

# WOMEN'S STRUGGLE FOR JUSTICE AND SAFETY

VIOLENCE IN THE FAMILY  
IN MEXICO

**AMNESTY**  
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

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Amnesty International Publications

First published in 2008 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: AMR 41/021/2008  
Original language: English  
Printed by Amnesty International,  
International Secretariat, United Kingdom

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*Cover photo:* Protesters demand justice for victims of violence against women, Cuernavaca, Morelos state, Mexico, 2006. © Jorge Medina Palomino

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## A NOTE ON TERMINOLOGY

Amnesty International bases its work on violence against women on the definition set out in the UN Declaration on the Elimination of Violence against Women. Article 2 of the Declaration states:

“Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

Throughout this report a variety of terms are used to describe violence against women in the context of intimate relationships, including domestic violence, violence in the family and intimate partner violence. No single term is universally accepted in all contexts to describe acts or conduct by an individual that a woman considers to be, or to have been, intimately connected to her – regardless of sex, marital status or residence – which results in death, physical, sexual or psychological harm or suffering to the woman.

## METHODOLOGY

This report is based on interviews and research carried out by Amnesty International delegates in 2006 and 2007. Delegates visited the states of Oaxaca, Chiapas, Morelos and Sonora – all states in which women’s organizations are documenting violence against women and campaigning for improved access to justice.

Delegates carried out one-to-one and group interviews with survivors of and relatives affected by more than 20 cases of violence in the family. They also spoke to lawyers, staff in women’s shelters, and representatives of the women’s movement and of non-governmental organizations (NGO) working on a range of human rights. The focus of the interviews was the experience of survivors of violence in the family seeking assistance from the social services and justice system and those supporting their efforts. Amnesty International researchers also consulted official documentation where available, such as surveys, medical reports and other case file documentation.

Amnesty International interviewed representatives of federal and state institutions, including senior officials with public prosecutors’ offices, women’s institutes, human rights commissions and family development services. This enabled researchers to compare the official procedures which these institutions follow with the experience of some of those seeking help.

Amnesty International also wrote to the State Attorney Generals in Oaxaca, Sonora and Morelos in February 2008 requesting data gathered on offences against women. No reply had been received at the time of writing.

In this report the names of most survivors have been changed or withheld in order to protect their privacy and ensure that their security is not compromised. Real names have been used when either the survivor or relative wished them to be used.

# 1/INTRODUCTION

“In May 2006, after he attacked me with a knife, I went back to the local public prosecutor’s office, and on that occasion they didn’t even take my complaint... I remember exactly what they said: ‘When you have got one foot in the grave and the other still out, then come back here.’”

Neomi, in Hermosillo Women’s Shelter, Sonora, Mexico, November 2006

Violence in the family is the most common form of gender-based violence experienced by women worldwide. According to UN estimates, one in three women is subjected to physical violence by an intimate partner during their lifetime. In Mexico, in a 2006 national survey almost one in four women said that they had suffered physical and/or sexual violence at the hands of an intimate partner.<sup>1</sup>

Few cases of violence against women are reported, fewer still result in the prosecution or conviction of those responsible or restitution for victims. The most well documented pattern of violence against women in Mexico is that involving the murder over the past 15 years of more than 430 women and girls, with more than 30 others still missing in Ciudad Juárez and Chihuahua City, Chihuahua state. Many of the murdered women were victims of abduction and sexual violence. However, a significant proportion were also victims of violence in the family.

A factor common in many of these crimes is the failure of the authorities to take adequate steps to prevent or punish them. This is true of sexually motivated murders, years of physical and mental abuse in the family, and reported abductions. In 2005 in Ciudad Juárez, 177 local public officials were implicated by federal investigators in negligent criminal investigations into the murder of nearly 300 women over a 10-year period. Virtually none of

those implicated has been held to account. In San Salvador Atenco, Mexico state police were responsible for torture and sexual assaults on at least 26 female detainees between 3 and 4 May 2006. Despite state and federal level investigations, to date only six officials have been charged, all for minor offences.

Some states, including the Federal District, have been more proactive than others in improving prevention and punishment of violence against women and combating discrimination. Nevertheless, Amnesty International found that many women who experience violence in Mexico continue to face serious obstacles in accessing safety and justice.

A significant factor in deterring women from reporting violence is the response of local officials, including police and prosecutors. Several women told Amnesty International that officials had refused to accept their report because they consider it a private family matter, or because they assume women will withdraw the complaint later, or because, in their view, the violence is not serious enough to merit attention.

Even when women overcome these initial hurdles and a complaint is registered, there is no guarantee that medical evidence, including psychological evidence, will be gathered adequately or presented to the courts. Survivors of violence in the family usually have the primary burden of providing evidence. Victims of domestic violence are frequently required to deliver summons letters to the aggressor, putting them at risk of further violence. Even when protection measures are ordered, they are rarely applied or enforced. In this climate, prosecutions and convictions are rare and women and their families remain at risk of new attacks, some of which prove fatal.

The Mexican government has ratified all international instruments to fulfil women's rights, end inequality and eradicate gender-based violence. Legislative reforms enacted at federal and state level over the past 10 years level have begun to give weight to these international commitments, as have increased training of officials and investment to improve access to justice and information on women's rights. Nevertheless, levels of violence and impunity remain extremely high and the real impact of many official initiatives has yet to become apparent.

The women's movement in Mexico has been at the forefront of efforts to raise awareness of the high levels of gender-based violence and discrimination. It has been instrumental in bringing the issue to the attention of the Mexican government and tracking the authorities' prevention and punishment record, particularly in relation to the murder of women. This has resulted in an increasing acknowledgement by the authorities that they have a responsibility to take action against all forms of gender-based violence. For example, in February 2007 the General Law on Women's Access to a Life Free From Violence was enacted (from here on referred to as the 2007 General Law). By February 2008, the Federal District and 17 states had approved similar legislation at state level.<sup>2</sup>

In recent years, the Mexican authorities at different levels of government have been active in raising public awareness about violence against women. There has also been some progress in establishing legislation and institutions, particularly to address the needs of victims of violence in the family. Indeed, in some cases, authorities have sought to explain patterns of



gender-based violence almost exclusively in terms of domestic violence. At times this appears to have been driven by an attempt to deflect attention from the state's responsibility to prevent and punish all forms of gender-based violence.<sup>3</sup> The report focuses on cases of violence against women in the family in order to show that even in this area where official attention has been clearest, victims continue to encounter major barriers in obtaining justice and ensuring their safety.

One of the underlying causes of the failure to address violence against women in the family is the widespread belief that it is a private matter which should be resolved within the family, rather than through state action. Violence against women in the family is a human rights violation. The state has an obligation to ensure that women's human rights are respected, which includes preventing and punishing domestic violence. The failure to recognize this responsibility at all levels of government remains a major obstacle to the development of effective policies to address violence in the family.<sup>4</sup>

Amnesty International believes that Mexico has made some important advances in recent years in defending women's right to freedom from violence. In particular, human rights standards have gradually been incorporated into national and many state laws. However, there remains an urgent need to bridge the gap between the law and its implementation and to evaluate the impact of measures in order to ensure that effective strategies are developed to address violence against women. This report ends with recommendations to the authorities at all levels on the measures which they should take to fulfil their obligations under international law and to ensure that the protections promised by the law are made a reality in practice for women and their families throughout Mexico.

## 2/LEGAL FRAMEWORK

### STATE RESPONSIBILITY

Human rights treaties require states to respect, protect and fulfil a wide range of rights that are essential for women and girls to lead a life free from violence and discrimination. These include: the right to life, liberty and security of the person; the right to be free from torture and from cruel, inhuman or degrading treatment or punishment; and the right to equal protection under the law.

Mexico is a state party to the UN Convention on the Elimination of All forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"). This defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere" and requires states to "pursue all appropriate means and without delay, policies to prevent, punish and eradicate such violence".<sup>5</sup>

The UN Human Rights Committee, the Special Rapporteur on violence against women and the Special Rapporteur on torture have all highlighted "striking parallels"<sup>6</sup> between violence against women in the private sphere, particularly intimate partner violence, and torture and ill-treatment.<sup>7</sup>

### DUE DILIGENCE

International law obliges governments to use their power to protect and fulfil human rights.<sup>8</sup> This includes not only ensuring that their own officials comply with human rights standards, but also acting with "due diligence" to address abuses committed by private individuals (non-state actors).

The concept of due diligence describes the degree of effort which a state must undertake to implement rights in practice. States are required to make sure that the rights recognized under human rights law are made a reality in practice. In addition, if a right is violated, the state must restore the right violated as far as is possible and provide appropriate compensation. This must include the investigation and punishment of those responsible for violating these rights including, where relevant, state officials. The standard of due diligence is applied in order to assess whether they have carried out these obligations.

When states know, or ought to know, about violations of human rights and fail to take

appropriate steps to prevent them, they, as well as the perpetrators, bear responsibility. The principle of due diligence includes obligations to prevent human rights violations, investigate and punish them when they occur, and provide compensation and support services for victims.<sup>9</sup>

State responsibility to exercise due diligence does not in any way lessen the criminal responsibility of those who carry out acts of violence. However, the state also bears a responsibility if it fails to prevent or investigate and address the crime appropriately. In addition, when a state fails to act with sufficient diligence in responding to violence against women – by using the criminal justice system and providing reparation – this often violates women's right to equality before the law.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) and the Convention of Belém do Pará have set out specific measures that must be introduced in order to meet the criteria of due diligence. These include:

- establishing a legal framework consistent with international standards to prevent and punish violence against women;
- putting in place effective and timely procedures to secure legal recourse, protection and reparations;
- ensuring women are not forced to seek unsafe medical procedures such as illegal abortion;
- promoting awareness of women's rights and protecting those rights;
- modifying the conduct of women and men to counter prejudice or gender stereotyping;
- carrying out appropriate specialist training for those responsible for the prevention, punishment and eradication of violence against women;
- establishing specialist support services and rehabilitation for women who have experienced violence, including sexual violence;
- gathering data to determine the effectiveness of these measures and the prevalence of violence.<sup>10</sup>

In addition, the 1998 UN Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice also specify measures that should be taken specifically in relation to criminal law, criminal procedures, policing, sentencing and correctional measures, victim support and assistance, health services, training, and research and evaluation.<sup>11</sup>

In 2007, the Inter American Commission on Human Rights (IACHR) published a report on violence against women in the Americas, concluding that women victims of violence were unable to fully exercise and enjoy their rights under the Convention of Belém do Pará and other international instruments for the protection of human rights. It noted that the next step

towards advancing the rights of women was to move beyond formal recognition to the creation of guarantees for real and effective implementation in practice.<sup>12</sup> The IACHR recognized that many governments, including Mexico, had made some progress particularly in relation to legal norms, but this had often not translated into effective access to justice and protection for women. The report called on governments in the region, among other things, to address widespread flaws and irregularities in investigations and prosecution of cases of violence against women and ineffective preventive and protection measures.

#### A FEDERAL COUNTRY WITH INTERNATIONAL OBLIGATIONS

Amnesty International has frequently documented the particular failure of many state-level authorities to prevent and punish human rights violations. Nevertheless, under international law the federal government is accountable for all human rights violations committed in its territory.

The failure of the federal government to ensure that state governments effectively meet the obligations of international human rights treaties, including those relating to the elimination of violence against women, remains one of the key obstacles to substantial advances in the protection of human rights.

