint with his office in 2000 after prosecutors at the local attorney general's office

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<sup>70</sup> The attorney general's office in most states is affiliated with a number of forensic doctors who routinely are asked to provide expert testimony on criminal cases.

<sup>71</sup> Human Rights Watch interview with Salvador Díaz Sánchez, forensic doctor, Area Médico Forense del Instituto Jalisciense de Ciencias Forenses [Medical Forensic Area of the Jalisco Institute of Forensic Science], Guadalajara, Jalisco, December 5, 2005.

<sup>72</sup> Human Rights Watch interview with Armando Villarreal, attorney general of Yucatán, December 12, 2005.

<sup>73</sup> Human Rights Watch interview with Sergio Salazar Vadillo, presidente, Comisión de Derechos Humanos del Estado de Yucatán, December 13, 2005.

in Maxcanú, 80 kilometers from Mérida, had insulted her and refused to record her complaint. The state's human rights ombudsperson's office issued a recommendation on this case in 2002, stating *inter alia* that the attorney general's office should file administrative charges against the public prosecutors who had refused to take the complaint and who had channeled the underage rape victim and her mother to Mérida.<sup>74</sup> This recommendation was rejected by the attorney general's office, which, according to Salazar, issued a letter to the human rights ombudsperson suggesting that things were fine as they were.<sup>75</sup>

Some women told Human Rights Watch that they had had to file the same complaint twice because the public prosecutors in the attorney general's office closest to their home had not acted upon the initial complaints. "My mother first went to [the specialized agency in town in Guanajuato]," said "Socorro Salazar," sister of a mute rape victim. "And they didn't pay any attention to her. They said they needed more proof [but didn't investigate]. ... And they said: 'No, ma'am, we can't do anything for you.' ... That's when, because we have family in [a larger city in Guanajuato], my aunt said that she was going to find out what to do there. ... And [the public prosecutors in the second agency] called [the first agency] and found out that they hadn't even opened a file [on the case]."<sup>76</sup> Salazar's mother, "Teresa Pérez," then resorted to filing the case in the second city, and had to pay considerably more on transportation so that she and her daughter could attend legal depositions and be present for required forensic tests. Salazar lamented: "He [the rapist] says: 'Let's see when she [my mother] gets tired [of traveling to the public prosecutor's office].' Because we don't have any money and he does."<sup>77</sup>

### ***Undue Emphasis on Reconciliation and Mediation***

Social workers, lawyers, and NGO representatives told Human Rights Watch that public prosecutors often tell victims of domestic and sexual violence to reconcile with the aggressor, in particular if he is a family member. In some states, public prosecutors act as mediators between victims and assumed perpetrators.

Rocio Corral Espinosa, director of an NGO in Mexico City that works with victims of violence, saw the emphasis on reconciliation and mediation as intimately related to impunity: "There is no national law against violence in the family.... There is no

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<sup>74</sup> Comisión de Derechos Humanos del Estado de Yucatán, Recommendation 14/2002, Case 1311/III/2000, December 13, 2002, First Recommendation.

<sup>75</sup> Human Rights Watch interview with Sergio Salazar Vadillo, presidente, Comisión de Derechos Humanos del Estado de Yucatán, Mérida, Yucatán, December 13, 2005.

<sup>76</sup> Human Rights Watch interview with Socorro Salazar, state of Guanajuato, December 2005.

<sup>77</sup> *Ibid.*

guarantee that women have any access to justice. ... Some judges send them directly to family therapy, and there are public prosecutors who tell the women to go home.”<sup>78</sup> José Manuel López, an NGO representative from Jalisco, echoed this: “If a woman goes to report [violence] at the public prosecutor’s office, they ask: ‘And what if you are going to end up alone? Much better to forgive him.’”<sup>79</sup> Ana María López, from the Federal District government’s Women’s Institute in Mexico City, agreed: “There are still a lot of people in the judicial system who are not very sensitive. ... If we send [victims of violence] alone to the prosecutor, the prosecutor will say: ‘Why don’t you go back to your husband? It would be better if you just went home.’”<sup>80</sup>

However, when victims report violence, they have often suffered years of abuse. “The state policy is to tell the man to change his behavior, and tell the women to go home [to the abusive man],” said Juliana Quintanilla, coordinator for the Independent Commission for Human Rights in Morelos, an NGO. “But we know that when she [finally] reports the violence, it is because she has come to the end.”<sup>81</sup> Fernando Toranzo Fernández, head of public health services in San Luis Potosí, agreed: “The victims come [to us] when they are at the point of not being able to tolerate any more. And if you do a study of each case, you will find years of abuse and violence in each one.”<sup>82</sup>

Undue emphasis on reconciliation and mediation is problematic for a number of reasons. Victims of domestic and sexual violence are unlikely to file a report unless the aggressor is a repeat abuser or the rape or violence was committed by a stranger. Further, an emphasis on reconciliation contributes to the pervasive notion that “low levels” of violence or sexual abuse in marriage are unavoidable and therefore not criminal. Insistence that the female victim negotiate with the aggressor can also lead to further abuse, and assumes that the victim and the perpetrator of the crime are equally empowered to negotiate their relationship. In fact, while voluntary mediation certainly should be offered by the state, undue emphasis on mediation can perpetuate an existing power imbalance, especially if not accompanied by policy measures that offer real

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<sup>78</sup> Human Rights Watch phone interview with Rocio Corral Espinosa, director, Centro de Apoyo a la Mujer Margarita Magón [Center for Assistance to Women Margarita Magón], August 18, 2005.

<sup>79</sup> Human Rights Watch phone interview with José Manuel López, president, CIPAS, Guadalajara, Jalisco, August 19, 2005.

<sup>80</sup> Human Rights Watch interview with Ana María López, coordinator, Área de Asesoría Jurídica y Orientación Integral [Area for Judicial Support and Holistic Orientation], Instituto de la Mujer del Distrito Federal [Women’s Institute for the Federal District], October 11, 2005.

<sup>81</sup> Human Rights Watch phone interview with Juliana Quintanilla, coordinator, Comisión Independiente de Derechos Humanos de Morelos, Cuernavaca, Morelos, August 23, 2005.

<sup>82</sup> Human Rights Watch phone interview with Fernando Toranzo Fernández, general director, Public Health Services, Healthy Ministry for San Luis Potosí, San Luis Potosí, December 1, 2005.

alternatives to staying in an abusive relationship. Such measures might include the availability of long-term shelters, and economic support for single parents.

Ulises Sandal Ramos Koprivitza, human rights director for the attorney general's office in the Federal District, acknowledged the dynamics of the situation, yet did not see this as contradicting an institutional policy to promote conciliation over justice. Ramos said that the Federal District since 2004 had employed a policy that encourages all non-serious crimes (of which domestic violence is considered one) to pass through mediation. "Criminal punishment should be the last option. This is in order to open the door for other types of alternatives of conflict resolution," he said. Later in the interview, however, he noted that "the victim [of domestic and sexual violence] comes to us when the aggressor has abused them once too often or is continually abusing them."<sup>83</sup>

### *The Cost of Justice*

Some of the people Human Rights Watch interviewed said that court fees and corruption are also barriers to women and girls seeking redress. An official at a family services agency in Morelos told Human Rights Watch:

We have sent victims of violence, women, children, to the prosecutor's office, and they send them right back to us. ... [They say that it is] because they don't have the time [to take the report]. [Or] because [the victims] aren't black and blue. ... It's all a lie: it's because there is no money. ... If there is no money, the police department doesn't move, and the public prosecutor doesn't release the file.<sup>84</sup>

Most women we interviewed for this report connected the impunity they faced with their poverty and thus inability to pay court fees, much less bribes: "I hadn't reported the case, because ... I didn't have any money," said "Andrea Sánchez," mother of an adolescent mute rape victim in Guanajuato.<sup>85</sup> "José Ayala," father of an adolescent rape victim in Morelos, told Human Rights Watch that the cost of justice had become too great for his family:

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<sup>83</sup> Human Rights Watch interview with Ulises Sandal Ramos Koprivitza, director for human rights, Attorney General's office for the Federal District, Mexico City, October 10, 2005.

<sup>84</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Dirección Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

<sup>85</sup> Human Rights Watch interview with Andrea Sánchez, Guanajuato, December 2005.

If you can make justice, that's your thing, if not, well, that's how it is. ... I would need to give a person at the court 200 pesos [U.S.\$20] [to continue with the case] and I don't have that. ... They raped my daughter and they abused her, and it is really difficult, but I don't have any money.<sup>86</sup>

### ***Lack of Public Services***

Victims of domestic and sexual violence also risk another more tangible “cost” of attempting to obtain justice for violent crimes: an escalation of the violence. “A lot of the women, we can't convince them to report [the violence],” said Ester Chávez Cano, an NGO representative with more than a decade of experience working with victims of violence. “Because they say it's going to get worse. They even say [the perpetrator] might kill them.”<sup>87</sup> Fernando Toranzo Fernández, head of public health services in San Luis Potosí agreed: “In many cases, the rapist threatens the victim with death threats, and so they don't report the crime.”<sup>88</sup> This fear was redoubled where the perpetrator was a family-member or a person of authority with regard to the victim. “We have pregnant girls here who were impregnated by members of their own family: the stepfather, the uncle,” lamented Iliana Romo Huerta, head of the program for adolescent mothers at a public hospital in Jalisco. “And they don't report the abuse out of fear of retribution.”<sup>89</sup>

Most state authorities did not demonstrate an active interest in the implementation of witness protection programs or other public programs that might protect girls and women from violent retaliation after reporting domestic or sexual violence, let alone show any signs of grappling with the specific difficulties of creating effective programs in the domestic violence context. Bárbara Yllán Rondero, head of the Deputy Attorney General's Office on services for victims in the Federal District, told Human Rights Watch that this could be related to a wish to keep statistics on crime low: “The truth is that the authorities do not want [rape victims] to report, because [figures on reporting] is

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<sup>86</sup> Human Rights Watch interview with José Ayala, Morelos, December 2005.

<sup>87</sup> Human Rights Watch phone interview with Ester Chávez Cano, director, Casa Amiga Centro de Crisis [House of Friends' Crisis Center], Ciudad Juárez, Chihuahua, August 19, 2005.

<sup>88</sup> Human Rights Watch phone interview with Fernando Toranzo Fernández, general director, public health services, Healthy Ministry for San Luis Potosí, San Luis Potosí, December 1, 2005.

<sup>89</sup> Human Rights Watch interview with Iliana Romo Huerta, head, Center for Assistance to Pregnancy in Adolescence, Guadalajara Civil Hospital, Guadalajara, Jalisco, December 7, 2005.

how you measure insecurity. ... It has to do with the politicization of justice and security.”<sup>90</sup>

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<sup>90</sup> Human Rights Watch interview with Bárbara Yllán Rondero, head, Subprocuraduría de Atención a Víctimas de Delito y Servicios a la Comunidad [Deputy Attorney General’s Office on Assistance to Victims of Crimes and Services to the Community], Mexico City, October 11, 2005.

## IV. Abortion in Mexico

Abortion is a crime in Mexico, and women in some states continue to be prosecuted for it. At the same time, all jurisdictions establish some exceptions for the general criminalization of abortion, and all penal codes permit legal abortion for rape survivors. Every single public official Human Rights Watch interviewed for this report conceded that abortion after rape is a woman's right, and public opinion polls consistently show that the majority of the Mexican population supports this right though many are unaware it is currently guaranteed in the law.

As in most countries where abortion is criminalized, estimates on the prevalence of abortion vary widely. In 2003, the Autonomous National University of Mexico (UNAM) published a study estimating that approximately half a million girls and women undergo abortion (both legal and illegal) every year in Mexico.<sup>91</sup> In 2005, UNAM updated its study, concluding that the previous figure had seriously underestimated the prevalence of abortion and that the annual number of abortions in Mexico was closer to one million.<sup>92</sup> This would constitute approximately 30 percent of all pregnancies in a year.<sup>93</sup> An estimate published by the Latin American Center on Health and Women (Celsam) concluded in 2004 that the annual number of abortions was between half a million and 850,000.<sup>94</sup> Meanwhile, government figures dating from 1995 estimate that only 100,000 clandestine abortions are carried out each year.<sup>95</sup>

### ***Legal Framework, Public Debate, and Occurrence***

Abortion has constituted a crime in Mexico at least since 1931. The initial federal law, still on the books, makes abortion punishable with one to three years of imprisonment when carried out with the pregnant woman's consent and three to six years when carried out without consent. Both women and abortion practitioners can be prosecuted for this

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<sup>91</sup> Agencia Mexicana de Noticias, "Se realizan más de 500 mil abortos por año en México," NOTIMEX, April 14, 2003.

<sup>92</sup> Agencia Mexicana de Noticias, "Calculan que en México se practican un millón de abortos al año," NOTIMEX, March 19, 2005.

<sup>93</sup> The annual number of live births was 2,201,000 in 2004. UNICEF, "At a glance: Mexico" [online] <http://www.unicef.org/infobycountry/mexico.html>, (retrieved January 27, 2006). If an additional 1 million pregnancies end in abortions, the total number of pregnancies would be 3,201,000, of which 1 million constitutes a little over 30 percent.

<sup>94</sup> El Universal, "Alarmante cifra de abortos en México," El Universal (Mexico), May 22, 2004. By this calculation, abortions constitute between 15 and 27 percent of all pregnancies.

<sup>95</sup> Agencia Mexicana de Noticias, "Practican en México más de 500 mil abortos clandestinos anuales," NOTIMEX, January 1, 2004.

crime. The 1931 penal code waives all criminal penalties for abortion after rape where the pregnant woman's life would be endangered by a continued pregnancy or where the abortion is the result of negligent behavior on the part of the pregnant woman.<sup>96</sup>

Due to Mexico's federal structure,<sup>97</sup> the federal penal code provisions on abortion are generally irrelevant to the treatment of this issue at state level and would only apply if the abortion were carried out under exclusively federal jurisdiction. Nevertheless, the 1931 penal code has served as a model for state penal codes. As of January 2006, all state penal codes criminalize abortion both for the pregnant woman who procures the abortion and for the health professional who provides it. Applicable penalties vary from state to state, but the most commonly mandated sentence is anywhere between six months and five or six years. In eleven states, as well as in the federal penal code, the sentence is substantially lower when the woman who aborted "does not have a bad reputation," when the pregnancy was the result of a sexual relationship outside of marriage, and when the woman had managed to keep the pregnancy secret.<sup>98</sup>

All states waive penalties for abortion in at least one circumstance: where the pregnancy is the result of rape. Other reasons for waiving the penalty for abortion are:

- the abortion is the result of negligent behavior on the part of the pregnant woman (valid in twenty-nine states);
- to save the life of the pregnant woman (valid in twenty-seven states);
- the fetus has serious genetic malformations (valid in thirteen states);
- to protect the health of the pregnant woman (valid in ten states);
- the pregnancy is the result of non-consensual artificial insemination (valid in eleven states); and
- where the woman already has three other children, for economic reasons (valid only in Yucatán).

For almost seventy years, the laws on abortion remained virtually untouched. A number of important developments on the criminalization of abortion have happened since

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<sup>96</sup> Código Penal Federal [Federal Penal Code], Publicado en el Diario Oficial de la Federación el 14 de agosto de 1931 [Published in the Official Paper of the Federation on August 14, 1931], articles 329-332. "Negligent behavior," while legally imprecise, is generally thought to cover, for example, carrying out strenuous physical activities in order to provoke a miscarriage.

<sup>97</sup> For a discussion of the federal nature of Mexico's government, see above footnote 15 and accompanying text.

<sup>98</sup> Campeche, Durango, Jalisco, Hidalgo México state, Nayarit, Oaxaca Puebla, Tamaulipas, Yucatán, and Zacatecas.

2000. In August 2000, the Guanajuato Congress approved reforms that eliminated the possibility for legal abortion after rape, though the governor of the state vetoed the law a month later amidst national furor.<sup>99</sup> In the same month, after much public debate, the Morelos Congress approved an additional article for that state's criminal procedure code which sets out procedures for access to legal abortion.<sup>100</sup> Despite having threatened to do so, the governor of Morelos, under pressure from women's groups and health advocates, did not veto the new procedures.<sup>101</sup>

Also in 2000, the head of government in the Federal District, Rosario Robles, proposed an amendment to the penal code and the criminal procedure code of the Federal District to lower the penalties for criminal abortion and oblige public health authorities to provide access for abortion after rape.<sup>102</sup> The bill—dubbed the “Robles Law”—was approved by the local congress, entered into force, and was immediately subject to a claim of unconstitutionality before Mexico's national Supreme Court. This lawsuit stalled the implementation of the law until 2002.<sup>103</sup> In January 2002, the Supreme Court declared the law constitutional.<sup>104</sup>

Legal reforms in two jurisdictions were aimed at further guaranteeing the right to abortion after rape. In March 2005, Baja California Sur reformed its penal code to include an additional exception for the criminalization of abortion—where the woman's health is endangered by the pregnancy—and to establish lower penalties for illegal abortion. Baja California Sur also reformed its criminal procedure code to include specific procedures for access to legal abortion after rape. These reforms entered into force in September 2005.<sup>105</sup> Both Baja California Sur (in 2005) and Mexico City (in 2003) reformed their general health codes to include an obligation to provide abortions free of charge in public health institutions in those cases where abortion is not subject to penal sanctions, including after rape.<sup>106</sup> Most developments toward decriminalization of

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<sup>99</sup> Servicio Universal de Noticias, “Aborto-Guanajuato,” August 30, 2000.

<sup>100</sup> Periódico Oficial, Órgano del Gobierno del Estado Libre y Soberano de Morelos [Official paper, Organ of the Free and Sovereign State of Morelos], October 18, 2000.

<sup>101</sup> Servicio Universal de Noticias, “Morelos Reformas Aborto” [Morelos, Reforms, Abortion], October 4, 2000.

<sup>102</sup> Servicio Universal de Noticias, “Robles Iniciativa Aborto” [Robles abortion initiative], August 15, 2000.

<sup>103</sup> See CIMAC noticias, “Especial: Controversia Ley Robles” [Special report: Controversy over Law Robles] [online] <http://www.cimacnoticias.com/especiales/leyrobles/> (retrieved January 12, 2005).

<sup>104</sup> *Ibid.*

<sup>105</sup> Decree 1525, penal code for the state of Baja California Sur, article 252.

