

# Mexico

## Briefing to the Committee on the Elimination of Discrimination against Women

Amnesty International welcomes the steps taken by the federal government of Mexico to fulfil its treaty obligations as a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW or the Convention), including the submission of its 6<sup>th</sup> periodic report to the Committee on the Elimination of Discrimination against Women (the Committee).<sup>1</sup>

Amnesty International recognizes that Mexico's federal government has implemented some important measures to address discrimination against women during this administration. Nevertheless, in 2005 the First National Survey on Discrimination found that 93% of women believed they suffered discrimination, indicating the degree to which the lives of women and girls are still directly impacted by inequality.<sup>2</sup>

Amnesty International welcomes the investigation undertaken by the Committee into the abduction and murder of women in Ciudad Juárez in 2003 and the Mexican government's full open cooperation with this procedure. Amnesty International also welcomes the recent visit in 2005 of the Special Rapporteur on Violence against Women to Mexico and her recommendations to the Mexican government.

The aim of this submission is not to highlight all concerns related to CEDAW, but to focus particularly on the obligation of the state party to prevent and punish all forms of violence against women, as set out in the Committee's General Recommendation 19. This briefing presents a number of cases that highlight:

- Abuses committed against women directly by state agents, that have not been adequately investigated or those responsible held to account.
- Abuses committed by non-state actors which the state has failed to prevent or punish with due diligence, including violence in the community and domestic violence. This section also considers the effectiveness of the measures taken by the state to prevent and punish violence against women in Ciudad Juárez and the City of Chihuahua.
- Harassment of women human rights defenders working to defend the rights of women and children.

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<sup>1</sup> UN Doc. CEDAW/C/MEX/6.

<sup>2</sup> Primer Encuesta Nacional Sobre Discriminación en México, Secretaria de Desarrollo Social, 2005, [http://www.sedesol.gob.mx/subsecretarias/prospectiva/subse\\_discriminacion.htm](http://www.sedesol.gob.mx/subsecretarias/prospectiva/subse_discriminacion.htm)

## **Common Factors contributing to impunity for gender-based violence:**

Despite the governmental programmes to address gender discrimination and improve the position of women in Mexican society set out in the government's 6<sup>th</sup> report to the Committee, impunity for human rights violations and all forms of violence against women remains widespread in many parts of Mexico. These are some common factors that contribute to impunity.

### **(i) Federal legal framework and impunity for human rights violations**

Amnesty International welcomes the Committee's attention to the relations between federal, state and municipal authorities in Mexico in the list of questions relative to Mexico's 6<sup>th</sup> periodic report.<sup>3</sup> The organization has often noted the willingness of the present federal government to promote human rights initiatives in the federal public administration. However, according to Mexico's federal Constitution, the governments of the 32 federal entities are responsible for preventing and punishing the vast majority of cases of violence against women. Several state governments, while formally committed to respect human rights, often fail to do so in practice. The federal government has on occasions recognised the failure of state governments to meet their obligations under international law, but frequently argues that its powers to ensure compliance are limited under Mexico's Constitution to voluntary agreements. As a result, some state governments have avoided addressing many of the institutional failings that continue to limit the effective prevention and punishment of all forms of violence against women and other international human rights standards.

This issue has frequently been linked to the failure to explicitly incorporate Mexico's international human rights commitments into the Constitutional text. Despite the 1999 National Supreme Court ruling which places international human rights conventions immediately below the Constitution and above federal law and state laws, there is a long standing failure to apply international human rights law in federal and state courts, reducing the onus on all state institutions to uphold these standards.<sup>4</sup> It should be noted that legislative proposals by the government to explicitly incorporate Mexico's international human rights obligations into the Constitution have not been approved by Congress. Neither have proposals to reform Constitutional article 73 to extend the criteria for the Federal Public Prosecutor's Office to intervene directly in cases normally dealt with in state jurisdictions when state authorities are either incapable or unwilling to tackle serious human rights violations. As a result, Amnesty International continues to identify the absence of effective, impartial and transparent accountability mechanisms, particularly at state level, as a key obstacle to ending impunity for human rights violations, including violence against women.

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<sup>3</sup> CEDAW/C/MEX/Q/6, para. 6.

<sup>4</sup> Tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en Segundo plano respecto de la constitución federal. Novena Epoca. Instancia Pleno. Semanario judicial de la Federación. Tomo X noviembre de 1999. Tesis: P. LXXVII/99 pagina 46, materia constitucional. Tesis aislada.

In 2003 the UN Office of the High Commissioner for Human Rights (OHCHR) published a Diagnostic on the Human Rights Situation in Mexico analysing key human rights concerns and making a set of extensive recommendations to the authorities, including specific measures to mainstream the protection of women's rights. In December 2004 the Mexican government published its National Human Rights Programme (*Programa Nacional de Derechos Humanos*, PNDH), partly on the basis of the Diagnostic. Despite this positive step, the manner in which the Programme was consulted and defined, the lack of widespread national support and the absence of clear and substantive implementation and verification mechanisms appear to have limited the PNDH to primarily focus on the functioning of the Federal Public Administration. As a result, the main recommendations of the OHCHR remain unimplemented and the future of the PNDH is uncertain as the administration of President Fox draws to a close.

**(ii) Failure to fully review domestic laws and ensure their application**

Amnesty International welcomes the work of Mexico's parliamentary Commission on Equality and Gender and the Special Commission on the Investigations of Femicides in Mexico (*Comisión Especial para conocer y dar seguimiento a las investigaciones relacionadas con los femicidios en la República Mexicana*) which have promoted steps to gather information on the scale of violence against women in at least ten Mexican states and put forward important legislative proposals to improve the protection of women's right to lead their lives free from all forms of violence. However, at the time of writing, proposed legislation was still awaiting Congressional approval with parliamentary session drawing to a close.