In its most recent review CEDAW noted “with concern the lack of consistent harmonization of legislation and other regulations at the federal, State and municipal levels with the Convention, which results in the persistence of discriminatory laws in several States and obstructs the effective implementation of the Convention.”<sup>13</sup>

#### LEGISLATION AND OTHER MEASURES

*“The Commission urges Governments to... take action to eliminate all forms of violence against women by means of a more systematic, comprehensive, multisectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans, including those supported by international cooperation and, where appropriate, national development plans, including poverty eradication strategies and programme-based and sector-wide approaches.”*

UN General Assembly Resolution 61/143, 2007<sup>14</sup>

Women's rights have become an increasingly important issue in Mexico. In recent years there have been welcome legal measures to reinforce the right to equality and non-discrimination and to make domestic violence a criminal offence.<sup>15</sup> For example, in 2006 the National Supreme Court ruled that marital rape was a criminal offence.<sup>16</sup> Such developments are particularly important at state level, where discriminatory articles in criminal and civil codes have undermined women's right to access justice.<sup>17</sup>

A range of policy initiatives have been introduced in recent years by federal and state governments to address violence against women. The measures include:

- legislation to make domestic or family violence a criminal offence;
- accompanying legislation on measures to address the needs of survivors;
- the establishment of a National Women's Institute and state women's institutes which have promoted initiatives on combating violence against women;

- legislation on gender equality and non-discrimination;
- the establishment of specialist units in local Public Prosecutor's Offices to receive complaints, provide medical and therapeutic assistance, lead investigations and give advice on domestic and sexual violence cases; and
- the introduction of the 2007 General Law and accompanying legislation.

Offences that relate to gender violence, such as murder, rape, sexual assault, abduction, threats, harassment, wounding and domestic violence are criminalized in law. In the vast majority of cases, these crimes are dealt with by state authorities under state-level criminal codes rather than by the federal authorities.<sup>18</sup> Despite a relatively strong legal framework in most states, Amnesty International found that state or municipal officials in a number of states often fail to treat victims of gender-based violence and their relatives in a manner consistent with Mexico's human rights commitments.

There have been an increasing number of women's shelters established in different states. Official bodies, including the National Women's Institute and women's institutes at state level, have coordinated a wide range of training and awareness programmes. However, lack of effective monitoring and evaluation means that the impact of many of these initiatives remains unclear.

In January 2008, the Special Prosecutor's Office for Violent Crimes against Women was replaced by the Special Prosecutor's Office for Violent Crimes against Women and People Trafficking (FEVIMTRA), under a new Special Prosecutor. The federal authorities have often been reluctant to take charge of failed or negligent investigations into human rights violations committed at state level. The FEVIMTRA was given more authority to directly investigate and prosecute crimes against women, including those committed in state jurisdictions. Many states have also established local special prosecutors for crimes of violence against women.

## 2006 SPECIAL FEDERAL COMMISSION

In 2006 the Federal Chamber of Deputies set up a special commission to try to catalogue the levels of violence against women throughout Mexico and the institutional measures adopted by each state government to combat it. The commission was successful in highlighting widespread patterns of violence against women, promoting legislative reform and public debate, and collating disparate information. However, it also exposed the failure of state authorities to gather reliable data, consistent with the standards set out in the Convention on the Elimination of Discrimination against Women and other human rights standards. As a result, the effectiveness of police, prosecutors and courts in dealing with cases of violence against women could not be fully evaluated.

The commission particularly focused on murders of women. According to the National Institute of Statistics, Geography and Information Technology (INEGI), in 2003, 9,322 people were murdered in Mexico; 1,205 of the victims were women.<sup>19</sup> The statistical evidence indicated that while men were almost seven times more likely to be murdered than women, this gap had narrowed since 1990 as the murder rate for men had tended to drop at a faster rate than that for women. This national data also showed that in 2003 and 2004, 34

per cent of women who were murdered were killed in the home; the comparable figure for men was 12.5 per cent.<sup>20</sup>

The commission's report highlighted that because the murder rate for women was lower than for men – as is the case throughout most of the world – many state governments had ignored or marginalized the murder of women and failed to address gender-based violence and discrimination. This lack of a gender perspective had prevented the development of effective measures to identify and end patterns of gender-based violence against women.

The commission requested information from state public prosecutors' offices and state courts on judicial proceedings and sentences in cases related to violence against women, including murders, wounding, threats and harassment. However, the information provided by state authorities was often very limited, indicating that there was no systematic attempt to gather or analyze this information at state level. As a result it is virtually impossible to assess the levels of impunity for gender-based violence against women.

### 2007 GENERAL LAW ON WOMEN'S ACCESS TO A LIFE FREE FROM VIOLENCE

One of the measures promoted by the special federal commission, following consultation with women's groups, was the General Law on Women's Access to a Life Free from Violence.<sup>21</sup> The General Law was intended to give greater effect to Mexico's international human rights commitments and establish mechanisms to address all patterns of violence against women. Shortly after the General Law was enacted in February 2007, the National System to Eradicate Violence against Women was introduced to coordinate policy measures across a wide range of federal institutions and state governments. The Commission on Equality and Gender in the present Congress has continued to press for adequate funding for this new legislation.

The 2007 General Law establishes the legal basis for the authorities to assume their responsibilities in relation to the different types and contexts of gender violence:

<b>Areas of action</b>	<b>Context of violence</b>	<b>Types of violence</b>
Prevention	Family	Physical
Attention	Community	Economic
Punishment	Workplace	Psychological
Eradication	School	Patrimony
Reparation	Institutional	Sexual

The 2007 General Law institutes a Gender Violence Alert which enables the federal government to intervene to take measures to end severe patterns of violence against women where necessary in any part of the country (Articles 21-23). It also defines the criteria for the government to ensure reparations to the victims in line with international standards (Article 26). It establishes the obligation on authorities to deploy protection measures for women and girls at risk and sets out the basic gender sensitive aims and actions of a National System to

Eradicate Violence against Women. The government's six-year National Development Plan commits the administration to combat violence against women via the application of the 2007 General Law in order to comply with international human rights commitments.<sup>22</sup>

As, the 2007 General Law does not clearly identify the responsibilities and lines of accountability of the many different ministries and agencies involved, in March 2008, President Calderón issued an executive decree regulating the implementation of the General Law. This identifies more clearly some of these responsibilities and the consequences of failing to carry them out. However, much will depend on the National Women's Institute, which is responsible for coordinating the implementation of the law and evaluating its impact.

The real test of the effectiveness of the new legislation in combating violence against women will be its impact at the state and municipal level. In the vast majority of cases, it is the 32 state governments that have the primary responsibility for ensuring that women who experience violence have access to justice, security and reparations. To become effective at this level, legislation in all 32 states needs to clearly identify responsibilities, lines of accountability and budgets.

In order to independently assess the implementation of new legislation and track the authorities' response to murders of women around the country, women's organizations have established a monitoring mechanism with civil society representatives from at least 17 different states, the Femicide Citizen's Monitoring Group (Observatorio Ciudadano del Femicidio).

By February 2008, 18 state governments had approved laws on women's access to a life free from violence. However, many of these new laws simply restate the General Law and fail to identify the specific responsibilities of state and municipal institutions and agents under the law, or to strengthen accountability to ensure the law is enforced and funded. At the time of writing, only the Federal District government had issued regulations to define these responsibilities or allocated resources to meet the cost of enforcement. The other 31 states remained without clear implementation mechanisms.

## 3/THE SCALE OF THE PROBLEM

"At first they were little problems. Then he began to hit me. On one occasion I had to go to hospital because of the beatings. It was a private hospital. I was kept hidden because my husband didn't want people to know about the bruises. I was there for a month till the bruises went. The doctor in the hospital didn't report the injuries. On various occasions I went to the social services. They said 'What are you thinking of doing, Señora?' They told me to take the summons letter to my husband, but I was afraid to even leave the house." Cecilia, Oaxaca, June 2006.

Amnesty International has researched and reported on violence in the family in a wide variety of countries around the world.<sup>23</sup> Amnesty International believes that all human beings are entitled to the full enjoyment of their human rights. A person's gender or marital or relationship status do not change their right to have his or her human rights respected, protected and fulfilled.

There are many different types of violence against women. However, in the context of violence against women in the family, some forms of violence are more common than others. Physical violence, because it leaves the most visible injuries, is the most easily recognized. Many women try to cover up the signs of violence, too ashamed to admit that this is happening to them, even when injuries are so severe that they are forced to seek medical help. Physical abuse is often combined with other forms of abuse and invariably causes psychological damage.

For most women who experience intimate partner violence, physical abuse and psychological abuse are closely linked. However, some women experience intense psychological violence but are not physically attacked. Although, less visible and sometimes more difficult to define, psychological abuse can and does have devastating consequences and has been identified in international law as a form of violence against women.<sup>24</sup> Many of the women interviewed by Amnesty International described the fear that paralyzed them and made them a prisoner of their abuser. They spoke of isolation and of being undermined, leaving them with deep feelings of inadequacy. Years of such treatment can be debilitating, causing profound psychological damage requiring professional help which is often difficult to access.

Domestic violence is one of the most insidious forms of violence against women. In public debates on the issue, the needs of the woman are sometimes put in opposition to the needs of the family. If protecting women, so the argument goes, means breaking up the family, then it is too high a price to pay. In this way the needs of the children are often used to justify inaction.



There have been many studies on how domestic violence affects children. All the evidence suggests that even when children are not the immediate targets of family violence, its consequences for their future development are severe and far-reaching. Witnessing violence has a negative psychological impact on children. There is also compelling evidence that domestic violence very frequently escalates to target others in the family – the children. This pattern is true both for physical and sexual violence in the home. Studies also show that some children exposed to violence in the home go on to become abusers themselves, perpetuating the vicious cycle down the generations.<sup>25</sup>

“The beatings began after six months of being married. My husband made me have sex in front of the children. Each time the violence became more and more ferocious. I got pregnant with my third child and my husband kept on taking it out on him. My family didn't give me any support. In the end I had to give the child to another woman. Even when the child left, the violence continued. I felt like committing suicide.” Isabel suffered 13 years of abuse and violence, including marital rape. Her three children were victims of repeated beatings.<sup>26</sup>

24-year old Julia told Amnesty International how the violence had started when they were girl and boyfriend. Initially it was incidental violence, but this soon turned into insults and beatings and she was also forced to have sex. In the five-year relationship with her husband there was always physical, sexual and psychological violence. “On various occasions I was locked in the house for hours”. In 2000 she miscarried after a severe beating.<sup>27</sup>

Violence in the family takes an enormous toll on women's health. Health problems linked to violence against women listed by the World Health Organization include gynaecological problems, injuries (cuts, fractures, broken bones) and increased risk of HIV infection.<sup>28</sup>

Several women told Amnesty International that they had suffered miscarriages as a result of physical abuse experienced during their pregnancies. Pregnancy generally does not end or even reduce domestic violence, but it can make the consequences even graver. The World Health Organization has noted the relationship between violence and low birth weight. “Although research is still emerging, findings of six different studies performed in the USA, Mexico, and Nicaragua suggest that violence during pregnancy can contribute to low birth weight, pre-term delivery, and to foetal growth retardation”.<sup>29</sup>

The repercussions on families of violence against women can reach down through generations and disfigure the political and cultural life of communities. The cost of human pain and suffering is in many respects incalculable.<sup>30</sup> However, domestic violence also has serious economic and social consequences. Some of these are more easily quantifiable, loss of working days, loss of income and the cost of health care as demonstrated in the National Survey of Violence against Women published in 2004 in Mexico.<sup>31</sup> The longer term cost may be even greater. If women are unable to take an active role in their communities, their energy and creativity is denied to society as a whole. This is an incalculable loss.

Susana, a 24-year-old mother of two, told Amnesty International that the women's shelter in Hermosillo, Sonora, was the only institution that offered her protection from a partner who had subjected her to 10 years of physical and psychological violence. She described how she had been imprisoned in her own home for long periods and how her children had been abducted. Her physical injuries included broken bones in her hand, a

fractured nose and a dislocated collarbone. When she went to the hospital in July and September 2006 with severe bruising on her arms, legs and head, no one asked her how the injuries had happened or referred her case to the authorities for investigation. Susana made as many as 10 direct complaints to the local public prosecutor's office. She said that each time she was told that it was not a crime and they could do nothing. On the majority of occasions, the prosecutor failed to even take an official statement from her. Although Susana asked for protection, no restriction order was ever placed on her partner.

