

Chapter Two: International legal standards and conventions on reproductive rights

Chapter one attempted to show that the abortion debate is a very complex issue in which the moral stakes are very high. This is primarily because various positions on the moral status of the embryo and where we, as a community, draw the line of inclusion or exclusion of membership of our moral community at different points. One consequence of this is that it is very difficult to reach an agreement between members of each side of the abortion debate. Another consequence is that it is often difficult for states to make laws regulating the practice of abortion. It is difficult that these laws will accommodate to some extent to the views of all citizens in a country. Therefore, it is important to view what international conventions state on women's rights as well as how Mexico has formulated its laws in regard to abortion.

This chapter will discuss numerous international legal standards and conventions on reproductive rights such as: the outcome document from the International Conference on Population and Development (ICPD) held in Cairo in 1994; The Human Rights Declaration of the United Nations; the Report of the Committee on the Elimination of Discrimination against Women (CEDAW) of the United Nations. There is evidence of the United Nations Treaty Body Concern with administrative and legal obstacles to abortion after rape. In this chapter I will analyze the Mexican Legal Framework, considering what the law establishes in Mexican jurisdictions as well as the ethical arguments behind the law. In addition, I will offer an analysis on the current social and political situation in Mexico as it pertains to abortion and women's reproductive rights. In Mexico sometimes even when an abortion should be legal there are many cases in which it is not offered or even known of as an

option. I suggest that, in such cases, a violation of women's rights occurs if access to legal abortions after rape is denied, withheld or downplayed.

In the second part of this chapter I provide some practical examples as evidence that the Mexican government is remiss in upholding the right to an abortion in those cases when it should be considered legal. I identify several comparable cases in other parts of Central and South America, which demonstrate how widespread the problem is, as well by their incidence they show how this problem of persistent impunity towards violations of women's rights is rooted in cultural values. It seems that the logical conclusions to draw from this is that pressure from the west for female emancipation and women's rights is finding it difficult to penetrate in these societies. However, and perhaps surprisingly, in some cases in the United States several states are losing ground with the 'pro-choice' arguments, challenging the *Roe v. Wade* (1971) legislation.

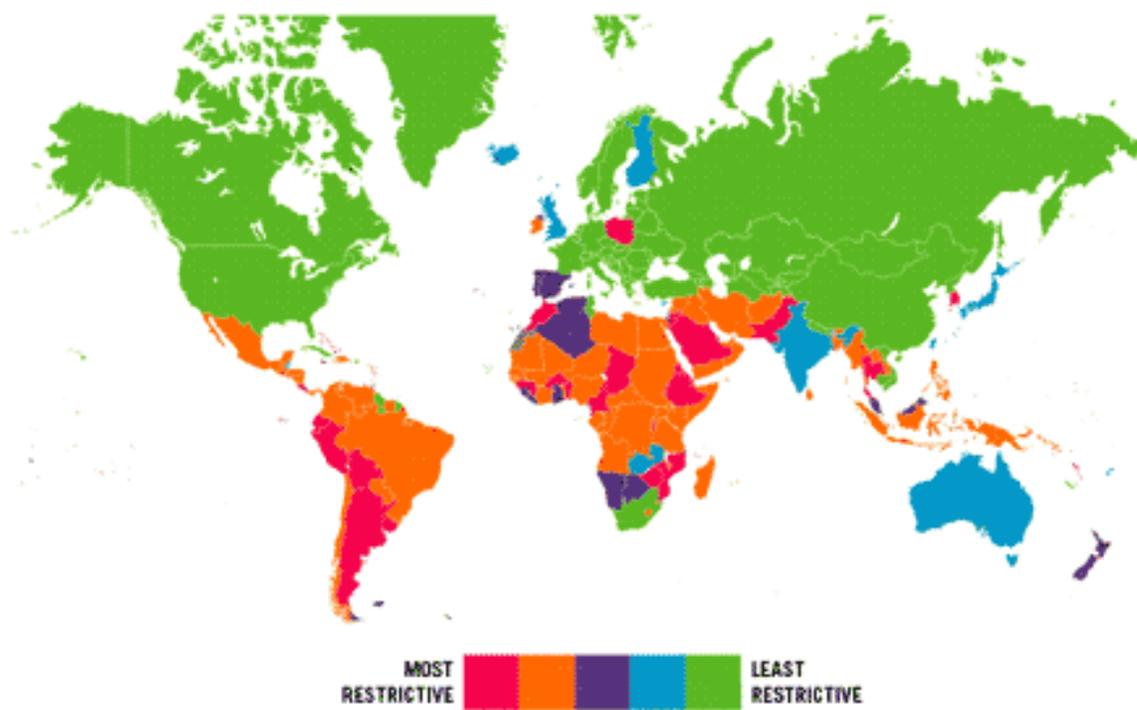


Figure Source: “The World’s Abortion Laws,” *Center for Reproductive Rights*, Apr. 2005.

Currently, more than 61% of the world’s people live in countries where induced abortion is permitted either for a wide range of reasons or without restriction as to reason. In contrast, 26% of all people reside in countries where abortion is generally prohibited.¹

Roughly two-thirds of the women in the world reside in countries where they can get an abortion either on demand or where certain exceptions to the laws permit abortion in certain cases, either personal or socio-economic. For 99% of the world population there exists at least one exception that permits legal abortion. Therefore, the international tendency is to exempt penalization of abortion in certain cases, for example, the case of pregnancy after rape is a very common cause for exception. It is important to acknowledge that in Chile, El Salvador and recently Nicaragua, abortion is prohibited in *all cases* with no exceptions.² These countries do not consider any cause of pregnancy to warrant a legal and safe abortion. The Catholic Church exerts a very strong power in cultural and political grounds in these countries, which the legislation there reflects.

¹ “The World’s Abortion Laws,” *Center for Reproductive Rights* (April 2005 [cited 29 Nov. 2006]): available from http://www.reproductiverights.org/pub_fac_abortion_laws.html.

² United Nations Population Division, *Abortion Policies: A Global Review, 2002*, *United Nations* (2002 [cited 2 Dec. 2006]): available from <http://www.un.org/esa/population/publications/abt/fabt.htm>.

