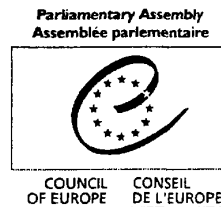


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**Disappearance and murder of a great number of women
and girls in Mexico**

Report
Committee on Equal Opportunities for Women and Men
Rapporteuse: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group

Summary

Since 1993, hundreds of women and girls, an estimated number of between 350 and 500, have been brutally murdered in the northern Mexican border State of Chihuahua. The exact number of victims is disputed but most of them were killed in or around the border town of Ciudad Juárez, others in the State capital of Chihuahua. An integrative approach is needed to understand what all these crimes have in common. The phrase "femicides" has been coined to describe these murders which result from a climate of generalised violence and discrimination against women.

Following an initial phase of "denial", considerable efforts are now being made by the Mexican authorities on all levels (municipal, state and federal) to investigate the murders and disappearances of women in Ciudad Juárez and Chihuahua and bring to justice both the authors of the crimes and those officials who initially botched the investigations and perverted the course of justice, as well as to repair the social fabric of these cities and to fight violence against women state- and nationwide.

However, despite a clearly discernible political will, a general commitment and the efforts by the state and federal authorities, too many cases remain unsolved and too many victims unidentified. It is urgent to move from audit to action in order to end the climate of impunity for gender-based violence still prevalent in the region. Each branch of government has to face up to its responsibilities and tackle urgent tasks to produce rapid results and thus regain the confidence of victims' families and of civil society as a whole.

The Parliamentary Assembly should support the Mexican authorities, in particular the Mexican Congress and the Congress of the State of Chihuahua, in their endeavours and should express its readiness to offer its assistance.

The Assembly should also recommend that the Committee of Ministers set up a co-operation and assistance programme with its observer state of Mexico in order to promote judicial and prosecutorial reform and a culture of respect for human rights and the equality of women and men.

I. Draft resolution

1. Since 1993, hundreds of women and girls, an estimated number of between 350 and 500, have been brutally murdered in the northern Mexican border State of Chihuahua. The exact number of victims is disputed but most of them were killed in or around the border town of Ciudad Juárez, others in the State capital of Chihuahua. Many were abducted and sexually abused before they were killed and their bodies dumped in the desert; others became victims of domestic violence taken to the extreme; a few seem to have been involved in the drugs trade and revenge killings. Some were *maquiladoras* workers, others students and schoolchildren; many were young mothers; most were poor and aged between 13 and 30. In addition to the hundreds of women and girls killed, many disappeared (presumed abducted) and are still missing.
2. An integrative approach is needed to understand what all these crimes have in common and what makes them so different from the murders of women committed in every country all over the world every day. These women were killed because they were women. The Mexican Chamber of Deputies "Special Commission to study and review the investigations of murders perpetrated against women in Mexico and promote justice for the victims of femicide" has coined the phrase "femicides" to describe these murders which result from a climate of generalised violence and discrimination against women, resulting in an attitude that "women are expendable and can be routinely used, abused and discarded".
3. The initial reaction to the "femicides", particularly at the state level, was "denial": neither were these crimes adequately investigated and punished, nor were the root causes of the violence against the women in Ciudad Juárez and Chihuahua addressed which led to a climate of impunity. Following campaigns by victims' families and non-governmental organisations, the problem was widely reported on in the national and international media and seeped into Mexico's national consciousness, prompting action especially by the federal authorities, who submitted themselves to international reviews. Considerable efforts are now being made by the Mexican authorities on all levels (municipal, state and federal) to repair the social fabric of these cities, to fight violence against women state- and nationwide and to investigate the murders and disappearances of women in Ciudad Juárez and Chihuahua and bring to justice both the authors of the crimes and those officials who initially botched the investigations and perverted the course of justice.
4. In the past few months, arrests have been made in some of the cases, including in "cold" cases going back several years, thanks to a co-ordinated prosecutorial effort on the level of the State of Chihuahua and on the federal level. The Parliamentary Assembly particularly welcomes the election, by the Congress of the State of Chihuahua, of a new Prosecutor General and a new Director of the State Women's Institute, both of them women, and approves of the way they have reoriented the policies and priorities of the institutions they head so far. The Assembly also welcomes the creation of the post of Under-Prosecutor General for human rights of the State of Chihuahua.
5. The Assembly further salutes the efforts of the Special Commissions set up both by the Mexican Senate and the Mexican Chamber of Deputies to propose constitutional and legislative reform to tackle both the immediate problem and its root causes. The constitutional reform bill tabled by the President of Mexico was made available to the Assembly and the European Commission for Democracy through Law ("Venice Commission") delivered an opinion on some of its aspects. The Assembly supports the work of the Special Federal Commissioner and the Special Federal Prosecutor (also women) and would wish to see their respective competences enlarged and more funds put at their disposal.
6. However, despite a clearly discernible political will, a general commitment and the efforts by the state and federal authorities, too many cases remain unsolved and too many victims unidentified. It is urgent to move from audit to action in order to end the climate of impunity for gender-based violence still prevalent in the region. Each branch of government has to face up to its responsibilities and tackle urgent tasks to produce rapid results and thus regain the confidence of victims' families and of civil society as a whole.
7. The Parliamentary Assembly supports the Mexican authorities, in particular the Mexican Congress and the Congress of the State of Chihuahua, in their endeavours and expresses its readiness to offer its assistance.
8. At the same time, the Assembly calls upon:

- i. the Mexican Congress to:
 - a. complete the envisaged constitutional and legislative reforms to fight past or future impunity for such grave human rights violations and to ensure that prosecutors efficiently, rapidly and transparently investigate every case of "feminicide", if necessary at the federal level, making possible the punishment both of the authors of the crimes and of officials who have perverted the course of justice, in accordance with the opinion of the Venice Commission;
 - b. give positive consideration to the proposal of the Chamber of Deputies' "Special Commission to study and review the investigations of murders perpetrated against women in Mexico and promote justice for the victims of feminicide" to put the crime of "feminicide" onto the Mexican federal statute books and prepare a nation-wide diagnostic study on the prevalence of gender-based violence and "feminicide";
 - c. ensure that reparation is made available in accordance with transparent and non-discriminatory criteria to all the families of victims of "feminicide" in Ciudad Juárez and Chihuahua from the reparation fund which has been set up with a generous contribution from the Mexican Congress and oversee the payouts;
 - d. consider judicial and prosecutorial reforms to promote equality of treatment (prosecution/accused) and the rapid, impartial and transparent investigation of torture allegations;
 - e. support programmes and campaigns aimed at preventing and fighting gender-based violence, including in schools;
 - ii. the Congress of the State of Chihuahua to:
 - a. rapidly move to the adoption of the law on transparency and access to information;
 - b. consider adding the crime of "feminicide" onto the state statute book;
 - c. support the Chihuahua State Institute for Women, especially its programmes aimed at preventing and fighting gender-based violence.
9. The Assembly offers to associate the Mexican Congress and the Congress of the State of Chihuahua with the pan-European parliamentary campaign against domestic violence to be launched in 2006.
10. The Assembly resolves to study the concept of "feminicide" and, in co-operation with the Mexican Congress, to explore how this concept may usefully be applied in the European context, including its possible introduction into European Criminal Law.

II. Draft recommendation

1. The Parliamentary Assembly refers to Resolution °... (2005) on the disappearance and murder of a great number of women and girls in Mexico.

2. The Assembly recommends that the Committee of Ministers set up a co-operation and assistance programme with its observer state of Mexico, possibly financed by voluntary contributions, in order to :

i. promote judicial and prosecutorial reform (promoting, for example, equality of treatment prosecution/accused; preventing torture and efficiently investigating allegations of torture and ensuring an effective investigation of crimes while respecting the rights of the victims and the defendants);

ii. promote a culture of respect for human rights and the equality of women and men (for example, campaigning against domestic violence and other forms of violence against women while ensuring equal participation of women and men in decision-making and fighting discrimination against women).

3. The Assembly recommends that the Committee of Ministers, in the framework of this co-operation and assistance programme, take some specific measures, including :

i. organising exchange and training programmes for Mexican prosecutors, members of the judicial police and forensic experts in the area of human rights and gender sensitivity;

ii. offering legislative expertise in key areas, such as legislation on "feminicides" and domestic violence;

iii. helping to finance

a. shelters for victims of domestic violence and the training of their staff;

b. equipment for the new forensic laboratory to be established in Ciudad Juarez.