On 15 September 2006, Susana filed another complaint with the local public prosecutor's office. A case was opened and her husband charged. He was detained but released one day later on bail of 3,600 pesos (approximately US\$344). The Prosecutor's Office failed to inform her of his release and she only found out accidentally. Susana and her children remained in hiding with relatives until 25 September, when the Prosecutor's Office referred her to the women's shelter. At the time of the interview, the shelter was helping Susana to relocate to another state.

The 2006 National Survey on Family Relations in Mexico carried out by the INEGI, the National Women's Institute and the United Nations Fund for Women's Development found that 67 per cent of women had experienced some form of violence at home, at school, in the community or at work. The survey sample included 35,000 women over the age of 15 in 25 states.<sup>32</sup> The same survey found that 47 per cent of women in relationships had experienced some form of violence. In some states this figure was as high as 60 per cent.

The survey showed that violence by intimate partners or ex-intimate partners took a variety of forms: women surveyed who had experienced domestic violence reported emotional violence (84 per cent); economic violence (61 per cent); physical violence (45 per cent); and sexual violence (18 per cent).<sup>33</sup> The physical violence ranged from pushes and hair pulling (37 per cent), beatings (27 per cent), kicking (11 per cent), to attempted strangulation (5 per cent), knife attacks (2.7 per cent) and shootings (0.7 per cent). In relation to sexual violence, 17 per cent of women said they were compelled to have sexual relations when they did not want to, and 6.6 per cent said they were physically forced to have sexual relations.

The survey also found that 82 per cent of women who said they had experienced physical or sexual violence had not reported this to an official body, such as the police or prosecutor's office. The reasons women gave for not reporting violence varied. Some said that they felt it was not important enough to report officially (38 per cent). Others said they did not report in order to protect their children (23 per cent). Other reasons cited were shame (19 per cent), fear of reprisals (17 per cent), not wanting their families to find out (14 per cent), lack of trust in the authorities (8.4 per cent). In 2.4 per cent of cases women said that their families had persuaded them not to file a complaint.

Violence against women in the family is not restricted to intimate or ex-intimate partners. The survey also found that 15 per cent of married women or women living with a partner had been attacked emotionally, physically or economically in the previous 12 months by a member of their family or by their partners.

The 2006 survey indicates that violence against women in the family is not improving and may in fact be worsening. A narrower survey conducted in 2003 found that 44 per cent of women over 15 living with a partner had suffered some form of gender-based violence: 9 per

cent experienced physical violence, 8 per cent sexual violence and 35 per cent psychological violence.<sup>34</sup> A survey published in 2004 of women who used health services found that 1 in 5 women had suffered violence by their partner in the previous year, and 1 in 3 had suffered intimate partner violence during their life time.<sup>35</sup>

A number of nationwide surveys carried out since the 1990s have revealed with increasing detail the prevalence of gender-based violence against women. Many of the surveys have adopted gender-sensitive indicators in line with the Convention on the Elimination of Discrimination against Women. However, they have not generally addressed the issue of impunity for those responsible for violence against women or for the effectiveness of institutions charged with investigations and ensuring access to protection and justice.

The failure to promptly and thoroughly investigate all cases of violence against women denies justice to victims and relatives and may mean that deaths of women are not properly clarified. The failure to consistently carry out rigorous gender sensitive autopsies and follow all leads, including a background of domestic violence, may prevent unexplained deaths from being properly identified as murders and investigated appropriately.

On 14 February 2005, the body of 26-year-old Flor Noemí Rodríguez Trujillo was found by a major highway outside Cuernavaca, Morelos state. The official autopsy recorded her death as accidental without establishing the nature and causes of the injuries she had suffered. On 16 February, her mother, identified her body and removed it for burial. No further autopsy was undertaken.

Despite the absence of items known to have been in her possession on her last night alive when she was seen in the company of her boyfriend, and witness statements indicating he had physically ill-treated her on previous occasions, the authorities failed to conduct a full investigation. Only after her mother pressed for a wider enquiry was a homicide unit temporarily assigned to the case. It concluded there were a number of leads to pursue, including the boyfriend and an unidentified individual seen near the location where her body was discovered. Despite this, the authorities did not interview potentially important witnesses and the boyfriend was not directly questioned till five months later. By this time, he had sold his car, preventing the authorities from gathering forensic evidence. The mother was told there was nothing more that could be done, but that she should not speak to the media or human rights organizations as that would hinder the official enquiry. Nevertheless, the enquiry was shelved without further investigation and the authorities continue to consider Flor Noemi Rodríguez Trujillo's death as accidental.



Photo: Demonstration in Cuernavaca, Morelos State, to remember women victims of violence and demand justice, November 2006. Flor Noemí Rodríguez Trujillo's portrait is the bottom one on the left © Jorge Medina Palomino

## 4/OBSTACLES TO SAFETY AND JUSTICE

On 7 September 2005, as 28-year-old Juana Mota Batalla was being beaten by her husband, one of her four children ran to a neighbour's house in the municipality of Amacuzac, Morelos state, to ask for help. The neighbour phoned the police emergency line, but was reportedly told that it was "a couple's issue" and no officers ever arrived. When the neighbour then went to the house, Juana Mota Batalla and her husband were not there. Juana Mota Batalla never reappeared. The husband later claimed that they had argued and she had left home after she had told him she was about to run off with another man.

Juana Mota Batalla's family filed a missing person's report with the local public prosecutor's office in Puente de Ixtla and informed the authorities that the husband had previously been reported for assaulting her when they were living in Temixco in 2001. Despite this, the husband was not interviewed and no measures were apparently taken to establish Juana Mota Batalla's whereabouts.

On 12 September an unidentified body was found in the nearby countryside. On 18 September the family were shown photos of her body and told that, as a full autopsy would take more than a month, it would be better to bury her immediately. The case was passed to the unit in the public prosecutor's office dealing with "crimes of passion" rather than the murder unit. The family were reportedly told to present witnesses and the neighbour who had gone to help made a statement. On 26 September the husband was arrested and questioned. On 28 September the family visited the scene where her body had been found and discovered a blanket, hair and a bloody stick, which had apparently not been collected as evidence by officials. When the family informed the authorities, they were told that the official recovery of the body had taken place, so the family should just dispose of the evidence they had found.

The husband remains in custody pending the outcome of his trial for murder. Amnesty International is not aware of any investigation into the failure of police to respond to the emergency call or to gather forensic evidence appropriately.

Women who experience violence in the family and their relatives have to confront many practical difficulties in their struggle for assistance, protection and justice. This chapter draws on Amnesty International's interviews with women and sets the experiences they described in the context of specific recommendations made by the UN General Assembly's Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (UN Model Strategies).<sup>36</sup>

## ATTITUDES TOWARDS VIOLENCE AGAINST WOMEN IN THE FAMILY

*"Provide for court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair processing of cases"*

UN Model Strategies, para 10(d)

International human rights bodies such as the Inter-American Commission on Human Rights (IACHR) have repeatedly noted that the discriminatory manner in which cases of violence against women are handled by officials has a direct impact on the state's capacity to gather evidence and prosecute those responsible.

*"Justice systems do not adequately protect women victims' dignity and privacy during the investigation process. These women end up being re-victimised by the lack of sensitivity to their plight, their sex and the seriousness of the facts alleged."*

*Access to Justice for Women Victims of Violence in the Americas, IACHR, January 2007*<sup>37</sup>

The IACHR has noted that while this discrimination may in part result from "cultural problems" of traditional patriarchal societies, the state has an obligation to address this discrimination diligently.<sup>38</sup>

However, despite changes and improvements in the law in Mexico, violence against women in the family is still considered by many to be a private issue for the family, not a human rights concern for which the state bears responsibility. This attitude appears to be shared by many officials working in the public security and justice sectors. As a result, state government officials continue to place the burden of responsibility for addressing this abuse on the family unit.<sup>39</sup>

In recent years there has been an expansion in Mexico in public awareness campaigns informing women of their right to report domestic violence and seek justice. There has also been increased training of many officials at different levels of government aimed at breaking down traditional resistance and integrating a gender perspective in their work in order to improve the way that cases are dealt with. These initiatives have been accompanied by increased reporting rates of violence against women in the family. However, systems for determining which education programmes are most effective have not been adequately developed.

## POLICE RESPONSE

*"Empower the police to respond promptly to incidents of violence against women"*

UN Model Strategies 8 (d)

Members of municipal law enforcement police often attend incidents of domestic violence in response to emergency calls made by victims, relatives or neighbours. Amnesty International was informed that police response to such calls has improved, particularly in major urban areas where training on domestic violence has been most intensive. Nevertheless, as many of the cases included in this report indicate, there remains a tendency by police to consider such cases as private issues even when serious levels of violence have occurred which would in any other context be considered a criminal offence. Amnesty International found that some police are often still reluctant to take action against offenders and may only address the

problem by taking the woman to a relative's house. In rural areas, there was also concern that police were sometimes on friendly terms with the offender and would therefore be less likely to take action.

Police often argue that women do not want police action and that they lack powers to enter a home to arrest a man who is assaulting his wife. They fear that if they do, they may be subject to legal action by the perpetrator for violating Article 16 of the Mexican Constitution on the right to privacy in the home. In 2007 a National Supreme Court ruling gave greater powers to police to enter private homes when a crime is being committed.<sup>40</sup>

When police detain someone committing an offence, they are legally bound to present the detainee "without delay" to the public prosecutor's office to be charged. However, this may result in several hours or more spent in local police holding cells. During this time, police may try to encourage a private solution to the problem. If the woman decides to press charges, the offender will be turned over to the judicial police of the state public prosecutor's office to face a criminal complaint and potential custody.

## COMPLAINTS PROCEDURES

*"Encourage and assist women subject to violence in lodging and following through on official complaints"*

UN Model Strategies, 10 (b)

"In June [2006] I went to the local public prosecutor's office after being beaten by my husband. There was another severely beaten lady there. The local prosecutor told the lady he couldn't help her and then he said to me 'I don't know what I am going to do with this lady as she has already been here several times'. In the end they said they wouldn't take my case either and sent me to the Special Prosecutor's Office in Oaxaca City. They gave me a medical examination but didn't take any photos of my injuries. I never had any psychological help. They didn't give my kids any time with the psychologist."

Rosa, Oaxaca, June 2006

Most of those responsible for violence against women are not held to account. As with all human rights violations, impunity is a powerful factor in perpetuating abuses. Violence in the family is a violation of human rights which is committed behind thousands of doors in apparently ordinary homes. The government and its officials have a responsibility to prevent and punish violations of human rights, including violations of women's right to a life free of violence.

For a criminal investigation of domestic violence to be initiated the victim must file a complaint with the local public prosecutor's office. Only if the victim is under 18 or has a disability can a complaint be initiated without a complaint by the victim.

In order to file a complaint, the survivor must provide a statement of what has happened and return to the public prosecutor's office to ratify the complaint. If she does not return to ratify the complaint, this is usually interpreted as the person's intention not to pursue the complaint and the case is closed.

According to the law, prosecutors and the judicial police, who work under the prosecutors' authority, are required to gather sufficient evidence to demonstrate that a particular criminal offence has occurred and to establish the probable responsibility of the accused. At this stage charges can be filed with a judge.

Since the 1990s, states have gradually developed specialist units attached to the local public prosecutor's office to document complaints of violence in the family and sexual violence and provide assistance to victims. For example, the Federal District established the Centre for Victims of Domestic Violence (*Centro Atención a Víctimas de Violencia Familiar*) to provide legal, psychological and social assistance to victims. In some states, like Sonora, these are not specialist gender units, but 10 centres for victims of crime in general. In Morelos there are 26 such general units and eight specialist units dealing with sexual or domestic violence against women. According to victims interviewed by Amnesty International, regional public prosecutors' offices are often reluctant to accept cases and recommend that the woman go to the specialist gender violence units. This can involve repeated long and expensive journeys when women report the case, return to ratify the complaint, and attend hearings.

Many survivors told Amnesty International of the reluctance they encountered in many officials to register their cases and initiate an investigation. Amnesty International was informed by representatives of the public prosecutor's offices in the states visited that there was no reluctance to investigate and prosecute cases of violence against women in the family and that women could file their complaint at any available representative of the local public prosecutor's office. Amnesty International made a written and oral request to the authorities in Oaxaca, Morelos and Sonora for data relating to investigations and prosecutions, but has not so far received a reply.