In the case of these two nations in Latin America and the Caribbean, abortion is thus completely banned in 5.55% of the countries in this region. The exceptions, which warrant legal abortions are commonly: to save the life of a woman, acknowledged in 14 countries (38.88%); for physical health in 9 countries (25%); for mental health 3 countries³ (8.33%); and, for economic reasons⁴ (8.33%). Finally, abortion on demand in this region is legal in Canada, Cuba, the United States of America, Guyana and Puerto Rico, representing 13.88% of the countries in the world.⁵

2.1 International Legal Standards on Reproductive Rights

Violence and reproductive rights are addressed by International human rights that protect women around the world. I will delineate these legal frameworks and offer a brief explanation on what these conventions and treaties convey and how they specifically relate to the reproductive rights of women. The Center for Reproductive Rights emphasizes the importance of litigation in international law, as can be seen in the Center's attitude toward international litigation.

Litigation is becoming an increasingly attractive tool for human rights advocates around the world who are seeking to secure states' compliance with existing human rights standards, further the development of global norms, and increase awareness and support for human rights. The Center has a number of legal tools available for advocates working to uphold reproductive rights at the national, regional and international levels.⁶

As the reference above states, law is a useful tool to make countries comply with international legal standards. International legal support for a woman's right to a safe and legal abortion can be found in a number of treaties and other instruments. The right to choose is encompassed in other guarantees such as: the right to life, the right to health; the

³ Jamaica, Trinidad and Tobago, and, Saint Kitts and Nevis.

⁴ Barbados, Belize and Saint Vincent and the Grenadines.

⁵ United Nations Population Division, *Abortion Policies: A Global Review*.

⁶ "International Litigation," Center for Reproductive Rights [cited 12 Dec. 2006]: available from http://www.crlp.org/ww_litigation.html

right to freedom from discrimination; and the right to autonomous reproductive choices. Annex 2⁷ illustrates the provisions of the international instruments that are used to defend a safe abortion as a women's right and the specific articles that address the issue at hand such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention, the Women's Convention, among many other international tools.

The most important convention that addresses the issue at stake in this thesis, which is the right of women to safe and legal abortions, is the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional Protocol*. Article 5 of *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* stipulates that: "countries should modify the social and cultural patterns of conduct of men and women to promote equality of men and women and, through research, examine the interface between the role of culture and socio-legal institutions as major factors that contribute to inequality."⁸ This Convention affirms to be the "only human rights protocol that affirms and openly avows the reproductive rights of women."⁹ The countries that have ratified and signed this Convention are "legally bound to put its provisions into practice,"¹⁰ as well as they have to submit their country's reports, "at least

⁷ "Safe and Legal abortion is a human right." *Center for Reproductive Rights*. Briefing Paper (Aug. 2004 [cited 13 Jan. 2007]): available from www.crlp.org/pdf/pub_bp_safeandlegal.pdf

⁸ "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)," *United Nations Division for the Advancement of Women Department of Economic and Social Affairs* (1979 [cited 1 Dec. 2006]): available from <http://www.un.org/womenwatch/daw/cedaw/>

⁹ "Convention on the Elimination of All Forms of Discrimination Against Women," *United Nations Division for the Advancement of Women Department of Economic and Social Affairs* (26 Jan. 2007 [cited 28 Jan. 2007]): available from <http://www.un.org/womenwatch/daw/cedaw/>

¹⁰ "Convention on the Elimination of All Forms of Discrimination Against Women," *United Nations Division for the Advancement of Women Department of Economic and Social Affairs*.

every four years, on measures they have taken to comply with their treaty obligations.”¹¹ Mexico’s latest report was criticized by Organizations such as Ipas¹² for being ambiguous and not addressing the issue of abortion.¹³ Regarding reproductive health, the report said very vague things and nothing very specific. This reflects the lack of interest in providing safe abortions to women who have the legal right to get an abortion, such as the case of pregnancy after rape.¹⁴

2.2 Rights being violated

Although many international treaties do not explicitly express or refer to women’s reproductive rights, they still protect other rights that encompass and contribute to reproductive rights. “The *right to life* is protected in multiple human rights instruments.”¹⁵ Unsafe abortion is directly associated with high rates of maternal death, and therefore, countries that prohibit or obstruct access to safe and legal abortions put a women’s life in danger as well as infringing in women’s right to life.

In 2000, in interpreting Article 6.1 of the *International Covenant of Civil and Political Rights*, the United Nations Human Rights Committee called upon states to inform the committee of “[a]ny measures taken by the State to prevent unwanted pregnancies, and

¹¹ “Convention on the Elimination of All Forms of Discrimination Against Women,” *United Nations Division for the Advancement of Women Department of Economic and Social Affairs*.

¹² Ipas: Protecting Women’s Health, Advancing Women’s Reproductive Rights (cited 31 Jan. 2007): available from <http://www.ipas.org/english/default.asp>

¹³ “Shadow report’ emphasizes issues of violence, abortion access,” Ipas (29 Aug. 2006 [cited 20 Jan. 2007]) available from: http://www.ipas.org/english/press_room/2006/releases/08292006.asp

¹⁴ To read the report that Mexico submitted to CEDAW check, “Fifth periodic report of states parties, Mexico,” Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations, (Mexico, 1 Dec. 2000).

¹⁵ “Safe and Legal abortion is a human right,” *Center for Reproductive Rights*, Briefing Paper (Aug. 2004 [cited 28 Jan. 2007]): available from www.crlp.org/pdf/pub_bp_safeandlegal.pdf

to ensure that they do not have to undergo life-threatening clandestine abortions.”¹⁶ The *International Conference on Population and Development’s* stance on women’s right to life and right to health is

to promote women's health and safe motherhood; to achieve a rapid and substantial reduction in maternal morbidity and mortality and to reduce the difference between and within developed and developing countries; and, on the basis of a commitment to women's health and well-being, to reduce greatly the number of deaths and morbidity from unsafe abortion. Actions that improve the health and nutritional status of women, especially of pregnant and nursing women, are also recommended.¹⁷

Because clandestine abortions are rarely safe and women may experience any number of reactions such as uterine perforation, chronic pelvic pain or pelvic inflammatory disease,¹⁸ International Law strives to protect a woman’s *right to health*. The *right to health* can be interpreted as guarantying the appropriate measures to ensure that women are not risking their health by seeking out unsafe, clandestine abortions. Providing the necessary information on the procedures to get an abortion, how to get it and also, making the law clear and comply by what the law states; are concrete measures that could be taken to start ensuring the *right to health* for all women.