<sup>106</sup> Health law of Federal District, article 16 (bis 6) and health law of Baja California Sur, article 62.

abortion have occurred only after years of organizing and pressure by women's rights activists and despite staunch opposition from conservative groups.<sup>107</sup>

The congressional debates on abortion in Guanajuato, Morelos, and the Federal District in 2000 happened in the midst of a larger public debate on abortion after rape, a debate sparked by a controversial case originating in Baja California: the so-called Paulina case. Paulina Ramírez Jacinto was fourteen when she was raped in 1999 in Baja California Norte. Despite having procured—after much back-and-forth—the needed authorization from the state attorney general's office, Ramírez did not receive the abortion to which she was legally entitled because of sustained pressure from anti-abortion groups and individuals. The case caused a national uproar when Ramírez publicized what had happened through the human rights ombudsperson in Baja California Norte and the press.<sup>108</sup> Public opinion surveys at the time and since show the Mexican population to be generally in favor of legal abortion after rape, which may have contributed both to the veto of the stricter law in Guanajuato and to Morelos' governor's backing down on his threat to veto abortion access procedures.<sup>109</sup>

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<sup>107</sup> See Isabel Barranco, "Aborto: Cronología del Debate en México" [Abortion: Timeline of the Debate in Mexico], *La Jornada* [México], September 10, 1998; and Grupo de Información en Reproducción Elegida [Group for Information on Reproductive Choice], "Cronología de la despenalización del aborto en México" [Timeline for the decriminalization of abortion in Mexico] [online] <http://www.gire.org.mx/contenido.php?informacion=42> (retrieved January 12, 2005).

<sup>108</sup> Ramírez denounced the pressure she was under to continue the pregnancy, and in 2002 filed a suit with the Inter-American Commission on Human Rights for violations of the American Convention on Human Rights, in particular with regard to judicial protection, physical integrity, personal liberty, privacy, and religion. See Grupo de Información en Reproducción Elegida [Group for Information on Reproductive Choice], *Paulina: en nombre de la ley* [Paulina: In the Name of the Law] (Mexico City: GIRE, 2000). See Grupo de Información en Reproducción Elegida [Group for Information on Reproductive Choice], *Paulina: Five Years Later* (Mexico City: GIRE, 2005).

<sup>109</sup> "Gobernador mexicano veta radical ley antiaborto" [Mexican governor vetoes radical anti-abortion law] REUTERS, August 29, 2000 [citing survey concluding that 53 percent of Guanajuato's population was against criminalization abortion after rape]; and Roberto Blancarte, "¿Qué piensan los mexicanos sobre el aborto?" [What do Mexicans think about abortion?], *Libertades Laicas*, (Mexico City: Colegio de México, no date) at <http://www.libertadeslaicas.org.mx/pdfS/Salud%20sexual/Qu%EA%20piensan%20los%20mexicanos%20sobre%20el%20aborto.pdf> (retrieved on January 20, 2006) [citing survey concluding that 79 percent of Mexico's population believed abortion should be legal in all or some circumstances].

## **Prosecution for Illegal Abortions**

*Yes, of course we implement [the penal sanctions for illegal abortion]. ... If anyone goes to jail, it is the woman.*

—Deputy Attorney General, San Luis Potosí<sup>110</sup>

Officials in most states told Human Rights Watch they do not maintain specific data on the number of women in prison for the crime of abortion. It is likely that only a small portion of the estimated hundreds of thousands of girls and women who undergo clandestine abortion in Mexico each year go to jail. Nevertheless, prosecutions of girls and women who have had illegal abortions are not unknown.<sup>111</sup> “From August to December 2005, we have had ten women here [charged] for illegal abortion,” said Carmen Hernández Rosas, head of the forensic medical team in Guadalajara, Jalisco.<sup>112</sup>

In stark contrast to the dismissive attitude and delays victims of domestic and sexual violence experience when they seek redress for crimes committed against them, justice seems to be relatively swift when the state decides to prosecute for illegal abortion. In Guanajuato, a public official who spoke on the condition of anonymity, said:

There are five women [currently] in jail for abortion [in Guanajuato]. ... [In one case] a woman ... gets to the hospital with very strong hemorrhaging, and the first thing the doctor does is to report her [to the authorities]. ... They arrest her very fast, and they sent her to jail for a week [pre-sentence detention]. Why is it that when it is a rape case, everything is so negative, [and] they don't do anything. ... And in those cases [of illegal abortion], everything is so fast?<sup>113</sup>

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<sup>110</sup> Human Rights Watch phone interview with Concepción Tovar Monreal, deputy attorney general, Specialized Agency for Sexual Crimes and Family Violence, Attorney General's Office of San Luis Potosí, San Luis Potosí, November 28, 2005.

<sup>111</sup> For a human rights analysis of the prosecution of women for illegal abortion in other Latin American countries, see Human Rights Watch, “Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina,” *A Human Rights Watch Report Vol. 17, No. 1*, June 2005, pp. 65-66; Center for Reproductive Law and Policy (now the Center for Reproductive Rights), *Persecuted: Political Process and Abortion Legislation in El Salvador*, (New York: CRLP, 2001); and Center for Reproductive Law and Policy (now Center for Reproductive Rights), *Women behind Bars: Chile's Abortion Law*, (New York: CRLP, 1998).

<sup>112</sup> Human Rights Watch interview with Carmen Hernández Rosas, forensic doctor, Medical Legal Team, Attorney General's office of Jalisco, Guadalajara, Jalisco, December 5, 2005.

<sup>113</sup> Human Rights Watch interview with [name withheld], Guanajuato, October 2005.

Guanajuato's attorney general denied that any women have been sentenced for abortion over the past five years in that state or are currently in jail for that crime.<sup>114</sup>

“Ana Díaz,” a twenty-nine-year-old woman from Yucatán personally experienced the priority authorities give to investigations of presumed illegal abortions as compared to reports of domestic violence. When she attempted to file a complaint against her now ex-husband for domestic violence, the public prosecutor told her that there was not enough proof, despite the fact that “I was all black and blue, all beaten up.” The public prosecutor took her declaration once, and, according to Díaz, then did nothing. In contrast, one year later when she went to a public hospital with hemorrhaging, the public prosecutors suspected an illegal abortion and seemingly spared no effort to prove her crime:

At 7:30 p.m. they [the doctors] did the curettage [to clean me out]. ... And then it all started, the hardest part. ... I was still more or less sleepy after the anesthesia. ... I saw a person, he said can I ask you questions, and I said yes. ... [I said] I didn't know that I was pregnant. ... In fact, I had gone four times to [the health center linked to my] social security and they had told me it was my colon [that made my stomach hurt]. ... [The public prosecutors] took my declaration, one time. ... Then two more persons came, one was a chemical expert from the public prosecutor's office, and another person also from the public prosecutor's office, and once more I had to give the whole explanation. ... Then two-three hours later, again. I think they came back four or five times. ... At 6:30 in the morning they were still there. ... They signed me out at about 10 o'clock and I still had to go to the public prosecutor's office to see where they had the [fetal remains]. ... There I had to do another interview with who-knows who. ... He said that I couldn't leave because they might need me for another declaration. ... I said that I just wanted to be with my family. From 10 o'clock in the morning until 6 o'clock at night, they finally let us out. ... My sister says that when they came [to my home] to inspect the bathroom, they measured it, they looked through the trash, they collected water from the waste-pipe, to see if there were remains of blood. ... Look at the difference [from when I declared against my husband]!<sup>115</sup>

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<sup>114</sup> Human Rights Watch interview with Daniel Howell Arenas, attorney general of Guanajuato, October 5, 2005.

<sup>115</sup> Human Rights Watch interview with Ana Díaz, Yucatán, December 2005.

In total, Díaz was questioned for more than fifteen hours though ultimately was not charged with a crime.

## V. Obstructing Access to Legal Abortion after Rape

*What caused me the most desperation is that [public prosecutors] show you the law. They say: “She has every right in the world [to have a legal abortion].” And then they deny her access.*

—“Marcela Gómez,” mother of adolescent rape victim<sup>116</sup>

Despite recent improvements in some states, substantial obstacles continue to restrict women’s and girls’ access to legal abortion after rape in Mexico. While obstacles were present in all eight jurisdictions Human Rights Watch researched for this report, they not surprisingly were most pronounced in states without policies regulating access to safe and legal abortion services. In the following sections, we examine those obstacles, beginning with issues women and girls face in states with no guidelines on access to legal abortion after rape, and subsequently in states (and the Federal District) where guidelines do exist.

### **States with No Administrative Guidelines for Abortion after Rape**

Twenty-nine of thirty-two independent jurisdictions in Mexico do not have clear legal or administrative guidelines to guarantee access to safe and legal abortions for rape victims. Human Rights Watch interviewed public officials, experts, as well as rape victims and their families from seven of these twenty-nine states: Baja California Norte, Guanajuato, Jalisco, Nuevo León, San Luis Potosí, and Yucatán.

In these states, rape victims who request a legal abortion effectively face stone-walling by public officials. This was illustrated by the testimony of Hilda Chávez Díaz, a social worker in Mérida, Yucatán. Chávez was head of social work at the state Integrated Family Services (DIF) agency in Yucatán for more than a decade and saw dozens of underage rape victims suffer through unwanted pregnancies. She told Human Rights Watch:

There were several cases where I went back and forth [to try to procure a legal abortion for an adolescent client]. ... [The authorities] said: “For this you need an authorization from such-and-such.” Someone it would take me a long time to get hold of. ... If I went to someone from the justice system, they would say that [legal abortion after rape] is in the

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<sup>116</sup> Human Rights Watch interview with Marcela Gómez, [state withheld], December 2005.

law, but that there are no procedures [to guarantee it]. ... If I went to doctors, [they said] that it would be dangerous for the life of the underage girl [for her to have an abortion]. ... There are several male lawyers [in the Integrated Family Service agency] who say: "Have them get married, have the boy be responsible." ... [In one specific case,] in the Integrated Family Service agency they wanted her to have the child by any means. ... [The authorities finally] said to me that she was many months pregnant now [so the abortion was impossible], and I said: "That's because you have told me no for so many months."<sup>117</sup>

### ***Non-existing or Inaccurate Information on Legal Abortions***

Doctors and representatives for NGOs say that lack of information is the number one reason pregnant rape victims do not ask the authorities for a legal abortion. "Women don't have the information," said Laura Miranda Arteaga, program director for an NGO providing family planning services in Chiapas. "They know perfectly well that they are pregnant, but not that they should have access to an interruption of the pregnancy."<sup>118</sup> Laura Gutiérrez López, from a women's rights organization in Baja California Norte, agreed: "Many women think that it is illegal, even in the case of rape. ... So to start with, there should be more information."<sup>119</sup> Indeed, a 2000 national survey found that 44 percent of all Mexicans are unaware that abortion is legal in some circumstances, including after rape.<sup>120</sup>

Public officials acknowledged to Human Rights Watch that some doctors in the public health system also are not aware that abortion is legal for rape victims. Francisco Uicab Alonzo, responsible for the maternal health policy unit at the health ministry in Yucatán, said: "Many doctors at the operational level don't even know the penal code. [They say:] 'What does the penal code have to do with me?'"<sup>121</sup> This lack of legal knowledge by public health officials influences rape victims' ability to access legal abortion because it directly conditions the treatment rape victims receive when they seek assistance.

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<sup>117</sup> Human Rights Watch interview with Hilda Chávez Díaz, social worker, Mérida, Yucatán, December 12, 2005.

<sup>118</sup> Human Rights Watch phone interview with Laura Miranda Arteaga, program director, Marie Stopes Mexico, San Cristóbal de las Casas, Chiapas, July 27, 2005.

<sup>119</sup> Human Rights Watch phone interview with Laura Gutiérrez López, community organizer, Mujeres Unidas Olympia de Gouges, Tecate, Baja California Norte, July 29, 2005.

<sup>120</sup> "Aborto in México, realidad cotidiana" [Abortion in Mexico: daily reality], CIMAC noticias (México), March 19, 2004; Roberto Blancarte, "¿Qué piensan los mexicanos sobre el aborto?" [What do Mexicans think about abortion?], *Libertades Laicas*, (Mexico City: Colegio de Mexico, no date) at <http://www.libertadeslaicas.org.mx/pdfS/Salud%20sexual/Qu%E9%20piensan%20los%20mexicanos%20sobre%20el%20aborto.pdf> (retrieved on January 20, 2006).

<sup>121</sup> Human Rights Watch interview with Francisco Uicab Alonzo, coordinator of maternal health unit, Ministry of Health of Yucatán, December 13, 2005.

Our interviews reveal that almost no abortion-related information is provided to pregnant rape victims either before or after they file a report with the justice system. Few state governments have invested in campaigns to inform the general public of the content of the law in this respect. Moreover, where rape victims do file a report and find that they are pregnant as a result of the rape, they are seldom presented with the three possibilities that are lawfully before them: 1) to carry the pregnancy to term and keep the infant; 2) to carry the pregnancy to term and give the infant up for adoption; or 3) to have a legal abortion.

Human Rights Watch interviewed rape victims and their family members from eight cases that were reported to the authorities in states without a clear policy framework for access to legal abortion. In only two of those eight cases did the public prosecutors provide information on legal abortion after rape, and in both of these cases, the rape victims received no information on how and where to procure an abortion should they so wish. In one of those two cases, the public prosecutor informed the mother of an adolescent rape victim that she was within her right to demand the service, but that no one would perform it.<sup>122</sup> In the other, the underage rape victim ended up procuring a back-alley abortion, only to be chastised later by the public prosecutor for not waiting for the legal authorization for this abortion—though he had never told her such authorization was forthcoming or even necessary.<sup>123</sup>

Amelia Ojeda, from an NGO working with victims of sexual violence in Yucatán, lamented: “[Public prosecutors] leave the woman with the burden of figuring it out . . . . There are a lot of cases of adolescents impregnated by family members and the public prosecutors don’t even tell them [about the possibility of having a legal abortion]; that is, the people with whom they file the complaint don’t tell them.”<sup>124</sup>

Despite the admitted absence of public information campaigns and individual counseling on legal abortion that could inform victims of their rights, many public officials told Human Rights Watch that the only way for rape victims to access legal abortion services would be for the rape victim herself to make such a request directly to the public prosecutor assigned to investigate the rape. These same officials generally confirmed that access to abortion services after rape is a legally protected right, and did not seem to have thought through (or did not care) how a rape victim would actually exercise a right

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<sup>122</sup> Human Rights Watch interview with Marcela Gómez, [state withheld], December 2005.

<sup>123</sup> Human Rights Watch interview with Miranda Alvarez, Guanajuato, October 2005.

<sup>124</sup> Human Rights Watch phone interview with Amelia Ojeda, lawyer, Unidad de atención psicológica, sexológica y educativa para el crecimiento personal [Agency for Psychology, Sexology, and Education for Personal Development, UNASSE], Mérida, Yucatán, August 26, 2005.

that she may not know exists. The reasons public officials gave for not providing information on the right to abortion after rape can be divided into two main categories: denial that unwanted pregnancies after rape exist, and opposition to anything that might hint at promoting abortion.

### ***Denial that Cases of Unwanted Pregnancy after Rape Exist***

Public officials from various states told Human Rights Watch that access to legal abortion services after rape was mostly a theoretical issue since few, if any, rape victims had ever petitioned for such services. “In terms of rape victims that want to have an abortion, or that ask the authorities for an abortion, we haven’t had any cases,” said Concepción Tovar Monreal, deputy attorney general from San Luis Potosí, in a comment repeated by public officials in Jalisco, Guanajuato, and Yucatán.<sup>125</sup> Tovar Monreal explained that the state government of San Luis Potosí had not informed the public of the possibility of legal abortion, and that access essentially would require each rape victim to know and understand the applicable penal code provisions and demand their implementation without prompting from the public prosecutor.<sup>126</sup>

In a few states, officials seemed at best willfully blind to the existence of the problem. In Guanajuato, for example, Attorney General Daniel Chowell denied repeatedly that any pregnant rape victims had wanted a legal abortion during the past five years,<sup>127</sup> despite ample evidence to the contrary. This evidence included legal files from three cases,<sup>128</sup> Human Rights Watch interviews with past and current public officials in Guanajuato,<sup>129</sup> as well as with rape victims and their families who requested legal

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<sup>125</sup> Human Rights Watch phone interview with Concepción Tovar Monreal, deputy attorney general responsible for the agencies specialized in sexual crimes and family violence, Attorney General's Office, San Luis Potosí, November 28, 2005. Human Rights Watch interviews with Salvador González, attorney general of Jalisco, Guadalajara, Jalisco, December 6, 2005; with Daniel Chowell Arenas, attorney general of Guanajuato, Guanajuato, October 5, 2005; and with Francisco Uicab Alonzo, coordinator of maternal health unit, Ministry of Health of Yucatán, December 13, 2005.

<sup>126</sup> *Ibid.*

<sup>127</sup> Human Rights Watch interview with Daniel Chowell Arenas, attorney general of Guanajuato, October 5, 2005. Confirmed in e-mail message from Daniel Chowell Arenas, attorney general of Guanajuato to Human Rights Watch, November 15, 2005 [maintaining that no such cases existed, after a thorough review of all legal cases under Chowell's authority].

<sup>128</sup> Juzgado de Pra. Inst. Segundo Penal, “Causa Criminal Instruida en Contra de Ernesto Juárez Martínez como Probable Responsable del Delito de Violación Cometido en Agravio de Sandra Isela Rodríguez Macias,” Exp. 66/2003; Procuraduría General de Justicia de Guanajuato, Averiguación previa número [withheld]/2002; and Procuraduría General de Justicia de Guanajuato, Averiguación previa número [withheld]/2005. All on file with Human Rights Watch.

<sup>129</sup> Human Rights Watch interview with [name withheld], [agency withheld], [city withheld], Guanajuato, October 2005 [referencing the existence of several cases within the past five years]; with Miguel Valadez Reyes, advisor to the Governor, Governor of Guanajuato, Guanajuato, Guanajuato, October 6, 2005; and with Manuel Vidaurri

abortion within this period.<sup>130</sup> Further, the former attorney general authored a set of draft procedures to facilitate access to legal abortion only two years earlier, in the midst of a very public controversy over a mentally disabled woman who had been denied access to legal abortion after rape.<sup>131</sup> In another state, Human Rights Watch spoke to a rape victim who was only granted access to public abortion services under the dual conditions that the case not appear in hospital and other records as a legal abortion after rape, and that the rape victim and her family did not divulge information about the case to the public.<sup>132</sup>

Some public officials doubted the sincerity not only of rape victim testimony, but also of their request for voluntary legal abortions. With reference to the case of a mentally disabled woman who had been raped by a neighbor, and whose mother had petitioned for a legal abortion in Guanajuato, Manuel Vidaurri Arechiga, human rights ombudsman for that state, told Human Rights Watch: “The mother got advice from some women’s group. . . . That’s when it suddenly was an issue that she [the rape victim] should have an abortion, because that is what the woman’s group had said [to the rape victim and her mother].”<sup>133</sup> Meanwhile, Martha Macias, the mother of the rape victim to whom Vidaurri made reference, recalled that she had been unambiguous in her petition to the state from the very beginning: “I said I can’t feed another person. And maybe this child will keep reminding [my daughter] of what happened.”<sup>134</sup> In this case, authorization for the legal abortion was not granted or denied because the rape victim’s pregnancy had advanced too far for an abortion to be carried out. The delay occurred in part because

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Arechiga, Human Rights Ombudsman, Human Rights Ombudsman’s Office, León, Guanajuato, October 4, 2005 [both referencing the existence of at least one specific case].