Women told Amnesty International about officials who had made it clear they viewed violence in the family as a private issue that couples should resolve themselves or who believed the women were exaggerating. Several women interviewed in Sonora and Oaxaca who had tried to report cases of physical violence to the public prosecutor's office said that they had been told their cases did not amount to criminal offences or that the Prosecutor simply could not take their complaint because they did not have the time and violence in the family was not a priority.

These responses deny women access to immediate protection measures and deter them from pursuing complaints. Over time, the failure of officials to record acts of violence against women also means that information is lost that is vital in determining the level of risk women face. This can undermine future prosecutions; in at least 12 states, the crime of domestic violence requires a woman to prove repeated acts of violence.

Many factors can combine to deter women from reporting violence in the family directly to the public prosecutor's office. Fear of reprisals from their abuser and entrenched social attitudes towards violence against women and women's role in the family can make women reluctant to report. However, an additional significant factor is that women fear they will not be listened to and taken seriously by state officials.

Many women, particularly those from communities which have been marginalized or that are living in poverty, fear that lodging a complaint can result in humiliation and unsustainable costs, rather than protection and an end to violence in the family. Lack of accessible specialist domestic violence units in rural areas and many towns means most women have no option but to file a complaint with the local unit of the public prosecutor's office in their own communities. This can be problematic if local officials lack specialist training, know the alleged aggressor, or dismiss the allegation as not serious and not a priority. As a result, although there has been an increase in the rate of reporting of domestic violence, the disincentives to filing such complaints remain strong.

## CONCILIATION

*"ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered,"*

UN Model Strategies, 10 (c)

In October 2006, Teresa filed a complaint for physical assault against her brother with public prosecutor's office in the community of Alpuyecá in Morelos, municipality of Xochitepec, Morelos state. The official received her complaint while holding a separate conversation on a telephone and concluded by telling her that it would be best if she and her brother could be reconciled. She was given a summons to deliver to her brother requiring him to attend a conciliation meeting. The brother subsequently went to the prosecutor and struck a verbal agreement with his sister. Teresa was told: "Don't file an official complaint. He's your brother. He is going to cause problems." The agreement was that the brother would cover the bill for the private doctor Teresa had seen for treatment of her injuries and the price of a new pair of glasses to replace the pair he had broken. No official medical report was taken of Teresa's injuries, nor was the case registered, despite the fact that the brother had attacked her on previous occasions.

Mexico's National System for Integral Family Development (Desarrollo Integral de la Familia, DIF) provides important support and assistance to many minors and adults at risk. Federal health and social assistance legislation establish the DIF at federal level as a decentralized institution responsible for promoting and providing social services.<sup>41</sup> Separate DIF institutions exist in the government apparatus of the 32 federal entities and in many of the 2,400 municipalities carrying out the same function at local level.

The DIF at state or municipal level is often the first point of contact for many women who have experienced violence in the family and who have decided to seek assistance. The primary objectives of the DIF are to promote the integrity of the family and protect the interests of children.<sup>42</sup> While these services should play a fundamental role in both preventing violence against women and helping them overcome its consequences, they should never replace or become an obstacle to women accessing adequate protection, effective investigations and justice.

In many Mexican states, laws to prevent and address violence in the family give the local DIF, and in some states the local public prosecutor's offices, authority to provide arbitration or conciliation services for the victim and the aggressor.<sup>43</sup> Amnesty International's research found that officials working at the both the public prosecutors offices and the social services institutions in the states visited often relied heavily on conciliation as a means of resolving cases. For example, in Chiapas, Amnesty International was informed by representatives of the



DIF that in only 10 per cent of cases where women reported violence in the family to DIF offices was the violence considered sufficiently grave for the case to be passed to the public prosecutor's office for a criminal investigation.<sup>44</sup> The remaining 90 per cent, where DIF officials concluded the victim's injuries were insufficiently serious or the victim was not determined to seek prosecution, were referred for conciliation within the DIF.

The methods and procedures employed by the DIF when handling family violence cases vary, but according to DIF officials interviewed by Amnesty International, a woman who makes a complaint will undergo a medical and psychological evaluation in order to assess the severity of the case and the steps to be followed.

Amnesty International was informed that there were no consistent, gender-specific procedures by which medical or social services staff should document the psychological and physical evidence of domestic violence. There were no specific protocols providing for female staff to carry out interviews, nor guidelines on maintaining confidentiality or conducting interviews to gather detailed information on the context and history of the violence. There were also no specific procedures for staff to follow on how to advise women on the choices available to them, including the possibility of filing a criminal complaint with the public prosecutor's office.

DIF representatives told Amnesty International that women were never forced to pursue conciliation, but that women themselves often preferred this option in order to maintain the relationship with their aggressor.

"The times I went to the DIF [National System for the Integral Development of the Family, Desarrollo Integral de la Familia], they told me they couldn't do anything as there were no marks on me. I never got a psychological evaluation. They just passed me straight to a social worker. They told me I couldn't get any support payments for me and my kids if I left my husband as I couldn't prove his financial solvency and they could only send a summons letter via me. I stopped going to the DIF because they wouldn't take any notice of me, despite the continuing violence."

Marta, Oaxaca, June 2006

Most women who spoke to Amnesty International said that they had to deliver the letter notifying their aggressor of the mediation meeting personally. Women's organizations reported that this practice was widespread and DIF officials and public prosecutor's offices stated that this was due to lack of resources to cover delivery costs. Many women do not deliver the letters for fear of retaliation. Women's rights organizations also reported that agreements were often not adequately monitored or evaluated, leaving victims isolated and dependent on the good faith of the aggressor.

Many of those cases that reach public prosecutors' office are often deemed not serious enough to merit a criminal investigation or prosecution. In some instances, prosecutors also initiate conciliation between the victim and perpetrator; this was reportedly common in Oaxaca. In all the states visited by Amnesty International, it was common practice for women to be forced to deliver summonses to their aggressors, whether these were issued by DIF or public prosecutors' offices.

Various studies have highlighted the dangers of referring domestic violence for resolution through conciliation rather than dealing with the crime through the judicial process. Conciliation presupposes that both parties to the negotiation are starting from a point of equality. However, this equality is almost never present between the victim of violence in the home and the abuser, so that conciliation becomes not merely a flawed approach, but a dangerous one for the victim. The IACHR has noted that in Latin America it has become clear that given the unequal power relationship between the victim and assailant, agreements reached in the framework of mediation compound the physical and emotional risks for women. The Commission has also noted that, as a rule, the assailant does not abide by the agreement which, in any case, does not address the causes and consequences of the violence. .<sup>45</sup>

The Special Rapporteur on Violence against women and the CEDAW Committee have both expressed concern about the use of conciliation by the authorities in order to avoid investigating and punishing violence against women in the family.<sup>46</sup>

Turning to conciliation mechanisms may be part of the steps that a victim of domestic violence takes to deal with and change her situation, but it can never substitute, diminish or rescind her right to access justice.

When the state prioritizes and promotes conciliation mechanisms as a response to domestic violence, there is a danger that these may be promoted and perceived as the only viable option available to women seeking help from family violence. Even where the authorities or the perpetrator do not exercise direct or indirect pressure on the victim to agree to engage in a conciliation process, victims of domestic violence may experience being put in the position of having to opt for or against conciliation. In such circumstances, women may opt for conciliation at the cost of their right to seek justice.

## MEDICAL EVIDENCE

*“Develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for the collection of the best evidence”*  
UN Model Strategies 8(b)

Whether or not a criminal investigation into a report of domestic violence takes place depends in large part on the medical evidence gathered by the public prosecutor's office.<sup>47</sup>

According to the criminal codes in force around the country, the severity of the offence depends on an assessment of the lasting impact of physical injuries. Cases where the injuries will heal within 15 days are considered minor offences. If injuries are semi-permanent or permanent, such as scarring, disability or loss of the use of limbs or faculties, legislation sets out a sliding scale of increasingly severe fines and prison terms.<sup>48</sup>

However, according to the women interviewed by Amnesty International who had received medical examinations, many medical professionals and particularly official medical examiners working with the local public prosecutors' offices, focus almost solely on physical evidence, such as bruising. As a result the majority of injuries are assessed as lasting 15 days or less and therefore the result of a minor offence, which is less likely to result in a

prosecution. While this categorization in the federal and state criminal codes is explicitly applicable to determining the severity of crimes of bodily harm, it is frequently used in domestic violence cases by prosecutors and medical examiners as a benchmark criterion to determine whether to register a case and open a preliminary investigation, or to discourage a victim from pursuing a complaint and recommend reconciliation.<sup>49</sup>

According to women survivors of violence in states such as Oaxaca, Sonora and Morelos, local prosecutors often rely on their own appraisal of physical injuries because medical examiners are often not available. Prosecutors tend to rely on clearly visible signs of injuries, often ignoring important issues such as psychological trauma sustained over many years. The psychological impact of violence against women in the family is such that victims may not necessarily come forward at a time when they are most visibly affected. The failure to take psychological trauma into account therefore effectively discriminates against women and often prevents all but the most glaring cases from continuing.

Even when survivors are examined by medical professionals, they may not have the expertise needed to conduct gender-sensitive medical evaluations of physical and psychological symptoms, such as those developed by the international community to document medical evidence of torture, including rape.<sup>50</sup> Prosecutors generally prefer to rely on strong physical evidence when building a case because an assessment of psychological injuries is generally considered to have less weight in court. The IACHR has observed "the majority of evidence-collection efforts related to acts of violence against women focus on physical and testimonial evidence, neglecting other types of evidence that can be crucial to establishing the facts, such as that of a scientific and psychological nature."<sup>51</sup>

#### OFFICIAL MEDICAL EXAMINERS

Most states have enacted laws that require victims of domestic violence to receive medical treatment. However, in order to ensure that the results of a medical examination carry legal weight as evidence in court, prosecutors require an official forensic medical examiner to carry out the examination. Medical examiners working in the forensic departments of public prosecutors' offices work on a wide range of forensic issues, but may not be specialists trained to treat and evaluate violence in the family or sexual violence. For example, a member of the forensic science unit in Morelos state informed Amnesty International in November 2006 that of 11 medical examiners in the state, none was expert in gender-based violence. In recent years, training of prosecutors, police and medical examiners to deal with cases of violence against women has increased, particularly in specialist domestic and sexual violence units.

#### HEALTH PROFESSIONALS

Health professionals in medical facilities around the country play an important role treating women who have been victims of violence and advising them of the options available to them. In 2000, Ministry of Health Directive 190 on procedures for dealing with cases of violence in the family was issued to all medical professionals working in the national health system.<sup>52</sup> This requires doctors to assess and register all patients they believe to be victims of domestic violence; to report their cases to the public prosecutor's office; and to advise the victim of their right to file a complaint. In cases where the victim is unable to file a complaint, or where doing so would put her at heightened risk, the doctor should contact the

prosecutor's office directly and request that an official medical examiner go to the health centre. The Directive also states that the patient should receive legal services, forensic medical services and social assistance.

This Directive requires medical professionals to treat domestic and sexual violence as a public health and legal issue. It also helps detect levels of violence against women in the family, including sexual violence.

Nevertheless, according to women's organizations and some victims interviewed by Amnesty International, some medical professionals are not following the Directive and do not inform women of their rights or register cases. As a result, data gathered does not necessarily reflect the true extent or nature of domestic violence and sexual violence cases treated by the medical profession. In addition, the Directive does not require private doctors to report incidents.

In 2005 a review of the Directive was initiated following a ruling by the IACHR that Mexico had violated the legal right to abortion of a young woman who had been raped.<sup>53</sup> However, at the time of writing the Ministry of Health had not issued a revised Directive.<sup>54</sup>

In 2000, 18-year-old Julia tried to report that her husband had physically assaulted her to a representative of the Sonora State Public Prosecutor's Office based in the hospital where she was being treated. The official reportedly told her that for him to do anything "you have to arrive like that" pointing at a person lying on a stretcher in the corridor. Julia reportedly had a miscarriage as a result of the assault. When she returned to the hospital she insisted on filing a complaint and the prosecutor finally allowed her to be examined by a forensic doctor from the public prosecutor's office.

