

# **Mexico: Protecting Informed Consent**

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## SUMMARY

The objective of this three-month project was to disseminate information among key audiences about: (1) the right of women to choose contraceptive methods in a free and informed manner; and (2) the laws and institutions available to help redress any violations of this right.

Four publications on these topics had been developed by a previous project funded by Population Council/INOPAL III:

1. A brochure for providers of medical and legal services on ways that they can safeguard the right of informed consent;
2. A brochure for clients stressing their right to make an informed decision on contraceptive use;
3. A working paper on laws, administrative policies, and women's views on informed consent; and
4. A monograph summarizing Mexican laws on informed consent.

These materials were reproduced and distributed to 2,750 people in the following target audiences: women of reproductive age, reproductive health service providers, national and state commissions of human rights, complaints offices in public hospitals, feminist and human rights organizations, and legal professionals, such as judges, lawyers and ministry officials.

The project, which cost US\$25,806, was implemented by AFLUENTES, S.C., a nonprofit organization founded in 1998 that produces, synthesizes and distributes materials on sexual and reproductive health.

The dissemination plan had four major components:

- **Publications distribution.** AFLUENTES distributed 51,946 copies of the brochure for service providers, 37,406 copies of the brochure for clients, 4,182 copies of the working paper, and 406 copies of the legal monograph.
- **Presentations to professional groups.** The author of the legal review gave 15 talks to key groups, including health providers, legal experts, women's health advocates, and university professors.
- **Magazine article.** A magazine article about informed consent was sent to nearly 15,500 private physicians.
- **Website postings.** Six nongovernmental organizations working in reproductive health and women's rights posted information about informed consent on their Internet websites.

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# Mexico: Protecting Informed Consent

## I. INTRODUCTION

Media reports in Mexico often cite accusations by feminist organizations that service providers are giving women contraceptives without their prior consent. Women's health advocates are especially concerned about the IUD and female sterilization because these methods cannot be readily reversed by the user. They believe that inadequate consultation with women may be more common after a birth or other obstetric event than at other times.

Clearly, these violations of reproductive rights should be prevented. In the past two years Mexican institutions have made a strong effort to insure that clinical contraceptive methods are provided after an obstetric event only after the woman has indicated her written consent. In cases where women's reproductive rights are violated, they should have access to mechanisms for redress.

To collect basic information on the laws governing informed consent and the mechanisms for redress, Population Council/INOPAL III conducted a study to review the legal and administrative laws governing informed consent procedures in Mexico.<sup>1</sup> The study consisted of a bibliographic review of: (1) federal laws, including the Political Constitution, the General Health Law and its Regulations, the General Population Law and its Regulations, the Civil and the Penal Codes for the Federal District; (2) for illustrative purposes, the constitutions and health laws of the states of Puebla and Hidalgo; (3) the laws and regulations governing the main public health service providers, including the Mexican Institute for Social Security (IMSS), the Institute for Social Security and Services for State Workers (ISSSTE), and the Ministry of Health (MOH) (4) manuals of complaint departments of these institutions; and (5) procedures manuals of the National Commission of Human Rights, the State Commissions of Human Rights and the National Medical Arbitrage Commission. Officials of the institutions were interviewed to see how they had dealt with cases in the past.

The study found that most laws implicitly or explicitly mention the right to decide in a free and informed way the number of children and the characteristics of the family. Other laws and norms explicitly state the right to freely choose a contraceptive method without any undue pressure. Further, several laws explicitly prohibit forced sterilization. However, the only penalty explicitly mentioned in the laws for violating the right to freely choose a method is a penalty of 4,000 to 10,000 times the daily minimum wage in the Federal district for those who perform a sterilization without the client's consent.

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<sup>1</sup> Brenes, Victor; A. Mesa, O. Ortiz, X. Contreras, R. Vernon, H. Reyes, G. Rodríguez, E. Santos and C. Suárez. 1998. Redressing reproductive rights violations through institutional mechanisms: Laws, cases and complaint procedures in Mexico. Final report, INOPAL III, Population Council, Mexico City.

The review of complaint departments and ombudsman institutions (i.e. National Human Rights Commission, State Human Rights Commissions, National Medical Arbitrage Commission) concluded that these were ineffective in dealing with the problem of IUD insertions or female sterilization without appropriate consent.

As part of this study, eight women who had received an unwanted method were interviewed. Two of these women had presented complaints and suits (one for an unconsented IUD insertion and the other for an unconsented sterilization). These women had devoted three and five years, respectively, to their suits, which reflects the persistence required to pursue a lawsuit. Both women sought redress through the penal and the civil systems after the health institutions failed to recognize the violations. The first reaction of the public ministry agents was that the crime was not typical and that there could not be a suit resulting from the delivery of a contraceptive method without the previous consent of the woman. Representatives of government ministries also tended to agree with the version given by the health institutions. Even the lawyers of the women were uncertain about the medical terms and the laws to invoke.