<sup>130</sup> Human Rights Watch interview with Martha Macias [real name, mother to rape victim who was denied a legal abortion], Irapuato, Guanajuato, October 2, 2005; and with “Miranda Alvarez” [mother to rape victim who had asked for a legal abortion in 2005], Guanajuato, October 2005.

<sup>131</sup> Human Rights Watch interview with Miguel Valadez Reyes, former attorney general, now advisor to the Governor, Governor of Guanajuato, Guanajuato, Guanajuato, October 6, 2005. Valadez confirmed that, during his tenure, access to legal abortion had been subject to some public controversy as the result of the case of a mentally disabled rape victim who in the end carried the resulting pregnancy to term. However, he refuted that the rape victim in this case had been denied access to abortion and noted that the development of the draft procedures at that particular time was entirely coincidental. These assertions are contradicted by the existence of a formal complaint launched at the Human Rights Ombudsman’s office by the mother of the rape victim against the attorney general’s office for intimidation, as well as by numerous newspaper accounts.

<sup>132</sup> Human Rights Watch interview with Marcela Gómez, [state withheld], December 2005. This account was confirmed by former public officials as well as lawyers involved in the case, all speaking on the condition of anonymity.

<sup>133</sup> Human Rights Watch interview with Manuel Vidaurri Arechiga, Human Rights Ombudsman, Human Rights Ombudsman’s Office, León, Guanajuato, October 4, 2005.

<sup>134</sup> Human Rights Watch interview with Martha Macias [real name], Irapuato, Guanajuato, October 2, 2005. Macias and her daughter, Sandra Rodríguez, told Human Rights Watch they did not wish their names to be withheld in this report because Rodríguez’ case had been extensively covered in state and even national media in 2003 when Rodríguez failed to obtain an authorization for a legal abortion.

the public prosecutor had provided inaccurate information to the mother: “[The public prosecutor] said to me ‘Abortion is a crime.’ I said that it was rape. She said ‘It doesn’t matter.’”<sup>135</sup>

Despite the lack of reliable data, it is most likely true that the vast majority of girls and women who have gotten pregnant as the result of rape and wish to have an abortion have not petitioned the authorities for access to legal abortion services—in fact, as noted, most victims do not even report the rape itself.

### ***Aversion to Facilitating Legal Abortion after Rape***

Some public officials considered the very suggestion that they might present all legal options to the rape victims as synonymous with promoting abortion. “Really, in San Luis Potosí, no state institution will ever suggest to a woman that she might have an abortion,” stated Beatriz Grande López, head of the state women’s institute in San Luis Potosí.<sup>136</sup>

Insofar as access to abortion is a rape victim’s right, public authorities are in fact duty-bound to enable women to exercise this right, including by providing all necessary information on how to claim it. The U.N. Human Rights Committee clarified in 1981 that state obligations under the International Covenant on Civil and Political Rights (including the rights to physical integrity and equality before the law) “call[s] for specific activities by the States parties to enable individuals to enjoy their rights.”<sup>137</sup>

At times, opposition even to the legality of abortion after rape was voiced from the highest officials in the public agencies most responsible for enforcing the right to legal abortion after rape. “In my understanding ... [abortion] even in the case of rape is a bit debatable [clarifying that he meant it was immoral]” said Armando Villarreal, Attorney

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<sup>135</sup> Human Rights Watch interview with Martha Macias [real name], Irapuato, Guanajuato, October 2, 2005. Macias filed a complaint against the public prosecutor with the state human rights ombudsperson’s office, which recommended that this public prosecutor be sanctioned. Expediente 47/03-S, March 31, 2003, on file with Human Rights Watch. The human rights ombudsperson insisted that the sanction was warranted because the legal investigation process had been too slow, and not because of any improper declarations made regarding abortion. Human Rights Watch phone interview with Miguel Vidaurri Arechiga, human rights ombudsperson, Procuraduría de Derechos Humanos de Guanajuato [human rights ombudsperson’s office of Guanajuato], León, Guanajuato, October 17, 2005.

<sup>136</sup> Human Rights Watch phone interview with Beatriz Grande López, director, Women’s Institute of San Luis Potosí, San Luis Potosí, November 29, 2005.

<sup>137</sup> Human Rights Committee, “General Comment No. 03: Implementation at the national level (Art. 2),” July 29, 1981, para. 1.

General of Yucatán. “I don’t agree with abortion ... but well, it’s in the law.”<sup>138</sup> José de Jesus Becerra, Health Minister of Jalisco, expressed a similar view: “Of course women have a right [to abortion after rape] ... [but] let’s not give them access! Life should be protected from the moment of conception. ... That’s my personal opinion.”<sup>139</sup> While public officials are entitled to hold and express personal opinions, opposition from highly placed officials can contribute to the existing stigma related to abortion, in particular when combined with a failure to effectively assist rape victims in exercising their right to legal abortion as is the case in Jalisco and Yucatán.

### ***Actively Discouraging Abortion after Rape***

With little information to guide them, some pregnant rape victims in Mexico still ask the authorities for assistance in terminating their imposed pregnancy. In practice, there are three public institutions rape victims can turn to for information and assistance:

- 1) state Integrated Family Services (Sistema para el Desarrollo Integral de la Familia, DIF);
- 2) public health centers or hospitals; and
- 3) state public prosecutors’ offices.

Human Rights Watch found that in each of these institutions pregnant rape victims were at times actively discouraged from seeking legal abortion services. While a limited number of individual prosecutors, doctors, and social workers had attempted to help rape victims voluntarily terminate their pregnancies, the standard practice—and sometimes the institutional policy—was to discourage abortions. Instead of receiving much needed support and information, pregnant rape victims often encountered indifference and disregard.

A common manner of discouraging rape victims from filing a complaint, thus in effect closing the door to legal abortion, was to suggest that the rape victims should marry the perpetrator. “I send them on to the public prosecutor,” said a lawyer from the local DIF agency in Pénjamo, Guanajuato, “It’s not my responsibility, so I can’t say to the guy: ‘Just marry her [the rape victim] so that it is resolved.’ That’s for the public prosecutor

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<sup>138</sup> Human Rights Watch interview with Armando Villarreal, attorney general of Yucatán, Mérida, Yucatán, December 12, 2005.

<sup>139</sup> Human Rights Watch interview with José de Jesus Becerra, health minister, Ministry of Health of Jalisco, Guadalajara, Jalisco, December 7, 2005.

to do.”<sup>140</sup> Hilda Chávez Díaz, cited above, mentioned a similar prevailing attitude in the DIF agency in Mérida, Yucatán.<sup>141</sup>

Some public officials provided misinformation about the health consequences of abortion, in particular for adolescent rape victims. Asuzena Leal, from the DIF agency in Jalisco said: “We emphasize a lot how dangerous an abortion can be for an adolescent, because we already know what risk the pregnancy puts them in.”<sup>142</sup> Human Rights Watch interviewed several rape victims and their families from various states who had been told that even an early abortion could be lethal.<sup>143</sup>

In fact, medical studies show that abortions carried out under adequate medical conditions are ten times safer than childbearing up to the sixteenth week of pregnancy, and that the risk of death from abortion remains lower than the risk of death from childbirth throughout most of the second trimester.<sup>144</sup> In particular for adolescent girls, carrying a pregnancy to term can be dangerous.<sup>145</sup> NGO representatives confirmed that public officials often tell even adult rape victims that abortions generally are life-threatening, regardless of the medical conditions in which they are carried out.<sup>146</sup>

Public officials in some states at times expose rape victims, directly or indirectly, to anti-abortion materials and organizations. “[Public prosecutors] send [the rape victim] to organizations ... where they convince her to have the child,” said Amelia Ojeda, a lawyer

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<sup>140</sup> Human Rights Watch interview with [name withheld], lawyer, Desarrollo Integral de la Familia [Integral Family Services agency], Pénjamo, Guanajuato, October 3, 2005.

<sup>141</sup> See above footnote 117 and accompanying text.

<sup>142</sup> Human Rights Watch interview with Asuzena Leal, responsible for the Program for the Attention of Adolescent Mothers, Desarrollo Integral de la Familia de Jalisco [Jalisco Family Services], Guadalajara, Jalisco, December 6, 2005.

<sup>143</sup> Human Rights Watch interviews with Marta Macias [her real name], Guanajuato, October 2005; Miranda Alvarez, Guanajuato, October 2005; Marcela Gómez, [state withheld], December 2005; and with Laura Ruíz, Yucatán, December 2005.

<sup>144</sup> Rachel N. Pine, “Achieving Public Health Objectives through Family Planning Services,” *Reproductive Health Matters*, No. 2 (November 1993), p. 79.

<sup>145</sup> “When a woman is too young, pregnancy—wanted or unwanted—can be dangerous for both mother and infant. Complications of childbirth and unsafe abortion are among the main causes of death for women under age 20. Even under optimal conditions, young mothers, especially those under age 17, are more likely than women in their 20s to suffer pregnancy-related complications and to die in childbirth. The risk of death may be two to four times higher, depending upon the woman's health and socioeconomic status.” [footnotes in original text suppressed] Population Information Program, “Meeting the Needs of Young People,” Population Reports (Baltimore, Maryland: The John Hopkins School of Public Health, 1995) [online] [http://www.inforforhealth.org/pr/j41/j41chap2\\_3.shtml](http://www.inforforhealth.org/pr/j41/j41chap2_3.shtml) (retrieved January 10, 2006).

<sup>146</sup> Human Rights Watch phone interview with [name withheld], medical doctor, Mexico City, August 26, 2005. Human Rights Watch interview with María Luisa Becerril, director, CIDHAL, Cuernavaca, Morelos, October 7, 2005.

from Yucatán who works directly with victims of violence.<sup>147</sup> Ector Jaime Ramírez Barba, health minister of the state of Guanajuato, said that the public authorities routinely send rape victims to VIFAC,<sup>148</sup> an organization that provides assistance for pregnant women on the condition that they do not seek to procure an abortion.<sup>149</sup> “Mariana Guerrero,” a fifteen-year-old girl in Guanajuato who was raped and made pregnant by a neighbor when she was twelve, told Human Rights Watch that the public prosecutor told her that she could give birth at VIFAC. Guerrero said that no one at the public prosecutor’s office or the public hospital had told her she could have terminated the pregnancy.<sup>150</sup>

In Jalisco, the state program for pregnant adolescents employed aggressive anti-abortion strategies to change the minds of those girls who ask for assistance in obtaining a legal abortion, including anti-abortion psychological counseling and exposure to anti-abortion video-tapes. Asuzena Leal relayed to Human Rights Watch the “success” of this approach:

In the last case we had, we showed a video of how an abortion really is,<sup>151</sup> because the [thirteen-year-old] girl came to us with every intention of having an abortion, and the psychological counseling didn’t help [i.e. didn’t convince her otherwise]. And she ended up deciding to keep the child. ... We also 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

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<sup>147</sup> Human Rights Watch phone interview with Amelia Ojeda, lawyer, UNASSE, Mérida, Yucatán, August 26, 2005.

<sup>148</sup> Human Rights Watch interview with Ector Jaime Ramírez Barba, health minister, Guanajuato, Guanajuato, October 4, 2005.

<sup>149</sup> Human Rights Watch phone interview with Virginia Brehm, director, Vida y Familia A.C. (VIFAC), Leon, Guanajuato, October 2, 2005.

<sup>150</sup> Human Rights Watch interview with Mariana Guerrero, Guanajuato, October 2005.

<sup>151</sup> Leal later identified this video as “The Silent Scream,” a video produced in the mid-1980s by anti-abortion organizations as a means to convince women to carry unwanted pregnancies to term, notably by claiming that fetuses experience pain from the eleventh week of the pregnancy. This video is available online at <http://www.silentscream.org/> (retrieved January 3, 2006). “The Silent Scream” has been widely criticized for containing scientific and medical inaccuracies, with medical experts suggesting inter alia that a fetus does not start experiencing pain until much later in the pregnancy. For a summary of this criticism, see “The Facts Speak Louder than ‘The Silent Scream’” [online] <http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/abortion/fact-abortion-silent-scream.xml> (retrieved January 3, 2006). Furthermore on the issue of fetal pain, two independent scientific studies released in 2005, one from New Zealand and one from the United States, note that “there is an emerging consensus that fetuses do not have the brain circuitry to feel pain until 29 weeks into a pregnancy.” Andy Coghlan and Emma Young, “Why fetuses don’t feel pain,” *New Scientist* 8 vol. 187, September 3, 2005.

abortion, but we worked with her psychologically, and in the end she kept her baby. Her little child-sibling.<sup>152</sup>

### ***No Legal Abortion for Incest and “Estupro”***

*If you talk to a girl [who was raped by her father], the first thing that passes through her head is that she wants to have an abortion. But there is nowhere to go.*

—Head of program for adolescent mothers at a public hospital in Jalisco<sup>153</sup>

Only women or girls who have become pregnant as the result of a rape—as defined in the law—have the right to access a legal abortion.<sup>154</sup> “Incest” and “estupro” are defined as wholly or partially voluntary forms of sexual intercourse and therefore less serious crimes than rape.<sup>155</sup> These legal provisions contribute to minimize the seriousness of sexual assaults by providing public prosecutors with an opportunity not to classify involuntary sex against underage victims as rape. Moreover, they deny some underage victims access to essential health services—such as legal abortion—that should be universally available. Further, these provisions have the intended or unintended effect of supporting the myth that many rape victims are lying and in fact were not raped at all.

In some cases investigated by Human Rights Watch, public prosecutors opted to file charges for crimes less serious than rape, thus closing the possibility for a legal abortion, even when rape charges were entirely appropriate. This was the case for “Graciela Hernández,” a sixteen-year-old girl from the state of Guanajuato, who was raped repeatedly by her father for more than a year. Hernández and her mother reported the rapes to the authorities in 2002 when Hernández found she was pregnant. The legal file contains graphic testimony of the abuse, and an unequivocal petition to the authorities for help in terminating the unwanted pregnancy:

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<sup>152</sup> Human Rights Watch interview with Asuzena Leal, responsible for the Program for the Attention of Adolescent Mothers, Desarrollo Integral de la Familia de Jalisco, Guadalajara, Jalisco, December 6, 2005.

<sup>153</sup> Human Rights Watch interview with Iliana Romo Huerta, head, Center for Assistance to Pregnancy in Adolescence, Guadalajara Civil Hospital, Guadalajara, Jalisco, December 7, 2005.

<sup>154</sup> As mentioned in section above on the legal framework for the criminalization of sexual violence, forced sex between family members is generally defined as rape with extenuating circumstances, and abortion would therefore be legal for victims of this crime.

<sup>155</sup> For a definition of these crimes, see above section on the legal framework on sexual violence on p. 16. As mentioned in that section, criminal law in Mexico penalizes three forms of sexual intercourse: rape, “estupro” (intercourse with an adolescent obtained through seduction or deceit), and incest. Only rape is defined unequivocally as involuntary: “estupro” does not involve violence or the threat of violence, and incest is defined as entirely voluntary. Incest and “estupro” are in law subject to shorter sentences than rape.

And I want to declare that I don't want to have the child that I am expecting, because I will not be able to love it. Because it is my father's, I will not be able to love it. And I also don't know how it will come about, if it [the pregnancy] will go wrong. And I also don't want it because I didn't want to be pregnant, and that's why I want you to help me to have an abortion, because as I already said, I don't want to have this child, because it is my father's and I don't want it.<sup>156</sup>

Verónica Cruz, director of an NGO that worked directly with Hernández and her mother in their efforts to obtain a legal abortion, explained to Human Rights Watch that the public prosecutors, after ignoring Hernández for weeks, took advantage of the girl's official testimony that she did not want her father to be detained or incarcerated because she "still love[d] him as a father,"<sup>157</sup> to change the charge from rape to incest:

The mother supported [Hernández] in wanting to have an abortion ... Her lawyer accompanied her daily for a month [to the prosecutor's office] so that they would give her the authorization. ... The prosecutor made a comment that the girl might have wanted to [have sex with her father]. ... That was one of those cases where [the prosecutors] changed the charge from rape to incest, because for incest there is no access to legal abortion, and also it's less [prison] time for the rapist.<sup>158</sup>

Hernández ended up carrying the pregnancy to term, and as of December 2005 was living with her parents, siblings, and child. The Attorney General of Guanajuato denied that this, or any other cases of women or girls asking for a legal abortion after rape during the past five years, existed at all:

Having conducted a review of our archive, I am in a position to be able to reiterate that the Government of Guanajuato does not possess any

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<sup>156</sup> Official testimony from Graciela Hernández [not her real name], sixteen-year-old rape victim, Guanajuato, on file with Human Rights Watch.

<sup>157</sup> Ibid.

<sup>158</sup> Human Rights Watch interview with Verónica Cruz, director, Centro Las Libres [Free Women Center], Salamanca, Guanajuato, October 2, 2005. The difficulties faced by Hernández were confirmed by Hernández' lawyer. Human Rights Watch interview with María Angeles López García, legal coordinator, Centro de Derechos Humanos Victoria Diez (Victoria Diez Human Rights Center), León, Guanajuato, October 12, 2005. Human Rights Watch was not able to corroborate whether the charge was actually changed from rape to "incest," and if so what the motive was, because all public prosecutors Human Rights Watch approached in the state of Guanajuato declined individual interviews.

files from the past five years in which a woman expressly has asked for an authorization to interrupt a pregnancy that was the result of rape.<sup>159</sup>

### *Undue Delays*

In several states, it can take months to get legal authorization for abortion after rape, effectively ruling out the possibility of a safe abortion. An abortion is not a medical procedure that can be put off for an indefinite period. In many cases, as rape victims deal with objections from public prosecutors, public health personnel, social workers, and family members, their pregnancies progress, sometimes to the point of making medical intervention impossible.