Amnesty International welcomes steps by the federal government and some state governments in recent years to improve legislation outlawing discrimination and criminalising domestic violence. Nevertheless, legislation to protect women and girls from discrimination, abuse and sexual violence remains very limited in many of Mexico's 31 states and the Federal District. Information on the concrete steps of each local government to bring legislation into line with international human rights standards protecting the rights of women or on what steps are being made to ensure progress is not comprehensively included in the government's report. The Parliamentary Special Commission on Femicides has undertaken an important review of ten states. However, the federal government agencies have not carried out an ongoing detailed review of state legislation in this area (which varies greatly), nor developed mechanisms for ensuring appropriate reforms are introduced.

In November 2005 the National Supreme Court ruled that marital rape was a criminal offence, superseding its previous ruling in 1994 which considered marital rape to be the undue exercise of marital rights and not a criminal offence. Amnesty International hopes this will be a catalyst for reform in those states that have failed to make marital rape a criminal offence. However, national gender experts have noted that its impact is limited, as most states have already incorporated marital rape into the criminal code. The overdue ruling is nevertheless indicative of the National Supreme Court's reluctance and slowness to establish judicial precedent in line with international human rights standards to protect the rights of women.

During a recent Amnesty International research visit to Mexico in June 2006, women's rights organizations often stressed to Amnesty International delegates the failure of authorities, particularly at state level, to acknowledge the scale and seriousness of violence against women or to allow adequate access to official data in order to enable independent assessments. As a result, official efforts to tackle problems often appear to be superficial and refer to legal procedures or principles supposedly guiding institutional conduct, rather than focusing on the actual experience of women or relatives seeking assistance from the authorities when reporting violence. These experiences often vary markedly from how such cases are supposed to be treated.

**(iii) Evaluation**

In order to assess the effectiveness of the police and judicial response to violence against women, detailed and reliable data is essential. However, the government's 6<sup>th</sup> report does not provide detailed information indicating the proportion of women who suffer some form of gender violence file formal complaints with the authorities, the proportion of cases that are officially reported which result in prosecutions, and the proportion of prosecutions that result in convictions. The fact that impunity for gender-based violence remains widespread makes it vital to undertake a substantial and independent analysis of the manner in which the criminal justice system handles such cases at federal, state and municipal level. The failure to directly survey women in relation to their treatment by official agencies or to assess their experience of bringing cases to court seriously limits the capacity to develop effective policy and practices responsive to the needs of women. Despite the government's claim to have mainstreamed gender perspective in all policy development, there is still an apparent failure to gather basic reliable data in relation to the criminal justice system.

Amnesty International welcomes the request included by the Committee in its list of issues and questions for more information regarding the evaluation of the substantive impact of many of the projects and initiatives cited by the Mexican government in recent years to address discrimination and violence against women.<sup>5</sup> As has been noted, there is a serious lack of reliable data gathered from criminal justice agencies and from the intended beneficiaries of the projects, women and girls at risk or who seek assistance from the authorities. Instead the government appears to rely on the information of the project providers, which does not appear to include substantive impact assessment. As a result, it is extremely difficult to assess if these projects have made any substantial contribution to the challenge of changing deep-seated practices in society and governmental institutions.

Amnesty International is not aware of any evaluation of judicial rulings in cases involving violence against women in federal or state criminal and civil courts to determine if the courts are applying gender sensitive practices and ensuring that the rights of women are protected in practice according to the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and

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<sup>5</sup> UN Doc. CEDAW/C/MEX/Q/6, para. 13.

Eradication of Violence against Women (also known as the "Convention of Belem do Para"), both ratified by Mexico.

### **Torture and other ill-treatment of women by state agents**

As well as being a state party to CEDAW and the Convention "Belem do Para", Mexico is also bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. Nevertheless, Amnesty International has continued to receive reports of women suffering sexual abuse, intimidation and humiliation while in the custody of state officials as documented in the cases below. Impunity for human rights violations remains widespread and internal disciplinary enquiries and criminal investigations by the respective public prosecutors offices rarely produce substantive results, leaving perpetrators unaccountable. Amnesty International is not aware of any official facing criminal prosecution for the offences described in cases in this section.

#### **San Salvador Atenco, State of Mexico**

On 3 and 4 May 2006 federal and state public security police arrested 205 people in the neighbouring municipalities of San Salvador Atenco and Texcoco, State of Mexico, after demonstrations lead to violent clashes with police. At least 50 people were injured and a 14 year-old boy was shot and killed, reportedly by police. Thirteen police officials were temporarily held captive by protesters, leading to a major operation on 4 May by state and federal police in the town of San Salvador Atenco. According to testimony gathered by Amnesty International, police used excessive force to carry out numerous arbitrary detentions of residents of San Salvador Atenco. The majority of detainees were forced to pull their shirts over their heads and were beaten, kicked and threatened repeatedly before being placed on buses to be transported to the prison of Santiaguito, La Plama near Toluca. Forty-seven women were amongst those detained.

According to the testimonies taken by Amnesty International, the male and female detainees were tortured and ill-treated on the transport buses. Those arrested were forced to lie on top of each other in the aisle of the bus while others were made to walk over them. The heads of all detainees remained covered and lowered throughout the journey. Women detainees were reportedly threatened with rape and assault. According to victims, state public security police (*Policia Preventiva del Estado*) reportedly sexually assaulted and humiliated various women while continuing beatings. Some women were reportedly forced to carry out sexual acts on officials and at least six others were raped. Subsequently 17 women reported suffering sexual abuse and at least six others reported being vaginally penetrated with hands and unidentified objects.

Despite clear signs of injuries and trauma, prison officials did not register any official complaint at the manner male and female detainees were delivered to the prison. Detainees were provided with basic medical treatment for visible injuries by prison medical staff. In June detainees informed Amnesty International that Public Prosecutors in the prison refused

to accept complaints by detainees about their treatment or document visible injuries. When women tried to report having suffered sexual assault to prison doctors, they were informed that only the forensic doctor of the Public Prosecutor's Office was competent to examine them. Given the lack of impartiality of prosecutors in the treatment of detainees, and the limited nature of the medical examinations so far undertaken, the women refused to be examined by official forensic doctor.

