

HUMAN RIGHTS WATCH

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HUMAN
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Members of the United Nations Committee on the Elimination of Discrimination Against Women
Office of the United Nations High Commissioner for Human Rights (OHCHR)
One United Nations Plaza
Room DC1 - 511
New York, NY 10017

Re: Review of Mexico's compliance with the Convention on the Elimination of Discrimination Against Women

Dear Committee Members:

We write in advance of the Committee on the Elimination of Discrimination Against Women's upcoming review of Mexico to highlight areas of concern regarding the Mexican government's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This submission focuses specifically on violations of the right to health, which are inconsistent with Article 12 of the Convention.

This submission is based on the Human Rights Watch report on sexual and reproductive health and rights in Mexico, *The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico* (2006), as well as ongoing monitoring of human rights in Mexico. Recent consultations with women's rights groups indicate the findings remain relevant and accurate, despite having been completed 6 years ago.

Our research on Mexico shows that many women and girls face obstacles in accessing sexual and reproductive health services after sexual violence. Abortion is a crime in Mexico under the Federal Criminal Code and state criminal codes, 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 victims.

On paper, abortions may be obtained legally in the case of sexual violence in all states of Mexico; however, we found in 2005/6 that the reality on the ground was different for some women and girls. Based on feedback from respected organizations that we work with in Mexico, little has changed about the nature of the barriers they encounter. As documented in our 2006 report, these include:

- inaccurate or lack of information on legal abortions
 - 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, 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. 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.
- denial by officials that cases of unwanted pregnancy due to rape exist in Mexico
 - 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 a few states, officials seemed at best willfully blind to the existence of the problem. Some public officials doubted the sincerity of rape victim testimony, and their request for voluntary legal abortions.
- personal opposition of officials to the legality of abortion and active discouragement by officials of abortion after rape
 - Some public officials with whom Human Rights Watch spoke held personal convictions in opposition to the legality of abortion. They were uncomfortable providing information on all legal options to the rape victims because they believed doing so promoted abortion. This was true even with some of the highest officials in the public agencies most responsible for enforcing the right to legal abortion after rape. 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.

- Human Rights Watch found instances where pregnant rape victims were actively discouraged from seeking legal abortion services. One tactic that we documented in our research was by discouraging rape victims from filing a criminal complaint, thus closing the door to legal abortion. And in one state Human Rights Watch spoke with officials who employed aggressive anti-abortion strategies to attempt to change the minds of pregnant adolescents who asked for assistance in obtaining a legal abortion, including anti-abortion psychological counseling and exposure to anti-abortion videos.
- 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 a medical procedure that needs to be carried out within very specific timeframes if it is to be safe for the woman or girl. 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.
- intimidation by the justice sector
 - In a small number of cases, Human Rights Watch spoke to several rape victims or family members of underage rape victims who described direct intimidation in the justice sector as they sought access to legal abortion for themselves or their loved ones. For example, in one case, the mother of a pregnant adolescent went to a public prosecutor to report the rape. The prosecutor told the mother that abortion was criminal even in cases of rape and that the prosecutor's office would be watching her and her daughter. The prosecutor also warned the mother that she would be sent to jail if her daughter had an abortion.

Human Rights Watch found that even in states with administrative or legal guidelines for abortion after rape, women and girls face unduly complicated procedures, illegal delays, lack of information or biased information, and intimidation by the health sector.

Since we conducted our research in 2005/6 on this issue, Mexico has issued an Official Mexican Policy NOM-046, *Family Violence, Sexual Violence, and Violence against Women: Criteria for Prevention and Response*. We recognize this legislation, which entered into force in April 2009, as an important step in addressing the

inconsistencies in the provision of health services after rape. This technical norm, based on the Federal Law on Metrology and Standardization (Ley Federal sobre Metrología y Normalización), is applicable to the health sector and binding to all institutions of the National Health System and health service providers of the public, private and social sectors.¹ Failure to comply with NOM-046 could generate criminal, civil or administrative sanctions.