III. Explanatory memorandum by Mrs Vermot-Mangold, Rapporteuse

I. Introduction

1. In February 2004, 54 Assembly members led by Mrs Agudo from Spain tabled a motion for a recommendation on the disappearance and murder of a great number of women and girls in Mexico (Doc. 10088). In 2004, the Assembly's Bureau asked the Committee on Equal Opportunities for Women and Men to prepare a report on this subject, and the Committee appointed me Rapporteuse shortly thereafter. A few weeks later, on 29 April 2004, the Committee held an exchange of views with the Chairman and members of the Mexican observer delegation to the Assembly. On that occasion, the delegation extended an invitation for me to go on a fact-finding visit to Mexico. Following the Bureau's authorisation, I carried out this visit on 9-13 August 2004 (the programme figures in Appendix I). The visit was excellently organised by the Mexican parliament and its Secretariat, and I would like to extend my heartfelt thanks for the warm welcome I received and for the efficiency with which my visit was organised.

2. During the October 2004 part-session of the Assembly, I presented a first introductory memorandum to the Committee. In it, I tried to draw up a reasonably accurate picture of the situation, starting with outlining the facts (the disappearances and murders of women and girls during the past 10 years in a certain Mexican region), detailing the efforts of both the state and federal authorities to address the problems (including where they have failed), and the evaluations of NGOs, victims' families and international organisations. Finally, I presented my impression of the situation and tried to sketch the possible help the Council of Europe could provide to the Mexican government and parliament to further improve the situation and ensure that violence against women in Mexico is fought effectively.

3. The memorandum was very well received by the Mexican parliamentary observer delegation, who once more invited me to come to Mexico. At its meeting in Paris on 14 December 2004, the Committee on Equal Opportunities for Women and Men invited the Venice Commission to prepare an opinion on the question of constitutional reform in Mexico related to the distribution of powers between the federation and the states regarding the investigation and punishment of serious and systematic human rights abuses, as well as the investigation and punishment of the failings of officials involved in the investigation and prosecution of such crimes, if possible during its March 2005 meeting. In January 2005, the outgoing President of the Assembly went on an official visit to Mexico, where he raised, *inter alia*, the concerns and the hopes for co-operation expressed in my memorandum. During the January 2005 part-session, I presented a revised and updated introductory memorandum to the Committee and accepted the invitation of the Mexican parliamentary observer delegation to return to the country.

4. This visit took place from 18 to 22 April 2005 (the programme figures in Appendix II), and was, once again, excellently organised by the Mexican parliament and its Secretariat, whom I would like to thank very much. In Mexico City and Chihuahua I met with all relevant actors and was able to both listen to their efforts and concerns and present the point of view of our Committee, as well as that of the Venice Commission. In fact, the Venice Commission adopted the opinion we had requested at its 62nd Plenary Session in Venice on 11-12 March 2005 (CDL-AD (2005) 006, reproduced as Appendix III).

5. I am submitting this report for adoption within the Committee on 28 April 2005, with a view to its debate in the Plenary Assembly during the June 2005 part-session, to enable members of the Mexican parliamentary observer delegation to take part in it.

II. Brief presentation of the facts

6. Since 1993, hundreds of women and girls have been brutally murdered in the northern Mexican border State of Chihuahua. Most of them were killed in or around the border town of Ciudad Juárez, others in the state capital of Chihuahua. Many were abducted and sexually abused before they were killed and their bodies dumped in the desert; others became victims of domestic violence taken to the extreme; a few seem to have

been involved in the drugs trade and revenge killings. Some were *maquiladoras*¹ workers, others students and schoolchildren; many were young mothers; most were poor, and aged between 13 and 30. In addition to the hundreds of women and girls killed, many disappeared (presumed abducted) and are still missing.

7. You will have noticed that I have not mentioned any figures. This is because – at least until August last year – there seemed to be a “war of figures” going on – sometimes, more energy seemed to be expended on trying to grasp the scope of the problem, and attempting to fit these murders and abductions into tidy statistics, than on actually solving these crimes, or preventing more of the sort! Of course, numbers are relevant to a certain extent: what made the Ciudad Juárez murders of women visible in the end was their sheer overwhelming number. Also, every victim deserves to be counted (and her story told²). The quest to know the exact number of these murders and abductions, however, easily becomes counterproductive, as the statistics depend on which “type” of murder and abduction is included, and which is not (e.g. limited to Ciudad Juárez or including the town of Chihuahua, federal or state crimes, involving sexual violence or not, committed by strangers or family members, committed with which type of motive, case at which state of investigation/court proceedings, etc.).

