

# **MEXICO**

## **BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

52<sup>nd</sup> session, July 2012

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# 1. INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee), in advance of its examination of combined seventh and eighth periodic report of Mexico, submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). This briefing reflects Amnesty International's research on discrimination against women in Mexico, in particular with regard to violence against women, human rights defenders, migrant women and sexual and reproductive rights. This research gives rise to concerns regarding the implementation of articles 1, 2, 3, 5, 6, 7, 12 and 16 of the Convention, in particular with regard to General Recommendation 19, by the state party.

## 2. VIOLENCE AGAINST WOMEN (ARTICLES 1, 2, 3, 5, 6, 7, 12; GENERAL RECOMMENDATION 19)

### 2.1 VIOLENCE AGAINST WOMEN PERSISTS DESPITE LEGISLATIVE DEVELOPMENTS

In the last decade and more the Mexican authorities have taken a number of important legislative and institutional steps to incorporate into domestic law the obligation to comply with international human rights treaties, to outlaw discrimination and to establish the right to equality of women backed by national programmes and women's institutes at federal and state levels.<sup>1</sup> It has also passed legislation at federal and state levels on women's access to a life free from violence (Ley General de acceso de las mujeres a una vida libre de violencia, LGAMVLV) and there have been gradual modifications to some states' criminal codes. In 2009 the National Commission for the Prevention and Eradication of Violence against Women (Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres, CONAVIM) was established and has promoted reforms at the state level.<sup>2</sup> Several states have introduced the crime of femicide into their criminal codes.

Despite these legislative and institutional advances, gender-based violence continues to be widespread, with official figures of killings of women rising rapidly in the last three years. The failure of federal and state authorities to ensure the effective implementation of many aspects of the new legislation has allowed impunity to persist. The lack of rigorous evaluation of implementation and impact of the law raises concern about the commitment of many authorities to ensure its success. In 2008 Amnesty International issued a report, *Mexico: Women's Struggle for Safety and Justice*, to highlight the ongoing failure to deliver real

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<sup>1</sup> 1996 - Ley de Asistencia y Prevención de la Violencia Intrafamiliar, 1997 - el Decreto para reformar el Código Civil y el Código Penal, que se refiere a la violencia intrafamiliar y la violación, 2003 - Ley Federal para prevenir y eliminar la discriminación; 2006 - Ley General para la Igualdad entre mujeres y hombres; 2007 - Ley General de Acceso de las Mujeres a una Vida Libre de Violencia; 2012- Reforma constitucional en materia de derechos humanos.

<sup>2</sup> <http://www.conavim.gob.mx/es/CONAVIM/Legislativa>

improvements in justice and protection for women.<sup>3</sup> Despite findings and recommendations of this Committee and judgements of Inter-American Court of Human Rights (IACtHR) that Mexico has breached its treaty obligations, the data below on killings and sexual violence indicates the situation continues to be equally grave and in recent years appears to have worsened.

## 2.2 KILLINGS OF WOMEN (ARTICLES 2(C), 2(F), 5(A), 6; GENERAL RECOMMENDATION 19)

In November 2011, a joint report by the UN Development Fund for Women (UNIFEM), the National Women's Institute (Inmujeres) and the Parliamentary Special Commission on Femicide (Comisión Especial para el Seguimiento de los Femicidios) analysed available national data on killings of women and concluded that at least 34,000 women had been murdered in Mexico between 1985 and 2009.<sup>4</sup> It also demonstrated that despite underreporting, the rate of decline of murders of men up to 2007 was marked, while the rate of killings of women remained relatively even. Since 2007, homicides generally have been sharply on the increase in the context of insecurity and violence in Mexico.<sup>5</sup> 2010 data not included in the report shows 2,418 murders of women and 23,285 of men – the highest year on record for killings of men and women.<sup>6</sup>

The report highlights the many flaws that exist in the various procedures for recording and documenting murders of women, which prevent a fuller and more reliable assessment of actual gender-based violence in Mexico and undermine proper investigation of cases, including the routine failure to conduct full autopsies. The report demonstrates that the manner in which official data is gathered makes it impossible to determine the degree to which perpetrators of killings of women are arrested, tried and convicted by the courts.<sup>7</sup> The report concludes that the continuing failure to establish gender sensitive procedures for registering and investigating cases is preventing a fuller and more reliable picture of the pattern of violence against women and levels of impunity emerging.

Despite the limitations, the available data shows that killings of women are frequently characterized by direct misogynistic violence:

*"The brutality with which women are murdered is equally demonstrated in the study, which*

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<sup>3</sup> Mexico: Women's struggle for justice and safety: Violence in the family in Mexico, AI Index: 41/021/2008, <http://www.amnesty.org/en/library/info/AMR41/021/2008/en>

<sup>4</sup> Femicidio en Mexico. Aproximaciones, tendencias y cambios, 1985-2009, primera edición 2011, D.R©ONU Mujeres, Entidad de de las Naciones Unidas para la igualdad de Género y el Empoderamiento de las Mujeres, ISBN 978 1-936291-65-6, printed and made in Mexico, Page 31, [http://cedoc.inmujeres.gob.mx/documentos\\_download/00\\_femicidMx1985-2009.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/00_femicidMx1985-2009.pdf)

<sup>5</sup> Ibid, pages 31-34

<sup>6</sup> Consult mortality rates database on website of Mexico's official National Statistics Institute (Instituto Nacional de Estadísticas y Geografía) [www.inegi.org.mx/est/contenidos/espanol/proyectos/continuas/vitales/bd/mortalidad/MortalidadGeneral.asp?s=est&c=11144](http://www.inegi.org.mx/est/contenidos/espanol/proyectos/continuas/vitales/bd/mortalidad/MortalidadGeneral.asp?s=est&c=11144)

<sup>7</sup> Femicidio en Mexico. Aproximaciones, tendencias y cambios, 1985-2009, page 69.