Every woman also has the *right of non-discrimination*, no one should be discriminated because of gender. *The Convention on the Political Rights of Women* (implemented on July 7, 1954) addresses this right and many other international instruments as well, such as the *International Declaration of Human Rights* in Article 2, and *Fourth World Conference on Women, Beijing Declaration* in paragraph 24.¹⁹ The

¹⁶ Human Rights Committee, General Comment No.28: *Equality of rights between men and women* (article 3), paragraph 10, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

¹⁷ “Chapter VIII, Health, Morbidity and Mortality on the International Conference on Population and Development,” *United Nations* (El Cairo, 1994 [cited 11 Jan. 2007]): available from <http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm#chapter8>

¹⁸ John M. Paxman, Alberto Rizo, Laura Brown, and Janie Benson, “The Clandestine Epidemic: The Practice of Unsafe Abortion in Latin America,” *Studies in Family Planning* Vol. 24, No. 4. (July- Aug.1993): 205-226.

¹⁹ “Fourth World Conference on Women, Beijing Declaration,” *United Nations* (1995 [cited 24 Jan. 2007]): available from <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

Convention on the Political Rights of Women concedes to “equalize the status of men and women in the enjoyment and exercise of political rights.”²⁰ Also, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Convention of Bélem do Para) recalls that laws that have the effect or the purpose of preventing a woman from exercising any of her rights to fundamental freedoms on an equal basis with men. Laws that ban abortion have the effect and purpose of putting woman in an inferior place in society, because women should have a complete control of their bodies. Moreover, countries that have exceptions in their legal framework where they permit abortion in some cases, such as in the case of rape, and deny these abortions in practice have the *discriminatory purpose* by denigrating and undermining a woman’s capacity to make responsible decisions about her body and her life.

The *Universal Declaration of Human Rights* addresses in Article 25 part II that “[m]otherhood and childhood are entitled to special care and assistance... All children, whether born in or out of wedlock, shall enjoy the same social protection.”²¹ Interestingly, the constitution states that in some states of Mexico, as well as in the federal penal code, the sentence for punishable abortion is lower when the woman—who has the abortion performed—does not hold a bad reputation; when the pregnancy was the result of a relationship outside marriage; and, when the woman kept her pregnancy secret. These laws clearly violate article 25 of the Universal Declaration of Human Rights, which Mexico has ratified and signed. This reaffirms that in Mexico women are discriminated by laws that

²⁰ “Convention on the Political Rights of Women,” *United Nations* (20 Dec. 1952 [cited 24 Jan. 2007]): available from <http://www.unhchr.ch/html/menu3/b/22.htm>

²¹ “Universal Declaration of Human Rights,” *United Nations* (10 Dec. 1948 [cited 3 Jan. 2007]): available from <http://www.un.org/Overview/rights.html>

denigrate and undermine feminine capacity to make responsible decisions about their bodies and their lives.

The outcome document from the *International Conference on Population and Development* (ICPD) held in Cairo in 1994 is important because it gives critical views on the abortion debate which include the statement that:

[i]n no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services. Prevention of unwanted pregnancies must always be given the highest priority and all attempts should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have access to reliable information and compassionate counseling, not intimidation or accusations. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances in which abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education and family planning services should be offered promptly, which will also help to avoid repeat abortions.²²

The respect for a woman's right to plan her family requires governments to give good sex education, as also provide contraceptives and make abortion services when considered legal, safe and accessible to women. Especially if a woman becomes pregnant through non-consensual sex she should not by any means be forced to bear the child and bring the pregnancy to term if she does not desire to do so.

With a clear precedent in international law, "the women whose rights have been violated have a legal tool to fight back with"²³ because states that sign and ratify are morally obliged to carry out these agreements, and more so if they want to project an image as a modern country that respects women's rights. The analysis provided overlooking the

²² "Chapter VIII, Health, Morbidity and Mortality on the International Conference on Population and Development," *United Nations* (El Cairo, 1994 [cited 11 Jan. 2007]): available from <http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm#chapter8>

²³ "Victory in Landmark Reproductive Rights Case Before CEDAW," Center for Reproductive Rights, (November 2006 [cited 22 Jan. 2007]): available from <http://www.crlp.org/worldwide.html>

international standards above leads to the conclusion that if Mexico wishes to reflect to the world that women's rights are a priority, it should not only be stated in the national and international laws but also in reality. All of the human rights treaties that Mexico has signed ratified, 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 Belém do Pará), and the *American Convention on Human Rights*, are directly applicable to Mexico, because they form the body of law and should take precedent over state or federal laws.²⁴

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.²⁵

Clearly, the biggest issue at stake in the eyes of the U.N. is the willingness of a country to not only have laws that ensure the safety of women in such cases, but their ability to follow through on those laws. This further demonstrates the need for a legal framework that women can use to guarantee the right to a legal abortion and consistency in its enforcement across the nation of Mexico.

²⁴ The Human Rights Watch Report has this good translation of the Mexican Constitution and how International Treaties form part of the body of law. The Constitution of the United States of Mexico, article 133 says "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 la aprobación del Senado, serán Ley Suprema de toda la Unión. Los jueces de cada estado se arreglarán 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 it, as well as those treaties that are consistent with the Constitution and that have been entered into the President of the Republic and ratified by the Senate, will be the Supreme Law of the Union. The judges of each state will work according to this constitution, these laws and treaties, despite any contradictions that may exist in the state laws and state constitutions.].

²⁵ "The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico." 4.

2.3 Abortion in Mexico

Abortion constituted a crime in Mexico since 1931.²⁶ Intentional abortion or abortion on demand, are both considered a crime in Mexico, although, to get an abortion after rape is legal in all of the states. Women are seldom prosecuted for having an abortion under illegal circumstances; nevertheless, there are still some cases where there is documented punishment.²⁷

Because of its federal Republic structure Mexican Law, is divided in federative entities (states), and they each have their own laws and constitutions, there is also a federal law. The federal codes on abortion are irrelevant to the treatment of the issue because abortion is to be handled at the state level and would only go federal “if the abortion were carried out under exclusively federal jurisdiction.”²⁸ It is relevant to state, however, that even though each state has its own constitution, the federal code (which can be found in Annex 3) is still very similar to the state’s constitutions.²⁹ Penalties for illegal abortions vary from state to state; they can be from six months to five years (In Annex 4 three penalties by state are illustrated). The exceptions of the abortion ban also differ from state to state. Although abortion is penalized in Mexico, all states dispense penalties in several circumstances and these are the exceptions. Legal reasons for dispensing abortion are presented in the Annex 5.