NOM-046 establishes the steps to be followed in the health system to help victims of sexual violence. It establishes the criteria for the detection, prevention, and medical treatment of gender-based violence, and for the provision of information to the victims of domestic and sexual violence. It clearly establishes criteria for the provision of information and services to prevent pregnancy, sexually transmitted infections, and HIV/AIDS transmission in cases of rape.² The norm also establishes that, in cases of pregnancy that result from rape, health service providers should offer counseling and information to the victims regarding legal termination of the pregnancy.³

The governor of the state of Jalisco filed a constitutional challenge regarding the provision of the norm that provides for the emergency contraception in cases of rape in July 2009. However, Mexico's Supreme Court struck down the challenge and ratified the constitutionality of NOM-046 on May 27, 2010.

The weakness of NOM-046 is that it is not binding upon the Attorney General's office (Ministerio Público), which is the only institution that can provide legal authorization for abortions in cases of rape. Women's human rights groups in Mexico have expressed concern to Human Rights Watch that, without similarly regulating how the Attorney General's office discharges its obligations respecting the authorization of abortions in the case of rape, women will continue to encounter obstacles in seeking legal abortions, even with the improved protections provided under NOM-046.

Human Rights Watch is also concerned that since 2008, 16 states in Mexico have passed constitutional reforms that "protect life from conception," which in effect limit women's ability to exercise their fundamental human rights, including the right to health. The constitutional reforms do not change the status of legal exceptions in the criminal code that allow for abortion; however, we are concerned that they create a chilling climate and could generate more instances of denial of services.

Baja California and San Luis Potosí amended their constitutions, in 2008 and 2009 respectively, to add language that protects the right to life from conception to natural death. The Baja California State Human Rights Commission (Procuraduría de

¹ Diario Oficial de la Federación. Norma Oficial Violencia Familiar, Sexual y contra las Mujeres. Criterios para la Prevención y Atención (NOM-046-SSA2-2005), section 2 Campo de Aplicación.

² Id., section 6.4, subsection 6.4.2.3.

³ Id., section 6.4, subsection 6.4.2.7.

Derechos Humanos y Protección Ciudadana del estado de Baja California)—a government institution—and deputies of the 59th Legislature of the Congress of San Luis Potosí challenged these reforms in Mexico's courts. The Supreme Court ultimately ruled on the challenge, declaring that the reforms did not violate Mexico's constitution, based on a constitutional analysis that states have the power to legislate on topics not expressly addressed in the federal constitution.

Chiapas, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, Sonora, Tamaulipas, and Yucatán have all passed similar reforms. Seven more states have introduced (but not yet adopted) proposals for analogous constitutional reforms from 2009 to 2011: Aguascalientes, Baja California Sur, Estado de México, Sinaloa, Tabasco, Tlaxcala and Zacatecas.

As noted above, the constitutional reforms cannot eliminate the exceptions to the criminalization of abortion—including abortion after rape. However, we are concerned that these reforms will exacerbate the obstacles women and girls face in accessing legal abortion. A basic principle of international human rights law is that sub-national governments cannot limit or violate human rights guaranteed by Mexico under its treaty obligations.

In your upcoming Committee review of Mexico, Human Rights Watch urges you to question the government of Mexico about the following key issues, which at present threaten the rights of women and girls:

- *What steps has Mexico taken to ensure that women and girls in all jurisdictions have access to information regarding reproductive health services available after sexual violence?*
- *How has Mexico monitored the implementation of NOM-046, to ensure the protection of the rights of women and girls in all jurisdictions, including those where constitutional reforms have been passed? Can it provide the number of victims who have accessed the services established in NOM-046 since it was issued?*
- *What efforts has Mexico taken to remove barriers that women and girl victims of sexual violence encounter when seeking legal abortion or emergency contraception after sexual violence?*
- *What legal protections and remedies still exist in the country for citizens wishing to challenge the constitutionality of these state reforms, in light of the Supreme Court decisions regarding the reforms in Baja California and San Luis Potosí?*

We hope you will find these comments relevant to your examination of the Mexican government's compliance with the Convention, and would welcome an opportunity to discuss them further with you.

Sincerely,

A handwritten signature in cursive script that reads "Amanda M. Klas". The signature is written in black ink and is positioned above the typed name.

Amanda Klasing
Women's Rights Researcher
Human Rights Watch