In some states, delays are required before legal authorization for abortion after rape can be granted. The attorneys general for Guanajuato, Jalisco, and Yucatán told Human Rights Watch that decisions on access to legal abortion can be made only after full legal investigation of the rape, which typically take months. In some places, officials even implied that the rape trial would need to be completed and there would need to be a conviction before a woman could seek an abortion. “The judge is the only one who can determine if there has been a crime,” said Daniel Chowell, attorney general of Guanajuato.<sup>160</sup> He continued: “Our doubt is if we can authorize [an abortion] during the investigation phase [related to the rape case].” Salvador González, attorney general from Jalisco, agreed: “One would have to be certain that [the pregnancy] was the result of a rape. ... There has got to be some kind of [judicial] sentence [establishing that the pregnancy is the result of rape].”<sup>161</sup> Armando Villarreal, attorney general of Yucatán, insisted further that the suspected rapist would need to be arrested and the criminal investigation would need to be completed before a woman or girl could seek abortion after rape.<sup>162</sup>

All three public officials declined to give an average or median time for a typical rape investigation, but other public officials and NGO representatives told Human Rights Watch that investigations take at least three months and generally more. Claudia Salas

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<sup>159</sup> Letter to Human Rights Watch dated November 8, 2005, in e-mail message from Daniel Chowell Arenas, attorney general of Guanajuato to Human Rights Watch, November 15, 2005. Also see section above on denial of the existence of legal abortion cases, p. 40. This assertion was first made by Chowell in person. Human Rights Watch interview with Daniel Chowell Arenas, attorney general of Guanajuato, October 5, 2005.

<sup>160</sup> Human Rights Watch interview Daniel Chowell Arenas, attorney general of Guanajuato, Guanajuato, October 5, 2005.

<sup>161</sup> Human Rights Watch interview with Salvador González, attorney general of Jalisco, Guadalajara, Jalisco, December 6, 2005.

<sup>162</sup> Human Rights Watch interview with Armando Villarreal, attorney general of Yucatán, Mérida, Yucatán, December 12, 2005.

Rodríguez from the state Women’s Institute in Jalisco, which closely follows legal cases on sexual violence, explained that in her experience the minimum time frame for a typical rape case was three months.

Some state penal code procedures include a time limit of gestation for when a legal abortion may be carried out.<sup>163</sup> Other states do not have a codified time limit, but in practice apply a limit of ten to twelve weeks’ gestation. Since most rape victims do not know they are pregnant until at least one full month into the pregnancy (defined in obstetric terms, and therefore legally, as a six-week pregnancy), waiting for the legal investigation to be completed can in practice make legal abortion impossible.

Meanwhile, rape victims who request a legal abortion with a public prosecutor are often not told that they have to wait for an authorization or denial until the end of the legal investigation. As a direct consequence of the lack of guidelines on the implementation of the right to access legal abortion after rape, rape victims who request an abortion are often sent from one public authority to another, as most officials claim ignorance or a lack of mandate to deal with the issue.

“Abortion is like a hot potato: they pass it from one to the other, and no one wants to have it in the end,” said Salvador Díaz Sánchez, a forensic doctor from the state Institute of Forensic Science in Guadalajara, Jalisco.<sup>164</sup> Laura Gutiérrez López, from a grassroots and advocacy women’s organization in Baja California Norte, agreed: “It doesn’t have to do with a lack of resources but rather with the fact that the public prosecutors don’t authorize [the abortions]. ... Despite the fact that it is legal, they keep putting women off. ... They keep hiding behind the fact that there is nowhere to send the women [for actual services].”<sup>165</sup> José Manuel López, an NGO representative who has worked directly with rape victims for years, added: “The public prosecutors say that they can’t authorize it because [abortion] is not within their mandate, and the doctor says that he needs an authorization. They pass the ball from one court to the other. ... We have

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<sup>163</sup> Baja California (ninety days), Baja California Sur (ninety days), Campeche (ninety days), Colima (ninety days), Chiapas (three months), Chihuahua (ninety days), Federal District (ninety days), Guanajuato (seventy-five days), Puebla (three months), Yucatán (ninety days). The federal penal code establishes the legality of abortion after rape during the first five months of the pregnancy.

<sup>164</sup> Human Rights Watch interview with Salvador Díaz Sánchez, forensic doctor, Area Medico Forense del Instituto Jalisciense de Ciencias Forenses [Medical Forensic Area of the Jalisco Institute of Forensic Science], Guadalajara, Jalisco, December 5, 2005.

<sup>165</sup> Human Rights Watch phone interview with Laura Gutiérrez López, community organizer, Mujeres Unidas Olympia de Gouges, Tecate, Baja California Norte, July 29, 2005.

cases where the women have asked for an authorization, and they don't grant it, and they don't deny it."<sup>166</sup>

This was Sandra Rodríguez' experience in Guanajuato: the legal abortion she asked for was neither authorized nor denied, it was simply declared impossible. Rodríguez, mentally disabled, was twenty-nine years old when she was raped by a neighbor in late 2002. Rodríguez's mother, Martha Macias, discovered that Rodríguez was pregnant a month later, and filed a complaint with the public prosecutor in February 2003.<sup>167</sup> Also in February, when Rodríguez was fifteen-weeks pregnant, the state psychological expert witness noted in her report to the public prosecutor that Rodríguez had a mental development equivalent to that of a ten-year-old girl, and that Macias, as Rodríguez' legal guardian, was asking for assistance in obtaining a legal abortion for her daughter. This request was formalized in a letter from Macias to the public prosecutor's office that same month. The state forensic doctor did not send an evaluation of the medical feasibility of an abortion until twenty-two days later. At this point, Rodríguez was nineteen-and-a-half weeks pregnant. The forensic report concluded that an abortion should not be attempted after twelve weeks' gestation; that Rodríguez already was thirteen weeks pregnant when she filed the complaint in the beginning of February; and that the second trimester of the pregnancy (between twelve and twenty-eight weeks) is considered a period of very high maternal morbidity and mortality if a woman has an abortion.<sup>168</sup> Rodríguez had to carry the pregnancy to term and ended up giving the infant up for adoption.<sup>169</sup>

In another case, in which the rape victim was accompanied by social worker Hilda Chávez Díaz in Mérida, Yucatán, a twelve-year-old pregnant rape victim was passed from one agency to another despite the fact that a medical doctor from a public health facility had recommended a "therapeutic abortion"<sup>170</sup> when the girl was only one-month pregnant. Chávez recalled:

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<sup>166</sup> Human Rights Watch phone interview with José Manuel López, president, CIPAS, Guadalajara, Jalisco, August 19, 2005.

<sup>167</sup> At this point, Rodríguez declared her desire to give the infant up for adoption once the pregnancy was carried to term. It is possible that this stated desire was driven by the threats made to her mother by the public prosecutor involved in the case. See section on intimidation below on p. 51.

<sup>168</sup> All information from legal file on Sandra Isela Rodríguez [real name], Guanajuato, on file with Human Rights Watch.

<sup>169</sup> Human Rights Watch interview with Martha Macias [real name], Irapuato, Guanajuato, December 2, 2005.

<sup>170</sup> In this case, a "therapeutic abortion" refers to an abortion that is necessary to maintain or safeguard the pregnant woman's or child's mental or physical health.

It was a twelve-year-old girl, she came from the rural part of the state. ... The first doctor had seen her [when she was only] one month pregnant. ... The next clinic at eight weeks. ... When she came to Mérida, she was twelve weeks pregnant. ... I went to [the health centers linked to] social security, I went to [the public hospital]. I went to the offices of those in charge. ... Everyone turned their back. They said: “It is not possible.” I brought the article [of the state penal code] where it says that [abortion after rape] is within the provisions. ... In the family services agency [where I worked] they wanted her to have the child by any means. ... They said to me that she was many months pregnant now, and I said: “That’s because you have told me no for so many months.”<sup>171</sup>

### *Intimidation in the Justice Sector*

Several rape victims or family members of underage rape victims described direct intimidation in the justice sector as they sought access to legal abortion for themselves or their loved ones. “Marcela Gómez,” mother of an adolescent rape victim, told Human Rights Watch that a public prosecutor had told her abortion was criminal even in cases of rape: “The [special prosecutor] answered me in an insulting manner that: ‘If you are coming here for me to authorize [a legal abortion], I am not going to authorize anything. I don’t agree with it, and if you want to do it, that’s your business, but it’s a crime.’”<sup>172</sup> Martha Macias, whose daughter had been raped, had a similar experience: “I went to the special prosecutor for the victims of sexual violence. ... She threatened me, she said: ‘Abortion is a crime. We will be watching you. If you have [your daughter] have an abortion, it is a crime.’ ... She threatened me: ‘If [your daughter] has an abortion, you are going to jail.’”<sup>173</sup>

Hilda Chávez, the social worker from Yucatán who personally accompanied many rape victims in their dealings with the justice and health sectors, said threats, in her experience, were common: “[A] thing [doctors and prosecutors] say is that you are risking the life of the underage girl, and that her mother could go to jail [for asking for an abortion for her daughter].”<sup>174</sup>

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<sup>171</sup> Human Rights Watch interview with Hilda Chávez Díaz, social worker, Mérida, Yucatán, December 12, 2005.

<sup>172</sup> Written testimony from Marcela Gómez, [state withheld], shared with Human Rights Watch in December 2005.

<sup>173</sup> Human Rights Watch interview with Martha Macias [her real name], Irapuato, Guanajuato, October 2005.

<sup>174</sup> Human Rights Watch interview with Hilda Chávez Díaz, social worker, Mérida, Yucatán, December 12, 2005.

## **States with Administrative or Legal Guidelines for Abortion after Rape**

Specific procedures on abortion after rape can and at times do lead to better access. In fact, in Morelos and the Federal District (Mexico City), the two jurisdictions Human Rights Watch visited that had legal and policy guidelines on access to legal abortion, access was more available than in states with no legal guidelines or procedures. Moreover, Human Rights Watch found public authorities in these jurisdictions to be considerably more open to dialogue than in other states we visited. In fact, continuous legal and administrative reforms, in particular in the Federal District, indicate a certain amount of political will to address the issue.

Isabel Ocotl, a social worker in Morelos, told Human Rights Watch that the existence of the procedures and of an institutional policy to accompany women and girls through the process had made a very concrete difference: “I have been working for fourteen years in the municipality, and just as long as a social worker ... and I had never before worked on abortion. ... Never, in all of those years, did we work on the right to abortion. That’s only since February [2005], and we are still learning. ... In August [2005] we had a workshop ... we are only just learning about it.”<sup>175</sup> Asa Christina Laurell, health minister for the Federal District commented: “It has helped a lot [on access] that it is an institutional policy.”<sup>176</sup>

Nevertheless, the existence of the formal procedures has not guaranteed unobstructed access to safe and legal abortion for all pregnant rape victims. Human Rights Watch documented three main reasons for this.

- 1) The procedures are long and complicated, involving multiple experts tests and intervention by at least three different state offices;
- 2) They have not been implemented with a view to overcoming the deep-seated societal stigma attached to both rape and abortion; and
- 3) Public officials who do not follow the guidelines or applicable law (including in particular those who ignore or misinform rape victims) are not sanctioned.

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<sup>175</sup> Human Rights Watch interview with Isabel Ocotl, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>176</sup> Human Rights Watch interview with Asa Christina Laurell, health minister, Health Ministry of the Federal District, Mexico City, October 13, 2005.

The result is a lack of information, dismissive attitudes, confusion, and delay, often to the detriment of women's and girls' health and choices. Thus legal abortion continues to be generally inaccessible to rape victims who seek to maneuver through the convoluted process without accompaniment by NGO volunteers or legal advisors who know the procedures well and are able to stand up to obstructive justice officials and service providers.

Our interviews with girls and women confirmed that obstacles in accessing abortion after rape start with a general reluctance to report rape in the first place, a reluctance that is based on prevailing impunity and the presumption—sometimes accurate—that public prosecutors, police officers, and public health providers will require payment in excess of what most rape victims and their families have. Until these underlying issues are addressed, the most diligently implemented guidelines on access to abortion after rape will not lead to unobstructed and equal access.

A medical doctor in Mexico City summed up the obstacles pregnant rape victims continue to face there, despite the specific procedures established in 2002 for abortion after rape:

[After a rape], at first [the pregnant victims] panic, then they are afraid, and then they are completely alone, because they can't tell the family. ... The family says: "You provoked it." ... [Public prosecutors] tell them that they went out in short skirts or "you are to blame because you left work late." ... And secondly, women have to face the Mexican judicial system, where everything has to go through [bribes]. ... And when she goes to the hospital with a situation that is somewhat solved, that is: with an authorization, the doctors themselves don't have an appropriate attitude. They say: "This is very dangerous. You will bleed to death. You won't be able to have children." ... There is also the possibility of conscientious objection. The doctors say: "It may be legal, but I am not doing it."<sup>177</sup>

### ***Unduly Complicated Procedures***

All procedures for access to legal abortion in the three jurisdictions<sup>178</sup> that have issued such a procedure require the rape victim to report the crime to the authorities. While this

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<sup>177</sup> Human Rights Watch phone interview with [name withheld], medical doctor, Mexico City, August 26, 2005.

<sup>178</sup> Baja California Sur, Federal District (Mexico City), and Morelos.

provision is not inherently objectionable or necessarily onerous, the procedures further stipulate that the public prosecutor cannot authorize a legal abortion until the basic elements of the crime are proven, or until it can be presumed that the pregnancy is the result of the reported rape.<sup>179</sup> It is these further legal requirements, which are directly related to the general criminalization of abortion in Mexico,<sup>180</sup> that often cause undue delay.

On the positive side, the criminal procedure codes in the Federal District and Morelos establish an obligation on the part of the public health system to provide both pregnancy tests and—where appropriate—abortion services for rape victims that fall within the codes' criteria. The codes also stipulate that the doctors who would carry out the interruption of the pregnancy must provide information about the risks of abortion, but in a manner that in no way could compel a pregnant woman to avoid having an abortion.<sup>181</sup>

Another positive requirement is the tight timeline for issuing an authorization for the termination of the pregnancy. In all three jurisdictions, the public prosecutor must give his or her authorization for a legal abortion to the pregnant rape victim within twenty-four hours from the moment the victim asks for an abortion, if the requirements established in the code are all complied with.<sup>182</sup>

The procedures include additional requirements that the rape victim declare herself to be pregnant and that the pregnancy be confirmed by a health provider; and that the pregnant rape victim has asked for an abortion. Morelos adds a final requirement: that two specialized medical doctors have issued a clinical report on the health of the

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<sup>179</sup> These basic procedures are established in the state code on criminal procedure or in the state penal code itself. Código de Procedimientos Penales del Distrito Federal [Criminal procedure code for the Federal District], article 131 bis, as added by penal code reform of November 11, 2002; and Código de Procedimientos Penales para el Estado de Morelos [Criminal procedure code for the State of Morelos], article 141 bis, as added by penal code reform published in the official journal on October 18, 2000. Código de Procedimientos Penales de Baja California Sur [Criminal procedure code for Baja California Sur], article 300. Código Penal para el Estado de Baja California Sur, article 165.I., of January 15, 1991.

<sup>180</sup> See above footnote 64 and accompanying text.

<sup>181</sup> Código de Procedimientos Penales del Distrito Federal [Criminal procedure code for the Federal District], article 131 bis. See also Código de Procedimientos Penales para el Estado de Morelos [Criminal procedure code for the State of Morelos], article 141 bis. B. b.

<sup>182</sup> Código de Procedimientos Penales del Distrito Federal [Criminal procedure code for the Federal District], article 131 bis, Código de Procedimientos Penales para el Estado de Morelos [Criminal procedure code for the State of Morelos], article 141 bis.; and Código de Procedimientos Penales de Baja California Sur [Criminal procedures code for Baja California Sur], article 300

pregnant woman and the “product” of the rape.<sup>183</sup> While it is essential to ensure informed consent and evaluate the general health of a patient before any medical intervention, these reports are not necessary for the public prosecutor to authorize the abortion and often cause delays. Counseling, ensuring informed consent, and evaluating the patient’s health prior to the abortion could (indeed should) in all cases be a routine part of carrying out the intervention in public hospitals.

The justice and health authorities in Mexico City have issued their own regulations that add to the requirements of the criminal procedure code. These regulations are of binding character within their respective institutions, though such regulations must always comply with the requirements and obligations set out in the law. In the justice system, guidelines from 2002 give the public prosecutor twenty-four hours to authorize a legal abortion from the moment all requirements in the criminal procedure code are complied with.<sup>184</sup> The guidelines emphasize the public prosecutor’s obligation to ensure that the rape victim receive “impartial, objective, accurate, and sufficient information” about the “procedures, risks, consequences, and effects” of an abortion “as well as about existing alternatives [to an abortion], so that the pregnant woman can make her decision to interrupt or not her pregnancy in a non-coercive, informed, and responsible manner.”<sup>185</sup> This information can be provided by the attorney general’s specialized agency for sexual crimes or by any health institution in Mexico City.

The Federal District’s Health Ministry’s internal guidelines, also from 2002, require hospital personnel to provide the abortion procedure within ten days of the pregnant rape victim’s first visit to the hospital.<sup>186</sup> Apart from a formal authorization from the attorney general’s office, the health system also requires the informed consent of the patient.<sup>187</sup> These guidelines were developed in coordination with, and under pressure from, NGOs with experience in working with victims of sexual violence.

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<sup>183</sup> Código de Procedimientos Penales para el Estado de Morelos [Criminal procedure code for the State of Morelos], article 141 bis.A.

<sup>184</sup> Acuerdo número A/004/2002 del Procurador General de Justicia del Distrito Federal por el que se establecen 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 number A/004/2002 from the Attorney General’s Office for the Federal District in which guidelines are established for the conduct of public prosecutors for the authorization of an interruption of a pregnancy that is the result of rape or of nonconsensual artificial insemination in conformity with that which is established in article 131 Bis of the Criminal procedure code for the Federal District], published in the legal paper of the Federal District on July 11, 2002, Second Paragraph.

<sup>185</sup> *Ibid.*, Third Paragraph.

<sup>186</sup> Health Ministry for the Federal District, Circular/GDF-SSDF/02/02, published in the legal paper for the Federal District on April 23, 2002, Fifteenth Paragraph.

<sup>187</sup> *Ibid.* Third Paragraph (II) and Fourth Paragraph I.