²⁶ 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. In “The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” *Human Rights Watch* Vol 18. No. 1(B) (New York: March 2006). “Negligent behavior,” while legally imprecise, is generally thought to cover, for example, carrying out strenuous physical activities in order to provoke a miscarriage.

²⁷ Eduardo Barraza, *Aborto y Pena en Mexico*, (Mexico: Grupo de Informacion en Reproduccion Elegida-Instituto Nacional de Ciencias Penales, 2003), 19.

²⁸ Political Constitution of the United Mexican States (1917 [cited 12 Jan. 2007]): available from <http://constitucion.gob.mx>

²⁹ The Federal Code on Abortion can be retrieved in Annex 5.

In the Penal Code of Mexico City the definition of Rape, Statutory Rape and Incest are the following: “[r]ape is the carnal access obtained by physical or moral violence with a person of either sex without their consent (Art. 265).”³⁰ “Statutory Rape is the realization of intercourse with a chaste and honest, women less than eighteen years old, with her consent obtained by swindle (Art 262),”³¹ and “*incest* is a sexual offense that consist in carnal contact between relatives between the degree that matrimony is considered illegal (Art 272).”³² It is evident by these concepts that the legal framework lacks objectivity. What are the guidelines for measuring the honesty and chastity of a woman? Additionally, it is uncertain whether an international standard for these types of offense because conceptions of honesty and chastity vary across cultures and time periods. This paradox, however, should not signal an abandonment of the debate, rather it should prompt the establishment of certain fundamental guidelines to be established, perhaps using the input of individuals from different cultures.

Linked to the ambiguity stated above, there is the inherent problem with partial decriminalization of abortion, such as occurs in Mexico, this problem is that the decision-making power over abortions mainly resides within medical doctors and public prosecutors. The procedures and administrative formalities have more weight in the long run than a woman’s right to decide about her pregnancy in a voluntary manner. While the decision of doctors and prosecutors is used mainly in cases of abortion after rape, I strongly advocate a

³⁰ Rafael de Pina Vara, *Diccionario de Derecho* (Mexico: Editorial Porrúa, 1986). [My translation from: VIOLACION. Acceso carnal obtenido por violencia física o moral con persona de cualquier sexo y sin su voluntad. (Art. 265 del Código Penal para el Distrito Federal)].

³¹ Rafael de Pina Vara, *Diccionario de Derecho* (Mexico: Editorial Porrúa, 1986). [My translation from: ESTUPRO. Realización de la copula con una mujer menor de dieciocho años, casta y honesta, con consentimiento de ella, obtenido mediante engaño (art. 262 del Código Penal para el Distrito Federal)].

³² Rafael de Pina Vara, *Diccionario de Derecho* (Mexico: Editorial Porrúa, 1986). [My translation from: INCESTO. Delito sexual consistente en el contacto carnal entre parientes dentro de los grados en que se encuentra prohibido el matrimonio (art. 272 del Código Penal para el Distrito Federal)].

woman's right to decide independently upon matters related to abortion with no interference from the state or any other group, because abortion is a private matter in a woman's life. In cases in which abortions are considered legal, such as abortion after rape, women who go to the Public Ministry (it is important to state that Human Rights Watch noted that in percentage few go) are harassed and intimidated by public officials. These officials "aggressively discourage abortion after rape."³³ Even though administrative guidelines for doctors, social workers and officers exists in Mexico, these officers still have their own beliefs on abortion and expect women to abide by them. They may not have overcome the social taboo attached to abortion and rape. As Human Rights Watch found in Mexico:

[a] number of agencies in various Mexican states' - particularly the State Attorney General's office- public hospitals and family services' employ aggressive tactics to discourage and delay rape victims' access to legal abortion. A social worker in Jalisco for example, showed a scientifically inaccurate anti-abortion video to a 13 year-old girl, who had been raped and impregnated by a family member. Some public prosecutors threatened rape victims with jail for procuring legal abortion, and many doctors told women and girls, without a cause, that an abortion would kill them.³⁴

If the authorities and health officials feel morally wrong by performing an abortion, it is acceptable that they should not be obliged to do it, as is the case with legal abortions in, for example, the United Kingdom. However, in such cases where doctors and other health officials should not employ aggressive tactics against the victims; they must find someone that will perform the abortion. The state needs to guarantee pregnant rape victims that at least someone could and should carry out the abortion because they have a legal right.

³³ "The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico," *Human Rights Watch* Vol 18. No. 1(B) (New York: March 2006), 3. "A social worker in Jalisco told Human Rights Watch: "We... had a case of an eleven or twelve year old girl who have been raped by her brother... She came here wanting an abortion, but we worked with her psychologically, and in the end she kept her baby. Her little child-sibling."

³⁴ "Summary: The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico," *Human Rights Watch* (March 2006 [cited 24 Jan. 2007]): available from <http://hrw.org/reports/2006/mexico0306/1.htm>

Given this information, in addition to what has already been discussed, it is clear that the problems Mexico faces in creating, enforcing and upholding laws that adhere to international conventions on human rights lack consistency.

Another way we can see that laws lack of consistency is, as Eduardo Barraza states in his book *Aborto y Pena en Mexico* punishment for abortion in Mexico is not always exercised in a full manner, and in some cases clandestine abortion clinics have been ignored and the government has not criminalized abortion.³⁵ He also argues that by prohibiting abortion on demand, there is a vast organized and lucrative illegal black-market for abortion. Barraza argues that currently many Mexican women feel threatened by two specific realities, first, by the state that prohibits and threatens to punish them, and the threat of physical punishment by unsafe abortions such as death.

The cultural values and outlooks that pervade Mexico today are very conservative in relation to other modern democracies. While Mexico's government wants to appear as if it is upholding basic human rights, the report they sent to the CEDAW³⁶ sent in December of 2000, demonstrates that in the area of reproductive rights for women and legal abortion that this may not be the case. Even the past president, Vicente Fox, was very vocal about his opposition to the practice and principle of abortion even in the case of rape.³⁷ This perception is deeply rooted within the social norms in Mexican society, many of which are have religious undertones. In addition, it is shocking how vague and ambiguous the law

³⁵ Eduardo Barraza, *Aborto y Pena en Mexico*, 20.