In the first case the physician was convicted of penal responsibility and medical negligence. His license to practice medicine was suspended for three months, although he was given leave time so that the sanction would not show up in his record. The civil suit was abandoned because the plaintiff was accused of wanting money. The second case was closed by the State Human Rights Commission when a signed informed consent form was presented. The plaintiff then filed a suit for falsification of signature and a civil suit, which are still unresolved.

During the project, six focus group discussions were conducted in Puebla, Hidalgo and Mexico City. The 48 women who participated in these groups had been assembled by the staff of primary and secondary health care units. Focus group participants had not heard of the term “informed consent.” The women seemed to be ambivalent about informed consent. On the one hand, they criticized service providers for failing to provide adequate information about contraceptive methods and safeguard women’s right to choose a method. On the other hand, they stated that unconsented IUD insertions were justified in the case of adolescents at risk of unplanned pregnancy or women who have too many children.

A few women said that they had experienced IUD insertions or female sterilization without their informed consent. Some women reported that they were made to sign forms immediately after childbirth and did not know the purpose of these forms. Others were simply told after the birth that an IUD had been inserted. Some women learned much later after the fact that an IUD had been inserted. Typically the IUD was discovered during a medical examination or when it was expelled.

In general, the focus group participants had a passive attitude toward IUD insertions or sterilization without consent. They did not know of the available complaint mechanisms. Those who had voiced complaints reported that they had been ill-treated and had had to spend considerable time talking with several people at various locations without having their

problem resolved. Given these experiences, most women believed that it was useless to present complaints. They thought that it was better to just remain silent and go to a different physician -- a private one if possible.

## II. PROBLEM STATEMENT

The right to informed consent is implicitly and explicitly mentioned in Mexican laws and regulations as well as institutional norms and guidelines. Nevertheless, these norms and guidelines are not well known by reproductive health service providers, their clients, or the staff who handle complaints to service providers. Professionals in the legal sector who are responsible for applying legal remedies to rights violations also do not know the relevant laws and mechanisms for redress. These professionals include the staff of ombudsman organizations, lawyers, public ministry agents and judges. Mexican institutions lack a cultural norm supporting reproductive rights, including clients' right to freely choose contraceptives.

Major recommendations of the previous study are:

- Complaint offices of health institutions should make their mechanisms more widely known to consumers and should adopt a more objective review of complaints.
- Ombudsman organizations should be aware of the rights of users and should accept complaints regarding unconsented IUD insertions and sterilization.
- NGOs should provide education to women on their rights and the mechanisms available to redress rights violations. NGOs should also help detect cases of rights violations and motivate the women involved to report the facts to public ministries. Documenting these occurrences will force the legal system to take notice and change the laws.

These recommendations indicate the need for broader awareness of informed consent laws.

## III. OBJECTIVES

The objective of this project was to disseminate information among key audiences about: (1) the right of women to choose contraceptive methods in a free and informed manner; and (2) the laws and institutions available to help redress any violations of this right. Four major target audiences were identified:

- **Women of reproductive age.** Women need to understand their legal rights regarding informed consent and available mechanisms to redress violations of these rights.
- **Reproductive health service providers.** Service providers need to know about the full range of legislation and the penalties for failing to adhere to institutional procedures to ensure informed consent.
- **Legal professionals.** Legal professionals such as judges, lawyers, and staff in public ministry agencies need to know that these laws exist. Lawyers and public ministry agents need to take complaints about informed consent seriously and to invoke the right laws

when presenting cases to judges. Despite the difficulty of following a case through to the end, it is important that the different actors (e.g. ombudsman organizations, complaint departments in public hospitals, and the court) know what to do when a suit is presented. Bringing cases to court is an important catalyst for change in legal systems.

- **Advocacy organizations.** Women's health and human rights organizations, including national and state commissions of human rights, need to be knowledgeable about informed consent in order to educate their constituencies and assist women whose rights have been violated.

## IV. INTERVENTIONS

To disseminate information about informed consent, PC/Frontiers teamed with AFLUENTES, S.C., a Mexican NGO founded in 1998 that produces, synthesizes and disseminates information on sexual and reproductive health.

### Distribution of Information Materials

The main project activity consisted of reproducing, mailing and distributing the four publications that were produced as part of the previous INOPAL project. These materials were:

1. *The Right to Informed Consent: Laws, Sanctions and Procedures to Avoid Violation (El Derecho al Consentimiento Informado: Leyes, Sanciones y Procedimientos de Queja ante su Violación)*, a brochure for providers of medical and legal services;
2. *La Decisión a Usar un Método Anticonceptivo: ¡Es Nuestra! (The Decision to Use a Contraceptive Method: Is Ours!)* a brochure for clients;
3. "El Derecho al Consentimiento Informado: Un Ejercicio en Construcción" ("The Right to Informed Consent: Building the Components"), by Victor Brenes et al., *INOPAL Working Paper No. 22*, 1998, a summary of the results of the previous project; and
4. *Marco Jurídico del Consentimiento Informado (The Legal Framework for Informed Consent)*, by Víctor M. Brenes Berho and Alicia Mesa Bribiesca, a monograph published by INOPAL III in 1998, which summarizes the relevant legal information.