*shows that women are three times more likely than men to die by the most cruel means, such as hanging, strangulation, suffocation, drowning, immersion and knives. Women are also three times more likely to be murdered by poisoning or burns with chemicals or fire. In short, a form of dying directly and literally at the hands of the aggressor."*

*(La brutalidad con la que se asesina a las mujeres se documenta igualmente en el estudio, el que muestra el mayor uso de medios más crueles contra ellas, como ahorcamiento, estrangulamiento, sofocación, ahogamiento e inmersión, y de objetos cortantes tres veces más que en los asesinatos de hombres, así como una proporción también tres veces más elevada de envenenamiento y quemaduras con sustancias diversas o con fuego. En suma, una forma de morir directa y literalmente a manos de su agresor.)"*<sup>8</sup>

### 2.2.1 CIUDAD JUAREZ AND CHIHUAHUA STATE

In 2004 the Committee concluded an investigation under the Optional Protocol to the Convention into a pattern of gender-based killings and impunity in Ciudad Juarez.<sup>9</sup> Despite the recommendations issued by the Committee, and other international and national human rights mechanism, gender-based killings continue. In Chihuahua state, where there has been a steep rising in overall homicide rate, one in 14 murder victims were women in 2008 compared with one in 11 in 2010.

#### Homicides: Chihuahua state

Year	Total	men	women
2010	6,421	5,826 (91%)	584 (9%)
2009	3,680	3,457 (94%)	218 (6%)
2008	2,604	2,424 (93%)	180 (7%) <sup>10</sup>

In Ciudad Juarez, the killing and abduction of women has reached extremely alarming levels. In 2010, 320 women were killed according to human rights organizations. In the first three months of 2012, at least 13 bodies of young women and girls were discovered in the Valle de Juarez district outside the city. Seven bodies have reportedly been identified as girls between the ages of 15 and 17 whose abduction from the central district of the city had been reported. Human rights organizations and relatives of victims have reported an increasing number of women abducted and disappeared in recent years. Amnesty International is concerned that these deaths are not being investigated adequately, facilitating impunity. In March the state authorities recognised 115 cases of unsolved disappeared women since

<sup>8</sup> Ibid, 71

<sup>9</sup> Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO.

<sup>10</sup> <http://www.inegi.org.mx/est/contenidos/Proyectos/registros/vitales/mortalidad/default.aspx>

1993.<sup>11</sup>

Also in March 2012, the state government made public incorrect information in relation to the work of the Argentine Forensic Anthropology Team (AFAT) which had been invited by federal and state government in 2005 to carry out a forensic project to identify female remains. The state authorities claimed that the international forensic experts had failed to provide full information of remains not identified and that the state only held 30 unidentified bodies of women. In fact as the AFAT pointed out in a letter it made public, they had provided a full report on the 50 remains of women which continued unidentified when the AFAT had concluded its assistance project in Ciudad Juarez in 2010.<sup>12</sup>

The surge in cases of killings and abductions in Ciudad Juarez and the inadequate response of the state authorities strongly suggests that the pattern of gender-based killings and negligence by officials responsible for protection and investigation persists. Human rights organizations in Ciudad Juarez have repeatedly expressed concern to Amnesty International that the high levels of overall violence in recent years in the city have led state and municipal authorities to reassign resources, with the result that there is reduced capacity to register and investigate reports of gender based abductions and killings.

## 2.2.2 THE COTTON FIELD JUDGEMENT

The 2009 judgement by the Inter American Court of Human Rights (IACtHR) on the killing of three young women in Ciudad Juarez in 2001 found the Mexican state responsible for a series of treaty violations, including discrimination, failure to protect the lives of the victims, failure of due diligence to effectively investigate and failure to hold to account officials responsible. The Court ordered the federal, state and municipal authorities to effectively investigate the case; investigate threats and attacks on relatives; improve measures to combat violence against women; establish standard protocols for investigating gender based crimes; improve emergency coordinated response to reports of missing women (Alba Protocol), establish a DNA database; carry out training and education programmes for police and judges as well as the public; provide medical support and compensation to victims and families.<sup>13</sup>

According to lawyers representing some of the victims, the measures implemented by the government to comply with the judgement have been insufficient. There have been no advances in the investigation into the killing of the young women; public officials have avoided criminal sanctions for their conduct in the original investigations; investigations into threats and attacks against relatives of victims and human rights defenders have produced no results, symbolic acts by the government have been widely criticised by families as ignoring their concerns and the ongoing pattern of gender based attacks; standardized protocols have

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<sup>11</sup> <http://www.lapolicia.com/nota-roja/protestan-ante-fiscalia-este-dia-internacional-de-la-mujer-por-las-juarenses-desaparecidas/>

<sup>12</sup> <http://www.scribd.com/doc/83501804/Carta-de-respuesta-EAAF-a-funcionario-de-CD-Juarez>

<sup>13</sup> I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para 602

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)



been announced but not consulted or reviewed by independent experts and there is not information on their application; the application of the Alba Protocol to search for missing women remains limited to a small proportion of women and girls reported missing each year, severely reducing its impact; information around the establishment of a database on missing women and unidentified female remains is contradictory, with no clear evidence that a reliable database is in operation; there is insufficient information on training and education of public officials responsible for preliminary investigations and judicial proceedings to allow an assessment of their impact on developing gender competence and ending stereotyping; relatives have received compensation ordered by the court but access to ongoing healthcare needs of victims and to relatives remains has not been guaranteed.