³⁶ "Fifth periodic report of states parties, Mexico," Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *United Nations* (Mexico, 1 Dec. 2000). The complete report is also available online (cited 1 Feb. 2007) from <http://www.hri.ca/ftmexico/spanish2002/documentation/tbodies/cedaw-c-mex-5.htm>

³⁷ After taking possession as President of Mexico Vicente Fox declared, "[a]bortion for rape victims is not necessary...women who are raped end up wanting and falling in love with their little ones." Conrad Fox, "The Double Burden of Mexican Rape Victims," Panos London (22 Sept. 2003 [cited 1 Feb. 2007]): available from <http://www.panos.org.uk/global/featuredetails.asp?featureid=1137&ID=1005>

regarding sexual violence in Mexico. “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. Abortion is not permitted in Mexico in the cases of incest or statutory rape.”³⁸ The consequences of unwanted pregnancies are surprising.

All over the world, women and girls suffer adverse health, social, and economic consequences of unplanned and unwanted pregnancies because family planning and safe and legal abortion services are criminalized or made practically inaccessible. Every year, twenty million women undergo an abortion in illegal and mostly unsafe circumstances, resulting in as many as 78,000 deaths, the vast majority of which are preventable.³⁹

The violations of women’s rights in the following examples serve as evidence that the Mexican government is not dealing with the problem of sexual violence and lack of protection of women. A study performed by Garcia, Strickler, *et al.* proves that, in cases of filing for legal abortions in Mexico, authorization is something that only exists in theory, as it is almost impossible to get in reality. They argue that, “[a]ccess to legal abortion in Mexico is limited. When women accomplish to obtain authorization to have a legal abortion practiced, many times it overpasses the first trimester (because of administrative delays) and then medical doctors refuse to perform the procedure.”⁴⁰ In this study, the scholar’s objective was to describe the procedure to obtain a legal abortion for the cause of rape in Mexico City, including the characteristics of the women who became pregnant as a consequence of rape and their access to abortion services. The methodology consisted of personal interviews with six victims as well as the revisions of 231 proceedings of women who became pregnant by sexual assault and sought help in a specific hospital in Mexico City between 1991 and 2001. The results demonstrated that the mechanisms to obtain

³⁸ “The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” 30.

³⁹ “The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” 33.

⁴⁰ Diana Lara, Sandra García, Jennifer Strickler, Hugo Martínez and, Luis Villanueva. “El acceso al aborto legal de las mujeres embarazadas por violación en la ciudad de México.”,77.

authorization for an abortion were extremely bureaucratic. In the sample studied, the rate of pregnancies due to rape was 13.9%. In this sample 66% were below 20 years of age, and only 22.3% had a legal abortion performed. By the end of the study they illustrated that access to legal abortion in Mexico City is rather limited. This study, along with those reported by Human Rights Watch,⁴¹ does seem to give some strong evidence to suggest that Mexico lacks coherent laws for prevention, protection and punishment of sexual violence and a neglectful implementation of the existing laws, specifically in regard to abortion after rape.

2.3.1 Paulina Ramirez Case

Seven years ago, the authorities of the State of Baja California denied Paulina Ramírez the right to a legal abortion as guaranteed by the state's criminal code. Paulina was only thirteen years old when she was impregnated as the result of a rape and found herself pressured to take her pregnancy to term by various judicial officials, healthcare personnel and members of religious and 'pro-life' organizations. She filed a police report because she did not want to have the baby and she had a legal right to request an abortion.⁴² Her case was known worldwide and covered by world press because she filed a lawsuit against the Mexican government, which provoked the involvement of several human rights groups such as the Center for Reproductive Rights, the Inter American Commission on Human Rights (CIDH), and other Mexican 'pro-choice' organizations such as *Alaide Foppa*.

⁴¹ "The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico," 34.

⁴² Deborah Meacham, "Mexico: Paulina Ramírez Receives Reparation for the Legal Abortion Denied in 1999," *Latin American and Caribbean Women's Health Network* (23 March 2006 [cited 27 Jan. 2007]): available from <http://www.reddesalud.org/english/sitio/info.asp?Ob=1&Id=273>.

2.3.2 Graciela Case

Graciela was raped by her father and became pregnant as a result. In the report to the public prosecutor, she says, “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.”⁴³ She could not get an abortion because she was “considered a victim of “incest” rather than rape.”⁴⁴ So she carried her father’s child until birth. Graciela is from the Mexican state of Guanajuato, this is where she filed the report. The state “denied that any rape victims requested legal abortions or were ever refused access to abortion.”⁴⁵

2.3.3 Sandra Rodriguez Case

Sandra Rodriguez is a mentally disabled twenty-nine year-old woman from Guanajuato. She worked in a home washing dishes in 2003 her boss raped her and she became pregnant, she has the mind of a ten year old.⁴⁶ By law she was entitled to a legal abortion if she desired so. The case is documented in the Human Rights Watch report as an example of the denial of legal abortions by the Mexican authorities, “the legal abortion she asked for was neither authorized nor denied, it was simply declared impossible.”⁴⁷ When Martha, Sandra’s mother, her legal guardian, went to the Public Ministry to solicit an abortion, the right was denied. She then filed a letter to the public prosecutor’s office and

⁴³ “Violated again: Mexican rape victims denied abortion,” *Ipas* (13 March 2006 [cited 19 Jan. 2007]): available from http://www.ipas.org/english/press_room/2006/releases/03132006.asp

⁴⁴ “Violated again: Mexican rape victims denied abortion,” *Ipas*

⁴⁵ “Violated again: Mexican rape victims denied abortion,” *Ipas*

⁴⁶ Nelly Orozco, “El gobierno niega el derecho a abortar a mujeres violadas,” *Revista Contralinea Guanajuato* (May 2006 [cited 24 Jan. 2007]): available from http://guanajuato.contralinea.com.mx/archivo/2006/mayo/htm/niegan_derecho_a_aborto.htm

⁴⁷ “The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” 50.

the authorities decided to do a medical evaluation but they took a several weeks to send the files. Human rights watch witnessed that “[t]he forensic report concluded that an abortion should not be attempted after twelve week’s gestation; that Rodriguez was already thirteen-weeks pregnant when she filed the complaint.”⁴⁸ Some months later, she had a baby who she gave for adoption. According to *Revista Contralinea Guanajuato*, after making the case public in March of 2003, the governor of Guanajuato, Juan Carlos Romero Hicks, promised to give economic support to the family. Sandra’s mother argues they have not received anything yet.

All of the three cases presented above demonstrate the lack of consistency between what the laws say and how they are regarded in reality and put, or not put, into practice. Many times rape victims are ignored when they file for an abortion as we saw in these examples, when they are in fact by law entitled to these abortions and if they want them the state should not refuse or deny this right in those grounds.