AFLUENTES compiled eight mailing lists to send the publications to the target audiences:

1. PC/Frontiers' mailing list for Mexico, which includes both the central staff as well as state-level managers of the main providers of reproductive health services, including FEMAP, IMSS, ISSSTE, MEXFAM, MOH, and NGOs;
2. Directors, specifically ObGyn Directors, social work chiefs and nursing directors of all public-sector hospitals in Mexico, including IMSS, ISSSTE, MOH and PEMEX;
3. The directory of the National Network of Human Rights Civil Organizations, "All Rights for Everybody," which includes 46 organizations;

4. A directory of state Human Rights Commissions;
5. Presidents and secretaries of commissions on human rights, health, gender and equity, and population and development of the Chamber of Deputies and Chamber of Senators;
6. All federal and state judges, as well as all federal and state judiciary councils, which are responsible for training and updating public ministry agents and judges;
7. All directors of the Departments of Law and of Medicine of all universities in Mexico; and
8. Mass media reporters and producers who have shown interest in reproductive health.

Various materials were sent to each list, as shown in Table 1. Mailings to key organizations enclosed several copies of the materials along with a request to distribute them among the staff.

**Table 1. Mass Mailings to Target Audiences**

Database/ Type of Audience	Number in Database	Number of Copies Distributed per Recipient		
		Working Paper	Brochure-Providers	Brochure-Clients
FRONTIERS mailing list (Mexico)	<b>387</b>	1	1	1
National and state program managers:	<b>434</b>			
MOH	67	5	30	20
IMSS	45	5	30	20
ISSSTE	67	3	10	5
COESPO	42	3	10	5
Women's Commission	17	3	10	5
MEXFAM	28	2	10	5
FEMAP	71	2	10	5
DIF	45	2	10	5
MOH sanitary jurisdictions	52	0	5	5
Hospitals:	<b>1,231</b>			
Directors	1,231	0	5	0
ObGyn directors	1,231	1	10	3
Social workers	1,231	0	5	5
Training and research chiefs	1,231	0	10	3
Directors of university departments of Medicine, Law, Nursing, Social Work, and Social Sciences	<b>539</b>	1	10	0
Commissions in the Chamber of Deputies (total persons)	<b>21</b>	0	1	0
Private physicians	0	0	5	5
Pharmacists	0	0	5	5
Human rights organizations and commissions/judiciary groups	<b>138</b>	1	10	0
<b>Total Number of Copies Mailed</b>	<b>2,750</b>	<b>3,542</b>	<b>50,428</b>	<b>17,778</b>

In addition, 509 copies of the legal monograph were mailed.

By April 15, 1999, two weeks after the mailings were made, FRONTIERS had received 44 requests for additional materials. These requests came from key organizations that could further disseminate information on informed consent, including:

- National Sexual Education Promotion and Training System
- Mexican Association of Sexual Education
- Colegio de México
- Twelve hospitals
- Ten state health departments
- Nine university departments on law, medicine, nursing and social work
- Four NGOs
- Two state population councils

- Chiapas State Human Rights Commission
- Congress of the State of Nuevo León
- One radio program
- A minister of the Supreme Court
- The social communication director of Family Integral Development (DIF) from the state of Jalisco.

In response to these requests, FRONTIERS distributed 640 working papers, 509 full legal reports, 19,628 brochures for clients, and 1,518 brochures for service providers.

The four publications have also been strategically distributed at several large meetings, including:

- Latin American Sexuality Congress, held October 29-31, 1998;
- Meeting of MacArthur Foundation Fellows, held in November 1998;
- International conference “For a Feminist Millennium,” held in November 1998 in Cocoyoc, Morelos to follow up on the Cairo ICPD recommendations;
- National Committee for Safe Motherhood;
- Commemorative Meeting of the International Women’s Day, held in Oaxaca in 1999; and
- International Women’s Forum, held on March 7, 1999 in Mexico City.

### **Talks to Interested Target Groups**

All mailings contained a cover letter describing the materials and advising the addressees to contact AFLUENTES if they wanted to have a consultant go to their cities to give a talk for specific target audiences. By the end of the project, three talks had been given by Víctor Brenes Berho, the author of the legal review:

1. On March 8, 1999, the talk was the opening event of the International Women’s Day meeting attended by the ISSSTE delegation in the State of Mexico in the capital city of Toluca.
2. On March 26, 1999, the state population council organized a talk for some 250 decision-makers, opinion leaders, and key members of the state judicial, legislative and executive branches.
3. On April 24, 1999, IPAS organized a talk that was given in Ciudad Valles, San Luis Potosí, as part of Forum on Women’s Health and Safe Motherhood, attended by about 300 women’s health providers and advocates.