Furthermore, prisoners were not informed of the charges against them until they were committed for trial and were denied access to a lawyer of their choice during the initial period of their detention. They were not allowed to make a phone call or communicate with their families either during this period. On 4 and 5 May representatives of the National Human Rights Commission entered the prison and documented the condition of the detainees. It was only at this point that women detainees were confident enough to file complaints for sexual abuse and rape. In its preliminary report, issued on 23 May the CNDH stated that 23 women had filed complaints of sexual assault, which had been passed to the Mexico State Public Prosecutor's Office. Four foreign women, who were summarily expelled by immigration authorities, also subsequently made statements on their arrival in their home countries that they had suffered sexual humiliation by state police while in custody.

Despite the reports of serious sexual abuse and ill-treatment, federal and state authorities were reluctant to initiate a full enquiry on the grounds that the victims had not filed a formal complaint.

Senior government officials of the State of Mexico repeatedly stated in the media, without undertaking an independent investigation, that police simply applied the law and that allegations of abuse were unsubstantiated and a "trap" (*trampa*). The authorities also argued the allegations were unfounded as none of the alleged victims had agreed to a medical examination by forensic doctor of the Public Prosecutor's Office. No steps were taken to ensure that medical professionals were appropriately trained or sufficiently impartial to carry out sensitive examinations with the consent of the victims. Even the female doctor who carried out examinations of the victims on behalf of the CNDH was not reportedly a specialist in this field and only conducted a brief physical examination.

As public concern grew, the State of Mexico authorities made a number of vague commitments to conduct internal police enquiries, but failed to address how the impartiality of such an enquiry would be guaranteed or whether wider questions of chain of command responsibilities and operational orders given to police would be considered. The CNDH issued a preliminary report noting the nature of the investigation undertaken, which was subsequently used by the State of Mexico authorities to open an official investigation into the allegations of sexual abuse. Amnesty International delegates met the State Public Prosecutor and Secretary General of the state government in June 2006 and were informed that eight police officials were to face disciplinary sanctions for excessive use of force during the detentions. However, the public prosecutor could not identify any investigative steps taken or strategies developed to identify officials possibly involved in the alleged sexual attacks

beyond requesting the victims to visually identify the perpetrator – which was extremely difficult given that the victims' heads were covered to prevent them from seeing during the journey. The Public Prosecutor was also not concerned that the prosecutors responsible for investigating alleged abuses would be the same officials, or from the same team, who had failed to document the abuses suffered by the detainees on their arrival at the prison.

Due to serious concern that the state authorities could not guarantee an impartial investigation into the abuses, local human rights organizations filed a complaint of rape with the new Federal Special Prosecutor for violence against women, Dr. Alicia Elena Perez Duarte. The new fiscal has shown interest in assuming direct jurisdiction for the investigation of the sexual assaults. However, the Federal Attorney General's Office (*Procuraduría General de la República, PGR*) has so far expressed the view that these cases fall within the jurisdiction of the state authorities and the Federal Special Prosecutor's role is restricted to coordination and assistance.

In view of the lack of impartiality during the early stages of the investigation, Amnesty International has recommended that the Federal Special Prosecutor claim jurisdiction of this case (and the PGR investigate other allegations of abuses) in order to meet the minimum criteria of an impartial and independent investigation of the allegations of sexual attack and torture.

### **Guadalajara**

On 28 May 2004 a group of demonstrators clashed with police in Guadalajara, Jalisco state, at the end of the Summit of Latin American, Caribbean and European Union Heads of state, resulting in injuries and damage to property. In response, police detained more than a hundred people during and after the disturbances. According to testimony gathered by Amnesty International and other human rights organizations, including the National Human Rights Commission (CNDH), many of those arrested were subsequently tortured or ill-treated in order to extract confessions or implicate others in the violence.

One of the women detained, 22-year-old **Liliana Gálvez Lopez**, was reportedly photographing the disturbances when she was knocked to the ground and kicked and beaten by police officers, but was only detained later as she was receiving medical attention at a Red Cross Station. According to reports, during custody female police officers made her and other female detainees go into a basement room where they were ordered to undress and sit on their heels (*hacer sentadillas*) while male police officers watched them. The next day Liliana Gálvez Lopez was reportedly forced to sign a statement in front of prosecutors that she was not allowed to read. After being brought before a judge, she was charged and released on bail. Despite a special report by the National Human Rights Commission that recommended a full investigation into abuses committed during the detention of protesters, Amnesty International is not aware of any official investigation by State of Jalisco authorities into her treatment or that of other women while in custody.

**Nadia Ernestina Zepeda Molina**

On the evening of 23 January 2003, 18 year-old student, Nadia Ernestina Zepeda Molina, was walking with two young men in the streets of Colonia Agrícola Oriental of Iztacalco district (*Delegación*) of Mexico City. According to her testimony, she and the two men were approached and detained by the Federal District Public Security Police (*Policía Preventiva del Distrito Federal*) when they observed a police anti-drugs raid on a nearby house. Officers reportedly tried to force her to undress in the street, and once placed in a police vehicle, she was threatened and insulted. One officer then reportedly sexually assaulted her while others shouted encouragement. After being held for four hours in the van, she and the two men were transferred to another police vehicle. Nadia was reportedly forced to sit on the lap of one officer who laughed at her and put his hand down her shirt.

When the police finally presented the detainees at the PGR, they stated that the three suspects were arrested reportedly in the act of carrying illegal drugs when they were stopped and searched. Nadia Zepeda was allegedly caught in possession of a bag containing 190 wraps of cocaine while the two men allegedly had seven wraps between them. The two male suspects made statements that they only vaguely knew Nadia Zepeda and were released without charge. While in the custody of the public prosecutor, she was reportedly denied her right to make a phone call and forced to sign a document she was not permitted to see. Her initial statement (*declaración ministerial*) was taken on 24 January and she was then charged and placed in judicial custody the following day.