8. Thus, different authorities (both state and federal) and NGOs (including those founded by victims’ families) supplied vastly differing figures³ to me last year⁴. Even during my most recent visit last week, I was presented with a variety of different figures, of which the most authoritative seem those provided by the Special Federal Prosecutor, Ms María López Urbina⁵. I have decided to keep out of the numbers game, and simply stick to the well-known fact that hundreds of women and girls have been murdered or have disappeared in Ciudad Juárez and Chihuahua during the past twelve years, because, unfortunately, the murders and disappearances continue to this day.

9. In fact, I think that an integrative approach is needed to truly understand what all these crimes have in common, and what makes them so special and so different from the hundreds of murders of women which were committed in every country all over the world in the last decade: These women were killed **because they were women**. I understand that it was the current Chairperson of the Chamber of Deputies Commission on the progress of investigations into the cases of murdered women in Ciudad Juárez, Ms Marcela Lagarde, who first used the phrase “**femicidios**” to describe these murders – a phrase which has been taken up in Special Commissioner Morfín’s excellent report⁶, and which I wholly agree with. Basically, all these women were attacked and killed in Ciudad Juárez and Chihuahua because of their gender⁷. The Mexican Chamber of

¹ Workers in assembly plants for export products, so-called *maquiladoras*.

² Unfortunately, I am unable to present individual cases in the short space available to me here. However, many NGOs have published detailed accounts of various individual cases, such as “Justice for our Daughters” (in Spanish) and Amnesty International (in Spanish and English). One of the most impressive compilations of cases is a study (in Spanish and English) carried out by the “Eighth of March Group of Ciudad Juárez” on murders of women in the city 1993-2004, based on accounts in the “*Diario de Juárez*” newspaper.

³ For example: Mexican Commission for the Promotion and Defence of Human Rights (NGO) (2004) – over 400 murdered; Amnesty International (NGO) (2003) – over 370 murdered, over 70 still missing; Federal Mexican Government (2003) – 328 murdered, 44 missing; Chihuahua State Women’s Institute (2003) – 321 murdered; Special Federal Prosecutor’s Office (2004) – 295 murdered, 34 missing, National Human Rights Commission (CNDH) (2003) – 263 murdered, 4,581 missing.

⁴ The figures for abductions are particularly tricky: Thus, for example, Mr Plascencia Villanueva from the National Human Rights Commission (CNDH) explained to me how there had been 4,581 cases of missing women and girls registered in Ciudad Juárez alone, but that only 300 files existed on these disappearances. Of these, only 30 had seemed to follow the same *modus operandi* as the known abductions which ended in murder.

⁵ As of 19 April 2005, the office of the Special Federal Prosecutor provided the following figures: 323 cases of murder of women and girls transferred to her by the State Prosecutor’s Office, involving 349 victims, with 26 cases dating from 2004 and 2005; 42 cases of disappeared women, of which ten have been found alive and one has been found dead (32 women still missing); 27 non-identified bodies.

⁶ *Comisión para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez: Informe de gestión, noviembre 2003-abril 2004.*

⁷ To illustrate my point, I would like to cite just a few of the examples from the “Eighth of March Group of Ciudad Juárez” on murders of women in the city 1993-2004, based on accounts in the “*Diario de Juárez*” newspaper:

“Case No. 5 [1993]: May 5th. *Identity unknown*. Age 35. Five months pregnant, dark complexion, dark hair, short pants, barefoot. Raped and strangled. Attacker unknown. Occurred near Satélite on the way to Ortiz Rubio.”

“Case No. 9 [1993]: June 11th. *Identity unknown*. Age unknown. Was found partly naked, wearing a jean skirt, white t-shirt and black tennis shoes. Raped and tied to a stake, stabbed with a fracture in the skull. She was found on the playground of AltaVista High school on the way to dirt road at the edge of Rio Grande.”

Deputies Commission has, in the meantime, changed its name to the "Special Commission to study and review the investigations of murders perpetrated against women in Mexico and promote justice for the victims of femicide" and has validated the definition of "femicides" as murders of women and girls which result from a climate of generalised violence and discrimination against women, having in common an attitude that "women are expendable and can be routinely used, abused and discarded"⁸.