The case of *Paulina Ramírez v. Mexico* is a benchmark because it marked the “first time a Latin American government recognized that access to abortion, where it is legal, is a human right.”⁴⁹ The Center for Reproductive Rights is proud that they won the settlement in the Paulina Case.

The Center for Reproductive Rights and its partners in Mexico, Alaide Foppa and GIRE (Information Group on Reproductive Choice), will sign a friendly settlement with the Mexican government in a case brought before the Inter-American Commission for Human Rights. The case was brought by the Center for Reproductive Rights and Alaide Foppa...In addition to a monetary settlement, the Mexican government will issue a decree regulating guidelines for access to abortion for women who have been raped. The government also

“The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico,” 50.

⁴⁹ “Center Briefs Congressional Staff on Reproductive Rights in Latin America,” Center for Reproductive Rights (July 2006 [cited 20 Jan. 2007]) available from: <http://www.crlp.org/worldwide.html>

agreed to provide Paulina and her son significant compensation for health care, education, and professional development.⁵⁰

The case of Paulina was important because it opened the eyes of Mexican society and women's action groups. The case caused worldwide awareness on Mexico denying women's right to legal abortions. Paulina's case caused such controversy in Mexico within the press, political parties, television commentators, and opinion editors of renowned newspapers. The case caused such uproar because it reopened the debate on abortion, legality, women's rights and if what the laws say is in fact imperative to the authorities.

In all of these Mexican examples presented, abortion was legal, authorities denied the victims access to it, or 'convinced' them to not have it. But in many other cases the woman either does not file for the procedure even though she does want an abortion.⁵¹ It is important to state that since 2006 the Mexican Government has admitted its responsibility, so therefore positive actions should be taking place to avoid future problems.

2.4 Comparable cases in other parts of Central and South America

The abortion rate among Latin American women is equal to or higher than the rate among women in the United States, a study has found, even though abortion is illegal in every Latin American country but Cuba. Researchers estimate that 2.8 million induced abortions take place each year in six major countries, Brazil, Colombia, Chile, Mexico, Peru and the Dominican Republic, all of which are predominantly Roman Catholic.⁵²

The problem of denying access to legal abortion is widespread and rooted in cultural values; for example, Catholicism is a strong influence in the decision to have an abortion or

⁵⁰ Dara Mayers, "Mexico Admits Responsibility for Denying Child Rape Victim's Rights: Landmark Settlement Reached in Case of 13-year-old Mexican Rape Victim Denied Abortion," *Center for Reproductive Rights* (8 March 2006 [cited 23 Jan. 2007]): available from http://www.crlp.org/pr_06_0308MexicoPaulina.html

⁵¹ A very good book that is a chronicle of the Paulina Case is of Elena Poniatowska, "*Las mil y una... la herida de Paulina*," (Mexico: Plaza Janes, 2000).

⁵² Elizabeth H. Brooke, "Latin America May Outpace U.S. in Abortions," *New York Times* (April 12, 1994 [cited 22 Dec. 2006]): available from <http://select.nytimes.com/gst/abstract.html?res=F70B17F9385A0C718DDDAD0894DC494D81&n=Top%2fReference%2fTimes%20Topics%2fSubjects%2fA%2fAbortion>

not. Although pressure exists from western democracies for female emancipation and increased women's rights is present in Latin American societies, this mode of thinking does not easily penetrate these countries because of the "deeply rooted conservative and patriarchal beliefs of the Catholic Church."⁵³ The following case studies are to offer an overview in the different problems on legality and abortion in Central and South America.

2.4.1 Peruvian Case (*KL v. Peru* in 2001)

The Center for Reproductive Rights was very involved in the case of a woman in Peru who has to carry her pregnancy to term when there was evidence that the child had anencephaly and she still had to breast feed him after she gave birth. Karen was denied the right to an abortion despite all of these facts. The United Nations Human Rights Committee (UNHRC) was involved in the case as well and ruled that "denying access to a legal abortion violates women's most basic human rights."⁵⁴ This case was the Committee's first abortion case. It is important because it was the first time an international human rights body blamed a government as responsible for denying the access to legal abortion assistance to women. The "Human Rights Committee monitors compliance with the International Covenant on Civil and Political Rights and receives complaints from individuals whose rights have been violated."⁵⁵ The story of the Peruvian case according to the Center for Reproductive Rights is,

[i]n 2001, a 17-year-old Peruvian woman, was fourteen weeks pregnant when doctors at a public hospital in Lima diagnosed the fetus with anencephaly, a fatal anomaly in which the fetus lacks most or all of a forebrain. After much soul searching, the young woman decided

⁵³ "A difficult pill to swallow," *The Economist* Vol. 380 Issue 8495, (16 September 2006): 48.

⁵⁴ "UN Human Rights Committee Makes Landmark decision Establishing Women's Right to Legal Abortion," Center for Reproductive Rights (17 Nov. 2005 [cited 16 Jan. 2007]): available from http://www.crlp.org/pr_05_1117KarenPeru.html

⁵⁵ "Women's Rights Are Human Rights," *United Nations Population Fund* (cited 27 Jan. 2007): available from <http://www.unfpa.org/swp/2000/english/ch06.html>

to have an abortion. Abortion is legal in Peru for therapeutic reasons, however, because Peru failed to adopt clear regulations, women whose health is endangered by such pregnancies are left at the mercy of public officials. The petitioner in the case was denied access to the procedure by the hospital's director, and was compelled to carry the fetus to term. She was forced to breast-feed for the four days the infant survived.⁵⁶

The organizations that litigated in the case were the Center for Reproductive Rights in partnership with the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) and the Counseling Center for the Defense of Women's Rights (DEMUS). They fought on behalf of the Peruvian woman because even though her abortion was legal by Peruvian law, the state officials forced her to carry a "fatally impaired fetus to term."⁵⁷ The pregnancy compromised her physical and psychological health. The case ruled that "violations to the right to be free from cruel, inhumane, and degrading treatment, privacy, and special protection of the rights of a minor. It orders the Peruvian government to provide KL with reparations, and to adopt the necessary regulations to guarantee access to legal abortion."⁵⁸

2.4.2 Nicaraguan case

Last year, Nicaragua joined the countries that ban abortions in all cases.⁵⁹ This categorical ban does not offer exceptions for women's health, or for victims of rape or incest, not even for women whose lives are at risk. Nicaragua has joined countries such as Chile and El Salvador that have also banned abortion in all cases. There was a known case documented in the Center for Reproductive Rights in 2003 of a nine-year-old Nicaraguan girl receiving an abortion because she became pregnant from rape. Nicaraguan authorities

⁵⁶ "UN Human Rights Committee Makes Landmark decision Establishing Women's Right to Legal Abortion," Center for Reproductive Rights (17 Nov. 2005 [cited 16 Jan. 2007]): available from http://www.crlp.org/pr_05_1117KarenPeru.html

⁵⁷ "UN Human Rights Committee Makes Landmark Decision," *Center for Reproductive Rights*.