Julia's husband was summonsed to make a statement, but no further action was reportedly taken against him. Julia told Amnesty International that she heard nothing more for a year and was then summonsed on several occasions in the same week to make a statement. Fearing that she might lose her job because she was taking time off work to attend, she officially pardoned her husband and the case was closed. In 2002 she started civil divorce proceedings on the grounds of domestic violence. However, when she tried to exercise her right to access the previous case file to prove domestic violence, this was refused. She said she was only able to get a copy after she bribed a local official.

Julia's husband continued to subject her to physical attacks until July 2004, when she filed two domestic violence complaints. On one occasion she rang the police who reportedly told her when they arrived, "this isn't for us. You have to put a complaint in with the public prosecutor's office". The police took her to her mother's house, but took no action against the husband. When she went to the public prosecutor's office she was sent onto the specialist domestic violence unit. When she was finally able to file the complaint, the official medical report indicated she had suffered a serious beating. Her husband was not prosecuted and she was not provided with protection. No protective measures were issued until some time later when a civil court issued a restraining order on the husband as part of divorce proceedings.

### 'THEY TOLD ME TO BRING TWO WITNESSES'

*"The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence"*

UN Model Strategies, 7(b)

In September 2006 the National Supreme Court ruled that for the civil courts to grant a divorce on the basis of domestic violence, the victim must specify the time, manner and place where violence took place.<sup>55</sup> This ruling reinforced the onus on the victim to prove they have been subjected to violence in the home. It has also reinforced the tendency of prosecutors to request that victims of domestic violence provide detailed evidence of violence when filing a criminal complaint. During its research Amnesty International found that women or family members filing a complaint of domestic violence were often required to produce two witnesses willing to testify to the offence.

Several survivors living in Oaxaca and Sonora states told Amnesty International that they had been informed prosecutors would not take an active interest in or even register a case unless they or their families produced two witnesses to corroborate their statement. This practice has no legal basis and in both states the authorities denied that prosecutors ever required complainants to produce two witnesses as a precondition for opening an investigation. However, both also argued that without such evidence it was difficult for a prosecutor to bring charges.

At the preliminary investigation stage, the aggressor is summonsed directly, or via the victim, to provide their statement. The medical report is appended to the case file and the victim provides the witnesses who present themselves in the prosecutor's office to make their statement. The reliance on these standard elements of proof and the frequent failure of police investigators to seek or gather corroborating evidence severely hinders the chances of a successful prosecution. The IACHR has noted that in the region a "persistent problem cited is the fact that the public prosecutors' offices solely rely on evidence like medical reports of physical injuries and the testimony of witnesses, without efficiently compiling evidence that can be used to prove and reconstruct the crime."<sup>56</sup>

It is often difficult for survivors to provide two corroborating witnesses. Most violence against women in the family occurs behind closed doors, this means that women are faced with asking their children to testify against their father; many women would rather withdraw their complaint or pardon the aggressor. In the absence of police guarantees for their protection, witnesses are also exposed to heightened risk of intimidation. Several survivors and witnesses of violence in the family told Amnesty International that potential witnesses had been threatened by the alleged aggressor and had moved away to avoid further harassment or involvement in the case. Delays by prosecutors in gathering evidence and in ensuring that witnesses can come forward without fear of reprisal are a serious hindrance to prosecutions.

Mericia Hernández López, a young teacher and mother of a six-month-old baby, disappeared from her home on the outskirts of Oaxaca City on 21 August 2005. Her sister, Adela Hernández, concerned at her disappearance, visited the home Mericia Hernández shared with her husband. He said she had left to do a teaching job, but did not know where or when she would return. Adela Hernández tried to file a complaint with the local public prosecutor's office, but was told not to worry as her sister would return home soon. On Adela Hernández'

insistence, an investigation was finally opened eight days after Mericia Hernández went missing. Adela Hernandez described to Amnesty International how it was left to her to approach neighbours for information and evidence. Some had reportedly witnessed incidents of violence against Mericia Hernández but were reluctant to come forward, fearing reprisals. Neither the police nor prosecutors interviewed these witnesses. Seven months after her disappearance forensic scientists examined Mericia Hernández's home, but found no evidence. Prosecutors told Adela Hernandez that there was nothing more they could do. Mericia Hernández's whereabouts remain unknown at the time of writing. Her family continues to struggle for an effective investigation into her disappearance.



Photo: Poster prepared by the family of Mericia Hernandez Lopez asking for help in finding her. The lack of effective investigation by the authorities means that families are often left to organize the search for their missing loved ones themselves. November 2006 © Amnesty International

## LEGAL ADVICE AND ACCESS TO CASE INFORMATION

*“Make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings”*

UN Model Strategies, para10(a)

Domestic violence legislation already provides for victims and family members to receive legal advice. As victims of a criminal offence they also have the right to access the case file and act as auxiliaries to the official investigation. However, witnesses and survivors told Amnesty International of frequent and repeated violations of these rights. Prosecutors often fail to provide copies of complaints or statements, allow access to case files, or provide basic updates on the progress of investigations. Victims or relatives said they were often told not to

worry as the investigation was progressing and to return sometime in the future. Several relatives of women who had been murdered as a result of violence in the family said they were told the case file was not available. One family interviewed by Amnesty International received no official documentation; the only document they had was one press cutting relating to their daughter's murder. These failures have a particularly grave impact on the poorest victims who cannot afford independent legal advice on their rights and often have little option but to defer to the authority of prosecutors and police.

## PROTECTION MEASURES

*"Measures can be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation"*

UN Model Strategies, para7(h)

Article 27 of the 2007 General Law states that protection orders "must be issued by the competent authority, immediately that they are made aware of acts that probably constitute offences or crimes implying violence against women." Most state legislations grant the local public prosecutor's office and civil court judges separate authority to issue protection orders on behalf of women at risk.

However, during Amnesty International's research in 2006 and 2007, women's organizations, victims and several local authorities recognized that protection or restraining orders were rarely used or enforced. Representatives of the State Public Prosecutor's Office argued that this was an issue for the courts and no action could be taken until a criminal offence had been proven, despite the fact that most state legislation recognizes the authority of the prosecutor to seek protection orders from civil or criminal courts. In Sonora, where existing legislation already provides for public prosecutors to issue protection orders, the State Attorney General informed Amnesty International delegates that such powers did not exist and that only judges could issue such orders.<sup>57</sup> Representatives of the Attorney General's Offices in Chiapas, Oaxaca and Morelos also acknowledged that protection orders were rarely sought or used and argued that, as there were no police resources available to enforce the measures, there was no value in issuing them.

On 27 October 2005, Lula Lecuana Figueroa Haro was killed by her husband in the Colonia Caridad, Hermosillo, Sonora state. She had first filed a complaint for domestic violence with the State Public Prosecutor's Office in 2002 and a medical examiner documented her injuries. After taking her two children to live with her parents for six months, she dropped the case and returned to the family home. Her husband reportedly threatened to file a civil case for desertion if she tried to leave again, threatened her mother, and moved the family to another neighbourhood. In the following three years, Lula Lecuana Figueroa filed three more complaints against her husband for assault.

In June 2005, her husband attempted to strangle her and beat her in the stomach. She filed a complaint and a medical examiner confirmed her injuries. Her husband was arrested, but immediately released on bail. Lula Lecuana Figueroa initiated divorce proceedings in the civil courts and a judge issued a restraining order preventing the husband from approaching her home. In July, when he violated the civil order, police went to the house but reportedly left without arresting him. Lula Lecuana Figueroa then reportedly agreed to conciliation with him.

In late October 2005, her mother went to the house, concerned at not hearing from her daughter for several days. The husband initially informed her that her daughter had hanged herself, although he later confessed to her murder and was put on trial. Lula Lecuana Figueroa's parents repeatedly sought access to the case file of the investigation into their daughter's murder, but this was refused by prosecutors. Amnesty International is not aware of any investigation into the failure to deal adequately with the previous complaints of domestic violence.

Almost all of those interviewed by Amnesty International said that the only protection orders they were aware of in the context of violence in the family were those issued by civil court judges. None was aware that prosecutors also had the powers to seek temporary protection orders or petition a criminal court for a restraining order.

This lack of awareness appears to extend to senior officials. For example, in Chiapas, senior members of the State Public Prosecutor's Office informed Amnesty International that protection or restraining orders were not an option.<sup>58</sup> They stated that all they could do was order the arrest of the aggressor, which was usually not worthwhile as either the complainant would immediately drop the case or the perpetrator would be released straight away on bail for what the courts considered a lesser offence not meriting preventive custody. The failure of many prosecutors and police officials to provide reliable information on protection orders seriously undermines women's right to safety.

Even in cases where civil court judges issue orders prohibiting the aggressor from approaching the victim or their home, specific, dedicated mechanisms run by police and social services to deal urgently with breaches of the order are largely lacking. The only option women have if the order is breached is to ring the police emergency number or complain to the court. Despite these severe limitations, several women stressed that the official restraining order was one of the few means of protection available to them.

## SHELTERS

*"Establish, fund, and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation for women and their children who are at risk"*

UN Model Strategies, 11(a)

In recent years there has been an increase in the number of shelters for survivors. These play an important role in providing women and their children with temporary safety, medical and psychological treatment, legal advice, professional training and information on the options available to them in order to avoid returning to a violent situation. There are now 60 shelters throughout Mexico which are part of the National Network of Refuges. Thirty-six refuges are run by civil society organizations and the rest by state or municipal authorities. Some are the responsibility of the state or municipal DIF, while others fall under the authority of the local women's institute. Shelters offer a wide range of services and approaches. However, the National Network promotes standard procedures for addressing the needs of women and their families; they were in the process of being updated at the time of writing.

Neomi, a 20-year-old mother of two from Hermosillo, Sonora state, was subjected to two years of repeated and sustained violence at the hands of her husband. In May 2006, after her husband physically attacked her she



went to the public prosecutor's office to report the crime. She told Amnesty International that they refused to register the complaint and told her there were no places in the women's shelter and she should leave the city. They told her: "when you have one foot in the grave and the other still out, then come back here".

On 24 October 2006, Neomi was taken to hospital by ambulance after her husband beat her so badly he fractured her eye socket and left her vomiting blood. The local hospital reportedly only provided pain killers and discharged her. On 25 October she filed a new complaint with the local public prosecutor's office. She was able to make a statement and was examined by the medical examiner. She was not provided with a copy of her statement or medical certificate, but was referred to the local women's shelter. Her husband was summonsed, but initially refused to comply. When she later enquired about the case, she was told that he had been charged and was being prosecuted, but officials failed to provide any documentary evidence of this or keep her informed of judicial proceedings. When her eye failed to heal, the shelter took her to a private hospital where she was told she needed an operation to prevent permanent damage. At the time Amnesty International interviewed Neomi, the shelter was trying to raise funds for her operation and prepare for her transfer to a shelter in a different city.

In recent years, those working in shelters have reported increasing threats, attacks and reprisals by aggressors. In 2005, Lydia Cacho, a well-known journalist and women's rights activist running a shelter in Cancun, state of Quintana Roo, and staff at three other shelters around the country, were repeatedly threatened by known criminals and a former police officer in reprisal for providing shelter to their estranged wives.<sup>59</sup> Federal Police provided protection to Lydia Cacho, but no legal action was taken against the perpetrators on the grounds that death threats left on answering machines could not serve as evidence in legal proceedings.

## ACCOUNTABILITY

*"Ensure that applicable provisions of laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts of violence against women are recognised and responded to accordingly"*

UN Model Strategies para8(a)

Impunity for criminal offences and for officials who fail to carry out their duties in accordance with the law remains a key problem. In the case of violence against women, impunity appears to remain high, although the limited availability of reliable data prevents a more detailed analysis.