10. Everyone admits that the social fabric of these two cities – but especially of Ciudad Juárez – is all but in tatters. The municipality of Ciudad Juárez is Chihuahua State's "gateway to the north": Heavily populated (more than 1.3 million inhabitants), it has profited from its proximity to the USA and is one of the bases of the *maquiladoras* industry. However, it has attracted far more migrants than it can absorb, which has led to slums of the most abject poverty springing up on the outskirts of the city, practically in the desert. As the Director General of the Municipal Institute for research and planning of Ciudad Juárez, Mr Siquieros, explained, the city simply cannot keep up with the demand for improved public lighting, electricity, water, sanitation, paving, schools and leisure centres, as the size of its population doubles every 20 years. The city would need help from the state and federal authorities; but not much is forthcoming – it does not even receive its "fair" share of state funds (according to the size of its population), according to said Director General. As a result, Ciudad Juárez has, for example, the highest pupil/teacher ratio in secondary education in the State, and only 40% of the children aged 15 to 19 actually go to school. The majority of children this age, "work or are on the streets". 27.000 families live in the city's "high-risk"-zones.

11. Thus it is no surprise that with poverty and migration has come crime, including the lucrative drug trade and all kinds of trafficking. Special Federal Commissioner Ms Guadalupe Morfín Otero characterises the city as a zone where the rule of law has broken down. But it is not "big" crime which threatens women in Ciudad Juárez most: it is the pervasive disregard of women and their needs and rights. Women are worth nothing in this city's society. They are treated like goods, or worse – they can be used, abused, raped, beaten and finally killed and "thrown away" with impunity. Domestic violence against women is rife: as many women have found work in the *maquiladoras*, but their husbands or fathers have stayed unemployed, many men use violence as a "tool" to keep the "traditional" patriarchal power balance in the family. And this, despite the fact that even if the woman works (and her partner does not), it is she who has to continue to do all the housework and bring up the children, more often than not. Apparently, any pretext is good enough for beating your wife – from "acting disrespectfully" to "cooking a bad meal". As Marcela Lagarde has pointed out, the social and ideological climate of machismo and misogyny, of "normalised" violence against women, only makes these "femicides" possible.

12. This does not mean, however, that efforts are not being made by the Mexican authorities – at all levels – to both repair the social fabric of these cities and to fight violence against women state- and nationwide. On the contrary, after an initial phase of "denial" on the state level, when the violence against the women in Ciudad Juárez and Chihuahua and its root causes were not adequately addressed, considerable efforts are currently being made. Thus, for example, under the authority of and coordinated by the Special Federal Commissioner, Ms Guadalupe Morfín Otero, a number of measures are being taken in both cities to improve social, economic and security conditions. But let us start at the beginning, i.e. with the state level (Chapter III):

III. Efforts of the state and federal authorities

"Case No. 16 [1993]: December 15th. Yolanda Tapia. Age 50. Case # 25884/93. Victim was discovered in her house at # 54057th street. Deep wound in skull with piece of wood in vagina. Victim was murdered by her son, Jesús Roberto Gil Tapia."

"Case No. 4 [Different causes 2002]: January 19th. Lourdes Ivette Lucero Campos, 36 years, is found beaten to death and thrown in an irrigation canal. The killer declared he killed her because she offended him."

"Case No. 8 [Different causes 2002]: February 28th. Clara Hernández Martínez and her 4 children die in a fire set by an uncle. He declares he set the fire because she called him gay."

"Case No. 22 [Different causes 2002]: June 3rd. Lucila Silva Dávalos, 30 years, is violated and killed by her boyfriend because she refused to live together with him."

⁸The definition as presented by Federal Deputy Blanca Gámez, Secretary of the Special Commission on Femicide reads: "Femicide is the sum total of the various forms of violence against women due to their gender, class, ethnicity, age, ideology and politics, factors which come together and reinforce one another in a particular period or location., culminating in a series of violent deaths including homicides, fatal accidents and even suicides. These damages are inflicted on females by strangers as well as persons known to them, by rapists, by individuals or groups, and by casual and professional murderers. What these crimes have in common is the attitude that women are expendable and can be routinely used, abused and discarded. Femicide arises when the State provides no guarantees for women and fails to create conditions to safeguard their lives in the community, at home, in the workplace, on public transport or during recreational activities. Particularly when authorities fail to carry out their duties efficiently."

13. Mexico is a federation consisting of 31 "free and sovereign" States and the Federal District of Mexico City. Each of the 31 States and the Federal District have their own constitution and their own executive, legislative and judicial system – including their own penal codes. The states are divided into municipalities. It is thus necessary to briefly chronicle at least the efforts to solve these crimes and address the underlying causes undertaken by the top two levels of authority in Mexico: state and federal. In fact, in conformity with the principle of subsidiarity, it is the state level which is primarily responsible for the task of investigating and solving the crimes committed against women in Chihuahua, which is why I will treat it first.