During the first few days of detention, forensic doctors of the PGR reportedly examined Nadia Zepeda on three occasions, but failed to document bruises that were reportedly visible on various parts of her body. Nadia Zepeda denied that she had been in possession of the bag containing drugs and complained about the abuse by the police, but did not explicitly state she had been sexually assaulted. No investigation was undertaken and in May 2004 Nadia Zepeda was sentenced to five years in prison for selling cocaine.

In July 2003 Nadia Zepeda filed a complaint with Federal District Human Rights Commission (*Comisión de Derechos Humanos del Distrito Federal*, CDHDF) for sexual assault. In April 2005 she filed another complaint for sexual assault against the three arresting police officers with the Federal District Public Prosecutor's Office (*Procuraduría General de Justicia del Distrito Federal*, PGJDF). The CDHDF concluded that the Federal District Public Security Police failed to provide accurate information relating to Nadia Zepeda's detention and proposed that the institution investigate the three implicated officers. Nevertheless, the criminal investigation against the three officials was closed by the PGJDF in 2006, despite her lawyers' efforts to appeal this decision to the courts.

In 2005 a medical examination by the Special Unit for sexual violence cases of the PGJDF identified previously undocumented psychological evidence of her sexual assault. Nevertheless, in 2006 PGJDF also sought to close the criminal investigation for sexual assault on the grounds of lack of evidence. Her lawyers are seeking to appeal this decision.

In August 2005 Nadia Zepeda was released early from prison after completing two thirds of her sentence.

### **Violations by the military against indigenous women**

In 2004, Amnesty International published a report, *Mexico: Indigenous women and military injustice* (AI Index: AMR 41/033/2004, November 2004), highlighting a number of cases of indigenous women in Guerrero state who were reportedly raped by military officials. In all cases investigations were claimed by military jurisdiction and were unsatisfactory and inconclusive, leaving victims without access to justice.

On 22 March 2002, in the community of Barranca Tecuani, Guerrero state, Inés Fernández Ortega, a Tlapaneca (Me'phaa) Indian who speaks little Spanish, was reportedly raped when she did not reply to questions asked by soldiers who had entered her home to forcefully interrogate her about some meat which they said had been stolen. On 16 February 2002, Valentina Rosendo Cantú, then aged 17, also a Tlapaneca (Me'phaa) Indian, was approached by soldiers near her home who questioned her about the activities of some 'hooded men' (a reference to armed opposition groups). When she replied that she did not know any, she was threatened and two of the soldiers then raped her.

The Mexican armed forces have a wide-ranging role in counter-insurgency and counter-narcotics operations in many parts of the country, particularly the southern states and the northern border states. Despite carrying out policing functions, military officials accused of any offences, including serious human rights violations such as rape, are investigated and tried by the military police, prosecutors and courts. The military judicial system has repeatedly failed to meet standards of impartiality and independence necessary to ensure justice and the human rights mechanisms of the United Nations and the Inter-American Commission on Human Rights have called for all such cases to be handled by the civilian justice system.<sup>6</sup> However, the civilian courts continue to grant jurisdiction to the military in such cases and the Mexican government has not taken any steps to reform the Constitution and secondary legislation in order to ensure that any military official accused of serious abuses, such as rape, are effectively held to account.

Both Inés Fernández and Valentina Rosendo Cantú filed complaints of rape. However, the military investigation has not advanced. The petition of the victims' lawyers to the civilian courts to recognize civilian jurisdiction was rejected. The cases have been admitted to the Inter-American Commission on Human Rights.

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<sup>6</sup> See: *Report of the Special Rapporteur on torture – Addendum: Visit to Mexico*, UN Doc. E/CN.4/1998/38/Add.2, 14 January 1998, para. 88 (j); *Report of the Special Rapporteur on the independence of judges and lawyers – Addendum: Mission to Mexico*, UN Doc. E/CN.4/2002/72/Add.1, 24 January 2002, para. 192 (d).

### **Undocumented migrants**

Ill-treatment of the many undocumented migrants transiting through Mexico rarely comes to light given the risks involved in filing an official report. While the majority of undocumented migrants are men, women migrants are particularly vulnerable to abuse by state actors and non-state actors, such as private security guards working on the freight train network. In a church run hostel (*albergue*) in Saltillo, Coahuila state, which attends to the immediate humanitarian needs of migrants, new arrivals register anonymous reports of abuses suffered during their journey. For example, it was informed that in November 2004 a 16 year-old Honduran girl was detained by private security guards whilst travelling on a freight train. She was taken to a migration station where she was held for five days in a cell with other women during which time they were not allowed to wash. When they asked the guards to release them, she was reportedly beaten on the back with a stick and told to shut up or she would get a real beating. The victim was too afraid to file a formal complaint.

### **State failure to act with due diligence to prevent and punish violence against women by non-state actors**

In the light of concern at the failure of the municipal, state and federal authorities to prevent and punish abductions and murders of women and young girls in Ciudad Juárez and the City of Chihuahua over more than a decade, women's organizations in other regions of Mexico are highlighting high levels of murders and rapes of women and inadequate institutional response. The PGR noted in the conclusion of its review of cases in Ciudad Juárez that the murder rate of women in the state of Mexico was higher than that of Ciudad Juárez. However, there is no reliable desegregated information cataloguing murder, rape and abduction cases committed throughout the republic, hindering the development of public policy to address the situation.

The recent study by the Parliamentary Commission on Femicides is the first major attempt to systematise this information in ten states. Members of the Commission informed Amnesty International delegates that the Commission had encountered significant obstacles from state authorities when requesting detailed information on incidence of cases and clear-up rates.