During May and June 1999 Víctor Brenes Berho gave 12 additional talks to the following groups:

- Law School of the University of el Bajío, at Salamanca campus;
- Informed consent group at El Colegio de Mexico;
- Network of Women of Baja California, the state Health Services and University of Baja California;

- Annual meeting of the National Perinatology Institute;
- Cultural Department of ISSSTE-State of Mexico;
- Law School of the Cuahutemoc University in Querétaro;
- IMSS ObGyn Hospital 221 at Toluca;
- Nurses of Hospital La Raza, one of the largest of the IMSS system;
- State Population Council at Veracruz;
- Health Department of the State of Veracruz;
- Teachers affiliated with DIF in Mexico City; and
- Law School of the Autonomous University of Querétaro, at San Juan del Río campus.

FRONTIERS continues to schedule talks on informed consent as requested by Mexican organizations.

### **Publication of Articles in Magazines**

Project staff wrote one article that was published in the magazine *DIVERSION*, which is sent by Multicolor Editorial to nearly 15,500 private physicians. Two articles written by project staff were sent to the main publishers of women's magazines and political affairs magazines. To date, no news items on informed consent have been published in these magazines.

### **Electronic Dissemination**

FRONTIERS staff prepared three presentations to disseminate through the Internet for the electronic web pages of three types of organizations:

1. Reproductive and sexual health NGOs;
2. Legal defense organizations; and
3. Human rights organizations.

By the project's end, the following organizations had agreed to publish the materials on their website:

- GEM ([www.laneta.apc.org/gem](http://www.laneta.apc.org/gem)), an education NGO;
- APIS ([www.laneta.apc.org/apis](http://www.laneta.apc.org/apis)), a Mexican and Latin American network of social development organizations;
- CIDHAL ([www.laneta.apc.org/cidhal/index.html](http://www.laneta.apc.org/cidhal/index.html)), an organization that works on communication, exchange and human development;
- FEMPRESS ([www.fempres.cl](http://www.fempres.cl)), which disseminates a news bulletin via e-mail, as well as through its printed magazine;
- La Manzana de la Discordia (<http://fai.univalle.edu.co/~manzana>), an electronic feminist magazine; and
- MODEMMUJER ([modemmujer@laneta.apc.org](mailto:modemmujer@laneta.apc.org)), which sends an electronic bulletin with news on activities conducted by feminist organizations.

## **V. EVALUATION AND FOLLOW-UP**

To evaluate project activities, AFLUENTES selected a random sample of 160 persons from the mailing lists used for publication distribution. By the project's end, AFLUENTES had contacted 59 people with the following results:

- 22 said that they had not received the materials;
- 19 had received them but had not read them yet;
- 9 had read the materials and had shown them or discussed them with others;
- 4 had sent a request for more materials; and
- 5 were not reached due to an incorrect telephone number.

A likely explanation for the high proportion of respondents reporting that they had not received the materials is that some of the publications may have been delayed in the mail. PC staff have observed that other mass mailings take some time before leaving the post office.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

This project succeeded in providing much-needed information on informed consent to four key audiences – reproductive-age women, reproductive health service providers, legal professionals, and advocacy organizations. Within a few weeks of receiving publications on informed consent, representatives of these groups requested additional copies of the publications, invited a legal expert to address their group, and posted information about informed consent on their websites. Altogether, the project distributed nearly 52,000 copies of the brochure for service providers, 37,000 copies of the brochure for clients, 4,000 copies of the working paper on the research findings, and 400 copies of the legal monograph. A magazine article about informed consent was sent to nearly 15,500 private physicians.

The major conclusion that can be drawn from this dissemination project is that research findings need to be disseminated widely to key audiences, especially those outside the reproductive health field. The project illustrates the value of making research findings available in different formats, including print, interpersonal and electronic, tailored to key audiences. One lesson learned is that the dissemination process takes several months, if not a year, after completion of the research. Initial dissemination can take three months or longer in order to compile mailing lists, print publications and mail them. Then several months are needed to respond to inquiries, arrange for presentations at conferences and meetings, and place materials written by project staff into free distribution channels such as magazines and websites. Allowing more time to assess the impact and extent of dissemination would have been useful.

Recommendations are:

- Projects should allow sufficient time after research completion to produce and distribute summaries of the research findings, to respond to information requests, and to assess the

- impact and extent of dissemination activities.
- Projects should tailor materials on research findings to key audiences and should offer them in a variety of formats.