A. State level

State Prosecutors' Office and police of Chihuahua

14. NGOs and victims' families alike have used two phrases again and again to describe the initial reaction of the state authorities responsible for registering, investigating and prosecuting murders and disappearances of women and girls in Ciudad Juárez and Chihuahua: woefully inadequate and criminally negligent. Perhaps the state authorities' initial reaction (or lack of it) is just a manifestation of the indifference of local society to the murders and disappearances of these poor, young women, which in a sense mirrors society's indifference to murders of male drug traffickers. It is thus probably not surprising that the state authorities used to emphasize their perception that these women "put themselves at risk", going out at late at night (to work in *maquiladoras*, as prostitutes, or to enjoy themselves) – even if this perception does not at all correspond to reality.

15. As a result of this attitude, in many of the murder cases, incompetence and/or wilful neglect (if not corruption and even, in a few cases, direct involvement in the crimes⁹) has dogged the state authorities' reaction to the events from the start (1993). Starting at the crime scene, vital evidence was not preserved or even destroyed¹⁰; forensic examinations (when carried out at all) were botched¹¹; important clues and leads were not followed up¹². Many of the case files are incomplete, some have been damaged, others seem to have been manipulated¹³. Even the clear falsification of evidence has been reported¹⁴. But in most cases, the state authorities seem simply not to have made much effort to solve the crimes, working slowly, sometimes stopping to investigate a case when the case file comprised only a few pages, sometimes arresting close friends or family members when pressure became too strong to "do something" - and allegedly torturing some of the alleged culprits into making false confessions¹⁵. Few of the crimes are actually solved¹⁶, and even less are successfully prosecuted in court. The Special Federal Commissioner Ms Guadalupe Morfín Otero stated quite bluntly last summer that there is good evidence that the State Prosecutor's Office does not intend to clear up the cases. At the same time, NGOs complained about the resulting impunity, which had fostered a climate of violence against women.

⁹ NGOs allege, for example, that an Under-Prosecutor in Chihuahua was involved in a child-prostitution ring, and that the (since dismissed, but not prosecuted) Prosecutor General of Chihuahua was involved in drug trafficking.

¹⁰ The case of Sylvia Arce was mentioned by NGOs as an example – 74 photos were found at the crime scene which have since disappeared, as well as an audiocassette with witness statements, letters, etc. Her mother accuses the prosecutors responsible for investigating the crime of complicity.

¹¹ See: Amnesty International : Intolerable killings, August 2003, p. 45-51. However, since November 2003 the Office for Forensic Services of the Prosecutor General of Chihuahua has a modern forensic science laboratory at its disposal, and a new forensic laboratory is being built in Ciudad Juárez.

¹² The Mexican Commission for the Promotion and Defence of Human Rights cites the case of 15 disappeared girls who were all enrolled in the same computer school as an example of a lead which has allegedly never been investigated. The National Human Rights Commission (CNDH) gives the examples of 12 murder victims who had their hands tied behind their backs in the same way, 10 whose nipples had been mutilated, and 5 whose organs had been taken out.

¹³ The National Human Rights Commission (CNDH) claims that a lot of evidence has disappeared and been falsified, with files destroyed or stolen.

¹⁴ For example, Amnesty International cites the case of Paloma Angélica Escobar Ledesma. Amnesty International: Intolerable killings, August 2003, p. 52-53.

¹⁵ The National Human Rights Commission (CNDH) claims that there are several obvious cases of torture of the accused. The Mexican Commission for the Promotion and Defence of Human Rights cites the case of Neyra Azucena Cervantes as an example.

¹⁶ The Special Commission of the Chamber of Deputies estimates the real "clear-up" rate of the murders and disappearances in Ciudad Juárez and Chihuahua to lie at no more than 20%, although the office of the Special Federal Prosecutor claims that 71.2% of the murders have been solved.

16. The current treatment of the cases of disappeared women and girls is not quite clear. While in Mexico last August, I received indications that to this day, despite the knowledge of all the murders which followed abductions, the state police is reluctant to even file a missing person report when a woman or girl goes missing, let alone start a search before at least one week has gone by, or open a criminal investigation¹⁷. I was told that few search operations seem to be organised all in all and that disappearances of women and girls were commonly dismissed out of hand, along the lines of – the girl will have run away from home, or the woman will have left her husband after a beating, or will have run off with her boyfriend.