Women's organizations have repeatedly noted the tendency of the authorities to equate violence against women solely with domestic violence, ignoring violence committed in the community. The deep flaws in police, prosecution and court practice that facilitated discrimination and impunity in Ciudad Juárez exist equally in several other states. There has been no substantial reform of the criminal justice system at federal or state level to improve efficacy or protect human rights during the present administration, despite some legislative proposals. Fundamental investigative measures to ensure perpetrators are identified and held to account, such as autopsies, crime scene protection and evidence gathering, storage and analysis are frequently inadequate, particularly at state level. The burden of proof is often placed on the victim or their family to provide evidence of an offence and identify perpetrators before police and prosecutors will undertake serious investigations. As the cases in Ciudad Juárez repeatedly demonstrated, women victims or complainants from socially

disadvantaged groups are liable to receive less attention from the authorities than those with a higher social status.

#### Special Federal Prosecutor

In February 2006 the Federal Attorney General announced the establishment of the Federal Special Prosecutor's Office to investigate violence against women across the country. The institution had originally been set up to review the state handling of cases in Ciudad Juárez. The lawyer Dr. Alicia Pérez Duarte was named as prosecutor. Amnesty International hopes that it will play an important role in the prevention and punishment of violence against women in different parts of the country. Nevertheless, there are concerns about the mandate of the office as it does not appear to have powers to investigate cases normally under state jurisdiction, making its primary function one of promoting training and coordination. Also, despite widespread criticism at the limited impact of the work of the Federal Special Prosecutor in Ciudad Juárez, there has been no independent review of its effectiveness prior to embarking on this new initiative.

The cases below highlight the failure of some state authorities to investigate impartially and effectively allegations of rape and the lack of accountability of officials who fail to adequately carry out their duties.

#### **María**<sup>7</sup>

On 5 April 2002, 14 year-old **María** from the indigenous community of Zacatpexco, near Tlapa de Comonfort, in Guerrero state, was beaten and raped by the van driver who gave her a lift. After regaining consciousness four days later in hospital, charges of wounding were filed against the perpetrator, and her injuries documented by a forensic doctor. However, she did not feel confident to report the rape because both prosecutor and doctor were male. However, on 16 May 2002 she filed a complaint for rape with the prosecutor's unit specialising in sexual and domestic violence crimes (*Agencia Especializada en Delitos Sexuales y Atención a los Delitos de Violencia Familiar*). A female prosecutor was assigned to the case but a male doctor carried out an internal examination.

The victim was initially informed that the perpetrator would be charged and arrested shortly. However, in the following weeks the prosecutor reportedly visited the house of the victim in the company of the lawyer of the accused in order to persuade her to drop her complaint. The prosecutor from the specialist unit reportedly stated that the medical evidence was unlikely to prove rape, so it would be better to come to a financial agreement with the perpetrator (who was reportedly accused of committing other rapes). When the victim's representative criticised the prosecutor's conduct, she was reportedly threatened.

On gaining access to the case file, the victim's legal representative established that the official medical report had concluded that there was no evidence of rape and had not even documented the other extensive injuries that were still visible. The prosecutor had not visited

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<sup>7</sup> Her name has been changed to protect her identity.

the crime scene, sought the medical records at the hospital where the victim had first been treated, or investigated in any other way. On 12 June 2002 the prosecutor closed the case without informing the victim. In July 2002 a formal complaint was filed against the prosecutor and the official doctor with the Guerrero State Human Rights Commission (*Comisión de Defensa de los Derechos Humanos del Estado de Guerrero*) resulting in a recommendation to the Guerrero State Public Prosecutor's Office (*Procuraduría General de Justicia del Estado*, PGJE) to carry out an internal investigation.

In November 2002 the PGJE investigation found the forensic medical examination to be incorrect and the prosecutor to have failed to carry out basic responsibilities. Nevertheless, charges of criminal negligence, diverting the course of justice or threats were not brought against the officials and the internal enquiry only found the officials responsible of "irregularities in carrying out their duties", leading to a two-month suspension.

As a result of the manner in which the case was handled, María relocated to another region of Mexico to rebuild her life. The rapist was not brought to justice.

#### **Teresa**<sup>8</sup>

Teresa, a 17 year-old girl from the indigenous Mixteca community of San Isidro Vista Hermosa, in the Tlaxiaco District, in the State of Oaxaca, was reportedly abducted and raped on 29 August 2005 and released two days later. Her kidnapping and rape was reportedly related to a long running communal conflict between members of the community of San Isidro Vista Hermosa and the municipal authorities of Santa Cruz Nundaco. The Oaxaca state government had repeatedly failed to intervene to prevent violence in the community, despite reports of abuses and escalating tensions.

Upon her release, Teresa reported that a masked man had forced her into a van containing another masked man. She was then taken to an unknown destination where she was blindfolded and tied up. Her captors reportedly then raped her. According to local human rights organizations, the State Public Prosecutor's Office was slow to initiate an investigation and gather evidence; and once started, it reportedly sought to disprove the kidnap and rape allegation. As a result local human rights organizations filed a complaint of negligence with the State Human Rights Commission. The State Public Prosecutor's Office responded that delays in the investigation were due to the lack of interest of the victim who had failed to respond to official summonses to produce a witness. However, human rights organizations informed Amnesty International that no such summonses were ever made to the victim and that the responsibility for interviewing a witness rests with the prosecutors and judicial police, not the victim. At the time of writing, the State Human Rights Commission had not concluded its investigation into the case. The official criminal investigation remains open.

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<sup>8</sup> Her name has been changed to protect her identity.

**Silvia's daughter**

Silvia's daughter, who was 16 at the time, was reportedly drugged and raped by a group of four teenage boys at a party in Chihuahua City in May 2003. Her mother filed a complaint with the State Public Prosecutor's Office in Chihuahua (*Procuraduría General de Justicia del Estado*), which transferred the case to the Juvenile Courts (*Consejo del Tribunal para Menores*). The Juvenile Courts, which are part of the public security system rather than the judiciary, sentenced the boys to a period of rehabilitation in a juvenile detention centre (*Centro de Rehabilitación*). Shortly after, the four young men were released into custody of their parents (*arraigo familiar*) who were responsible for keeping them under supervision at home.