In 2003, a reform of the health law in the Federal District established tighter deadlines, requiring public health authorities to provide free legal abortion services within five days of the rape victim, or other entitled pregnant woman, presenting herself at a hospital.<sup>188</sup> Similar provisions were approved for Baja California Sur in December 2005.<sup>189</sup>

The Federal District health ministry's guidelines have been criticized for imposing an additional requirement on the rape victim in that it sets the time limit for a legal abortion at twenty weeks of gestation,<sup>190</sup> a requirement that is not included in the Federal District's criminal procedure code or the health law. "When more than three months have passed [of pregnancy], [the health system workers] don't want to do it," said Bárbara Yllán Rondero, the head of the attorney general office's deputy office on services to victims. "But the law does not say that."<sup>191</sup> Asa Christina Laurell, health minister for the Federal District, defended the additional requirement as a necessity to ensure the provision of services:

The guidelines ... were developed by a group of authorities and NGOs, so that it would represent a consensus. ... The only thing that was really the focus of discussion around the guidelines was the time limit of twenty weeks. ... Some of the participants [in the drafting process] did not want to have any time limits. ... [We included the limit] first of all because [abortion] becomes more dangerous for the woman ... and also because of resistance from our personnel, even those who were in favor [of legal abortion for rape]. [Resistance] increases noticeably [the further along a pregnancy is].<sup>192</sup>

The administrative guidelines include reasonable provisions that should be part of standard health procedures, such as confirming the existence of a pregnancy and ensuring the rape victims' informed consent to the abortion procedure. Moreover, the fact that the guidelines are so detailed potentially reassures public officials who otherwise could be afraid that they were not operating within the limits of the law.

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<sup>188</sup> Health law of the Federal District, article 16 (bis 6).

<sup>189</sup> Health law of Baja California Sur, article 62.

<sup>190</sup> *Ibid.*, Third Paragraph (I).

<sup>191</sup> Human Rights Watch interview with Bárbara Yllán Rondero, head, Subprocuraduría de Atención a Víctimas de Delito y Servicios a la Comunidad [Deputy Attorney General's Office on Assistance to Victims of Crimes and Services to the Community], Mexico City, October 11, 2005.

<sup>192</sup> Human Rights Watch interview with Asa Christina Laurell, health minister, Health Ministry of the Federal District, Mexico City, October 13, 2005.

However, as currently stated and implemented the procedures create a maze of sometimes duplicate requirements that can cause delays, despite the specific time limits they include. Moreover, our research indicated that rape victims of all ages found it difficult to navigate the requirements by themselves—and they are often alone.

### *Illegal Delays*

The guiding principle that rape victims' request for legal abortions be approved in timely fashion is at times infringed even when the law or administrative guidelines establish a clear timetable. “[Rape victims] go straight for an illegal [i.e. unofficial] abortion, because the legal process is very slow, and so when, in the end, they are told ‘yes,’ [then] they can’t have the abortion [anyway, because the pregnancy is too advanced],” said Juliana Quintanilla, head of a human rights organization in Cuernavaca, Morelos. “We know, because we have had to [physically] accompany [rape victims].”<sup>193</sup>

Some public prosecutors appear not to understand the time-sensitive nature of these cases. “Gloria Jiménez,” who was raped in Mexico City, went through all the preliminary tests and medical reviews required by the law before she was told that the public prosecutor in charge of her case would not make a decision on it until he was back from vacation, three weeks later.<sup>194</sup> “Lidia Muñoz,” a twenty-five-year-old woman who was drugged and raped by strangers in Mexico City, was sixteen weeks pregnant when a public prosecutor told her to wait two weeks for the authorization for a legal abortion. The NGO representative who was with Muñoz at the time recalled:

Then I said: ‘Listen, you can’t tell her to wait two weeks. That girl is sixteen weeks pregnant, and later they are not going to want to do the interruption [abortion].’ The public prosecutor answered: ‘That’s not my problem. She should have thought about that. I am going to set up a meeting for her in two weeks. Now, please go away, because you have nothing to do here.’<sup>195</sup>

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<sup>193</sup> Human Rights Watch phone interview with Juliana Quintanilla, coordinator, Comisión Independiente de Derechos Humanos de Morelos, Cuernavaca, Morelos, August 23, 2005.

<sup>194</sup> E-mail message from Lydia Miranda, assistant to the director, Equidad de Género: Ciudadanía, Trabajo y Familia [Gender Equity: Citizenship, Work, and Family] to Human Rights Watch, November 10, 2005 [including information on seven cases of women and girls seeking legal abortions in Mexico City, Mexico state, and Morelos. All seven rape victims were personally accompanied by representatives for ddeser - Red por los Derechos Sexuales y Reproductivos en Mexico [Network for Sexual and Reproductive Rights in Mexico]].

<sup>195</sup> *Ibid.*

Some public prosecutors acknowledged their failure to comply with the law's time limit, but sought to justify the delay by saying that not all legal requirements had been fulfilled: a medical report had not been filed, for example, or there were not enough elements for the public prosecutor to presume rape. "The law gives me twenty-four hours, but I can't comply with the law because I am not given all the elements I need to authorize [the abortion]," explained María de los Angeles Rosales Grahanda, head of the attorney general's specialized agency on crimes against family order in Cuautla, Morelos. "It is not my function as public prosecutor to follow-up on all those procedures."<sup>196</sup>

NGO representatives say the delays reflect confusion among public prosecutors who do not know the law and do not inform the rape victims. María Luisa Becerril, who has personally accompanied several rape victims to public hospitals and in the justice system, said public prosecutors continued to provide faulty information and assistance to rape victims, even after Morelos implemented the detailed guidelines in 2000. She continued: "The public prosecutors could give the authorization, before they arrest the rapist, before they do anything else. ... The law is quite flexible, but they don't understand it."<sup>197</sup> Indeed, the procedures do not require the rape to be fully investigated before the legal abortion is authorized: they require the public prosecutor to establish sufficient elements to presume that the pregnancy is the result of rape.

In some cases public prosecutors added requirements not included in the law, causing more delays. Marisol Martínez, a social worker in Cuautla who had accompanied almost all girls and women seeking legal abortion in that city over the two years prior to the Human Rights Watch visit, referred to several specific cases where the authorities had added such requirements. In one specific case, Martínez recalled:

The same day [the adolescent victim and her mother came to me] I went with them to report the crime with the public prosecutor. ... They ask for five things: first, that you report the crime with the justice system. Second, a psychological witness report [not mentioned in the law]. ... Third, the report of a forensic doctor. Fourth, that of a social worker

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<sup>196</sup> Human Rights Watch interview with María de los Angeles Rosales Grahanda, head of the specialized agency on crimes against family order, Attorney General's Office, Cuautla, Morelos, December 15, 2005.

<sup>197</sup> Human Rights Watch interview with María Luisa Becerril, director, CIDHAL, Cuernavaca, Morelos, October 7, 2005. Those public prosecutors Human Rights Watch interviewed insisted that they do inform rape victims of their rights. Human Rights Watch interviews with Perla Salgado Puente, head of specialized agency for sexual crimes for the capital, Attorney General's office, Cuernavaca, Morelos; and with María de los Angeles Rosales Grahanda, Titular de la Agencia Especializada en la Investigación de Delitos contra el Orden Familiar [Head of the Specialized Agency for the Investigation of Crimes against the Family Order], Attorney General's Office of Eastern Morelos, Cuautla, Morelos, December 15, 2005.

[also not in the law]. ... Fifth, and this was a mess, they sent us somewhere else for her clinical history, her blood sample, her pregnancy test. ... It was very tiring. ... And it wasn't until [twenty-two days after they filed the report] that they finally did the procedure.<sup>198</sup>

Social workers and NGO representatives from both Morelos and Mexico City said that they had witnessed several cases of illegal delay both in the justice and the health system. “When they [rape victims] come here, they are already five [or] six weeks pregnant, sometimes even eleven,” said Leslie Alonzo Pérez, legal advisor for the state agency for the defense of minors in Cuautla, Morelos. She noted that rape victims in her experience must wait at least four days for an authorization for a legal abortion, four times more than the twenty-four hours stipulated by law. Alonzo continued: “And then there is the bureaucracy [in the health system] of ‘Oh, the [hospital] director did not come in today. ... He will be there tomorrow.’ ... Or that no one wants to do it. .... So between all that, at least two weeks go by [after the authorization].”<sup>199</sup>

A medical doctor from Mexico City who provided abortions to rape victims at low cost without official authorization, told Human Rights Watch that his commitment to do so sprung from the fact that the legal process often was too drawn out:

Time is an obstacle. If you have a pregnancy that is two weeks along, in obstetric terms it is a four-week pregnancy. Then you file a complaint, and there goes another three-four weeks. ... The public prosecutor issues the authorization and the girl goes to the hospital, and they send her to the Ethical Committee, and that's where she loses time. ... And to top it off, if [the hospital] says yes, you have to look for a provider, because now doctors are expressing their conscientious objection [to performing the procedure]. ... This implies that in the end the woman may not be able to get [the abortion].<sup>200</sup>

In the health system, doctors and hospital directors admitted that delays were common, but sought to justify them with reference to a generalized resistance to carrying out

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<sup>198</sup> Human Rights Watch interview with Marisol Martínez Bautista, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>199</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

<sup>200</sup> Human Rights Watch interview with [name withheld], medical doctor, Mexico City, October 2005.

abortions. “The problem is ... well, it’s a personal issue, a question of education, or culture,” said Francisco Sánchez Martínez, deputy director for a General Public Hospital in Cuautla, Morelos. He continued: “I can’t force a gynecologist to carry out an abortion.”<sup>201</sup> This kind of explanation highlights the inherent problem in placing the essential decision-making power for abortion after rape with medical doctors and public prosecutors, and not with the rape victims themselves: in this system, the procedures and formalities have more legitimacy than the rape victim’s right to a legal abortion.

### ***Lack of Information or Biased Information***

Many girls and women continue to have limited access to accurate information—and thus to informed decision-making—even in states where access to legal abortion is regulated. A 2003 independent survey concluded that 74 percent of low-income women in Mexico City (where procedures exist) did not know that abortion is legal in some circumstances.<sup>202</sup> The value of public information on the legality and availability of abortion after rape cannot be overestimated. On the most basic level, it legitimizes to the rape victims themselves the very difficult choice they make regarding an imposed pregnancy, and as such it contributes to the de-stigmatization of both abortion and rape.

More readily available information on access to legal abortion after rape would likely stimulate increased reporting of rapes more generally, which would be an important step toward overcoming impunity. This is illustrated by the testimony of “Blanca Valdés.” A cabdriver raped Valdés in Mexico City in the beginning of 2005, resulting in a pregnancy. Valdés told Human Rights Watch that she had not known that she could have asked the authorities for a legal abortion. She did not file a complaint after the rape because she some years earlier had met with a dismissive attitude when she had tried to file a complaint against her violent husband. With the help of a friend, she identified a clandestine clinic where she could get an abortion. It was at that clinic she found out that abortion after rape is legal in Mexico City:

Then the [clinic’s] psychologist told me that the law had changed, and that if I had reported the rape then I would have had a right to do this.  
... And then you tell yourself: perhaps it is not such a bad thing I am

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<sup>201</sup> Human Rights Watch interview with Francisco Sánchez Martínez, deputy director, Hospital General Sí Mujer, Cuautla, Morelos, December 16, 2005.

<sup>202</sup> “Aborto in México, realidad cotidiana” [Abortion in Mexico: daily reality], CIMAC noticias (México), March 19, 2004; Roberto Blancarte, “¿Qué piensan los mexicanos sobre el aborto?” [What do Mexicans think about abortion?], *Libertades Laicas*, (Mexico City: Colegio de Mexico, no date) at <http://www.libertadeslaicas.org.mx/pdfS/Salud%20sexual/Qu%E9%20piensan%20los%20mexicanos%20sobre%20el%20aborto.pdf> (retrieved on January 20, 2006).

doing. ... And it would be true to say that I wouldn't be able to love that child. ... That's when I thought: I wish I had reported the rape, but it was too late. ... Today, if you were to ask me now: "Would you report the case?" I would say yes, because it would have allowed me to decide [about the abortion] without fear. Because that is how I felt: afraid. Afraid to die, afraid to bleed to death.<sup>203</sup>

Unfortunately, Human Rights Watch's research indicates that Valdés might not have met with an understanding attitude had she reported the rape and tried to obtain a legal abortion through official channels. As Marta Gómez Silva, a psychologist from an NGO that works directly with victims of violence in Mexico City, put it: "In many cases, we found that women don't get the necessary information. They are pressured into keeping the product [of the rape]."<sup>204</sup> Bárbara Yllán Rondero, head of the state's office for victim services, agreed: "It is a topic that has been ideologized. ... [In the justice system] there is ... a lot of trying to get women to withdraw their request [for an abortion] with criteria that are not very ethical, not very professional."<sup>205</sup>

The lack of public information and continued stigmatization of the issue at times result in the denial of a legal abortion in the health system, even when a rape victim had obtained an authorization. Aurora del Rio Zolezzi, from the national health ministry, told Human Rights Watch that women continued to be turned away from health centers in Mexico City, despite the procedures, because hospital directors still fear administrative sanctions:

There have been situations where women come to the hospital with the authorization [from the public prosecutor's office], and still the hospital director gets his lawyers to analyze if the person signing the authorization is really mandated to do so. ... But if [the hospital] complies and it is not the right person [who signed the authorization], then the sanction is not on [the hospital] but on the person who signed the authorization.<sup>206</sup>

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<sup>203</sup> Human Rights Watch interview with Blanca Valdés, Mexico City, October 2005.

<sup>204</sup> Human Rights Watch phone interview with Marta Gómez Silva, psychologist, Ambar, Mexico City, August 18, 2005.

<sup>205</sup> Human Rights Watch interview with Bárbara Yllán Rondero, head, Subprocuraduría de Atención a Víctimas de Delito y Servicios a la Comunidad, Mexico City, October 11, 2005.

<sup>206</sup> Human Rights Watch interview with Aurora del Rio Zolezzi, deputy director, gender equity unit, National Health Ministry, October 11, 2005.

### ***“Covert” Provision of Abortion Services and Continued Stigmatization***

The guidelines on access to legal abortion have, in both the Federal District and in Morelos, been implemented in a manner that creates additional obstacles for rape victims. Both in Mexico City and Morelos, the actual provision of legal abortion after rape departs from the written procedures in that it is carried out largely “underground.” In fact, public officials in these jurisdictions have chosen to “hide” legal abortion services as much as possible, with only a small handful of people knowing where, when, and how the procedures are carried out. Public officials told Human Rights Watch this “covert” provision of legal health services was necessary to avoid anti-abortion protests. However, the result of the “covert” provision of a legal health procedure is further confusion for rape victims who are not told whom to approach. Moreover, hiding away legal abortion after rape does nothing to overcome persisting stigmatization of the issue.

In Mexico City, despite guidelines that give rape victims a free choice between adequately equipped public health centers and hospitals, very few doctors actually carry out legal abortions. Moreover, the locations are not disclosed to the public. Asa Christina Laurell, health minister of the Federal District (Mexico City), explained: “We now have two teams in two hospitals. We haven’t really put out there too much where, because there are groups that are militantly opposed [to abortion].”<sup>207</sup> This system only works where pregnant rape victims arrive from the attorney general’s office with very specific instructions to go directly the health minister’s office. Laurell acknowledged that the “covert” approach has led to confusion and delay for rape victims: “Sometimes, the public prosecutors send the women directly to the hospital without letting us know, and that can create a mess. They could get sent away again.”<sup>208</sup>

In Morelos, the health ministry has organized available health personnel in trained teams of professional health personnel, called “commandos,” that can carry out legal abortions in hospitals in cities where they otherwise do not work, in order to avoid potential protests and harassment in their communities.<sup>209</sup>

Blanca Estela Gutiérrez Amar, a gynecologist at a public hospital in Morelos, confirmed that legal abortions for rape are performed covertly: “The [hospital director] has always demanded from us that we do it with maximum discretion. . . . We practically don’t do any paperwork [on those cases]. . . . We don’t admit them like other patients.” Gutiérrez

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<sup>207</sup> Human Rights Watch interview with Asa Christina Laurell, health minister, Health Ministry of the Federal District, Mexico City, October 13, 2005.

<sup>208</sup> *Ibid.*

<sup>209</sup> Human Rights Watch interview with Raúl Rangel Barrera, head, Unit for Reproductive Health, Health Ministry of Morelos, Cuernavaca, Morelos, October 7, 2005.

felt the hidden nature of the services helped to avoid problems, though she acknowledged that abortion-related stigma continued: “There are people who are too wedded to their ideas. ... People do make [negative] comments.”<sup>210</sup>

Social workers and NGO representatives told Human Rights Watch that the existence of the commandos created confusion, because it was unclear, in each case, if a commando or local health professional would carry out the abortion.<sup>211</sup> Furthermore, Marisol Martínez, a social worker from the state Integrated Family Services agency in Cuautla, Morelos, said that the commandos were less likely than local doctors to provide post-abortion care: “I have followed all the cases in Cuautla since 2003. ... [The commandos] are all doctors that I don’t know. ... And they just do the intervention and then they leave. ... After that, it’s ‘You take care of it!’ I prefer to [send my clients] to local doctors.”<sup>212</sup> Rosalena Cabañas, nurse at the public hospital in Cuautla, confirmed that the commandos are used—somewhat successfully—to avoid protests, but that they do not follow up on cases: “They do it very privately. She [the rape victim] arrives, the team comes, it is done, and they leave again. To avoid morbid questions.”<sup>213</sup>

### *Intimidation in the Health Sector*

The failure of public officials to adequately address the stigma related to abortion and rape has contributed to perpetuate the pervasive intimidation of rape victims and even health professionals, even where access to abortion after rape supposedly is guaranteed by codified procedures. Claudia Moreno, an NGO representative who has carried out research on access to legal abortion in Mexico, said: “In the public hospitals, you should see what they say to the women: ... ‘If [the aborted fetus] weighs more than 500 grams [just over a pound], you’ll need a coffin.’ ... And they make [the rape victims] wait. ... There are even resident doctors who scream at the doctors [who carry out the abortions]: ‘Murderer!’ and so on.”<sup>214</sup>

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<sup>210</sup> Human Rights Watch interview with Blanca Estela Gutiérrez Amar, gynecologist, General Hospital Sí Mujer, Cuautla, Morelos, December 15, 2005.

<sup>211</sup> Human Rights Watch interviews with María Luisa Becerril, director, CIDHAL, Cuernavaca, Morelos, October 7, 2005; and with Marisol Martínez Bautista, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>212</sup> Human Rights Watch interview with Marisol Martínez Bautista, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>213</sup> Human Rights Watch interview with Rosalena Cabañas, nurse, General Hospital Sí Mujer, Cuautla, Morelos, December 16, 2005.

<sup>214</sup> Human Rights Watch phone interview with Claudia Moreno, program coordinator, Ipas, Mexico City, September 14, 2005.

