



To: Health Professional Network
From: Health and Human Rights Team
Date: 15 August 2008

Health Professional Action
Women's struggle for safety and justice: Violence in the family in Mexico

Please see AI report, AMR 41/021/2008 and accompanying action circular, AI Index AMR 41/032/2008.

Background

Violence against women, in the community and at home, is a key concern in Mexico. Mexico's federal government has largely acknowledged the extent of the problem, but effective mechanisms to combat it have yet to be developed. At the state level there is a failure to sufficiently recognise violence against women in the home as a human rights problem or to acknowledge the responsibility of the state to prevent and punish these offences effectively as well as to provide a safe environment for women to come forward to report violence. Amnesty International is campaigning for the federal and state authorities to adopt the measures required to comply with the principles of new federal legislation on violence against women and, in this way, to make a positive change in the lives of women survivors of domestic violence in Mexico.

The campaign is mainly focused on the issue of access to justice for women who have suffered violence in the family in two states: Morelos and Sonora. However, as the campaign is based on the new federal legislation, it also aims to produce a positive effect on other states by promoting models of good practice for other Mexican states to follow.

Medical evidence

Whether or not a criminal investigation into any report of domestic violence takes place depends in large part on the medical evidence gathered by the public prosecutor's office.¹ According to the criminal codes in force around the country, the seriousness with which the offence is regarded depends on an assessment of the lasting impact of physical injuries suffered by the woman. 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

¹ "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.

loss of the use of limbs or faculties, legislation sets out a sliding scale of increasingly severe fines and prison terms.²

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 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.³

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 report violence 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 through to investigation and trial.

Even when survivors are examined by medical professionals, these doctors may not have the specialist 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 rape⁴. 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 Inter-American Commission on Human Rights (IACHR) has observed that "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."⁵

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 were experts 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.

The role of 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

² See, for example, Federal Criminal Code, Articles 288-293; Sonora Criminal Code, Article 243; Morelos Criminal Code, Article 121; Oaxaca Criminal Code, Articles 271-277.

³ 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. See Amnesty International report "Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system", AI Index: AMR 41/002/2007.

⁴ See "Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", known as the *Istanbul Protocol*. Available online at: <http://www.unhchr.ch/pdf/81stprot.pdf>

⁵ See *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser. L/V/II. Doc 68, 20 January 2007, paras 128 and 136.

professionals working in the national health system⁶. 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 states that the patient should receive legal services, forensic medical services and social assistance. It also requires medical professionals to treat domestic and sexual violence as a public health and legal issue. Furthermore it 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.⁷ However, at the time of writing the Ministry of Health had not issued a revised Directive.⁸

The case of Julia

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 said 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 following 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.

Recommended action

⁶ 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>

⁷ 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. See: <http://www.cidh.org/annualrep/2007sp/Mexico161.02sp.htm>

⁸ 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.

Please write to the authorities at the federal level below

explaining that you are a health professional concerned about human rights;
expressing concern about the situation faced by women victims of violence in the family in Mexico;
referring to AI's report, using its full title and publication date (1 August 2008);
urging the authorities to take all necessary steps to ensure the immediate nationwide implementation of the General Law on Women's Access to a Life Free from Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*);
calling on the authorities to finalize and implement the replacement to Directive 190 (NOM-190-SSA1-1999) on the provision of health services for cases of domestic violence. 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;

Please write to the authorities at the state level below

explaining that you are a health professional concerned about human rights;
expressing concern about the situation faced by women victims of violence in the family in Mexico;
referring to AI's report, using its full title and publication date (1 August 2008);
calling on the authorities to develop protocols on the gathering and storage of medical evidence, to ensure that valuable proof of violence against women in the family is not lost;
urging the authorities to ensure that all medical staff carrying out examinations on women victims of violence in the family are properly trained in gender-sensitive approaches;
calling on the authorities to abolish the requirement that women must show evidence of serious physical injury before their case is considered, and ensure that women are granted access to their own case files;
asking that the authorities take action to promote an extension of the network of shelters and the provision of an adequate budget to do so;
calling on the authorities to ensure that special attention will be paid to gathering psychological evidence of trauma.

Addresses

At the federal level:

Minister of Health

José Ángel Córdova Villalobos
Secretario de Salud
Secretaría de Salud
Lleja No. 7, 1er. piso, Col. Juárez, Del. Cuauhtémoc
México D.F., C.P.06600, MEXICO
Fax: (+52) 55 5553 7917
E-Mail: jcordova@salud.gob.mx
Salutation: Señor Secretario / Dear Minister

At the state level:

Sonora Health Minister

Dr. José Raymundo López Vucovich
Secretario de Salud Pública
Centro de Gobierno

Edificio Sonora 1er. Nivel Norte
Blvd. Paseo Río Sonora y Comonfort, C.P. 83280
Hermosillo, Sonora, MEXICO
Fax: (+52) 662 212 2335
E-mail: drlopezvucovich@salud.gob.mx
Salutation: Señor Secretario / Dear Minister

Morelos Health Minister

Dr. Victor Manuel Caballero Solano
Secretario de Salud
Secretaría de Salud
Callejón Borda No. 3, Planta Baja
Col. Centro, C.P. 62000
Cuernavaca, Morelos, MEXICO
Fax: (+52) 777 310 1778
E-mail: victor.caballero@morelos.gob.mx
Salutation: Señor Secretario / Dear Minister

COPIES TO:

[Colegio Medico de Mexico](#)

Fenacome
Hidalgo 1828 Pte. D-107
Colonia Deportivo Obispado
Monterrey, Nuevo León, MEXICO
Fax: (+52) 818 348 9507
E-mail: rcantum@doctor.com

President of the National Women's Institute

Lic. Rocío García Gaytán
Presidenta del Instituto Nacional de las Mujeres
Alfonso Esparza Oteo #119
Col. Guadalupe Inn, Del. Alvaro Obregon
CP 01020 México D.F., MEXICO
Email: mrgarcia@inmujeres.gob.mx
Fax: (+52) 555 322 4208
Salutation: Señora Presidenta / Dear President

Comisión Independiente de Derechos Humanos de Morelos

Calle Guerrero, num. 4, despacho 110, segundo piso
Centro, Cuernavaca, Morelos, MEXICO
Email: cidhmor@prodigy.net.mx

Nosotras Ciudadanas

Hermosillo, Sonora, MEXICO
Email: patyalonsor@hotmail.com

Please also send copies to Foreign Affairs offices and diplomatic representatives of Mexico accredited to your country.

If you receive no reply within six weeks of sending your letter, please send a follow-up letter seeking a response. Please send copies of any letters you receive to the International Secretariat, attention of Health and Human Rights Team, 1 Easton Street, London WC1X 0DW or e-mail: health@amnesty.org