One of the barriers to improving official responses to reports of violence against women in the family has been the absence of effective means for victims and families to pursue complaints against the authorities. One of the most notorious failures to do this has been in Ciudad Juárez, where despite two National Human Rights Commission recommendations and a federal enquiry concluding that more than 177 officials may have been responsible for criminal or administrative acts of negligence in the scores of bungled murder investigations, virtually none has ever been held to account.

In many cases, women and relatives are not made aware of their rights and what they should expect from the authorities. This limits their ability to judge whether the authorities have acted appropriately or with sufficient diligence. If a victim or relative does seek redress, the

options available are assistance from a local NGO or a lawyer; filing a complaint with internal complaints units of the local police or public prosecutors' offices; or approaching the State Human Rights Commission.

Internal complaints units have the authority to institute disciplinary proceedings against an official. However, Amnesty International has documented in several reports the failure of many law enforcement agencies or prosecutors' offices to conduct impartial and effective investigations into allegations against colleagues.<sup>60</sup> This appears to be particularly true in relation to possibly negligent investigations into violence against women.

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) and the network of 32 State Human Rights Commissions (Comisiones Estatales de Derechos Humanos, CEDHs) are empowered to investigate official abuses of power and to call on the authorities to correct abuses. As Amnesty International has documented in previous reports, the record of the different human rights commissions in exercising these powers to advance the application of international human rights standards varies widely.

In relation to violence against women, the record of human rights commissions is also mixed. The CNDH issued two recommendations in relation to the failure of the state and federal authorities to prevent and punish violence against women in 1998 and 2003 in Ciudad Juárez, Chihuahua. However, these were the exception as the CNDH has rarely taken up the issue in other contexts. At state level, human rights commissions can also often appear reluctant to tackle the issue. For example, during the period between 1993 and 2005 the Chihuahua CEDH failed to issue a single recommendation in relation to the pattern of violence against women in the state. In 2006 and 2007, Amnesty International interviewed officials from CEDHs in Chiapas, Oaxaca, Sonora and Morelos. Although not all officials expressed the view that violence against women, particularly violence against women in the family, was not directly relevant to the work of their commission, most officials considered their function to be restricted to an educational or advice role.<sup>61</sup>

The weakness of accountability and oversight mechanisms means that there is often only limited pressure on police and prosecutors and other agencies to meet their legal obligations to ensure access to justice and safety for women victims of violence.

As the following case highlights, Amnesty International believes that the CEDHs could play a more effective role in improving women's right to safety and justice.

On 5 April 2002, 14-year-old María from the Indigenous community of Zacatpexco, near Tlapa de Comonfort, Guerrero state, was raped and left for dead. While recovering in hospital, she was unwilling to report the rape because of a lack of female experts to support her. However, with the support of a family adviser, she filed a complaint for rape on 16 May. The case was then passed to a woman prosecutor in the Specialist Sexual and Domestic Violence Unit.

María was initially informed that the perpetrator would be charged and arrested. However, some weeks later, the prosecutor visited her home with the lawyer of the accused in order to persuade her to drop her complaint. María said that the prosecutor told her that the medical evidence was unlikely to prove rape, so it would be better to come to a financial agreement with the perpetrator. When María's legal representative was given

access to the case file, she established that the official medical report had concluded that there was no evidence of rape and had failed to document the other extensive injuries that were still visible. The prosecutor had failed to visit the crime scene, seek the medical records at the hospital where María was first treated or investigate the case in any other way. In June 2002, the prosecutor closed the case without informing María.

In July 2002 a formal complaint was filed against the prosecutor and the medical examiner with the Guerrero State Human Rights Commission. This resulted in a recommendation to the Guerrero State Public Prosecutor's Office to carry out an investigation. This investigation was completed in November 2002 and found that the forensic medical examination had not been carried out correctly and that the prosecutor had failed to carry out basic responsibilities. An internal enquiry found the officials responsible of "irregularities in carrying out their duties", for which they were suspended for two months, though no further action was taken against them. María had to relocate to another region of Mexico to rebuild her life. No one has been brought to justice for raping her.

## RESTITUTION AND REPARATIONS

*"Ensure women subjected to violence receive, through formal and informal proceedings, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offender or the State"*

UN Model Strategies, para10(c).

New legislation in Mexico establishes women's right to reparations as victims of violence, in line with international human rights standards. Nevertheless, the majority of survivors interviewed by Amnesty International had not received any reparations from the perpetrator or the state. In most cases, survivors focus their efforts on securing custody of children and support payments through civil divorce proceedings. If a woman cannot demonstrate the perpetrator's capacity to pay, she may not be able to secure any support.

In criminal cases, the public prosecutor is required to file for reparations as part of the claim against the perpetrator. However, the assessment of damages is based primarily on physical injuries recorded. These records are often inadequate and fail to take account of many years of abuse. In some instances, the state may make some discretionary payments or, as in the case of one woman interviewed, award a small incapacity pension when serious injury prevents a woman from earning a living. The state rarely provides compensation to women in other circumstances, arguing that it is only the perpetrator who is legally liable.

In 2002 the federal Constitution was reformed to recognize the responsibility of the State to provide compensation for damages to peoples' goods and rights resulting from "irregular administrative activity".<sup>62</sup> However, to prove this case, the internal administrative enquiry of the agency responsible must find in favour of the complainant against its own officials.<sup>63</sup> This limited advance at federal level has not been incorporated into the legal framework of many states. As a result, in the majority of cases it is not an effective legal recourse to seek redress from the state for its failure to act diligently in providing access to safety and justice.

Despite the failure of the authorities in many cases to act with due diligence to prevent, investigate and punish the cases of violence against women documented in this report, Amnesty International is not aware of any case where a woman has been offered reparations for the failure of the state to meet its own obligations.<sup>64</sup>

International human rights standards incorporate a number of elements into the obligation to provide full reparations for human rights violations. These include: adequate restitution, rehabilitation, compensation, satisfaction and the guarantee of non-repetition.

Article 26 of the 2007 General Law is a welcome advance in the legal standard. It specifically states that restitution for the murder of women should be consistent with international human rights law. According to the law, the following should be considered as restitution for injury: justice should be prompt, thorough and impartial; violations of women's rights should be investigated and those responsible brought to justice; rehabilitation for direct and indirect victims, should including provision of free and specialized legal, medical and psychological services; satisfaction should be in the form of measures to repair the damage or injury caused by preventing violations, including acknowledgement by the state of its responsibility for damage caused and its commitment to provide compensation; investigation and punishment of negligent officials whose actions resulted in human rights violations and impunity for abusers; the development and implementation of policies that prevent crimes against women; and the verification of facts and publication of the truth.<sup>65</sup>

On 31 August 2005, Marcela Blumenkron Romero's former husband broke into her home in Hermosillo, Sonora state, and stabbed her in the back leaving her paralyzed for four months and with serious long-term nerve damage and limited mobility.

The 49-year-old mother of three had divorced her former husband in 1993, but he had continued to harass and threaten her. On numerous occasions over the years, she had made emergency calls to police. However, when officers arrived she says they invariably told her there was nothing they could do. She told Amnesty International that she filed more than 10 complaints at the public prosecutor's office. On every occasion she was refused protection. Despite being divorced for 13 years, prosecutors advised her to resolve the issue directly with her former husband as it was an issue for couples.

Between June and August 2005 Marcela Blumenkron filed six complaints with the public prosecutor's office for sexual harassment, intimidation and death threats. On one occasion, she says she was told: "When you come with a bruise, we'll do something". When she asked why her former husband had not at least been interviewed, she was told they could not find him.

Two weeks before the attack, prosecutors ordered the former husband's arrest after Marcela Blumenkron refused to leave their office unless they took action. When he was taken into custody, Marcela Blumenkron says she saw the local police chief joking with her former husband and she was later told: "Don't be afraid, he's not going to do anything to you". He was released shortly after she left the office.

After the stabbing, the former husband was arrested and prosecuted for attempted murder; no charges were brought for years of threats and sexual harassment. He was sentenced to 10 years in prison and ordered to pay damages and Marcela Blumenkron's hospital bills. However, he was declared insolvent and she has not received any compensation from her ex-husband or the state. Marcela Blumenkron receives a small incapacity benefit. Her former husband has filed an appeal against the length of his sentence; this was pending before the courts at the time of writing.

Marcela Blumenkron told Amnesty International that she feared for her safety when he is released from prison as she believes he will try to kill her. The authorities have not yet made a commitment to ensure her protection once he is released.

## 5/CONCLUSIONS AND RECOMMENDATIONS

According to official studies, all forms of violence against women, including violence in the family, remain widespread in Mexico. The Mexican government has recognized the major challenge it faces in addressing this form of discrimination against women. It has made a commitment to implement the recommendations of various international human rights bodies and to meet its obligations under international human rights law regarding women's rights.

Legal and institutional steps have been introduced to improve the prevention and punishment of violence against women. These are gradually being adopted across the country, to a greater or lesser extent.

This report shows there is still insufficient understanding or acknowledgement by many senior officials, particularly at state level, that violence against women constitutes a serious human rights violation and that the state has a responsibility to take appropriate steps to prevent it. This is particularly true of violence against women by intimate partners, in the family or in the home, which is still often wrongfully portrayed as a private matter

Amnesty international found that this lack of understanding may in part explain, but is not the sole reason for, the fact that on many occasions the duty to protect survivors of violence in the family and their dependents is being underestimated or is given insufficient consideration. Failure to respond in an effective and timely manner frequently exposes women to greater danger. Discrimination against women is another underlying reason why complaints of violence against women frequently do not receive the attention required under both domestic and international law.

Amnesty International welcomes the 2007 General Law on Women's Access to Life free from Violence and accompanying legislation as a positive advance. It is now vital that this is backed up with political commitment, resources, training and accountability to ensure gender perspectives are effectively integrated into the policies and activities of key institutions.

The obstacles to justice and security identified in this report apply particularly to women who are victims of violence in the family. However, they are also relevant to other forms of gender-based violence, such as that which occurs in the community, in workplaces or in schools. The UN Model Procedures and the analysis of the Inter American Commission on Human Rights offer a road map for effective improvements in the performance of law enforcement and judicial institutions, particularly at state and municipal level.

Amnesty International found that state authorities often encourage conciliation processes between victims and offenders in place of criminal prosecutions, and as a result women and their dependents may be placed at greater risk. It is vital that there is full review of the use of conciliation processes to prioritize the safety of the woman and their dependents and ensure conciliation is not promoted as a substitute or replacement for judicial investigations. The organization also found that medical examinations often do not document adequately the physical and psychological evidence associated with violence against women in the home, undermining investigations and prosecutions. Improving access to high quality gender-sensitive medical examinations for women who have been victims of violence is crucial to ending impunity and increasing their protection.

Major reforms to the criminal justice system which are beginning to take place across the country offer important opportunities for strengthening measures to investigate and prosecute violence against women. However, steps need to be taken to ensure these reforms do not also encourage prosecutors to seek conciliation via alternative resolution mechanisms between victim and perpetrator in serious gender-based crimes of violence, including sexual violence.

Turning legal reforms into practical advances requires action from both federal and state governments to ensure that sufficient budgets are allocated to implement the new legislation protecting women's rights and that the reforms are diligently enforced. All authorities must take the lead in moving beyond broad statements of intent to practical measures to protect women's rights.

There is an urgent need to undertake a full and impartial evaluation of the effectiveness of the institutions involved. Such an evaluation requires the collection, analysis and publication of reliable data and is needed to form the basis of programmes to enhance reporting and prosecution rates as well as ensuring the protection of those at risk.

The challenge that faces all levels of government in Mexico is to ensure that new legislation and accompanying measures remove the barriers women face in accessing their rights in order to guarantee them safety, justice and reparations.