**Recommendations:**

The government of Mexico should implement in full the IACtHR judgement on the “Cotton Field” case, and review compliance with the Committee’s recommendations under article 8 of the Optional Protocol on Mexico,<sup>14</sup> to:

- Ensure a full and effective investigation into the Cotton Field killings, including holding a review of the case by specialists agreed in consultation with representatives of the victims in order to make sure that those responsible are brought to justice;
- Hold to account officials responsible for irregularities during initial investigations;
- Ensure protocols on investigations of violent crimes against women are open to scrutiny by civil society and experts to guarantee their quality and gender competence; ensure they guarantee the involvement of relatives of victims and are accompanied by training of officials, resources, rigorous enforcement and monitoring;
- Ensure that the DNA database on missing women and female remains is operational and regularly produces publicly available reports on its activities and findings;
- Establish effective, coordinated and proactive search mechanisms in all cases of women and girls reported missing, disappeared or abducted;
- Provide information on the scale and detail of training course of officials on gender perspective and diligent investigations, including a full evaluation of impact of training so far undertaken;
- Provide detailed information on the scale and the evaluation of impact of educational courses to combat discrimination, violence against women and stereotyping;
- Strengthen the collection and publication of data on all violent deaths of women to ensure gender-based killings are effectively recorded, investigated and reported on.

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<sup>14</sup> CEDAW/C/2005/OP/8/MEXICO, 27 Jan 2005

## 2.3 HUMAN RIGHTS DEFENDERS AT RISK (ARTICLE 7)

Women human rights activists have come under increasing attack because of their work against gender-based violence and highlighting human rights violations that have occurred in the context of Mexico's public security crisis. In December 2010, Marisela Escobedo, mother of murder victim, Ruby Frayre, was shot and killed outside the governor's palace in Chihuahua City as she continued her protest against the state government for its failure to successfully prosecute and convict her daughter's killer.<sup>15</sup> Marisela Escobedo's courage and determination to press state authorities to fulfil their obligations to bring to justice those responsible for her daughter's 2008 murder had become a symbol of the struggle led by the mothers of disappeared and murdered women for justice. The earlier release of a man allegedly responsible for her daughter's killing highlighted the failure of police, prosecutors and judges to ensure justice for victims and led Marisela Escobedo to continue her protest. At least two individuals were involved in Marisela Escobedo's shooting, but no one has been held to account and members of her family have been forced to seek safety in the USA as a result of her activism.

Other human rights defenders from Ciudad Juarez have also faced threats and attacks, forcing them to leave the city. These include Cipriana Jurado,<sup>16</sup> Marisela Ortiz, Maria Luz Garcia Andrade,<sup>17</sup> and Norma Andrade<sup>18</sup> of Nuestras Hijas de Regreso a Casa who was forced to leave Ciudad Juarez in December 2011 after she was shot and injured outside her home. In February 2012 she was also attacked in Mexico City where she had sought safety.<sup>19</sup>

### **Recommendations:**

- Publicly condemn all threats, attacks and smear campaigns against women human rights defenders;
- Implement recent legislation establishing a human rights defenders protection mechanism to ensure all human rights defenders at risk receive effective protection;
- Investigate and bring to justice those responsible for threats and harassment of women human rights defenders and others working to combat violence and discrimination against women.

## 2.4 SEXUAL VIOLENCE (ARTICLES 1, 2(C); GENERAL RECOMMENDATION 19)

Sexual violence and rape remain widespread. In 2009, there were 14,829 complaints of rape lodged with public prosecutors offices. In the same year there were 3,462 prosecutions and 2,795 convictions.<sup>20</sup> In national surveys, only a minority of women report incidents of

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<sup>15</sup> <http://www.amnesty.org/es/library/info/AMR41/092/2010/es>

<sup>16</sup> <http://www.amnesty.org/en/library/info/AMR41/005/2010>

<sup>17</sup> <http://www.amnesty.org/en/library/info/AMR41/014/2011/en>

<sup>18</sup> <http://www.amnesty.org/en/library/info/AMR41/080/2011/en>

<sup>19</sup> <http://www.amnesty.org/en/library/info/AMR41/008/2012/en>

<sup>20</sup> Consulta interactivo de datos, Judiciales in materia penal, delitos procesados, delitos sentenciados,

violence to the authorities. In the 2006 National Survey on Relationships in the home (Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares (ENDIREH), between 79 per cent and 61 per cent of women did not report violence.<sup>21</sup> The 2006 National survey on violence against women (Encuesta Nacional sobre Violencia contra las Mujeres) found that of women receiving medical attention after suffering violence, only 12 per cent sought assistance from legal authorities.<sup>22</sup> Other national studies suggest that as few as 15 per cent of crimes are reported.<sup>23</sup> As a result, assuming that at least 80 per cent of women do not report rape, it is possible to estimate that more than 74,000 rapes were committed in 2009, which amounts to one in 21 cases of rape resulting in the conviction of perpetrators. Amnesty International is not aware of any evidence that the incidence of rapes is going down or that rates of prosecution and conviction are increasing.