Sometimes, the intimidation seems directed at discouraging the rape victim from going through with a legal abortion that has already been authorized. A medical doctor in Mexico City who unofficially performs abortions for rape victims told Human Rights Watch that many of his patients relayed to him the difficulties they had faced in procuring a legal abortion through the public health system: “They put [the women] through the Holy Inquisition. They review your sins and decide about your life. Even when the woman has an authorization.”<sup>215</sup> An NGO representative was present when “Lidia Muñoz,” a twenty-five-year old rape victim, was intimidated by medical personnel in a public hospital:

When she got the authorization and went to the hospital to have the [abortion] done, the doctor in charge of her care said to her: ‘We are going to have many problems, because we are going to have to do a death certificate [for the aborted fetus]. You are going to have to bring a hearse, [and] to buy a coffin to take away the body, because we can’t have the body here.’<sup>216</sup>

Sometimes, the intimidation continues even as the legal abortion is taking place. In Mexico City, for example, some public prosecutors insist on taking photos of rape victims before and after a legal abortion, of the health personnel that participate, and of the fetal remains. This happens “in a sort of logic of intimidation,” said Noemí Ehrenfeld, expert of psychology with the Autonomous University of Mexico, who studies access to legal abortion in Mexico City. “Some people see this as a good thing so that women don’t lie,” she continued.<sup>217</sup> José Luis Fernández Silva, advisor to the health minister in the Federal District in charge of making access to legal abortions run smoothly in Mexico City, told Human Rights Watch that the presence of the public prosecutors during the medical procedure was necessary to collect evidence for the rape cases. While Fernández acknowledged that it could be intimidating to rape victims and health personnel, he believed this issue could be dealt with by providing better information regarding the purpose of the photos and other collected “evidence.”

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<sup>215</sup> Human Rights Watch interview with [name withheld], medical doctor, Mexico City, October 2005.

<sup>216</sup> E-mail message from Lydia Miranda, assistant to the director, Equidad de Género: Ciudadanía, Trabajo y Familia [Gender Equity: Citizenship, Work, and Family] to Human Rights Watch, November 10, 2005 [including information on seven cases of women and girls seeking legal abortions in Mexico City, Mexico state, and Morelos. All seven rape victims were personally accompanied by representatives for ddeser - Red por los Derechos Sexuales y Reproductivos en Mexico [Network for Sexual and Reproductive Rights in Mexico]].

<sup>217</sup> Human Rights Watch phone interview with Noemí Ehrenfeld, psychologist, Autonomous University of Mexico, Mexico City, September 9, 2005.

[The public prosecutors] come. They have to take photos of our personnel, of the patient, of the product [the aborted fetus]. ... They do not explain very well what it is all about, and that generates discomfort. ... We have an obligation to tell the public prosecutor when the procedure will happen so that they can send their expert witness. That's when we have this problem that they don't explain what they have to do: take photos, etc.<sup>218</sup>

It is unclear in law how the photos taken immediately before and after a legal abortion would further a legal investigation for rape or be necessary to prove that an abortion had taken place. It is, however, clear that this procedure—which is mentioned neither in the justice system nor the health system guidelines—can discourage health personnel from carrying out abortion procedures and rape victims from requesting them.

Health personnel and other public officials also are often discouraged from facilitating access to legal abortion directly by their peers, with little support from the heads of their institutions. In Morelos, some public officials acknowledged that they had been the focus of negative comments and harassment. Leslie Alonzo Pérez, a lawyer from the state agency for the defense of children who had accompanied several pregnant rape victims throughout the process to obtain a legal abortion, declared to Human Rights Watch: “We have some problems with people, they say: ‘stork-killers’ or ‘there go the abortionists’. ... Even a guy who was detained for beating up his wife said that to me.”<sup>219</sup>

The longer and more openly legal abortion services are provided, the fewer comments and protests public officials and service providers seem to encounter. Rosalena Cabañas, a nurse at a public hospital in Morelos who has worked with several pregnant rape victims on their emotional health, confirmed this:

I did hear, in fact, with the first couple of cases, that some people [health personnel] said: “I am not going to do any of that. Is it my fault [that she was raped]? And what if I am thrown to jail?” ... [Now] they hold their comments. Sometimes they say: “The doctor [who carries out

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<sup>218</sup> Human Rights Watch interview with José Luis Fernandez Silva, advisor to the health minister, Health Ministry of the Federal District, Mexico City, October 13, 2005.

<sup>219</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

the abortions] probably doesn't like children." But mostly they keep silent.<sup>220</sup>

### ***Need for Accompaniment***

Legal abortion is particularly inaccessible for rape victims who do not have sustained support from NGOs or volunteer legal advisors. María Luisa Becerril, an NGO expert on access to legal abortion in Morelos, said: "What we have noticed is that it is [only] the cases that we monitor and accompany that get to the end [i.e. where the rape victim gets a voluntary abortion]. With the other cases: don't even dream about it."<sup>221</sup> In Mexico City, an NGO representative recalled a case in which a rape victim was initially told to wait three weeks for an authorization until the public prosecutor came back from his vacation: "In this case, [the rape victim and her NGO accompanier] decided to mention that they belonged to a nongovernmental organization which works on these issues [access to legal abortion] and surprisingly everything got much faster, and the authorization was granted on that same day."<sup>222</sup>

Often, social workers and NGO representatives did more than accompany the victims. They paid, out of their own pocket, for local transport, meals for the victims, and photocopies required by the authorities. "More than being their lawyer, I have become their accompanier: I pay their ticket [for bus transportation], their food," said Leslie Alonzo Pérez, a judicial advisor from Morelos.<sup>223</sup> In some cases, the accompaniers even provided the medical necessities required for the legal abortion procedure to take place at all. "All the Cytotec<sup>224</sup> they use, I have given them, because they don't have that at the

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<sup>220</sup> Human Rights Watch interview with Rosalena Cabañas, nurse, General Hospital Sí Mujer, Cuautla, Morelos, December 16, 2005.

<sup>221</sup> Human Rights Watch interviews with María Luisa Becerril, director, CIDHAL, Cuernavaca, Morelos, October 7, 2005.

<sup>222</sup> E-mail message from Lydia Miranda, assistant to the director, Equidad de Género: Ciudadanía, Trabajo y Familia to Human Rights Watch, November 10, 2005 [including information on seven cases of women and girls seeking legal abortions in Mexico City, Mexico state, and Morelos. All seven rape victims were personally accompanied by representatives for ddeser - Red por los Derechos Sexuales y Reproductivos en Mexico [Network for Sexual and Reproductive Rights in Mexico]].

<sup>223</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

<sup>224</sup> Cytotec is a branded misoprostol product. Although misoprostol is produced as gastric ulcer medication, one side-effect is that it causes uterine contractions and can lead to miscarriage. For this reason, it is often used as part of an abortion procedure to "ripen" (i.e. soften and dilate) the cervix so that further dilation will be less painful for the pregnant woman or girl. The label on misoprostol marketed as Cytotec reads: "Cytotec (Misoprostol) administration to women who are pregnant can cause abortion, premature birth, or birth defects. Uterine rupture has been reported when Cytotec was administered in pregnant women to induce labor or to induce abortion beyond the eighth week of pregnancy." Center for Drug Evaluation, "Cytotec" [online] <http://www.fda.gov/cder/foi/label/2002/19268slr037.pdf> (retrieved November 23, 2004). Clinical studies have

hospital,” said Marisol Martínez Bautista, a social worker in the state agency for the defense of children, who has offered accompaniment in almost all the cases of legal abortion in Cuautla, Morelos.<sup>225</sup>

In Mexico City, some accompaniment for rape victims is provided by the Federal District’s Institute for Women, a government agency. Luz Rosales Esteva, director of the institute, said that she felt the accompaniment was part of the government’s commitment to fulfill women’s rights: “We channel [pregnant rape victims] to the health system and tell them what to expect, also with regard to legal abortion. ... We accompany them ... so that all obligations are fulfilled. ... As government, our role is to fulfill the law.”<sup>226</sup> Margarita Vásquez, responsible for the sexual crimes unit at the attorney general’s office of the Federal District, told Human Rights Watch that this office also provides some accompaniment, based on their assessment of the victim’s needs: “If it is necessary to accompany, we will accompany ... especially if it is a minor or someone from a low socio-economic level. ... Sometimes, [we] just place a phone call, and that is enough.”<sup>227</sup>

The accompaniment in the specific cases Human Rights Watch examined often proved essential to ensure that rape victims were treated with respect or, indeed, at all. The need for accompaniment highlights weaknesses in the procedures that are meant to guarantee the right to legal abortion for rape victims. “I worry about what will happen when I am not here anymore,” said Marisol Martínez. “When people ask for an authorization [in Cuautla], they send them to me.”<sup>228</sup> In fact, all other public officials Human Rights Watch spoke to in Cuautla on this issue referred us to Martínez. One colleague said: “I [was] doing the paperwork to see if [a sixteen-year-old girl] could get an abortion because she was raped. ... And [the doctors at the public hospital] said:

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shown misoprostol to be safe and effective for use in abortion procedures under adequate medical supervision and conditions. See Consensus Statement: Instructions for Use – Abortion Induction with Misoprostol in Pregnancies up to 9 Weeks LMP. Expert Meeting on Misoprostol sponsored by Reproductive Health Technologies Project and Gynuity Health Projects. July 28, 2003. Washington DC., on file with Human Rights Watch.

<sup>225</sup> Human Rights Watch interview with Marisol Martínez Bautista, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>226</sup> Human Rights Watch interview with Luz Rosales Esteva, general director, Women’s Institute for the Federal District, Mexico City, October 11, 2005.

<sup>227</sup> Human Rights Watch interview with Margarita Vasquez, special public prosecutor for sexual crimes, Attorney General’s office of the Federal District, Mexico City, October 10, 2005.

<sup>228</sup> Human Rights Watch interview with Marisol Martínez Bautista, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

‘Where is Marisol, she is the one who knows what to do’. ... The social worker didn’t know [what to do] either.’<sup>229</sup>

Adolescent rape victims are often most acutely in need of accompaniment, because law and practice require that a family member consent to the abortion for them.<sup>230</sup> This consent requirement is particularly problematic for two reasons. First of all, the perpetrator may be the father or guardian who is asked to consent to the abortion. Secondly, social workers and NGO representatives told Human Rights Watch that many pregnant adolescent rape victims are left emotionally and physically alone to deal with the imposed pregnancy, generally because the pregnancy is seen to bring shame on the family.<sup>231</sup> Leslie Alonzo Pérez, a lawyer from the state agency for the defense of minors in Morelos, told Human Rights Watch: “Sometimes [underage rape victims] don’t come with their family. ... And for them to get the operation, there has to be a family member who signs. ... And often, the father does not want to sign.”<sup>232</sup>

In order to effectively protect children’s human rights, Mexico needs to address this issue of consent, including by giving due weight to children’s own decisions in this regard. The Convention on the Rights of the Child (CRC), ratified by Mexico in 1990, requires States Parties to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, [such views] being given due weight in accordance with the age and maturity of the child.”<sup>233</sup> The CRC further stipulates:

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<sup>229</sup> Human Rights Watch interview with Isabel Ocotl, social worker, Agency for the Defense of Children, Desarrollo Integral de la Familia de Morelos [Integrated Family Services agency of Morelos], Cuautla, Morelos, December 15, 2005.

<sup>230</sup> In the procedures set out in the attorney general office’s agreement in the Federal District, the consent of a parent or guardian is required for the authorization of the legal abortion. Acuerdo número A/004/2002 del Procurador General de Justicia del Distrito Federal por el que se establecen 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, Second Paragraph (d).

<sup>231</sup> Human Rights Watch interviews with Hilda Chávez Díaz, social worker, Mérida, Yucatán, December 12, 2005; with Gabriela Bastarrachea, head of the unit for the treatment of victims of domestic violence, Hospital General Augustin O’Horan, Mérida, Yucatán, December 12, 2005; and with Leslie Jeanett Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005. Human Rights Watch phone interview with Eva Villanueva, midwife, Ciudad Guzmán, Jalisco, December 17, 2005.

<sup>232</sup> Human Rights Watch interview with Leslie Alonzo Pérez, judicial advisor, Agency for the Defense of Children, Desarrollo Integral de la Familia [Integrated Family Services agency, DIF], Cuautla, Morelos, December 16, 2005.

<sup>233</sup> Convention on the Rights of the Child (CRC), article 12(1).

States parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsibly for him or her, and, to this end, shall take all appropriate legislative and administrative measures.<sup>234</sup>

In its handbook on the implementation of the CRC, UNICEF analyzes these notions in the context of medical counseling:

The child's right to receive medical counseling without parental consent is vital in cases in which the child's views and/or interests are distinct from, or may be in conflict with, those of parents—for example in cases of violence and abuse by parents and other family members.<sup>235</sup>

The UNICEF handbook adds that a child may have a right to receive independent medical counseling before he or she is deemed capable of consenting independently to medical treatment, but that, in any case, the child's best interest and provision of the necessary protection and care should be central guiding principles.<sup>236</sup>

In light of these interpretations, it is unquestionable that Mexico should provide full, comprehensive, and confidential medical counseling for adolescent rape or incest victims, including regarding the possibility of obtaining a legal abortion. The provision of one-sided or medically inaccurate information decidedly does not fulfill this obligation.

It is also unquestionable that, where adolescent rape or incest victims are abandoned or alone, Mexico must provide compassionate physical and psychological accompaniment throughout the legal and health process for the girls, as needed for their well-being.

Moreover, international human rights law requires the state to ensure the protection of the best interests of all children.<sup>237</sup> In those cases, the abandonment of the child by her family, or the family's declared opposition to abortion, should not automatically result in the assumption that carrying the pregnancy to term is in the best interest of the child.

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<sup>234</sup> CRC, article 3(2).

<sup>235</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (New York: UNICEF, 2002), p. 8.

<sup>236</sup> *Ibid.* pp.8-9.

<sup>237</sup> CRC, article 3(1).

The state should in all cases set up adequate procedures to ensure adequate accompaniment and individual evaluation of each case.

### ***Conscientious Objection by Medical Professionals***

In Mexico City, the health ministry's guidelines on the provision of legal abortion contemplates conscientious objection by doctors who are opposed to abortion, though there are limits on when such doctors can choose not to perform the procedure: "health professionals may abstain from particular in legal interruptions of pregnancies for reasons of conscience, except where the pregnant woman's life is in imminent danger."<sup>238</sup>

These guidelines were codified in law in 2003 when the health law of the Federal District was reformed to include similar provisions on conscientious objection.<sup>239</sup> The guidelines and the law clarify that only individual health personnel may object, while institutions cannot, and also that the individual objector must refer the woman or girl to a doctor who does not object "in an immediate, responsible, and discreet manner."<sup>240</sup> The law further notes that the institution has an overarching obligation to ensure swift health assistance and the presence of non-objecting medical staff at all times.<sup>241</sup>

In Morelos, no such guidelines exist. Even so, Raúl Rangel Barrera from Morelos health ministry told Human Rights Watch that delays and denial of access to legal abortion procedures in the health system were somewhat arbitrary and related to doctors' claims of conscience.<sup>242</sup>

Conscientious objection to performing abortions often is justified with reference to the human right to freedom of religion. The right to freedom of thought, conscience, and religion is protected in the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR).<sup>243</sup> Freedom of religion includes freedom from being compelled to comply with laws designed solely or

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<sup>238</sup> Health Ministry for the Federal District, Circular/GDF-SSDF/02/02, Eleventh Paragraph.

<sup>239</sup> Health law of Federal District, article 16 (bis 7).

<sup>240</sup> *Ibid.*, and Health Ministry for the Federal District, Circular/GDF-SSDF/02/02, Eleventh Paragraph.

<sup>241</sup> Health law of Federal District, article 16 (bis 7).

<sup>242</sup> Human Rights Watch interview with Raúl Rangel Barrera, head, Unit for Reproductive Health, Health Ministry of Morelos, Cuernavaca, Morelos, October 7, 2005.

<sup>243</sup> International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entered into force March 23, 1976, and acceded to by Mexico on March 23, 1981, article 18; and American Convention on Human Rights (ACHR), adopted at the Inter-American Specialized Conference on Human Rights, November 22, 1969), entered into force on July 18, 1978, and acceded to by Mexico on April 3, 1982, article 12.

principally to uphold doctrines of religious faith. It includes the freedom to follow one's conscience regarding doctrines of faith one does not hold.

The CEDAW Committee has explicitly stated in concluding observations that women's human rights are infringed where hospitals refuse to provide abortions due to the conscientious objection of doctors and has expressed concern about the limited access women have to abortion due to conscientious objections of practitioners. The committee has also expressly recommended that public hospitals provide abortion services.<sup>244</sup>

The International Federation of Gynecology and Obstetrics (FIGO) has, through its Committee for the Ethical Aspects of Human Reproduction and Women's Health, issued ethical guidelines on conscientious objections for its members. These guidelines clarify that the doctor's duty to provide benefit and prevent harm to the patient must at all times take precedence over any conscientious objection.<sup>245</sup> The primacy of the provision of benefit and the prevention of harm requires all doctors to: 1) inform patients of all medically indicated options for their care, including options in which the practitioner declines to participate;<sup>246</sup> 2) make every effort to achieve appropriate and timely referral;<sup>247</sup> 3) give priority to patient's life, health, and well-being, even if it means participating in procedures they normally would object to;<sup>248</sup> and 4) respect patients' choices within the medically indicated options for their care.<sup>249</sup> The guidelines specifically note that "practitioners must provide timely care to their patients when referral to other practitioners is not possible and delay would jeopardize the patient's health and well-being, such as by patients experiencing unwanted pregnancy."<sup>250</sup>

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<sup>244</sup> See Committee on the Elimination of Discrimination against Women (CEDAW Committee), "Report of the Committee on the Elimination of Discrimination against Women," U.N. Doc. A/53/38 (1998), part I, para. 109 (noting with regard to Croatia: "In the area of health, the Committee is ... concerned about information regarding the refusal, by some hospitals, to provide abortions on the basis of conscientious objection of doctors. The Committee considers this to be an infringement of women's reproductive rights."); and CEDAW Committee, "Report of the Committee on the Elimination of Discrimination against Women," U.N. Doc. A/52/38/Rev.1 (1997), part I, paras. 353 and 360 Italy, U.N. Doc. A/52/38/Rev.1 1997), paras. 353 and 360 (noting with regard to Italy: "The Committee expressed particular concern with regard to the limited availability of abortion services for women in southern Italy, as a result of the high incidence of conscientious objection among doctors and hospital personnel" and "The Committee strongly recommended that the Government take steps to secure the enjoyment by women, in particular, southern Italian women, of their reproductive rights by, inter alia, guaranteeing them access to safe abortion services in public hospitals").

<sup>245</sup> Committee for the Ethical Aspects of Human Reproduction and Women's Health, "Ethical Guidelines on Conscientious Objection," August 2005, guideline 1.

<sup>246</sup> *Ibid.*, guideline 2.