## RECOMMENDATIONS

Amnesty International calls on federal, state and municipal authorities to implement Amnesty International's 14-Point Programme for the Prevention of Domestic Violence in order to ensure women's safety, protection and autonomy, as well as their physical, mental and social wellbeing in the aftermath of suffering abuse.<sup>66</sup>

### **Condemn domestic violence**

State officials and political leaders at every level, national, district and local, should publicly and consistently condemn violence against women in the family, highlighting its gravity. They should acknowledge that domestic violence is a human rights violation, and therefore a public concern, not a private matter. Officials may not invoke customs, culture, traditions or religion to evade their responsibility to eliminate violence against women.

### **Raise public awareness of violence against women**

Widespread public awareness campaigns should be launched in schools, colleges, citizens' forums and workplaces to denounce violence against women, to remove the stigma from women targeted for violence, to encourage survivors to seek redress and to combat prevailing discriminatory social attitudes against women. All available media should be used, including the press, the internet, lectures and debates, and the campaigns should involve community leaders, municipal politicians, journalists and civil society. All information should be easily accessible and available in local languages.

### **Use the education system to challenge prejudice**

Educational materials should be developed and incorporated into curriculums at all levels of the education system, aimed at preventing violence against women and challenging ideas that regard such violence as acceptable. Teachers, lecturers and other education workers should be part of the effort to overcome prejudices and stereotypes that confine women and girls to subordinate roles and contribute to violence against women.

### **Abolish legislation that discriminates against women**

All laws, including criminal, civil, family, housing and land laws, should be reviewed to ensure that they comply with human rights principles. Any laws, regulations, or procedures that discriminate against women or that allow such discrimination to persist should be reformed, as well as any laws that facilitate or perpetuate violence against women. Legislation and regulations on women's access to a life free from violence should clearly identify responsibilities and penalties for officials who fail to carry out their duties with due diligence.

### **Ensure violence against women is treated as a criminal offence**

Ensure that all forms of violence against women in the family are treated in law and practice, as human rights violations and criminal offences, that such acts are investigated, prosecuted and punished in accordance with the gravity of the crime, and that victims receive appropriate reparations. No matter where in a country a woman lives, her complaint should be pursued with equal determination and thoroughness.

### **Investigate and prosecute complaints of violence against women in the family**

Ensure that appropriate authorities provide a safe and confidential environment for women to report violence against them in the home, that registration of all complaints of such violence is mandatory, and that all such complaints are promptly, impartially and effectively investigated. When there is sufficient admissible evidence, suspects should be prosecuted in

accordance with international standards for fair trial, while ensuring that sentences are commensurate with the gravity of the crime. If a case is dropped, the reasons should be made public.

#### **Remove obstacles to prosecutions for violence against women in the family violence**

Investigate why reporting, prosecution and conviction rates for violence against women in the family are so low, and tackle obstacles and shortcomings identified by these investigations. Implement 1998 UN Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. Protocols should be developed and implemented on gathering and assessing evidence, including psychological examinations and autopsies, to ensure that all evidence of gender violence, including sexual violence, is adequately gathered, stored and analyzed.

A directive should be issued prohibiting officials from requesting that victims deliver a summons letter to their aggressor.

Procedures for conducting conciliation or mediation services should be reviewed nationwide to ensure that women are not placed in increased danger or pressured to pursue such proceeding in place of a criminal prosecution.

#### **Provide compulsory training on violence against women in the family for officials**

Fund and implement compulsory training programmes for officials – including police, lawyers, judges, forensic and medical personnel, social workers, immigration officials and teachers – to ensure a gender perspective is fully integrated into procedures for identifying cases of violence against women, ensuring the safety of survivors and collecting, safeguarding, evaluating and presenting evidence.

#### **Provide adequate funding**

Allocate adequate funding to programmes to address violence against women in all sectors including the criminal justice system, education, social services, health and housing, to ensure that assistance is equally available and of comparable quality throughout the country.

Federal, state and municipal authorities should ensure funding is sufficient to allow effective implementation of legislation protecting women from violence, and to provide necessary support and rehabilitation measures for survivors. Funding should also ensure evaluation of the impact and implementation of measures to guarantee women's access to justice and protection.

#### **Provide places of safety for women fleeing violence**

Fund and extend the coverage of sufficient temporary shelters for women, without compromising their privacy, personal autonomy and freedom of movement. Such places should support and assist women's physical and mental recovery, and help them to access suitable, safe housing in the longer term in accordance with best practices.

All states should develop effective emergency response measures to reports of violence against women and reports of women going missing.

#### **Provide support services and legal advice for women**

Fund and create services for women who have suffered domestic violence, in co-operation with civil society organizations as appropriate, so that they can access the criminal and civil justice systems, including free legal advice when necessary on divorce, child custody and inheritance. Ensure that they have access to adequately funded health-care and support



services, including counselling. Services should be culturally appropriate and provided in a language that is accessible to the women using them.

Finalize and implement the replacement to Directive 190 (NOM-190-SSA1-1999) on the provision of health services for cases of domestic violence. The replacement directive (NOM-046-SSA2-2005) should address all forms of violence against women, including sexual violence. It should incorporate a mandatory offer to provide voluntary, legal and free termination of a potential pregnancy for all victims of sexual violence.

#### **Reduce the risks of armed violence**

Remove all firearms from homes where incidents of domestic violence have been reported. Ensure that health and social workers include questions on the possession of guns in all demographic, health and social services surveys.

#### **Collect and publish data on violence against women**

Ensure that violence against women is fully reflected in official reports and statistics, that the collection of qualitative and quantitative data is standardized and disaggregated according to gender and other relevant factors, and that it is open to verification. Ensure that all relevant government departments collect and publish data and statistics on violence against women, that they share data, and that the data is used by policy makers in devising effective policies and programmes to address violence against women. Develop indicators to determine the effectiveness of key institutions at federal, state and municipal level, charged with the prevention, investigation and punishment of violence against women, particularly violence in the family.

#### **Let women know what they are entitled to**

Ensure that women experiencing violence have access to information about their rights and the services and support they are entitled to. In collaboration with civil society, a practical handbook for survivors and relatives should be designed and distributed, setting out their rights and how to ensure they are respected. The handbook should clearly detail the authorities' obligation to address violence against women, including civil and criminal remedies; the rights of the victim to receive protection; and information on how to file a complaint against those authorities that fail to meet these obligations. Police stations, health facilities and other state agencies should be required to publicize this information. All relevant agencies should be required to draw up, implement and monitor guidelines and procedures covering every stage of their response to cases of violence against women in the family, specifying what action is to be taken if these standards are not met.

Support the work of non-governmental human rights and women's rights organizations that provide assistance to women who are victims of violence and monitor the enforcement of new legislation to guarantee women's access to a life free from violence. Ensure that the recommendations of civil society to improve the enforcement of legal obligations are implemented.

## ENDNOTES

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<sup>1</sup> Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares, <http://www.emujeres.gob.mx/wb2/eMex/eMex> Encuesta Nacional sobre la dinamica de las re, visited 7 May 2008.

<sup>2</sup> Mexico is a federal republic composed of 31 states and the Federal District. There is a federal executive, legislature and judiciary. The Mexican Constitution sets out the relation between federal and state governments, which are “free and sovereign”, each with its own constitution, executive, legislature and judiciary. Each state also has its own law enforcement police, judicial police and public prosecutor’s office. State criminal codes establish proceedings and punishments for all offences that are not federal in nature. Federal offences are primarily international or inter-state crimes, particularly organized crime.

<sup>3</sup> The Federal Attorney General’s Office concluded in its special investigation into the killing of women in Ciudad Juárez over more than a decade that there was not a pattern of gender violence, only a number of cases of domestic violence and other largely unrelated killings of women.

<sup>4</sup> When Amnesty International interviewed one of the former special federal prosecutor’s investigating murders of women in Ciudad Juárez in August 2005, she stated that domestic violence could not be considered gender-based violence.

<sup>5</sup> Convention of Belém do Pará, Articles 1 and 7.

<sup>6</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, para 70, A/HRC/7/3, 15 January 2008.

<sup>7</sup> In 2000, the Human Rights Committee indicated that domestic violence can give rise to violations of the right not to be subjected to torture or ill-treatment under Article 7 of the International Covenant on Civil and Political Rights. In line with this statement, the Committee has mentioned the need for states to adopt specific legislation combating domestic violence, including legislation criminalizing marital rape. More specifically, it has called upon states to ensure that their justice systems incorporate restraining orders to protect women from violent family members, provide shelters and other support to victims, establish measures to encourage women to report domestic violence to the authorities, and offer “material and psychological relief to the victims”.

The Committee against Torture has also referred to the prevalence of domestic violence, and the urgent need to protect women by adopting specific legislative and other measures. The Committee has stressed the need to take action in cases where a woman is reportedly being confined against her will by members of her family and the importance of ensuring that fair standards of proof are required. See the report of the Special Rapporteur on torture and other

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cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008.

<sup>8</sup> See, for example, Article 2 of the International Covenant on Civil and Political Rights.

<sup>9</sup> See, for example, General Comment 31 of the Human Rights Committee, the expert committee that monitors states' implementation of the International Covenant on Civil and Political Rights. See also, Committee on the Elimination of Discrimination against Women, General Comment 19.

<sup>10</sup> Convention Belém do Pará Articles 7 and 8, Committee on the Elimination of Discrimination against Women, General Recommendation 19.

<sup>11</sup> United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, UN Doc. A/RES/52/86, 2 February 1998, <http://www.un.org/Depts/dhl/resguide/r52.htm>

<sup>12</sup> *Access To Justice For Women Victims Of Violence In The Americas*, IACHR, Organization of American States, January 2007, paras 123-237 (OEA/Ser.LN/II., Doc. 68). <http://www.iachr.org/women/Access07/exesummary.htm>

<sup>13</sup> CEDAW/C/MEX/CO/6, 25 August 2006, para 8.

<sup>14</sup> UN General Assembly Resolution, Intensification of efforts to eliminate all forms of violence against women, GA Res 61/143, 30 January 2007, para 8. <http://daccessdds.un.org/doc/UNDOC/GEN/N06/503/01/PDF/N0650301.pdf?OpenElement>

<sup>15</sup> Federal law to Prevent and Eliminate Discrimination (11 July 2003); General Law on equality between men and women (3 August 2006). Legislative advances at state level include: 32 federal entities now have laws to deal with, prevent and punish domestic violence and civil or family codes which recognize domestic violence as grounds for divorce. Twenty-nine states have made domestic violence a criminal offence (those which have not are Campeche, Querétaro y Tlaxcala) and 18 federal entities have made marital rape a crime (the 14 which have not are Campeche, Colima, Guerrero, Jalisco, Estado de México, Michoacán, Morelos, Nayarit, Quintana Roo, Sinaloa, Sonora, Tabasco, Tlaxcala y Zacatecas). Twenty-six states have made sexual harassment a criminal offence (those which have not are Campeche, Guanajuato, Quintana Roo, San Luis Potosí, Tamaulipas y Tlaxcala). Source: Inmujeres: [http://estadistica.inmujeres.gob.mx/documentos\\_download/PRESENTACIONLEYINMUJERES.ppt](http://estadistica.inmujeres.gob.mx/documentos_download/PRESENTACIONLEYINMUJERES.ppt)

<sup>16</sup> *Semanario Judicial de la Federación y su Gaceta*, 9a. Época; 1a. Sala; XXIII, Enero de 2006; Pág. 659, SCJN. The previous jurisprudence considered it to be the undue exercise of a man's right (Tesis: 1a./J. 10/94).

<sup>17</sup> For example, in some states the crime of domestic violence has yet to be made a criminal offence and in others such as Queretaro, the seduction by deception of a minor who is a virgin

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and honest (estupro) remains a lesser offence where the perpetrator can avoid punishment by marrying the victim.

<sup>18</sup> Federal offences are usually only those considered to be connected to organized crime activities, or where there are inter-state or cross-border aspects or where the perpetrator is believed to be a federal agent.

<sup>19</sup> The overall murder rate was 8.85 murders per 100,000; 2.28 women per 100,000 and 15.48 men per 100,000. "Violencia feminicida en la Republica Mexicana"; Comisión Especial para conocer y dar seguimiento a las investigaciones relacionadas con los feminicidios en la republica mexicana y a la procuración de justicia vinculada; Congreso de la Unión, Cámara de Diputados, LIX legislatura.