#### 2.4.1 INÉS FERNÁNDEZ ORTEGA AND VALENTINA ROSENDO CANTÚ

The judgements issued by the IACtHR in 2010 in favour of Inés Fernández Ortega and Valentina Rosendo Cantú, two Indigenous women raped by members of the military in Guerrero in 2002, concluded that the women had been raped by members of the military, that the state had failed to investigate the case effectively and that the women had been discriminated against and denied access to justice and reparations. The judgement, which is binding on Mexico, ordered a series of measures to be taken by the Mexican state which included: a full and diligent, gender and culturally sensitive, investigation by the civilian authorities to hold the perpetrators to account; investigation of officials responsible for the failed enquiry; public acts in which senior government officials recognise the state's international responsibility for the human rights violations in accordance with the wishes of the two women; support for medical treatment and educational grants as well as compensation. The judgement also required: legal changes to ensure all alleged human rights violations committed by the armed forces are subject to investigation, prosecution and trial exclusively by civilian judicial authorities, not military; officials implicated in blocking the initial enquiry to be held to account; new standardized protocols for the investigation and attention of cases of sexual violence against women in accordance with the guidelines of the Istanbul Protocol and the World Health Organization<sup>24</sup>; permanent training of public officials on diligent investigations into allegations of sexual violence and strengthened institutions to attend adequately to women victims of sexual violence; and facilitate resources to establish a

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<http://www.inegi.org.mx/sistemas/olap/proyectos/bd/consulta.asp?p=11017&c=15274&s=est&cl=4#>

<sup>21</sup> Avances en la equidad de género, *INMUJERES Page 197*

<http://www.conapo.gob.mx/publicaciones/sdm/sdm2009/11.pdf>

<sup>22</sup> Encuesta Nacional sobre Violencia contra las Mujeres, 2006, Centro Nacional de Equidad de Género y Salud Reproductiva, [http://cedoc.inmujeres.gob.mx/documentos\\_download/ENVIM\\_2006.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/ENVIM_2006.pdf), page 69

<sup>23</sup> [http://www.icesi.org.mx/documentos/publicaciones/cuadernos/cuaderno\\_8.pdf](http://www.icesi.org.mx/documentos/publicaciones/cuadernos/cuaderno_8.pdf), page 82

<sup>24</sup> UN Office of the High Commissioner for Human Rights, Professional Training Series No. 8, Istanbul, Protocol: Manual on the Effective Investigation and Documentation of Torture and other Cruel, inhuman or degrading treatment, New York and Geneva, 2001.  
(<http://www.ohchr.org/Documents/Publications/training8Rev1sp.pdf>)

WHO, Guidelines for medico-legal care for victims of sexual violence, Geneva, 2003

[http://www.who.int/violence\\_injury\\_prevention/publications/violence/med\\_leg\\_guidelines/en/index.html](http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/index.html)

centre to assist and strengthen access to education of Indigenous women and girls in the victim's community <sup>25</sup>

According to the human rights organization representing the women, Tlachinollan Human Rights Centre (Centro de Derechos Humanos de la Montaña "Tlachinollan") the state has only partially complied with the judgement. The investigations into the rape have finally been transferred to civilian jurisdiction, but there is no information available on advances. No officials have been held to account for obstructing the initial enquiry. Positive public events were held to recognise state responsibility, but some of the commitments made by the federal, state and municipal authorities during these events have yet to materialize, for example the community centre and hostel for Indigenous girls to enable them to continue their education. The authorities have given some educational and other support to the victims and their families, but structural changes have yet to be address or introduced. The government has failed to ensure the reform of military jurisdiction to exclude human rights violations. The federal government has announced a new federal and state level protocol on the attention and investigation of sexual violence, but the victims and their relatives have yet to be consulted or the protocol legally adopted.

**Recommendations:**

The government of Mexico should accelerate implementation in full the judgements in the cases of Inés Fernández Ortega and Valentina Rosendo Cantú, in particular:

- Carry out exhaustive and impartial investigation in civilian jurisdiction of the rape of Inés Fernández Ortega and Valentina Rosendo Cantú, hold those responsible to account as well as those officials responsible for negligence in the initial enquiry;
- Reform military jurisdiction to exclude all human rights violations, including rape;
- Implement the commitments made to develop community based facilities for education and support of young Indigenous women;
- Ensure that the protocol on the attention and investigation of sexual violence against women announced by the government is consulted with the two women, their representatives and women's groups and ensure it is in line with international best practice and is implemented as binding procedures for federal and state level authorities;
- Report on outcome of training and education programmes being implemented for law enforcement and health care professionals, to ensure they take all incidences of sexual violence seriously, including investigating all complaints, prosecuting suspected perpetrators and punishing them where found guilty.