In March 2006, the Juvenile Courts notified Silvia Madrigal Molina that they had decided to clear the four boys of all charges. Silvia Madrigal Molina filed an injunction to challenge this decision. In April, the Juvenile Court overturned the acquittal decision and sentenced the four to two months in a juvenile detention centre, even though by now they were no longer minors. At the time of writing, the young men responsible for the rape had not been detained.

On 13 May 2006, Silvia's daughter was reportedly approached by two of the young men who had allegedly raped her, at the entrance of an amusement centre (*centro de diversiones*), while she was out walking with a group of friends. They told Silvia's daughter that they knew her mother was trying to put them in jail, and that she and her mother should be very careful, because they did not want to go to jail.

In March 2006, a car followed Silvia in Chihuahua City while she was driving home. She believes the people in the car were linked to the families of the men who raped her daughter. Silvia filed a formal complaint about the threats and intimidation with the State Human Rights Commission and the State Public Security Secretariat (*Secretaría de Seguridad Pública de Estado*). Amnesty International is not aware of any action taken to investigate the threat or ensure that those responsible for rape are punished in a manner proportionate with the severity of the crime.

**Domestic violence**

The most recent official survey on domestic violence published in 2005 on the basis of information gathered in 2003, the National Survey on the Dynamic of Relations in the Home (*Encuesta Nacional sobre la Dinámica de las Relaciones de los Hogares*, ENDIREH), found that 49% of women over the age of 15 living with a partner or spouse reported some form of violence, either emotional, economic, physical or sexual during the last year.<sup>9</sup> Of the 9 % of women who suffered physical abuse and 8 % who suffered sexual abuse, three quarters did not file any report of the incident with the authorities.<sup>10</sup> The 2003 National Survey on

<sup>9</sup> Encuesta Nacional sobre la Dinámica de las Relaciones de los Hogares, ENDIREH, Instituto Nacional de Estadística, Geografía e Informática, 2004.

[http://cedoc.inmujeres.gob.mx/documentos\\_download/100663.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100663.pdf)

<sup>10</sup> *Ibid*, page 68.

Violence against women (ENVM) found that one in five women using medical services had suffered some form of domestic violence in the last year.<sup>11</sup> This situation appears to continue, despite the many governmental projects and initiatives highlighted in the government's 6<sup>th</sup> report to the Committee from pages 9 to 20, such as the campaign run by the National Women's Institute (Inmujeres), *Proequidad*, which has the central objective to "prevent, punish and eradicate violence against women" (*prevenir, sancionar, erradicar la violencia contra la mujer*).

Furthermore, despite ENDIREH and ENVM surveys providing important information on the scale and type of domestic violence severely affecting women, they do not focus on institutional responses or address other forms of violence in the community. Amnesty International is not aware of other recent detailed studies that consider these crucial issues. The information provided in the government report does not appear to indicate the scale and complexity of the problem of violence against women in the different state entities. In particular, there is no clear indication of how medical and social services as well as police, prosecutors and courts have modified the manner in which cases are treated. As a result, it is impossible to assess whether the relevant authorities are acting with due diligence, particularly in combating domestic violence. This lack of information raises concern that the mechanisms are not in place to monitor the effectiveness of the state's response.

In a recent Amnesty International research visit to Mexico in June 2006, the organization spoke to women's organizations, victims and authorities regarding measures in place to combat domestic violence. The organization's preliminary conclusions are that there is a serious gap between the legal procedural steps supposed to protect women and their application in practice in the states of Oaxaca and Chiapas. Of particular concern was:

- Failure to adequately apply legislation criminalizing domestic violence;
- Promotion of conciliation by state institutions between a woman victim of domestic violence and the partner-aggressor in all but the most serious cases;
- Routinely making women, who file complaints of domestic violence against their partner, responsible for conveying the official written letter to the aggressor summoning him to appear at a conciliation hearing;
- Regular refusal by representatives of the State Public Prosecutor's Offices to accept criminal complaints of domestic violence unless an official forensic doctor confirms the severity of the physical wounds. (The criminal codes categorise serious bodily harm (*lesiones graves*) as arising from only those injuries that a doctor confirms will take longer than 15 days to recover.);
- Frequent requirement on victims to present two witnesses to prosecutors confirming domestic violence before an investigation is initiated;
- Lack of trained official forensic experts capable of adequately assessing physical and psychological trauma of victims of domestic violence;

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<sup>11</sup> Encuesta Nacional sobre Violencia contra las Mujeres, 2003, Instituto Nacional de Salud Pública

- Lack of real protection measures to ensure the safety of women against reprisal by their male partners, particularly when filing a complaint of domestic violence. (Even if detained and charged, domestic violence is a lesser offence, so a suspect will immediately be released on bail, potentially placing the women at risk.);
- Widespread lack of gender perspective in the treatment of victims by relevant police, judicial and executive institutions.

In June 2006 Amnesty International delegates interviewed Adela Hernández whose sister, **Mericia Hernández López**, had disappeared from her home near Oaxaca City on 21 August 2005, leaving a six-month old baby. Despite reporting her disappearance to the authorities, including evidence that Mericia Hernández's husband had repeatedly changed his account of the circumstances in which he had last seen her, police reportedly told her not to worry, as she would come back. Police started the investigation eight days after the complaint was filed. Adela Hernández was reportedly told to produce more evidence of her brother-in-laws involvement. Only in March 2006 did a forensic expert of the Public Prosecutor's Office examine Mericia Hernández's home for physical evidence. Prosecutors have reportedly failed to gather testimony from neighbours who told officials that the brother-in-law was known to have used violence against a former wife and Mericia Hernández. Nevertheless, judicial police informed Adela Hernández that there was nothing they could do as there was insufficient evidence in the case file to bring charges against her brother-in-law. The whereabouts of Mericia Hernández López remain unknown.