<sup>247</sup> *Ibid.*, guideline background para. 2.

<sup>248</sup> *Ibid.*, guideline background para. 4.

<sup>249</sup> *Ibid.*, guideline 5.

<sup>250</sup> *Ibid.*, guideline 7.

## **Consequences of Limited Access to Abortion after Rape**

Obstructing access to legal abortion after rape has severe consequences for the rape victims, for their families and communities, and for society as a whole. The rape victims we interviewed mentioned many reasons they wanted to end the pregnancy that had been imposed on them, including mental health, physical health, poverty, and the possibility to get on with their lives after a traumatic experience. In light of the obstacles noted in this report, many women and girls opt for clandestine abortions, with all the added risks such a course of action entails. “Blanca Valdés,” who was raped by a cabdriver in Mexico City, expressed how afraid she had been of dying from a botched abortion: “That’s how I felt. Afraid to die, afraid to bleed to death.”<sup>251</sup>

Valdés’ fear of the potential health consequences of undergoing an abortion under inadequate medical conditions is not unfounded. Unsafe abortions constitute a grave threat to women’s health, and sometimes to their lives: worldwide, between 10 and 40 percent of women and girls who undergo unsafe abortions require post-abortion medical attention for complications such as incomplete abortion, infection, uterine perforation, pelvic inflammatory disease, hemorrhage, or other injury to internal organs.<sup>252</sup>

Obstructing access to legal abortion after rape may have additional adverse consequences for girls. Underage rape victims we interviewed who had not been able to procure an abortion told us that headmasters, teachers, or family members had pressured them to leave school without graduating.<sup>253</sup> Other underage victims were thrown out of their homes, or threatened with eviction, often with nowhere to turn for help.

The case of “Aurora Mejía,” a fourteen-year-old mentally disabled rape victim in Morelos, is illustrative, though Mejía, as opposed to many other girls in her situation, had the unwavering support of her mother and aunt. Mejía’s mother, “Rocio Hernández,” told Human Rights Watch her husband had wanted to throw Mejía out when he found out she was pregnant.<sup>254</sup> “Silvia Hernández,” Mejía’s aunt, said that her sister’s husband wanted to throw both Hernández and Mejía out: “Her father got very angry. [My sister]

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<sup>251</sup> Human Rights Watch interview with Blanca Valdés, Mexico City, October 2005.

<sup>252</sup> World Health Organization, *Unsafe Abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2000* (Geneva: WHO, 2004), p. 4. Specific figures for Mexico were not available.

<sup>253</sup> Human Rights Watch interviews with Mariana Guerrero, Guanajuato, December 2005; and with Nohemí González, mother to rape victim, Guanajuato, December 2005.

<sup>254</sup> Human Rights Watch interview with Rocio Hernández, Morelos, December 2005.

called me one night, she said: ‘Now he is throwing me and my daughter out, he says it is my fault [that she was raped.]’<sup>255</sup>

In the context of continued rape-related stigma and limited public information on rape victims’ rights, abandoned underage pregnant rape victims are particularly vulnerable to clandestine and unsafe abortions. María del Rocío García Gaytan, head of the state women’s institute in Jalisco, explained: “A girl who has been raped may or may not know that the law protects her. ... Her family may or may not support her in wanting to have an abortion. ... So if she decides to have an abortion, the last thing she is going to do is to look for the law to protect her.”<sup>256</sup>

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 scarring from botched clandestine abortions, and drug or alcohol addictions.<sup>257</sup> In other cases, the additional mouth to feed constituted a real burden. “What will I do with so many children, so many mouths,” asked “Andrea Sánchez,” mother to a mute adolescent rape victim.<sup>258</sup> “Teresa Pérez,” also mother to a mute rape victim, acknowledged, ashamed, that she could not feed properly the child that resulted from her daughter’s rape: “He was only three or four months old when I had to take his milk away [because we had no money]. ... Sometimes, he goes three days without milk.”<sup>259</sup> Both Sánchez and Pérez had filed complaints on behalf of their daughters, and neither received a satisfactory response from the government regarding their daughters’ imposed pregnancies and the issue of justice more generally. Sánchez recalled the public prosecutor’s response when she had asked if she could seek financial support for the child resulting from the rape: “[He] said to me ‘But if he [the rapist] does not have anything, what can we take from him? He is just a poor guy.’”<sup>260</sup>

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<sup>255</sup> Human Rights Watch interview with Silvia Hernández, Morelos, December 2005.

<sup>256</sup> Human Rights Watch interview with María del Rocío García Gaytan, president, Women’s Institute of Jalisco, Guadalajara, Jalisco, December 5, 2005.

<sup>257</sup> Human Rights Watch interviews with Silvia Romero, Guanajuato, December 2005; with Ximena Espinosa, Guanajuato, December 2005; and with Marcela Gómez, Jalisco, December 2005.

<sup>258</sup> Human Rights Watch interview with Andrea Sánchez, Guanajuato, December 2005.

<sup>259</sup> Human Rights Watch interview with Teresa Pérez, Guanajuato, December 2005.

<sup>260</sup> Human Rights Watch interview with Andrea Sánchez, Guanajuato, December 2005.

## VI. International Legal Standards

International human rights law addresses violence against women and girls directly, establishing a duty on the part of the state to prevent sexual and domestic violence and to effectively prosecute and punish those who perpetrate it. Authoritative interpretations of international human rights law furthermore suggest that all women have the right to decide independently in matters related to abortion, without interference from the state or others.

Children enjoy special protections under international law. The child is recognized as an active subject of rights, who must be allowed to exercise her rights independent “in a manner consistent with the evolving capacities of the child”<sup>261</sup> and who must be heard in all matters that affect them.<sup>262</sup> At the same time, international law acknowledges the potential vulnerability of the child and provides special guarantees to protect “the best interests of the child”<sup>263</sup> and “to protect the child from all forms of sexual exploitation and sexual abuse.”<sup>264</sup>

This report indicates that Mexico falls short of its international obligations in all of these aspects. All human rights treaties to which Mexico is a party, including CEDAW, the Convention on the Rights of the Child, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), and the American Convention on Human Rights, are directly applicable in Mexico, and take precedence over state laws.<sup>265</sup>

### ***International Law and Violence against Girls and Women in Mexico***

International human rights law applicable in Mexico establishes violence against women—including sexual violence—as a form of discrimination<sup>266</sup> and as a human rights

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<sup>261</sup> CRC, article 5.

<sup>262</sup> CRC, article 12(1).

<sup>263</sup> CRC, article 3(1).

<sup>264</sup> CRC, article 34.

<sup>265</sup> See discussion of Mexico’s federal system of government above at footnote 12 and 13 and accompanying text.

<sup>266</sup> CEDAW Committee, General Recommendation No. 19: Violence Against Women, para. 1, in “Compilation of General Comments and General Recommendation Adopted by Human Rights Treaty Bodies,” May 12, 2004, *U.N. Doc. HRI/GEN/1/Rev.7*. Mexico ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on March 23, 1981.

violation in its own right.<sup>267</sup> For girls under eighteen, the Convention on the Rights of the Child furthermore establishes an obligation on the part of state parties to “protect the child from all forms of physical or mental violence ... including sexual abuse” as well as from “all forms of sexual exploitation and sexual abuse.”<sup>268</sup>

International law and authoritative interpretations of the law also recognize that violence prevents women and girls from exercising their human rights and that violence against women is closely related to violence against children in the home.<sup>269</sup> This connection was highlighted in 2003 by Susana Villarán, then-special rapporteur on women’s rights for the Inter-American Commission on Human Rights, in her report on the violence in Ciudad Juárez in Mexico:

Violence against women is, first and foremost, a human rights problem. It has been accorded priority in the region as such, with the conviction that its eradication is essential to ensure that women may fully and equally participate in all spheres of national life. Violence against women is a problem that affects men, women and children; it distorts family life and the fabric of society, with consequences that cross generations. Studies have documented that having been exposed to violence within the family during youth is a risk factor for perpetrating such violence as an adult. It is a human security problem, a social problem and a public health problem.<sup>270</sup>

In light of this, and as a party to central human rights treaties on women’s human rights, Mexico has an obligation to take all appropriate legal, administrative, and social measures as may be needed to “prevent, punish and eradicate violence against women,”<sup>271</sup> to provide “adequate protection” against “family violence and abuse, rape, sexual assault

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<sup>267</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted on June 9, 1994, and entered into force on March 5, 1995. The Convention of Belém do Pará was ratified by Mexico on November 12, 1998. Article 3 of the convention reads: “Every woman has the right to be free from violence in both the public and private spheres.”

<sup>268</sup> CRC, articles 19 and 34.

<sup>269</sup> Convention of Belém do Pará, article 5. See also CEDAW Committee, General Recommendation No. 19: Violence Against Women, in “Compilation of General Comments and General Recommendation Adopted by Human Rights Treaty Bodies,” May 12, 2004, *U.N. Doc. HRI/GEN/1/Rev.7*; and Committee on the Rights of the Child, “Concluding Observations of the Committee on the Rights of the Child : Ethiopia”, CRC/C/15/Add.144, February 21, 2001, paras. 46 and 47.

<sup>270</sup> Special Rapporteur on women’s rights of the Inter-American Commission on Human Rights, “The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination,” OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 122.

<sup>271</sup> Convention of Belém do Pará, article 7.c.

and other gender-based violence,<sup>272</sup> and to protect children from all forms of violence.<sup>273</sup> In addition, all persons under Mexican jurisdiction have the right to prompt judicial protection and relevant remedies for violations of their human and constitutional rights.<sup>274</sup>

The CEDAW Committee,<sup>275</sup> which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>276</sup> has repeatedly expressed its concern with Mexico's failure to prosecute and punish cases of violence against women. The Committee on the Rights of the Child, which monitors the implementation of the CRC, has made a similar statement with regard to the "serious problem" of physical and sexual abuse of children both within and outside the family in Mexico.<sup>277</sup>

In 1998, the CEDAW committee recommended that state laws on violence against women be adjusted to conform with national laws.<sup>278</sup> The Committee also recommended a number of actions to ensure accountability for violence against women, including legal action, training judicial, law enforcement and health personnel, awareness-raising, and strengthening victims' services.<sup>279</sup> In 2002, the committee repeated its pleas in this regard, expressing "great concern at the violence against women in Mexico, including domestic violence, which continues to go unpunished in several

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<sup>272</sup> CEDAW Committee, General Recommendation No. 19: Violence Against Women, para. 24(b).

<sup>273</sup> CRC, article 19.

<sup>274</sup> ACHR, article 25.

<sup>275</sup> The implementation of the main human rights treaties under the United Nations human rights system is supervised by committees—called treaty monitoring bodies—made up of independent experts selected from the states parties to the respective treaties. The treaty monitoring bodies include the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on Migrant Workers. These committees receive periodic reports from states parties which they review in dialogue with the states. After such reviews, the committees issue conclusions and recommendations—generally called concluding remarks—regarding the fulfillment of the rights protected by the conventions they monitor in that specific country. The growing body of concluding remarks issued by the committees provides an important guide for the committees' thinking on the concrete status and scope of the rights protected under the United Nations system. The committees also sometimes issue conceptual guidelines on the implementation of a specific human right—called general comments or general recommendations. These general comments or recommendations provide yet another source on the evolving authoritative interpretation of the human rights in question.

<sup>276</sup> Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of December 18, 1979 and entered into force on September 3, 1981. CEDAW was ratified by Mexico on March 23, 1981.

<sup>277</sup> Committee on the Rights of the Child, "Concluding observations of the Committee on the Rights of the Child: Mexico," U.N. Doc. *CRC/C/15/Add.112*, November 10, 1999, para. 25.

<sup>278</sup> *Ibid.*, para. 411.

<sup>279</sup> *Ibid.*, paras. 412-413.

states.<sup>280</sup> Specifically, the committee requested that Mexico “take steps to ensure that women victims of such violence can obtain reparation and immediate protection” and “to train health-care workers, police officers and staff of special prosecutors’ offices in human rights and dealing with violence against women.”<sup>281</sup>

In 2003, two CEDAW experts visited Mexico to conduct an inquiry into the abduction, rape, and murder of women in Ciudad Juárez, Chihuahua. The committee experts concluded that the situation in Ciudad Juárez constituted a clear violation of the CEDAW convention,<sup>282</sup> and noted that they had been notified of similar patterns of violence elsewhere in Mexico.<sup>283</sup>

The Inter-American Commission on Human Rights, the entity which until recently was the main overseeing body monitoring the implementation of the Convention of Belém do Pará,<sup>284</sup> referred to the prevailing impunity for violence against women in Mexico in a 1998 report, and recommended that Mexico “adopt such urgent and effective measures of a juridical, educational and cultural nature as required to put an end to domestic violence against women, a serious problem that affects Mexican society.”<sup>285</sup>

These measures were still lacking in 2003, when the special rapporteur on women’s rights for the Inter-American Commission on Human Rights released a report based on her investigation of the Mexican government’s response to the violence against women in Ciudad Juárez.<sup>286</sup> In her report, the special rapporteur noted that “there remains a significant tendency on the part of some officials to either blame the victim for placing herself in a situation of danger, or to seek solutions that emphasize requiring the victim

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<sup>280</sup> CEDAW Committee, “Report of the Committee on the Elimination of Discrimination against Women, twenty-sixth, twenty-seventh, and exceptional sessions,” U.N. Doc. A/57/38, Part 3, para. 431.

<sup>281</sup> *Ibid.* para. 432.

<sup>282</sup> CEDAW Committee, “Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico,” U.N. Doc. CEDAW/C/2005/OP.8/MEXICO, January 27, 2005, para 53

<sup>283</sup> *Ibid.*, para 47.

<sup>284</sup> In 2004, an inter-governmental body was set up within the OAS system to monitor the implementation of this convention. Mexico was instrumental in setting up this mechanism. Agencia Mexicana de Noticias, “Destaca Mexico en la OEA al combatir la violencia contra la mujer” [Mexico stands out at the OAS in combating violence against women], NOTIMEX, October 27, 2004. At the time of writing, this body had yet to comment substantively on the issue.

<sup>285</sup> Inter-American Commission on Human Rights, “Report on the Situation of Human Rights in Mexico,” OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 756.

<sup>286</sup> Special rapporteur on women’s rights of the Inter-American Commission on Human Rights, “The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination,” OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003.

to defend her own rights.<sup>287</sup> The special rapporteur further lamented the general impunity for domestic and sexual violence and its contribution to continuing violations of women’s human rights:

[Domestic and sexual] violence ... has its roots in concepts of the inferiority and subordination of women. When the perpetrators are not held to account ... the impunity confirms that such violence and discrimination is acceptable, thereby fueling its perpetuation. ... [T]he Commission has emphasized that the failure to effectively prosecute and punish indicates that the State in effect condones it. ... It creates a climate that is “conducive to domestic violence” because society sees no will on the part of the State to take effective action against it.<sup>288</sup>

In 1999, the Committee on the Rights of the Child expressed concern that “physical and sexual abuse [against children]—within and outside the family—is a serious problem in [Mexico]” and recommended, inter alia “that law enforcement be strengthened with respect to such crimes, [and] that adequate procedures and mechanisms to deal effectively with complaints of child abuse should be reinforced in order to provide children with prompt access to justice.”<sup>289</sup>

Human Rights Watch’s research for this report indicates that, in many states, the legal framework to prevent and punish violence against women and girls continues to be nonexistent or seriously deficient, and certainly below minimum international standards.

### ***International Law and Abortion after Rape or Incest***

*Where abortions are legal, they must be safe: public health systems should train and equip health service providers and take other measures to ensure that such abortions are not only safe but accessible.*

—U.N. Special Rapporteur on the Right to the Highest Attainable Standard of Health<sup>290</sup>

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<sup>287</sup> Ibid., para. 125.

<sup>288</sup> Ibid., paras. 128-129.

<sup>289</sup> Committee on the Rights of the Child, “Concluding observations of the Committee on the Rights of the Child: Mexico,” U.N. Doc. *CRC/C/15/Add.112*, November 10, 1999, para. 25.

<sup>290</sup> Report of the Special Rapporteur, Paul Hunt, U.N. E/CN.4/2004/49, February 16, 2004, para. 30.

Authoritative interpretations of international law recognize that obtaining a safe and legal abortion is vitally important to women's effective enjoyment and exercise of their human rights, in particular rights to equality, life, health, physical integrity, and the right to decide on the number and spacing of children.<sup>291</sup> These interpretations sustain the conclusion that decisions about abortion belong to a pregnant woman alone, whether she was raped or not, without interference by the state or others. Any restrictions on abortion that unreasonably interfere with a woman's exercise of her full range of human rights should be rejected.

The 1994 ICPD Programme of Action<sup>292</sup> was the first international consensus document to put forward the idea that abortion services, where legal, need to meet certain standards. The ICPD Programme of Action states "[i]n circumstances where abortion is not against the law, such abortion should be safe."<sup>293</sup> Since 1994, U.N. treaty bodies have consistently linked a pregnant woman's right to decide about abortion without interference with her right to nondiscrimination and to equal enjoyment of other human rights. Treaty bodies have been particularly emphatic that abortion should be legal, safe, and available for rape victims, and have recommended that Mexico amend its laws to facilitate access to abortion.

### ***U.N. Treaty Body Concern with Legal Obstacles to Abortion after Rape or Incest***

U.N. treaty bodies have expressed particular concern with legislation that restricts access to legal and safe abortion after rape and incest. It is noteworthy that Mexican state laws do not allow for abortion after incest, in a prima facie contravention of international law as interpreted by these treaty bodies.

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<sup>291</sup> For a broader review of international human rights law and abortion, see Human Rights Watch, "International Human Rights Law and Abortion in Latin America," *A Human Rights Watch Briefing Paper*, July 2005 [online] <http://hrw.org/backgrounder/wrd/wrd0106/wrd0106.pdf> (retrieved January 31, 2006); Human Rights Watch, "Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina," *A Human Rights Watch Report* Vol. 17, No. 1(B), June 2005 [online] <http://hrw.org/reports/2005/argentina0605/argentina0605.pdf> (retrieved January 31, 2006); and Center for Reproductive Rights and Policy (CRLP, now Center for Reproductive Rights, CRR) and University of Toronto International Programme on Reproductive and Sexual Health Law, *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (New York: CRLP, 2002), in particular pp. 145-158, [online] [http://www.reproductiverights.org/pdf/pub\\_bo\\_tmb\\_full.pdf](http://www.reproductiverights.org/pdf/pub_bo_tmb_full.pdf) (retrieved March 3, 2005).

<sup>292</sup> Referring to the outcome document from the International Conference on Population and Development (ICPD), held in Cairo in 1994.