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<sup>25</sup> I/A Court H.R., Case of Fernández-Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., Case of Rosendo-Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216

## 2.5 TORTURE IN DETENTION (ARTICLES 1, 2(C); GENERAL RECOMMENDATION 19)

Amnesty International is concerned about impunity for torture and ill-treatment, including rape and other forms of sexual assault, of women by public officials. The absence of effective domestic avenues to punish perpetrators and provide remedies for victims is leading a number of victims to seek redress at the regional level through the Inter American system. The lack of accountability within Mexico's federal system enables different levels of government to blame each other for persistent impunity for violence against women committed by state agents and non-state actors.

Torture and ill-treatment, including rape and other forms of sexual assault, of women protesters detained in San Salvador Atenco, Mexico state in May 2006 has gone unpunished.<sup>26</sup> More than 200 demonstrators, including 47 women, were detained in a federal, state and municipal police operation. The operation employed excessive force and ill-treatment of detainees. At least 26 women reported suffering sexual violence by state police while being transferred to prison. One police officer was charged with the crime of libidinous acts and several others were accused of abuse of authority. Even on the basis of these lesser offences, all police officers were acquitted by the courts on the grounds of lack of evidence. The federal government has sought to blame the state government for failing to bring to justice those officials responsible, but has failed to take measure to press charges itself and did not comply with the Committee's earlier recommendation on the case.<sup>27</sup> The Special Federal Prosecutor for violent crimes against women and trafficking (La Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas, FEVIMTRA) which carried out an enquiry, ultimately declined jurisdiction in 2009 and submitted its findings to Mexico state's Attorney General's Office which, as with the initial investigation, failed to take effective legal action against the perpetrators. The refusal of the state government to comply with its legal and international human rights obligations demonstrates how impunity is sometimes allowed to prevail as the federal authorities claim they do not have the power to ensure compliance. The minor offences with which some of the accused were charged, "libidinous acts" (actos libidinosos) and abuse of authority, were not commensurate with state agents committing violent sexual crimes, amounting to torture, against female detainees in reprisal for their participation in demonstrations. The poor quality investigations by Mexico state prosecutors also undermined the outcome of judicial proceedings, ensuring acquittals and decisions not to prosecute.

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) and National Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) both carried out enquiries and concluded that grave human rights violations had been committed, including discrimination and torture involving sexual violence, against women detainees, and issued recommendations for perpetrators to be brought to justice and victims to receive reparations. Nevertheless, state and federal authorities have failed to comply despite in

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<sup>26</sup> <http://www.amnesty.org/en/library/info/AMR41/028/2006/en>

<sup>27</sup> "guarantee that the Special Prosecutor for Offences related to Acts of Violence against Women has the required authority, as well as the necessary human and financial resources, to empower her to effectively fulfil her mandate in an independent and impartial manner"; Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico CEDAW/C/MEX/CO/6, 25 August 2006, para 14 and 15

principle accepting the recommendations. Neither the CNDH nor the SCJN carried out an evaluation of compliance. In the face of this evident failure to ensure access to justice for victims, nine of the women have taken their case to the Inter American Commission of Human Rights, which has formally admitted the case.<sup>28</sup>

In a recent case received by Amnesty International, on 2 February 2011, Miriam Isuara López Vargas was arbitrarily detained in Ensenada, Baja California state, and reportedly tortured by members of the army in a military barracks in Tijuana while being interrogated by a civilian federal prosecutor. She was subjected to sexual assault, near asphyxiation, stress positions and threats to coerce her into signing a confession to implicate other military personnel of collusion with organized crime. On 9 February she was transferred to the pre-charge detention centre (Centro Nacional de Arraigo) of the Federal Attorney General's Office (Procuraduría General de la República, PGR) in Mexico City without being brought before a judge. She was held in arraigo (pre-charge detention) until 26 April when she was charged and remanded into custody on drugs offences. During arraigo she was denied access to a lawyer and adequate medical treatment. The prosecution's case subsequently collapsed and a federal judge ordered her release in September 2011. At the time of writing, there was no information on the investigation initiated into her torture complaint but she had received some official protection after reportedly receiving anonymous threats in relation to her complaint. In 2010, after its visit to Mexico, the Subcommittee on the Prevention of Torture highlighted cases of women who were victims of torture and ill-treatment during detention, particularly in arraigo.<sup>29</sup>

In October 2011, Margarita González Carpio was seriously assaulted by her former partner, a senior Federal Police officer in Queretaro City. Federal and state officials initially refused to take action to protect her or investigate the allegations of assault. After national and international attention highlighted the case, an investigation was opened. However, she remains in hiding and no information was available on the progress of the enquiry or steps taken against the aggressor.

**Recommendations:**

- Ensure that any public official accused of violence against women is subject to a full, prompt and impartial investigation and brought to justice, and failure carry out such an investigation should be subject to criminal and disciplinary proceedings;
- In relation to Atenco, seek clarification on the government's failure to comply with the Committee's previous 2006 recommendations, failure to comply with the CNDH and SCJN enquiry findings and ongoing impunity in the case;
- Establish clear obligation at federal and state level to uphold international human rights standards, including to eradicate violence against women and discrimination, where failure to do so results in serious consequences for the non-compliant authority;

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<sup>28</sup> Report No. 158/11, Petition 512-08, Mariana Selvas Gómez, <http://www.oas.org/en/iachr/decisions/admissibilities.asp>

<sup>29</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, CAT/OP/MEX/1, May 2010, para 266

- Strengthen coordination and accountability at all levels of government in Mexico to ensure effective investigation, prosecution and punishment of violence against women, particularly when public officials are implicated;
- Provide public information on outcomes of the education and training to all levels of government to counter discrimination and violence against women.