### **Ciudad Juárez and the City of Chihuahua**

In 2003, Amnesty International published a report, *Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/026/2003, August 2003), to highlight the pattern of violence against women in these two cities and the systematic failure of the authorities to effectively prevent and punish these crimes. As the Mexican government report to the Committee indicates, there has been a considerable investment of federal and state resources in Ciudad Juárez (though not Chihuahua City) to tackle this situation.<sup>12</sup> In particular, Amnesty International welcomes the efforts of the Special Commission for the Prevention and Eradication of Violence against Women in Ciudad Juárez, which has attempted to coordinate many disparate initiatives of federal, state and municipal agencies and has conducted the most comprehensive analysis of the pattern of violence against women and impunity in the city. Nevertheless, the mandate of the Special Commission prevents its substantive involvement in judicial aspects of the cases or scrutinising the work of police or prosecutors.

In 2005 the Federal Special Prosecutor's Office on the murder of women in the municipality of Ciudad Juárez (*Fiscalía Especial sobre el Asesinato de mujeres en el municipio de Ciudad*

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<sup>12</sup> All but 24 cases remain in Chihuahua state jurisdiction as the PGR has failed to claim jurisdiction to investigate the approximately 350 cases remaining. The federal government's proposed reform the Constitutional article 73 to extend the criteria by which the PGR can claim jurisdiction has not advanced.

Juárez), which is part of the PGR, published the conclusion of its review of case files of investigations into 379 murdered women since 1993 in Ciudad Juárez. The report recognized systemic failure to prevent and punish crimes against women in Ciudad Juárez during many years. However, the methodology and conclusions of the report failed to incorporate a clear analysis of gender based violence in the city. Furthermore, despite continuing high rates of violence against women and impunity in Ciudad Juárez, the PGR downplayed the scale and severity of the crimes committed against women and suggested that a “perception different from reality” had been created about the crimes by those seeking to highlight the crimes and impunity.<sup>13</sup>

The basis for these conclusions is the technical legal (*técnico-jurídico*) review of the evidence contained in case files of the investigations undertaken by the local Chihuahua State Public Prosecutor’s Office since 1993. However, this review has not involved fresh investigations, such as re-interviewing of witnesses or gathering new evidence. This is despite the fact that the original investigations left many leads un-investigated and failed to adequately document and record evidence in the case file, particularly forensic evidence and autopsy reports. Given these limitations, it is not clear how the Special Prosecutor’s Office concluded that approximately 20% of the 379 murders officially documented killings involved sexual violence. Similarly, given the failure of the state authorities to keep proper records of the many hundreds of women and young girls reported disappeared, it is unclear how the federal authorities concluded that only 34 women remain unaccounted for.

The PGR conclusions do not appear to take into account the recommendations of international and national organizations, such as the government’s own Special Commission for the Prevention and Eradication of Violence against Women in Ciudad Juárez, to ensure that the crimes are analysed from a gender perspective, in order to determine the role the victim’s gender played in the motive and commission of the crime. Instead the PGR conclusions suggest that only those crimes involving sexual violence amounted to gender violence, apparently excluding the cases that occurred as a result of domestic violence from this category. Other murders were classified as resulting from *social violence*, a concept which appears to necessarily exclude, without explanation, the gender of the victim as a factor in the murder. Another element not given proper consideration is the role played by the climate of violence against women and the impunity for the perpetrators, which has encouraged perpetrators to commit further crimes. Moreover, there has been no systematic review of the reliability of judicial decisions in cases where the suspects, detained and prosecuted by the local authorities, alleged serious violations in due process, such as torture. The federal authorities have not intervened in the cases in the City of Chihuahua.

The PGR’s final report also argues that Mexico’s federal structure of government limits its capacity to directly investigate cases or hold state authorities to account. However, even in the 24 cases where the PGR assumed direct jurisdiction, the report makes no mention of advances in bringing the perpetrators to justice. Amnesty International recognizes the restrictions of the

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<sup>13</sup> [www.pgr.gob.mx/CdJuarez/resultados.pdf](http://www.pgr.gob.mx/CdJuarez/resultados.pdf)

national legal framework. However, international law requires that these should not be used as an excuse to avoid responsibility of the Mexican state as a whole to enforce its international human rights obligations.

The administration of the compensation fund made available to the victims' families in Ciudad Juárez has also raised concern and caused distress to relatives. Despite making assurances that international standards on reparations would be followed in establishing criteria for the allocation of the fund, the PGR, which is responsible for its distribution, has apparently failed to ensure a fully transparent and accountable mechanism for consideration of cases. Amnesty International also received reports from local human rights organizations that families, who raised doubts about the original identification of the remains of their daughters, were reportedly informed that they were placing in jeopardy their right to compensation. The authorities have also stated that the fund is not reparations as recognition of some state responsibility, but a humanitarian gesture to assist the relatives.

Despite the limitations of this review of cases by the PGR, 177 former and serving officials of the Chihuahua State Public Prosecutor's Office were identified by the PGR as possibly responsible for negligence or omission in the original investigations. However, the PGR concluded that the cases fell within Chihuahua state jurisdiction and passed the investigations back to the agency responsible for the original failed investigations. Despite reassurances by Chihuahua state officials that the investigations would be pursued rigorously, no official has been held to account. In the handful of cases that have been brought to the court, local judges applied the statute of limitations in favour of the officials accused. As a result, no public official has been held to account for the systemic failure of the state to protect the rights of women over more than a decade.

Notwithstanding the failure to prosecute officials at state level in Chihuahua, the administration of the new state governor, José Reyes Baeza, has taken some welcome steps to improve the official response to reports of violence against women, strengthened investigative measures and ended the campaigns of threats and intimidation against human rights defenders.

However, 28 women and girls were reportedly murdered in Ciudad Juárez in 2005, a rise on the previous year. Furthermore, the struggle of numerous families goes on, as many of the cases of murdered or missing women over the last 13 years remain unsolved and doubts continue about the reliability of convictions secured because of allegations of torture. The state government has also committed itself to undertake judicial reform, but it is not clear how far this has advanced or what impact it has had on the protection of women's rights.