17. We were told that, in the majority of cases, missing girls and women do return home of their own accord, but that, very often, the families do not inform the police of their return (and the police itself does not always seem to follow up these cases of its own accord). The data situation as regards missing persons is thus not very clear. In the last few years, a few women and girls reported missing have indeed been located by the police and/or prosecutors in other parts of the country¹⁸. But this task is made more difficult by the fact that no missing persons register for all of Mexico exists for the time being. The creation of such a register has, however, been proposed¹⁹. In addition, I have recently been informed that the treatment of cases of disappeared women and girls has greatly improved, and that each missing person report is handled like a kidnapping – i.e. immediately, as the first 24 hours after a disappearance are crucial to a successful investigation. The Special Federal Commissioner, Ms Morfín Otero, informed us that the “reappearance” of persons reported missing is now also routinely checked by the police, who take photographs to ensure it is really the same person.

18. For a long time, the state authorities tried to hide and minimise the scope of the problem in Ciudad Juárez and Chihuahua, and attempted to keep the matter out of federal jurisdiction²⁰. Several NGOs, including the Mexican Commission for the Promotion and Defence of Human Rights, thus consider the increased involvement of the federal authorities in tackling the problem – a relatively recent development – as progress in and of itself.

19. However, some movement has come into the question recently also on the state level. On 9 November 2004, the new Prosecutor General of the State of Chihuahua, Ms Patricia Lucila González Rodríguez, suspended the entire staff of the State Prosecutor's Office, announcing that “appropriate investigations will begin”, and naming two new Assistant Prosecutor Generals. She made an excellent impression on me last week, showing much determination to reorganise her office, including the forensic laboratories²¹, and to invigorate the pending criminal investigations (hoping to finalise the case reviews by end of 2005), relying far more on modern technical and criminological techniques than on confessions. Unlike her predecessor, she recognises the crimes as “femicides”, and admitted that there seemed to be two cases of confessions extracted under torture, to which she was applying the standards of the “Istanbul Protocol”²² in co-operation with the Federal Prosecutor's Office.

20. There are also signs that the co-operation of the State Prosecutor's Office with its federal counterpart, in particular the Special Federal Prosecutor, is improving. The Mixed Prosecutor's Office also seems to be working better, although it intervenes solely in cases of sexual crimes, a mandate which could usefully be enlarged, as not all “femicides” are of a sexual nature.

¹⁷ The Mexican penal codes do not classify “disappearance” as a crime, and often the state authorities refuse to open criminal investigations into the crime of “kidnapping” claiming insufficient evidence – even when clear indications exist that the women/girls did not leave of their own free will.

¹⁸ The Federal Prosecutor's Office claims to have located 11 of the – according to their tally - 42 missing women in Ciudad Juárez.

¹⁹ For example, by the National Human Rights Commission (CNDH) and by Senator Lucero Saldána, member of the Senate's Special Committee on the events in Ciudad Juárez.

²⁰ This is the evaluation not only of NGOs, but also of Senator Marta Tamayo, member of the Senate's Special Committee on the events in Ciudad Juárez.

²¹ She requested help from the Council of Europe in financing equipment for the new forensic laboratory to be built in Ciudad Juárez.

²² The Istanbul Protocol is the Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations (adopted in 1999).

21. This improvement in co-operation is a very important development, as due to the separation of powers (state/federal) in the penal sphere, only the State Prosecutor's Office can investigate the failings of its state-level officials, and ultimately bring those guilty of botching the investigations of the "femicides" in Ciudad Juárez and Chihuahua to justice. Ms González Rodríguez informed me that there were about 40 such officials (members of the State Prosecutor's Office and the state judicial police), most of whom had been suspended. Four such cases had already been transferred to the state courts – the officials in question faced sentences up to 9 years in prison for abuse of authority.

22. In analysing the first 50 cases from Ciudad Juárez, the Special Federal Prosecutor Ms López Urbina has identified 81 state officials involved in the investigation of these cases who could be held responsible in this way (out of a total of 167). In her second report, which covers an additional 105 cases, 100 state officials (out of a total of 257) were identified – of which 51 were however already cited as possibly responsible in the first report²³. Civil society is unanimous on this issue: These officials need to be sanctioned and removed from their posts, otherwise the investigations will never progress. This process seems now finally to have started.