<sup>20</sup> Hombres y Mujeres en México, 2007, P442, Instituto Nacional de Estadística, Geografía e Informática,  
[http://www.inegi.gob.mx/prod\\_serv/contenidos/espanol/bvinegi/productos/integracion/sociodemografico/mujeresyhombres/2007/MyH\\_2007\\_6.pdf](http://www.inegi.gob.mx/prod_serv/contenidos/espanol/bvinegi/productos/integracion/sociodemografico/mujeresyhombres/2007/MyH_2007_6.pdf)

<sup>21</sup> <http://info4.juridicas.unam.mx/ijure/tcfed/151.htm?s=>

<sup>22</sup> National Development Plan, Strategy 5.4,  
<http://pnd.calderon.presidencia.gob.mx/index.php?page=procuracionjusticia>

<sup>23</sup> *Spain: More than words -- Making protection and justice a reality for women who suffer gender-based violence in the home* (Index: EUR 41/005/2005); *Albania: Violence against Women in the Family: "It's not her shame"* (Index: EUR 11/002/2006); *Belarus: Domestic violence - more than a private scandal* (Index: EUR 49/014/2006); *Jamaica: Sexual violence against women and girls in Jamaica: "just a little sex"* (Index: AMR 38/002/2006); *Nigeria: A statement for the public hearing on the hearing on the domestic violence and related matters bill* (Index: AFR 44/010/2006); *Ukraine: Domestic Violence - Blaming the Victim* (Index: EUR 50/005/2006); *Hungary: Cries unheard – The failure to protect women from rape and sexual violence in the home* (Index: EUR 27/002/2007); and *Maze of injustice: the failure to protect Indigenous women from sexual violence in the USA* (Index: AMR 51/035/2007).

<sup>24</sup> The UN Declaration on Violence Against Women (Article 2) and the Belém do Pará Convention (Article 2) include psychological violence in their definition of violence against women.

<sup>25</sup> *In-depth study on all forms of violence against women*, Report of the Secretary-General, UN General Assembly, 6 July 2006, A/61/122/Add. 1, paras 167-70.  
<http://www.un.org/womenwatch/daw/vaw/violenceagainstwomenstudydoc.pdf>

<sup>26</sup> Amnesty International interview, Oaxaca, June 2006.

<sup>27</sup> Amnesty International interview, Sonora, November 2006.

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- <sup>28</sup> *Researching Violence against Women* – WHO, PATH 2005 – [http://www.path.org/files/GBV\\_rvaw\\_complete.pdf](http://www.path.org/files/GBV_rvaw_complete.pdf), page 22. See also *Violence against Women*, WHO consultation, 1996, [http://whqlibdoc.who.int/hq/1996/FRH\\_WHD\\_96.27.pdf](http://whqlibdoc.who.int/hq/1996/FRH_WHD_96.27.pdf), visited 20 February 2008.
- <sup>29</sup> *Researching Violence against Women* – WHO, PATH 2005 – [http://www.path.org/files/GBV\\_rvaw\\_complete.pdf](http://www.path.org/files/GBV_rvaw_complete.pdf), page 22. See also *Violence against Women*, WHO consultation, 1996, [http://whqlibdoc.who.int/hq/1996/FRH\\_WHD\\_96.27.pdf](http://whqlibdoc.who.int/hq/1996/FRH_WHD_96.27.pdf), visited 20 February 2008.
- <sup>30</sup> *In-depth study on all forms of violence against women*, Report of the Secretary-General, UN General Assembly, 6 July 2006, A/61/122/Add. 1, paras 173-7, <http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>, visited 11 February 2008
- <sup>31</sup> National Survey on Family Relations 2003 (Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares 2003), Instituto de la Mujer, November 2004, p94. [http://cedoc.inmujeres.gob.mx/documentos\\_download/100776.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100776.pdf)
- <sup>32</sup> National Survey on Family Relations 2006 (Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares 2006), [http://www.e-mujeres.gob.mx/wb2/eMex/eMex\\_Encuesta\\_Nacional\\_sobre\\_la\\_dinamica\\_de\\_las\\_re](http://www.e-mujeres.gob.mx/wb2/eMex/eMex_Encuesta_Nacional_sobre_la_dinamica_de_las_re), visited 7 May 2008.
- <sup>33</sup> According to the survey, 83 per cent of perpetrators of domestic violence were men and 17 per cent were women.
- <sup>34</sup> National Survey on Family Relations 2003 (Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares 2003), Instituto de la Mujer, noviembre 2004, Page 50. [http://cedoc.inmujeres.gob.mx/documentos\\_download/100776.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/100776.pdf)
- <sup>35</sup> National Survey of Violence Against Women (Encuesta Nacional sobre Violencia contra las Mujeres, ENVIM), Instituto Nacional de Salud Pública, Mexico City, 2003, p50, [http://www.mujerysalud.gob.mx/mys/doc\\_pdf/encuesta.pdf](http://www.mujerysalud.gob.mx/mys/doc_pdf/encuesta.pdf)
- <sup>36</sup> United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, UN Doc. A/RES/52/86, 2 February 1998
- <sup>37</sup> IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, para 141.
- <sup>38</sup> IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, para 149.
- <sup>39</sup> On 19 February 2007, the Morelos State Attorney General reportedly told the local newspaper, *El Sol de Cuernavaca*, that “Prostitution and infidelity are the principle reasons for the murder of women” (“La prostitución y la infidelidad es la principal causa por la que se han realizado los asesinatos contra las mujeres”). He subsequently retracted the statement.

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<sup>40</sup> The 7 February 2007 jurisprudence recognized the admissibility of evidence gathered by police, when acting without a search warrant, to enter a house to apprehend those in the process of committing a crime. 9a. Época; 1a. Sala; Semanario Judicial de la Federación y su Gaceta; XXVI, Agosto de 2007; Pág. 224.

<http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=171739&cPalPrm=&cFrPrm=>

<sup>41</sup> General Law on Health, Article 172, Social Assistance Law, Article 27.

<http://info4.juridicas.unam.mx/ijure/tcfed/22.htm?s=>

<sup>42</sup> National system for Integral Family Development, strategic objectives, website:

<http://dif.sip.gob.mx/dif/?contenido=16>

<sup>43</sup> For example, Law for prevention and assistance against interfamily violence in Morelos state, Article 23 <http://info4.juridicas.unam.mx/adproius/leg/18/461/default.htm?s=>

<sup>44</sup> Interview, Chiapas DIF, May 2006.

<sup>45</sup> *Access To Justice For Women Victims Of Violence In The Americas*, IACHR, Organization of American States, OEA/Ser. L/V/II. Doc 68, January 2007, para161.

<sup>46</sup> E/CN.4/2006/61, 20 January 2006, para53; CEDAW concluding observations, El Salvador. 20/03/2003 (Doc e la ONU: A/58/38) para257; *CEDAW concluding observations*, Colombia. (Doc de la ONU: CEDAW/C/COL/CO/6), para19.

<sup>47</sup> "Forensic medical examinations are not always helpful in establishing the facts because those who perform them are not trained in cases involving violence against women and the findings may simply be a physician's subjective interpretation". See, IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, para143.

<sup>48</sup> See, for example, Federal Criminal Code, Articles 288-293; Sonora Criminal Code, Article 243; Morelos Criminal Code, Article 121, Oaxaca Criminal Code, Article 271-277.

<sup>49</sup> Amnesty International has documented how this same categorization of injuries has been used by prosecutors to justify not pursuing allegations of torture, where the victim cannot provide evidence of serious lasting physical injuries. *Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system*, (Index: AMR 41/002/2007).

<sup>50</sup> *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, known as the Istanbul Protocol. <http://www.unhcr.ch/pdf/8istprot.pdf>

<sup>51</sup> *Access to Justice for Women Victims of Violence in the Americas*; IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, paras128 and 136.

<sup>52</sup> NORMA Oficial Mexicana NOM-190-SSA1-1999, Prestación de servicios de salud. Criterios para la atención médica de la violencia familiar. <http://www.salud.gob.mx/unidades/cdi/nom/190ssa19.html>

<sup>53</sup> Paulina, a minor, was raped and became pregnant. She was then denied her legal right to abortion. She subsequently won her case in the IACHR and the government agreed to take remedial measures. <http://www.cidh.org/annualrep/2007sp/Mexico161.02sp.htm>

<sup>54</sup> Steps to introduce the new Health Directive (NOM-046-SSA2-2005, Criteria for the medical Attention of family and sexual Violence and violence against women), began in 2005. However, it remained under discussion in government ministries at the time of writing.

<sup>55</sup> Novena Época; Primera Sala, Semanario Judicial de la Federación y su Gaceta XXV, Enero de 2007, Página: 173; Tesis: 1a./J. 69/2006; Jurisprudencia: Materia(s): Civil. <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nIus=173572&cPalPrm=DIVORCIO,&cFrPrm=%20>

<sup>56</sup> *Access to Justice for Women Victims of Violence in the Americas*; IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, para146.

<sup>57</sup> Interview with Sonora State Attorney General, November 2006.

<sup>58</sup> Interview with Deputy State Attorney General, Chiapas, June 2006.

<sup>59</sup> See Urgent Action 37/05 (AMR 41/004/2005), 16 February 2005, and follow-ups.

<sup>60</sup> *Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system*, (Index: AMR 41/002/2007); *Mexico: Oaxaca – clamour for justice* (Index: AMR 41/031/2007); *Mexico: Violence against women and justice denied in Mexico State* (AI Index: AMR 41/028/2006); *Mexico: "How can a life be worth so little?" Unlawful killings and impunity in the city of Reynosa* (Index: AMR 41/27/2006); *Mexico: Allegations of abuse dismissed in Guadalajara: reluctance to investigate human rights violations perpetuates impunity* (Index: AMR 41/034/2004); *Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (Index: AMR 41/026/2003); *Mexico: Unfair trials: Unsafe convictions* (Index: AMR 41/007/2003). Reports available on [www.amnesty.org](http://www.amnesty.org)

<sup>61</sup> The Sonora State Human Rights Commission is one of the few to have carried out an enquiry (in 2006) into the handling of official investigations in the murder of women, but did not find negligence.

<sup>62</sup> Political Constitution of the United States of Mexico, Article 113; <http://info4.juridicas.unam.mx/ijure/fed/9/114.htm?s=>

<sup>63</sup> Ley Federal de Responsabilidades de los Servidores Públicos, Article 77 bis, <http://www.diputados.gob.mx/LeyesBiblio/pdf/115.pdf>

<sup>64</sup> An exception to this is the case of Ciudad Juárez, where a special fund was created to assist victims and their families. However, this has not included official acknowledgement of the state's liability for failings. .

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<sup>65</sup> Ley General del acceso de las mujeres a una vida libre de violencia, Article 26. "Ante la violencia feminicida, el Estado mexicano deberá resarcir el daño conforme a los parámetros establecidos en el Derecho Internacional de los Derechos Humanos y considerar como reparación: **I.** El derecho a la justicia pronta, expedita e imparcial: Se deben investigar las violaciones a los derechos de las mujeres y sancionar a los responsables; **II.** La rehabilitación: Se debe garantizar la prestación de servicios jurídicos, médicos y psicológicos especializados y gratuitos para la recuperación de las víctimas directas o indirectas; **III.** La satisfacción: Son las medidas que buscan una reparación orientada a la prevención de violaciones. Entre las medidas a adoptar se encuentran: **a)** La aceptación del Estado de su responsabilidad ante el daño causado y su compromiso de repararlo; **b)** La investigación y sanción de los actos de autoridades omisas o negligentes que llevaron la violación de los derechos humanos de las Víctimas a la impunidad; **c)** El diseño e instrumentación de políticas públicas que eviten la comisión de delitos contra las mujeres, y **d)** La verificación de los hechos y la publicidad de la verdad".

<sup>66</sup> <http://www.amnesty.org/en/library/info/ACT77/012/2006>



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Index: AMR 41/021/2008  
August 2008