With regard to establishing the identity of many of the unidentified murder victims or those victims whose identity remain in doubt, the project being carried out by the Argentine Team of Forensic Anthropologists (EAAF) is providing the first credible steps to overcome, as far as possible, the negligent identification and forensic procedures of the local authorities which undermined many of the original investigations. Nevertheless, it is unclear how far the State

Public Prosecutor's Office will implement the lessons learnt by the EAAF in the identification, gathering, preservation and storage of evidence as well as the treatment of families of the victims in order to strengthen the performance and accountability of the local forensic services.

Amnesty International has always maintained that the pattern of discrimination, violence against women and impunity in Ciudad Juárez and Chihuahua City was of a complex nature, involving many different forms of crimes and perpetrators, with widespread institutional failings to prevent and punish those responsible. Nevertheless, the lack of transparency, coordination and accountability between municipal, state and federal authorities that allowed violence against women to continue unchecked for so long has still to be effectively overcome. The continuing high level of murders of women in the state of Chihuahua also indicates that the security situation for women in both Ciudad Juárez and Chihuahua City remains serious and women and girls are not free to live their lives free from violence.

#### **Cases**

In May 2005, seven year-old **Airis Estrella Enríquez Pando** and ten year-old **Anahí Orozco Lorenzo** were brutally murdered in Ciudad Juárez in two separate incidents, leading to widespread public outcry. In the following months, state authorities detained two suspects in connection with the murders, both of whom are now standing trial.

**Minerva Torres Albedaña** went missing in 2001 in the City of Chihuahua when she was 18 years old. The efforts of the family to demand that the authorities effectively investigate the possible abduction of the young woman were unsuccessful for nearly five years.

Early in 2005, the State Public Prosecutor's Office called Minerva Torres' mother, Martina Albedaña, to identify a body that had been held unannounced in the morgue for the last two years after its discovery in 2003 outside the city, reportedly near the location where another victim was discovered. Minerva's body was finally identified by her mother on the basis of clothing and items found with the body and which fitted information originally given to the authorities. The EAAF also participated in the identification.

Despite the fact that the Chihuahua State Public Prosecutor's Office was in possession of clothes identified in the case file as worn by Minerva Torres at the time of her disappearance, the authorities failed to identify the body for two years. The family has filed a criminal complaint against the local authorities responsible for the concealment of Minerva's body.

**David Mesa** is in prison accused of the abduction and murder of his cousin **Nayra Azucena** in Chihuahua City in 2003. He was reportedly tortured by judicial police into making a false confession to the murder, despite not being present in the city at the time of crime. The prosecution case rests on the confession extracted under torture. At the time of writing a judge is to issue a verdict in the case.

On 24 February 2004 **Héctor Armando Lastra Muñoz**, ex sub-procurator of Chihuahua Public Prosecutor's Office responsible for preliminary investigations in Ciudad Juárez was arrested on charges of sexual exploitation of minors. He was allegedly implicated in recruiting and running a prostitution ring of young girls. Other judicial police officials were also implicated. On 29 February the former official was granted bail pending trial. On 5 March he reportedly absconded and has not been brought to justice.

### **Human Rights Defenders**

Women human rights defenders are at the heart of Mexico's human rights movement, exposing human rights violations and seeking to defend the interests of the victims and highlight state abuses or inaction. These defenders may often face intimidation, threats, smear campaigns attacking their legitimacy and may have fabricated criminal charges brought against them.

In 2005, human rights defender and journalist, **Lydia Cacho**, who runs a women's refuge in Cancún, was the subject of repeated death threats by a former police official, the husband of one of the women staying at the refuge. State authorities failed to prosecute the man responsible who was reportedly linked to organized crime. The federal authorities subsequently provided agents to protect Lydia Cacho.

In December 2005 a judge in Puebla state issued a warrant for the arrest of Lydia Cacho arising from a complaint for defamation filed by a powerful local businessman against her for a book published earlier in the year containing the testimony of victims of trafficking and sexual exploitation of minors. A convoy of police from Puebla state arrested Lydia Cacho and transported her by car in a 20-hour drive to Puebla. She reported that the police suggested that anything might happen to her during the journey and implied that she might suffer sexual assault. On arriving in Puebla she was held for several more hours before being granted bail pending prosecution for defamation. In the outcry that followed her detention, anonymous phone tap tapes came to light apparently implicating the governor and other senior state officials in facilitating the prosecution, detention and intimidation of Lydia Cacho on behalf of the local businessman. As a result, the National Supreme Court has established a commission to consider whether Lydia Cacho's rights were violated. At the time of writing, the case against Lydia Cacho remains pending as does the enquiry into official misconduct.

In December 2004 indigenous rights activist from Guerrero, **Obtilia Eugenio Manuel**, who has campaigned for justice for the two indigenous women reportedly raped by the military in 2002, Valentina Rosendo Cantú and Inés Fernández, received anonymous death threats. The letter she received stated "soon you will rest in peace" ("*muy pronto descansar[ás] en paz*") and also threatened her family. It told her that "You keep on trying to attack us with your stupid lies about the rape of Valentina and Ines. We've had enough of the stupidities you accuse us of. We were already going to get you but now you are really in trouble" ("*tú segues dando duro golpe a nosotros. Sigue con tus mentiras de violación a Valentina e Inés. Ya*")

*basta de estupideces de lo que nos echas, ya te vamos a dar gusto de por si tenía hambre el gusano de ti”).*

Men were later seen watching her house at least three times and taking photographs and watching the offices of the *Organización del Pueblo Indígena Tlapaneco* (OPIT), the indigenous organization she works with. She had reportedly suffered intimidation and death threats before in connection with her work on behalf of the two rape victims, but had not reported them for fear of reprisals against her and her family. Federal authorities provided some security apparatus for Otilia Eugenio Manuel, but official investigations into the threats by Guerrero state authorities did not produce any results.