⁵⁸ "UN Human Rights Committee Makes Landmark Decision," *Center for Reproductive Rights*.

⁵⁹ Nicaragua brings in abortion ban. <http://news.bbc.co.uk/2/hi/americas/6161396.stm>

ruled that the parents and doctors would not face criminal charges even though the health minister considered this a crime. The Attorney General, Maria del Carmen Solórzano, ruled the abortion did not infringe the laws because it was performed with the objective to save the victims life, but now these laws have changed, as the following quotation shows.

Nicaragua's Penal Code permits “therapeutic abortion” without defining the circumstances that warrant it. In the absence of a legally clear definition, therapeutic abortion is variously considered legal only to save the woman's life or also to protect the health of the woman, and in cases of fetal malformation and rape. This paper presents a study of the theory and practice of therapeutic abortion in Nicaragua within this ambiguous legal framework. Through case studies, a review of records and a confidential enquiry into maternal deaths, it shows how ambiguity in the law leads to inconsistent access to legal abortions. Providers based decisions on whether to do an abortion on women's contraceptive behaviour, length of pregnancy, compliance with medical advice, assessment of women's credibility and other criteria tangential to protecting women's health. The Nicaraguan Society of Obstetrics and Gynecology aimed to clarify the law by developing a consensus among its members on the definition and indications for therapeutic abortion. If the law designates doctors as the gatekeepers to legal abortion, safeguards are needed to ensure that their decisions are based on those indications, and are consistent and objective. In all cases, women should be the ultimate arbiters of decisions about their reproductive lives, to guarantee their human right to life and health.⁶⁰

With this new law the situation has complicated further, because therapeutic abortion is not permitted in Nicaragua any more. If the mother is at risk of dying, she now cannot terminate her pregnancy. In an article for the Center for Reproductive Rights, Dara Mayers writes, “[t]his abortion ban blatantly violates the most essential human rights of women recognized in international treaties ratified by Nicaragua. The rights to life and health are threatened when women cannot undergo therapeutic abortions or are forced to resort to unsafe procedures.”⁶¹ Before outlawing abortion in all cases, Nicaragua’s only allowed abortions in cases in which the mother's life was in danger, or when the fetus had severe deformities, but not in the case of rape.

⁶⁰ Heathe Luz McNaughton, Ellen MH Mitchell and Marta Maria Blandon, “Should Doctors Be the Judges? Ambiguous Policies on Legal Abortion in Nicaragua”, *Reproductive Health Matters* Vol. 12 no.24 (November 2004): 18-26.

⁶¹ Dara Mayers, “Center for Reproductive Rights Condemns Passage of Nicaragua’s Abortion Ban,” *Center for Reproductive Rights* (26 Oct. 2006 [cited 19 Dec. 2006]): available from http://www.crlp.org/pr_06_1026Nicaragua.html

The new law in Nicaragua “goes against global and regional trends, which are moving towards recognition that complete denial of abortion access violates women’s rights.”⁶² This new law has jeopardized the safety of Nicaragua’s women, and once again demonstrating that laws and reality differ in Latin America, because “Latin America has the world’s strictest laws on abortion. But that does not discourage it. Latin America also has the world’s highest abortion rates, averaging nearly one per woman over the course of her reproductive lifetime.”⁶³ Evidently Nicaragua’s new law is widely inconsistent with today’s reality.

2.4.3 El Salvadorian Case

Abortion laws in El Salvador are some of the most rigorous in the world. Contrastingly, El Salvador also has one of the “highest maternal mortality rates at 300/100,000 births”⁶⁴ and many women still get illegal, clandestine and unsafe abortions.

The law [in el Salvador] criminalizes abortion without exception, even to save the life of the pregnant woman or in cases of rape or incest. Abortion providers and women obtaining abortions face increased prison terms of up to 12 years. Legislators also amended El Salvador’s Constitution in January 1999 to protect the right to life from the moment of conception, further restricting women’s reproductive rights.⁶⁵

This last example further demonstrates that the consequences of inadequate law making are a serious threat to women worldwide. It is important to note that in many countries where abortions are completely banned many women still seek clandestine abortions. Sometimes there are have fatal consequences seeking these types of abortions, in some cases the

⁶² Dara Mayers, “Center for Reproductive Rights Condemns Passage of Nicaragua’s Abortion Ban,”

⁶³ “Nicaragua Bans Abortion,” *New York Times* (29 Oct. 2006 [cited 19 Dec. 2006]): available from <http://select.nytimes.com/gst/abstract.html?res=F60D13F83E5B0C7A8EDDA90994DE404482>

⁶⁴ *World Bank* cited in “Persecuted Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis Center for Reproductive Rights,” Center for Reproductive Rights (2001 [cited 20 Dec. 2006]): available from http://www.reproductiverights.org/pub_bo_perse.html

⁶⁵ “Persecuted Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis Center for Reproductive Rights,” Center for Reproductive Rights (2001 [cited 20 Dec. 2006]): available from http://www.reproductiverights.org/pub_bo_perse.html

consequences can be as serious as death. However, “widespread maternal mortality shows that reform must be accompanied by accessible abortion services and improved contraceptive care and information.”⁶⁶ Again, this case highlights the same sort of extreme approach to abortion taken in other Latin American countries. Yet, it is important to note that the controversy of abortion is not an issue confined to Latin America. Countries in the west also face the abortion question, sometimes with equally unjust and violent consequences. The next case will demonstrate this.