<sup>293</sup> ICPD Program of Action, para. 8.25.

Moreover, international human rights law protects the right to noninterference with one's privacy and family,<sup>294</sup> as well as the right of women to decide on the number and spacing of their children without discrimination.<sup>295</sup> These rights can only be fully implemented where women have the right to make decisions about when or if to carry a pregnancy to term without interference from the state. In the case of a pregnancy resulting from rape or incest, abortion is the only way for a woman or girl to exercise this right.

The CEDAW Committee has often recommended that states parties review legislation prohibiting abortion to meet their obligation to eliminate discrimination against women,<sup>296</sup> as set out in detail in its General Recommendation No. 24 on women and health: "When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."<sup>297</sup>

In its concluding remarks on Colombia the CEDAW Committee has expressed the view that restrictive abortion laws are contrary to the rights to nondiscrimination, health and life:

The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. No exceptions are made to that prohibition, including where the mother's life is in danger or to safeguard her physical or mental health or in cases where the mother has been raped. ... The Committee believes

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<sup>294</sup> ICCPR, article 17.

<sup>295</sup> CEDAW, article 16(1)(e). This article reads: "States Parties shall . . . ensure, on a basis of equality of men and women . . . (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

<sup>296</sup> See e.g. CEDAW Committee, "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/54/38/Rev.1, Part II*, July 9, 1999, para. 229 (noting with regard to Chile: "The Committee recommends that the Government consider review of the laws relating to abortion with a view to their amendment, in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including the mental health, of the woman"); and CEDAW Committee "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/53/38/Rev.1*, February, 1998, para. 349 (noting with regard to the Dominican Republic: "The Committee . . . invites the Government to review legislation in the area of women's reproductive and sexual health, in particular with regard to abortion, in order to give full compliance to articles 10 [education] and 12 [health] of the Convention.") See also CEDAW Committee, "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/54/38/Rev.1, Part I*, July 9, 1999, para. 393, quoted above at footnote 298 and accompanying text.

<sup>297</sup> CEDAW Committee, "General Recommendation 24, Women and Health (Article 12)," *U.N. Doc. No. A/54/38/Rev.1* (1999), para. 31(c): "31. States parties should also in particular: . . . (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."

that legal provisions on abortion constitute a violation of the rights of women to health and life and of article 12 of the Convention [the right to health care without discrimination].<sup>298</sup>

In 1998, moreover, the CEDAW Committee recommended to Mexico “that all states of Mexico should review their legislation so that, where necessary, women are granted access to rapid and easy abortion.”<sup>299</sup>

The Human Rights Committee has likewise noted with concern the relationship between restrictive abortion laws, clandestine abortions, and threats to women’s lives, and has recommended the review or amendment of punitive and restrictive abortion laws.<sup>300</sup> In 2004, the Committee recommended the review of Colombian laws restricting abortion after rape and incest:

[The Committee] is especially concerned that women who have been victims of rape or incest or whose lives are in danger as a result of their pregnancy may be prosecuted for resorting to such measures (art. 6) [the right to life]. The State party should ensure that the legislation applicable to abortion is revised so that no criminal offences are involved in the cases described above.<sup>301</sup>

In the case of Chile, where abortion has been illegal in all circumstances since 1986, the Committee noted that clandestine abortions can be a threat to women’s lives, a statement that is relevant for Mexico where many rape victims—despite their right to a legal abortion—still see themselves forced to undergo clandestine and sometimes unsafe operations:

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<sup>298</sup> CEDAW Committee, “Report of the Committee on the Elimination of All Forms of Discrimination Against Women,” *U.N. Doc. A/54/38/Rev.1*, July 9, 1999, para. 393.

<sup>299</sup> CEDAW Committee, “Report of the Committee on the Elimination of All Forms of Discrimination Against Women,” *U.N. Doc. A/53/38/Rev.1*, part I, February 6, 1998, para. 426

<sup>300</sup> See Human Rights Committee, “Concluding Observations of the Human Rights Committee: Colombia,” *U.N. Doc. CCPR/CO/80/COL*, May 26, 2004, para. 13; Human Rights Committee, “Concluding Comment of the Human Rights Committee: Peru,” *U.N. Doc. CCPR/CO/70/PER*, November, 15, 2000, para. 20; Human Rights Committee, “Concluding comment of the Human Rights Committee: Venezuela,” *U.N. Doc. CCPR/CO/71/VEN*, 2001, para. 19; Human Rights Committee, “Concluding comment of the Human Rights Committee: Chile,” *U.N. Doc. CCPR/C/79/Add.104*, 1999, para. 15; Human Rights Committee, “Concluding comment of the Human Rights Committee: Costa Rica,” *U.N. Doc. CCPR/C/79/Add.107*, 1999, para. 11; and Human Rights Committee, “Concluding comment of the Human Rights Committee: Guatemala,” *U.N. Doc. CCPR/CO/72/GTM*, 1999, para. 19.

<sup>301</sup> Human Rights Committee, “Concluding Observations of the Human Rights Committee: Colombia,” *U.N. Doc. CCPR/CO/80/COL*, May 26, 2004, para. 13.

The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. ... The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. .... The Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions.<sup>302</sup>

In the case of Peru, the Committee went further to note that the penal code provisions of that country—which subject women to criminal penalties even when the pregnancy is the result of rape—are incompatible with the rights to equal enjoyment of other rights protected by the International Covenant on Civil and Political Rights (ICCPR), life, and freedom from torture and other cruel, inhuman, or degrading treatment or punishment, as protected by the ICCPR:

It is a matter of concern that abortion continues to be subject to criminal penalties, even when pregnancy is the result of rape. Clandestine abortion continues to be the main cause of maternal mortality in Peru. ... The Committee once again states that these provisions are incompatible with articles 3 [equal enjoyment of rights], 6 [right to life], and 7 [right to freedom from torture and other cruel, inhuman, or degrading treatment or punishment] of the Covenant and recommends that the legislation be amended to establish exceptions to the prohibition and punishment of abortion.<sup>303</sup>

In its 2001 concluding observations on Guatemala—a country with stricter restrictions on abortion than those in Mexico—the Human Rights Committee noted that “the State has the duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy by providing the necessary information and resources to guarantee their rights and amending the legislation to provide for exceptions for the general prohibition of all abortions except where the mother’s life is in danger.”<sup>304</sup>

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<sup>302</sup> Human Rights Committee, “Concluding observations of the Human Rights Committee: Chile,” *U.N. Doc. CCPR/C/79/Add.104*, March 3, 1999, para. 15.

<sup>303</sup> Human Rights Committee, “Concluding observations of the Human Rights Committee: Peru,” *U.N. Doc. CCPR/CO/70/PER*, November 15, 2000, para. 20.

<sup>304</sup> Human Rights Committee, “Concluding comment of the Human Rights Committee: Guatemala,” *U.N. Doc. CCPR/CO/72/GTM*, 2001, para. 19.

The Committee on the Rights of the Child has in its 2003 General Comment on adolescent health and development placed particular emphasis on the physical and mental health risks related to early pregnancy, and has urged States parties to provide adequate services, including abortion services where they are not against the law:

Adolescent girls should have access to information on the harm that ... early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including ... safe abortion services where abortion is not against the law.<sup>305</sup>

The Committee on the Rights of the Child has also, in concluding observations on specific countries, expressed concern with the illegality of abortion for underage rape victims. In 2001, the Committee noted with regard to Palau: "The Committee notes that abortion is illegal except on medical grounds and expresses concern regarding the best interests of child victims of rape and/or incest in this regard. ... The Committee recommends that the State party review its legislation concerning abortion, with a view to guaranteeing the best interest of child victims of rape and incest."<sup>306</sup>

### ***U.N. Treaty Body Concern with Administrative Obstacles to Abortion after Rape or Incest***

In addition to a general concern with restrictive abortion laws, the U.N. Human Rights Committee has expressed its concern with obstacles to abortion where it is legal. These statements have referred to situations similar to those exposed in this report, and therefore are relevant for Mexico.

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<sup>305</sup> Committee on the Rights of the Child, "General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child," 2003, para. 27.

<sup>306</sup> Committee on the Rights of the Child, "Concluding comment of the Committee of the Rights of the Child: Palau," *U.N. Doc. CRC/C/15/Add.149*, 2001, paras. 46-47.

In 2000, for example, the Committee noted with regard to Argentina: “The Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law.”<sup>307</sup> In its General Comment on the right to equal enjoyment of civil and political rights, the Human Rights Committee also requested that governments provide information in their periodic reports about access to safe abortion for women who have become pregnant as a result of rape, as relevant to its evaluation of the implementation of this right.<sup>308</sup>

The right to information, certainly as it relates to the right to health, includes both the negative obligation for a state to refrain from interference with the provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection and promotion of reproductive health and rights, including information about abortion.<sup>309</sup> Human rights law further recognizes the right to nondiscrimination in access to information and health services, as in all other services.<sup>310</sup> Women stand to suffer disproportionately when information concerning safe and legal abortion is withheld.

The American Convention on Human Rights mandates judicial protection for human and constitutional rights—which in Mexico include the right to abortion after rape or incest—and stipulates that state parties to the Convention will ensure a prompt and adequately enforced judicial remedy for violations of such rights.<sup>311</sup> Where rape and incest victims have limited access to legal abortion after rape, this right has arguably been infringed.

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<sup>307</sup> Human Rights Committee, “Concluding observation of the Human Rights Committee: Argentina,” *U.N. Doc. CCPR/CO.70/ARG* (2000), para. 14.

<sup>308</sup> Human Rights Committee, “General Comment No. 28: Equality of rights between men and women (article 3),” *U.N. Doc. CCPR/C/21/Rev.1/Add.10*, March 29, 2000, para. 11.

<sup>309</sup> Article 19, *The Right to Know: Human Rights and Access to Reproductive Health Information* (Philadelphia: University of Pennsylvania Press, 1995), pp. 39 and 61-72.

<sup>310</sup> See International Covenant on Economic, Social, and Cultural Rights, article 2(2) as well as Committee on Economic Social, and Cultural Rights, “General Comment 14,” paras. 12(b), and 18-19.

<sup>311</sup> ACHR, article 25.

## VII. Conclusion

An unwanted pregnancy is distressing in 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. Rape victims who are denied their right to voluntarily terminate the imposed pregnancy are denied not only their right to choose independently in matters related to abortion but also their right to justice and redress, and—in a broader sense—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.

Since 1998, international human rights entities have asked Mexico to overcome the persistent and pervasive impunity for domestic and sexual violence in that country, and to provide adequate redress and judicial remedies for these crimes. Such redress, in Mexico and under authoritative interpretations of international law, includes unobstructed access to safe, legal and free abortion after rape or incest. Mexico has the infrastructure and resources to provide such redress and should do so immediately.

## VIII. Detailed Recommendations

### *To the Federal Government of Mexico:*

Human Rights Watch calls on Mexico's central government to take immediate and concrete measures to guarantee swift and unobstructed access to safe and free<sup>312</sup> abortion services for victims of rape, incest, or "estupro" (intercourse with an adolescent girl through seduction or deceit). In what follows, we identify some essential steps.

### *To the President of Mexico:*

- Publicly support the right to immediate unhindered access to safe and free abortion services in those cases where abortion currently is not criminalized and in accordance with human rights standards. Urge state governments to take immediate steps to guarantee this right.

### *To the Federal Congress:*

- Enact a federal law to effectively criminalize and punish domestic and sexual violence against girls and women, including sexual abuse of girls by parents or other family members.
- Amend the Law on the Creation of the National Institute for Women to explicitly include a mandate to further women's and girl's access to abortion where currently permitted by law.
- Amend the penal code to explicitly criminalize marital rape, in order to ensure compliance with the November 2005 Supreme Court ruling declaring marital rape a crime.

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<sup>312</sup> Where abortion is not penalized, concern for the equal enjoyment of the right to access a legal and safe abortion may require the state to provide abortion services for free for some women and girls. This is the case with regard to abortion after rape in Mexico. 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. Moreover, the obligation on the part of the public health system to provide free abortion services for rape victims is already law in some Mexican jurisdictions. National legislation should not fall short of this level of protection

- Enact laws that ensure women access to voluntary, safe, and free abortions after all forms of rape or incest.
- Repeal penal code provisions that criminalize abortion, especially those that punish women and girls who have had an abortion.
- Establish a federally mandated age of consent for sexual activities, with due consideration given to children's evolving capacities. Authoritative interpretations of international human rights law consistently express concern with a legal age of consent at twelve years of age or below. Clarify that all intercourse with children under the age of consent is criminalized as statutory rape, whoever the perpetrator is.
- Amend the General Health Law to guarantee the provision of safe and free abortions at public health institutions.
- Ensure continued participation of civil society actors with expertise in women's rights and service provision for victims of violence against women in the development of all future standards and guidelines on this topic.

***To the National Health Ministry:***

- Expand the applicability of the national norm on services to victims of domestic violence (NOM-190-SSAI-1999) to cover health services that must be offered to all victims of sexual violence, whoever the perpetrator. Revise the norm to include, *inter alia*, a mandatory offer to provide voluntary, legal, and free termination of a potential pregnancy for all victims of sexual violence, including adolescent girls.
- Devote adequate resources to the dissemination of and training on the Integrated Model for the Prevention of and Attention to Domestic and Sexual Violence.
- Ensure continued participation of civil society actors with expertise in public health, women's rights, and service provision for victims of violence against women in the development of all future standards and guidelines on this topic.

***To the National Ministry of the Interior:***

- Include the right to legal abortion after rape, incest, or “estupro” as an essential part of the mandate of the National Program on Human Rights within the Ministry of the Interior. Report annually on access to legal abortion after rape, incest, or “estupro” in all states, and provide administrative guidelines for how to integrate this right into individual state policies and programs.

***To State Governments and the Government of the Federal District:***

***To State Governors and the Head of Government for the Federal District:***

- Publicly support the right to immediate unhindered access to safe, humane, respectful, and free abortion services in those cases where abortion currently is not criminalized and in accordance with human rights standards.
- Publicly announce and implement a zero-tolerance policy for public officials’ failure to support victims of violence in their pursuit of justice and redress, bearing in mind that such redress includes access to legal and free abortion. Implement meaningful sanctions against public officials who obstruct women’s and girls’ right to abortion after rape.
- Develop a five-year plan for the prevention, punishment, and eradication of violence against women, which specifically includes steps to be taken to ensure access to justice for rape and domestic violence victims, as well as administrative steps to guarantee access to voluntary and safe abortion after all forms of rape or incest.
- Pardon and release all prisoners serving sentences for having procured or induced abortions.

***To Local Congresses and the Legislative Assembly of the Federal District:***

- Repeal penal code provisions that criminalize abortion.

- Until such time as these provisions are still in place, amend the state penal codes and penal procedure codes to guarantee access to safe and free abortion after all forms of rape or incest, including by establishing clear procedures for access.
- Enact or amend state laws to criminalize and punish domestic and sexual violence against girls and women, and to ensure adequate protection against the sexual abuse of children whoever the perpetrator. Rescind all provisions that condition criminal sanctions on the moral standing of the victim, as well as those that nullify criminal proceedings if the perpetrator marries the victim. Repeal all provisions that penalize the child for the crime of “incest.” Repeal all provisions that require domestic violence to be “repeated” in order to be considered a violation of the law.
- Amend or clarify existing state laws to 1) establish that a victim of rape or incest does not need judicial authorization in order to obtain a free and safe abortion procedure at a public health facility; 2) establish adolescents’ right to consent to medical procedures as needed to protect the best interests of the child and according to his or her evolving capacities; and 3) require public health officials to assist rape victims in accessing safe, humane, and free abortion procedures.
- Require all appropriate government agencies to provide training on preventing, investigating, and punishing violence against women, including domestic and sexual violence, especially for health personnel, judges, magistrates, police, and public prosecutors.

***To Health Ministries of the States and the Federal District:***

- Announce through public information campaigns—print, radio, and television—the provision of safe and free abortion procedures for victims of rape or incest.
- Implement the national norm on assistance to victims of domestic violence, including provisions regarding data collection, provision of contraceptives, and the referral of cases of presumed abuse to the justice system, with due regard to patient confidentiality and informed consent. Extend the provision of mandated services to all victims of violence, whoever the perpetrator is.
- Proactively investigate and sanction all health personnel who harass or provide misleading information to rape victims or colleagues involved in the provision of

legal abortion services. Sanctions should include the suspension or revocation of medical licenses for repeat offenders.

- Devote adequate resources to the dissemination of and training on state procedures to guarantee access to safe and legal abortion for rape and incest victims.

***To the Attorney General Offices of the States and the Federal District:***

- Encourage women and girls to report domestic and sexual violence to the police and the public prosecutors through swift and respectful investigation and prosecution, the provision of adequate victim and witness protection programs, and the establishment of accessible and adequately funded specialized services for victims of domestic and sexual violence. Accessibility should be evaluated, inter alia, on the basis of geographical distance to victims, victim costs associated with filing complaints, and potential language barriers.
- Systematically collect and analyze data and provide regular public updates on the number of complaints filed for domestic and sexual violence.
- Support, or continue to support, public information campaigns that publicize the provision of safe and free abortion procedures where legal, including for victims of all forms of rape or incest. Such campaigns should be carried out in Spanish and in indigenous languages, as appropriate, and should appear in mass media that reach a majority of the Mexican population, including those who are illiterate or not native Spanish speakers.
- Proactively investigate and sanction all staff and associated personnel, including public prosecutors, forensic doctors, and state expert witnesses, who treat victims of rape, incest, or “estupro” dismissively, neglectfully, or with disregard for the victims’ right to full redress. Sanctions should include dismissal for repeat offenders.
- Provide adequate and continuous training for all relevant personnel on preventing, investigating, and punishing domestic and sexual violence, as well as on girls’ and women’s right to access legal abortion after rape or incest. Devote adequate resources to the dissemination of and training on state procedures to guarantee access to safe and legal abortion for rape and incest victims.

- Establish specialized centers, linked to the attorney general's office, for legal accompaniment and psychological support services to victims of domestic and sexual violence. These centers should be accessible and adequately staffed and funded to assist all victims in a timely manner.
- Eliminate questions on the rupture of the hymen in questionnaires forensic doctors examining rape victims are required to fill out. Replace them with questions aimed at determining signs or symptoms of forced vaginal intercourse.

***To the Integrated Family Service Agencies (Sistema para el Desarrollo Integral de la Familia, DIF) of the states and the Federal District:***

- Provide or arrange for adequate physical and psychological accompaniment and guidance for pregnant rape victims who have asked for a voluntary legal abortion throughout the process leading to such abortion, including continuous accompaniment and follow-up for those victims who need it.

## IX. Acknowledgments

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