## 2.6 IRREGULAR MIGRANT WOMEN AT RISK (ARTICLES 2, 3, 6 AND 12)

Tens of thousand of irregular migrants, principally from Central America, cross Mexico each year attempting to reach the USA in order to escape poverty and violence. According to human rights defenders running shelters along the transit routes, there are an increasing number of women and girls making the journey. The migrants face a perilous journey at risk of abuses by police, migration officials and security forces, but most of all from criminal gangs who have increasingly targeted migrants for kidnapping, extortion, trafficking and murder. In 2011 the CNDH found that some 11,000 migrants were kidnapped over a six month period. The gangs responsible frequently operate with the complicity of public officials. The mass killing of 72 abducted migrants San Fernando, Tamaulipas state in 2010 is the most emblematic of cases, but the abduction and killing of migrants remains a frequent occurrence. The federal, state and municipal governments have consistently failed to take effective measures to prevent and punish abuses against migrants, leaving them exposed to grave human rights violations.

Migrant women are particularly vulnerable to sexual violence and trafficking into sex work. Reliable evidence of the levels of sexual violence is difficult to obtain, but Amnesty International research based on interviews with migrant women, migrants' rights defenders and academic studies suggested this may amount to six out of ten migrant women becoming victims of such violence during their journey.<sup>30</sup> The authorities have removed legal obstacles to migrant women receiving emergency medical attention, provided some services for victims of sexual violence and strengthened legislation to combat human trafficking, but these measures have not been sufficient to reduce abuses, ensure women can access justice and health services effectively or overcome the fear that migrant women have that they will be detained and deported if they seek help. For example, local human rights organizations have highlighted ongoing obstacles to access medical treatment because of the failure to train medical professionals on legal changes.<sup>31</sup> It is vital that the measures that have been taken are evaluated to assess their impact and further measures are taken to reduce barriers to the protection of migrant women's rights. In April 2011, the Committee on Migrant Workers recommended that "particular attention should be paid to ensuring access to justice for women migrants who have been victims of sexual assault."<sup>32</sup>

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<sup>30</sup> Mexico: Invisible victims. Migrants on the move in Mexico, Index Number: AMR 41/014/2010, published: 28 April 2010, <http://www.amnesty.org/en/library/info/AMR41/014/2010>.

<sup>31</sup> <http://www.cimacnoticias.com.mx/site/12052503-LA-OTRA-RUTA-MIGRAT.49813.0.html>

<sup>32</sup> Committee on Migrant Workers, CMW/C/MEX/CO/2, May 2011, paragraph 26

**Recommendations:**

- Ensure that all migrants who may be survivors of sexual violence have access to appropriate medical and psychological services. Efforts should be made to develop mechanisms for recording allegations of sexual violence and, whenever possible, to conduct effective criminal investigations which do not re-victimize the survivor or deter access to services;
- Provide training and education to public officials and medical professionals on rights of migrant women, including access to services;
- Review and evaluate impact of measures to detect and protect women and girl victims of trafficking and other recent measures to reduce discrimination and abuses against migrant women and improve access to services.

**2.7 IMPLEMENTATION AND IMPACT OF LEGISLATIVE MEASURES (ARTICLE 2;  
GENERAL RECOMMENDATION 19)**

The 2007 General Law on Women's Access to a Life Free from Violence (LGAMVLV) was a positive step forward in terms of a national legal framework to recognise and address different forms of violence against women. The adoption of similar legislation at state level was also positive, but implementing legislation which has been adopted in 28 states is frequently weak and vague, leaving doubt about the specific responsibilities of each institution. Many state criminal codes also continue to be deficient as identified by CONAVIM.

National human rights and women's organizations have highlighted the serious obstacles to invoking the "femicide alert mechanism" in the LGAMVLV which should trigger a range of coordinated institutional responses to a situation of femicidal violence in a specific area of the country.<sup>33</sup> On three occasions the National System for the Prevention and Eradication of Violence against Women has rejected without providing an adequate justification petitions to trigger the alert mechanism, despite civil society presenting compelling evidence of numerous unsolved abductions and killings of women in Oaxaca, Mexico state and Nuevo Leon. As a result, the same state level authorities that have failed to prevent or punish documented cases of grave gender-based violence, including rape and killings, have not faced additional pressure or oversight. The difficulty in using this mechanism raises serious concern about the commitment of federal and state authorities to use all means at their disposal to combat gender-based violence.

The National database on cases of violence against women (Banco Nacional de Datos e Información sobre Casos de Violencia contra las Mujeres), established under article 44 of the LGAMVLV, is still not operational and has not produced any reports or public information on progress or outcomes of the project.

Despite establishing CONAVIM and the National System for the Prevention and Eradication of violence against women, the authorities have failed to comply with the provisions of

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<sup>33</sup> LGAMVLV, Art 24 -26, <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV.pdf>



LGAMVLV which require the publication of a National Diagnostic on violence against women.<sup>34</sup>

The failure to comply with essential elements of the law and evaluate its enforcement and effectiveness raise serious concern about the commitment of the authorities to ensure the measures undertaken are producing real impact for the lives of women and girls.