2.5 South Dakota

In the United States the controversial case of *Roe V. Wade* caused very much polemic because the decision was established in the grounds that abortion violates “constitutional *right to privacy* (under the liberty clause of the Fourteenth Amendment).”⁶⁷ The case overturned all state and federal laws on abortion that were inconsistent with this decision, thus making the case one of the most controversial in U.S. Supreme Court history. *Roe v. Wade* provoked national debate that continues to this day over whether abortions should be legal, dividing the nation into ‘pro-choice’ and ‘pro-life’ sides, and inspiring grassroots activism. Nevertheless, it is surprising that in the United States of America ‘pro-choice’ arguments are losing ground in some States such as in South Dakota.⁶⁸ Last winter, the governor of this state signed legislation that would have outlawed nearly all abortions, “setting off a wave of fury from abortion rights advocates who succeeded in having the law

⁶⁶ R.J. Cook, B.M. Dickens and, L.E. Bliss, “International developments in abortion law from 1988 to 1998,” *American Journal of Public Health* vol. 89, no4 (1999): 579-586.

⁶⁷ Ronald Dworkin, “*Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*”, 51.

⁶⁸ Monica Davey, “South Dakota Bans Abortion, Setting Up a Battle,” *New York Times* (7 March 2006 [cited 23 Dec. 2006]): available from <http://www.nytimes.com/2006/03/07/national/07abortion.html?ex=1299387600&en=bc436021a5de3fd9&ei=5088&partner=rssnyt&emc=rss>

overturned by voters in November”.⁶⁹ Many activists believe that abortion should be legal, but with some restrictions to access it. Research by the Guttmacher Institute clearly summarizes this position:

[e]ver since *Roe* was decided, public opinion has held fairly steadily to the position that abortion in the early stages of pregnancy should remain legal, but that a woman's ability to obtain one should not necessarily be easy. This view is reflected in a recent New York Times/CBS News poll, which found that 61% of adults support the right to abortion during the first trimester, and more than three-quarters oppose a constitutional amendment outlawing abortion. According to the poll, however, approval of legal abortion after the first trimester drops off dramatically, and there is overwhelming support for restrictions on abortion access, such as parental consent and waiting-period requirements, which affect all stages of pregnancy.⁷⁰

The debate of access to abortion is still in dispute after three decades of legality in the U.S. “After a period in which the U.S. Supreme Court appeared in position to overturn *Roe*, a majority of justices reaffirmed their commitment to it in 1992 in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.”⁷¹ This case demonstrates that even in one of the most modern democracies some authorities still wish to ban abortion in all cases, including pregnancy after rape such as the case of South Dakota. All of this information proves the point on why abortion is such a hotly debated issue, it is a complex subject and the stakes are very high.

It is important to note that for the purpose of this thesis, space and time have allowed me to mention these few cases. And, while may be considered a weakness in that a few cases do not establish a phenomenon, I argue that we must keep the following points in mind. First, that for every one of these cases that was made public, there were likely hundreds, if not thousands, more that occurred under similar circumstances with similar consequences. As previously mentioned, the number of abortions in Latin America and

⁶⁹ “Governor Mum on Replacement Talk,” *The New York Times* (Dec. 16, 2006 [cited 22 Dec. 2006]): available from http://www.nytimes.com/2006/12/16/us/politics/16grounds.html?_r=1&oref=slogin

⁷⁰ Susan A. Cohen, “25 Years After *Roe*: New Technological Parameters For an Old Debate,” *The Guttmacher Report on Public Policy* Vol. 1, No.1 (February 1998).

⁷¹ Susan A. Cohen, “25 Years After *Roe*: New Technological Parameters For an Old Debate,”

around the world is quite high, therefore I feel it is a safe assumption to say that the very same feelings of shame and fear that prevent women from having abortions that are technically legal, also prevent them from talking about their experiences. Secondly, Human Rights Watch is a prestigious world organization that oversees countries compliance with human rights, and even though many of the cases cited in the report⁷² do not have the real names of the victims, they still argue that this is a common practice in Mexico. The examples of cases that I have presented in this chapter are meant to be emblematic, because they were internationally known cases and they represent the thousands of victims that suffer discrimination on a day to day basis.

2.6 Conclusions

Obstructing access to legal abortion after rape has severe consequences for any society as a whole. There are many women who become pregnant after being raped that want an abortion and they want it for legitimate reasons, however as this chapter has demonstrated, several concrete cases can be cited to show that women are being denied this access.

In Latin America, and since this work focuses mainly in Mexico in particular, democracy remains fragile, governments' protection of human rights has been inconsistent and civil society and international and non-governmental organizations must aspire to aid in the guarantee of women's rights. This requires "close scrutiny of judicial decisions . . . to ensure that human rights, including reproductive rights, are vigilantly protected."⁷³ The findings of this chapter demonstrate that there is an impressive gap between national and

⁷² "The Second Assault," *Human Rights Watch*.

⁷³ "Bodies on Trial: Reproductive Rights in Latin American Courts," Center for Reproductive Rights (2003 [cited 11 Jan. 2007]): available from http://www.crlp.org/pub_bo_bot.html

international human rights standards and there is apparent inconsistency in their application.

The international development of abortion law as seen in the study of Rebecca Cook *et al.*⁷⁴ is that the trend in most countries has been to slowly liberalize abortion. Yet, as we have seen, in some countries such as Nicaragua, the trend has taken steps backward. Other impediments to legal abortion include “restrictions on funding of services, mandatory counseling and reflection delay requirement, third-party authorizations, and blockades of abortion clinics.”⁷⁵ Mexican authorities such as judges and government officials commonly interpret the law through moral and religious lenses, and discrimination against women seems to always be left as the last priority.

Although all of the Latin American countries have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women they still fail to exercise this convention on an everyday basis. Judges that privilege or incorporate their own moral criteria into the interpretation of laws must be impeded from doing so, especially if these new liberal democracies such as Mexico, claim to be secular. It seems as if “[w]omen’s bodies continue to be territory controlled by the state through the courts’ perpetuation of laws and subsequent social norms that either disregard women’s rights or extend paternalistic protection over them.”⁷⁶ Civil society, Grassroots Organizations, Non-Governmental Organizations and International Organizations should

⁷⁴ Rebecca J. Cook, Bernard M. Dickens and, Laura E. Bliss, “International Developments in Abortion Law from 1988 to 1998,” *American Journal of Public Health* vol. 89, no4 (1999): 579-586.

⁷⁵ Rebecca J. Cook, Bernard M. Dickens and, Laura E. Bliss, “International Developments in Abortion Law from 1988 to 1998,” 579-586.

⁷⁶ “Trends in Reproductive Rights Jurisprudence in Latin America,” *Center for Reproductive Rights* (July 2003 [cited 14 Jan. 2007]): available from http://www.reproductiverights.org/pub_fac_lajurisprud.html

stop the government-sponsored discrimination that portrays women as in an inferior place before the law. This endeavor will be addressed in the following chapter.