**Recommendations:**

- The National database on cases of violence against women should commence functioning as a priority. It should publish data on types and scale of violence against women and measures taken to hold perpetrators to account and protect victims;
- Conduct a full, impartial and public review and evaluation of the impact of LGAMVLV in reducing violence against women and impunity;
- Review and reform procedures to ensure the effective application of the femicide alert mechanism established in LGAMVLV in instances where civil society or official agencies provide evidence of a pattern of gender-based killings and impunity in specific areas of the country;
- Ensure federal and state government, in consultation with civil society, devise and implement effective joint policies to eliminate gender-based violence and impunity in line with human rights commitments, including immediate and effective search for women or girls reported missing; best practice gender-competent investigations; reform of criminal codes and judicial training to combat discrimination and stereotyping of women victims of violence and hold to account officials for failure to comply with gender competent procedures and legislation. Provide regular reports on delivery of the programme drawn from evidence-based review of its effectiveness.

## **3. SEXUAL AND REPRODUCTIVE RIGHTS CONCERNS (ARTICLES 5, 12 AND 16)**

### **3.1 INDIGENOUS WOMEN'S MATERNAL HEALTH**

The government's focus on reducing maternal mortality in recent years has produced important advances in reducing overall levels of preventable maternal deaths. In 2010, according to public health data, there were 51.5 maternal deaths per 100,000 live births across Mexico.<sup>35</sup> However, the slow and uneven rate of reduction of maternal deaths means that government health officials have acknowledged that that Mexico will not meet its

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<sup>34</sup> Ibid, transitory article 5.

<sup>35</sup> Data obtained from the Observatorio de Mortalidad Materna, a joint civil society, government and international agency monitoring maternal mortality: <http://www.omm.org.mx>  
[http://www.omm.org.mx/images/stories/MM\\_2002\\_2010.xls](http://www.omm.org.mx/images/stories/MM_2002_2010.xls)

Millennium Development Goal of 22 per 100,000 by 2015.<sup>36</sup> One of the main factors is the persistently high levels of maternal mortality amongst Indigenous women compared with non-Indigenous women reflecting social inequality, discrimination and limited access to quality health facilities for many Indigenous communities.<sup>37</sup> The three states with the largest Indigenous populations, Chiapas, Guerrero and Oaxaca, averaged 82.5 maternal deaths per 100,000 live births in 2010, considerably higher than the national average.<sup>38</sup> In 2009 the risk of maternal death was three times higher in those municipalities with over 70 per cent Indigenous population compared to municipalities with less than 40 per cent Indigenous population.<sup>39</sup>

During Amnesty International field research on maternal health conducted in 2010 in Chiapas and Guerrero, health professionals, midwives, Indigenous women's rights organizations and community members identified a series of factors limiting the impact of government measures to reduce maternal mortality with regard to Indigenous women. These included the frequent failure to ensure the availability of adequate health facilities located sufficiently near communities in order to prevent Indigenous women being forced to make costly and long journeys to obtain essential medical attention; failure to ensure that services are culturally appropriate and acceptable to Indigenous women, as well as providing a high standard of health care; discriminatory attitudes that some Indigenous women encounter when seeking healthcare from some healthcare professionals; lack of interpreters as many health services are also only available in Spanish which many Indigenous women do not understand. Without these elements, efforts to develop the trust and confidence of Indigenous communities to seek and obtain timely maternal health care have had limited impact.

Amnesty International also found that there is frequently a failure to consult effectively and in good faith with Indigenous women in affected communities to ensure their views are built into policy formulation and planning on health care provision. The failure to establish robust processes of consultation with Indigenous peoples, particularly Indigenous women, frequently prevents the development of policies which effectively target the barriers Indigenous women face in accessing quality health services as well as preventing a more positive relationship between state maternal health services and Indigenous women in many of the poorest regions of the country.

#### **Recommendations:**

- Consult effectively with Indigenous women to ensure that their right to health care is fully realised, and use the outcomes of the consultation to devise a health care strategy for

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<sup>36</sup> <http://www.informador.com.mx/jalisco/2012/359329/6/reconocen-no-se-cumpliran-metas-del-milenio-en-mortalidad-materna.htm>

<sup>37</sup> In 2009, the Maternal Mortality ratio was 62.2 per 100,000 for the whole population, but states with high Indigenous populations recorded significantly increased ratios of maternal deaths, including Guerrero with 107.8. Observatorio de Mortalidad Materna, [http://www.omm.org.mx/images/stories/MM\\_2002\\_2010.xls](http://www.omm.org.mx/images/stories/MM_2002_2010.xls)

<sup>38</sup> Ibid

<sup>39</sup> [http://www.undp.org.mx/IMG/pdf/Informe\\_Completo.pdf](http://www.undp.org.mx/IMG/pdf/Informe_Completo.pdf), page 66

this community;

- Ensure translation services are available in appropriate languages for Indigenous women seeking health care;
- Ensure access to culturally appropriate and available high quality maternal health services for all women.

### 3.2 SEXUAL AND REPRODUCTIVE RIGHTS

Abortion continues to be a criminal offence in all states except the Federal District which has decriminalized abortion and provides access to safe services until the 12<sup>th</sup> week of pregnancy. In all states, abortion is legal in cases of rape and in some where the pregnant woman's life is at risk. In a few states abortion is also legal in cases of severe fatal deformities and in one where there are socio-economic reasons to terminate the pregnancy. However, most states have not regulated access to legal abortion services, making it difficult for women in practice to obtain safe legal abortions. Many of these states continue to treat all abortions as if they were illegal, though criminal punishment is selectively implemented. Amnesty International believes this treatment of legal abortion services stigmatises women who become pregnant as a result of rape and forms part of the obstacles they face to secure legal and safe abortion services.

Many states actively detain and prosecute women and girls for having procured illegal abortions.<sup>40</sup> The numbers of those in detention at national level for seeking or obtaining illegal abortions is unclear due to the lack of transparency with which this information is handled by states, and because some cases are prosecuted as infanticide or homicide rather than abortion.

In 2011, the National Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) narrowly rejected a legal challenge to overturn changes to the local constitutions of the states of Baja California and San Luis Potosí, which along with 15 other states had established the right to life from the moment of conception. Seven of the 11 Supreme Court judges argued that the changes were unconstitutional and unreasonably restricted women's reproductive rights. However, this was an insufficient majority for the legal challenge to succeed and as a result the local constitutional reforms were not overturned.

Amnesty International is concerned that allowing these constitutional reforms to stand endangers the reproductive rights of women and potentially establishes the basis to increase the criminalization of women obtaining or seeking to obtain abortions. Amnesty International believes there is a chilling effect of the decision to allow the constitutional changes to stand which reinforces barriers to legal abortion services in Mexico for women and girls who have been raped, especially for resource poor and otherwise marginalized women.

This is particularly the case in those states which have still failed to introduce or apply effective regulatory norms on providing access to legal abortion services for victims of rape.

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<sup>40</sup> <http://www.hchr.org.mx/Documentos/comunicados/2010/08/CDP180810.pdf>

In 2009, the federal government published official medical procedures for the prevention and attention of family based and sexual violence against women (NOM-046-SSA2-2005)<sup>41</sup> which included the obligation to provide abortion services to rape victims. However, there are continued reports that these procedures are not being applied effectively.<sup>42</sup>

### 3.2.1 UNFAIR TRIAL OF WOMEN ACCUSED OF ABORTIONS OR INFANTICIDE

In recent years, Amnesty International has researched several cases of women who have been tried and sentenced to long prison sentences by state courts in Guanajuato, Baja California and Guerrero, on the basis of charges of infanticide. The women were accused of intentionally terminating the foetus at a late stage of pregnancy and in some cases concealing the remains. Evidence of spontaneous miscarriage and mental instability of the accused was ignored in several cases, in favour of unreliable prosecution evidence that the foetus had taken some breaths on birth prior to being killed and therefore had a separate existence and was alive when killed by the mother.<sup>43</sup> The failure of judges and prosecutors to ensure adequate defence of the accused, who frequently came from poor and marginalized backgrounds, and ensure fair trial standards, raised serious concern about discrimination against the women and the safety of the convictions.

In May 2011, Lesley Karina Zamora of Mexicali, Baja California, was released from custody on appeal after two years in prison. She had been convicted of aggravated homicide by parent (homicidio agravado en razón de parentesco) and sentenced to 23 years on the basis of unreliable forensic tests cited above that she had killed her baby at birth. Amnesty International and other human rights organizations supported the efforts of her legal defence to highlight that she had been denied an effective defence in her trial and that prosecution evidence based on unreliable lung-tissue tests had been accepted by the court without adequate evaluation, while evidence of a spontaneous miscarriage was dismissed without justification. In a similar case, a 25 year-old Indigenous woman from Guerrero state, remains in prison in Chilpancingo, pending the outcome of a federal judicial review of her case. She has been in detention since 2006 and was sentenced to 22 years in prison for the offence of aggravated homicide by parent. According information Amnesty International has studied, prosecutors ignored evidence that she miscarried spontaneously and fabricated evidence in order to accuse her of premeditated murder. The outcome of her appeal is pending.

#### **Recommendations:**

- Ensure that any legal impediment to women accessing reproductive health care is removed;
  
- Ensure that federal and state governments guarantee that all women who are pregnant as a result of rape or incest are able to access safe and legal abortions, including publishing

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<sup>41</sup> Norma Oficial Mexicana NOM-046-SSA2-2005, Violencia familiar, sexual y contra las mujeres,. Criterios para la prevención y atención

<sup>42</sup> <http://www.cambiodigital.com.mx/mosno.php?nota=65444&seccion=Principa>

<sup>43</sup> Third Edition Knight's Forensic Pathology review. "Proof of separate existence" the authors critique the use of "hydrostatic tests" on lung tissue on deceased preterm or new born babies as a proof of separate existence and life. SAUKKO, Pekka ; KNIGHT, Bernard. *Knight's Forensic Pathology*. 3rd ed. Great Britain: Hodder Arnold, 2004. P. 445-447. ISBN 978-0-340-76044-4

binding procedures to make this right legally enforceable in all states;

- Provide training and public information on these procedures and NOM-046 medical procedures and report publicly on the evaluation of their implementation.
- Ensure that any woman whose baby dies during pregnancy or shortly after birth is not subject to unfounded and unfair prosecution and conviction, ensuring her right to non-discrimination, equality before the law, presumption of innocence and access to effective legal defence.
- Review standards of evidence of foetal deaths and new-born deaths in order that international best practices are applied and unreliable forensic tests are excluded.

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