State Courts

23. I was not impressed by my meeting with state criminal court judges. I was told by an NGO activist before my meeting that the President of the Supreme Court had mandated criminal court judges to find defendants guilty even if the prosecution had not come up with enough evidence to prove the defendant's guilt – as long as he or she, the judge, thought the defendant guilty. I brought up this issue with the judges I met, but was unable to get a clear answer. If it is true, this would, of course, make a parody of due process and the presumption of innocence²⁴.

24. The seven judges I spoke to were confident that, in the cases they had had under review in court, the cases were well resolved by the prosecutor's office. They considered that the accused were guilty, had not been tortured²⁵, and were thus sentenced fairly. 39 cases had already been through the courts, 9 were pending. The judges considered that the main problem lay not with the "resolved" cases, but with the "unresolved" ones.

Chihuahua's State Congress

25. Last week, I had the opportunity of meeting up with more than half of the members of Chihuahua's State Congress, including its Speaker, the Chairperson of the Special Commission of enquiry into the femicides of Ciudad Juárez, Ms Yolanda Morales, and several other Committee Chairpersons and leaders of political groups. Their points of view were very different: some members supported the federal Congress Commissions in their evaluation of the crimes as "femicides", others felt that their state was no different from other states, and that murders and disappearances of women and girls were not more common in Ciudad Juárez than elsewhere. Many emphasized the social aspect of the problem and the need to better integrate the many migrants into the society of the city and develop a better infrastructure, particularly in the poorer areas. One member of the Congress underlined the gender-specific form of violence and called for more progress to be made in fighting the impunity still prevalent in the city. Another member felt that Ciudad Juárez had become the object of a national and international "smear campaign", and that the murders and disappearances had been blown out of all proportion.

²³ On 19 April 2005, the total stood at 101 officials. Ms Morfín informed us that a number of these officials have accused Ms López Urbina of defamation, and have taken her to court.

²⁴ The Special Federal Commissioner Ms Morfín accused the State judiciary of complicity in some cases (the example she gave concerned five young women in Ciudad Juárez, who alleged to have been victims of a sexual exploitation ring involving the local Deputy Prosecutor; apparently, the judge freed him on a very small bail, leading the Commissioner to ask the Federal Prosecutor's Office to take over the case).

²⁵ Or, to be more exact, could not prove in court that they had been tortured (Mexico has a very high evidence threshold for the torture accusation to be accepted in court.) However, the judges we spoke to were adamant that the defendants had not been tortured, but just claimed to have been to escape punishment. One of the judges alleged that some defendants had auto-inflicted their wounds.

The Governor of Chihuahua

26. I also had the honour of meeting the new Governor of the State of Chihuahua, Mr José Reyes Baeza Terrazas. Unlike his predecessor, he seemed genuinely committed to solving the problems of "femicides" and gender-based violence in his state. The Constitution of the state had been changed after he had taken office in October 2004, to allow the Congress of the State to elect its Prosecutor General from a shortlist of three candidates proposed by the Governor. Ms González Rodríguez had been unanimously elected by the Congress. The state had also created a new preventive police force deployed in Ciudad Juárez.

27. One of the Governor's main aims was to institute a dialogue with the mothers of the victims, and keep them informed of developments – as well as ensuring they received adequate reparation from the newly set-up 61 million pesos victim reparation fund. A victims' assistance office was soon to open in Ciudad Juárez, and a new forensic laboratory was being built. His administration intended to fully respect human rights, and had no interest in forcing confessions from people just in order to be able to present a person presumed "guilty" to society. He also strongly believed in developing the social fabric of Ciudad Juárez – crèches for the children of working mothers were in the city were much needed, as was a better water and sanitation system.

State Women's Institute

28. A lot of controversy surrounded the Chihuahua State Women's Institute and its Chairperson, Ms Victoria Caraveo Vallina²⁶. Many NGOs and victims' families denounced the statistics produced by the Institute in particular, claiming that the Institute minimised the scope of the problem and gives unfair preference to the families of certain victims²⁷. This preference may have been explained by Ms Caraveo's particular interest in the cases of victims who suffered sexual violence, as she considers that the impunity is the biggest with regard to them. She told me that she had thus decided to help those families whose members had suffered from sexual violence, and where the guilty had not been found – 47 families all in all. The aid given to them included psychological and legal counselling, as well as medical, social, and economic assistance and help in the field of education. The reduction of the granting of aid to families whose members were victims of sexual violence is very problematic in my view, as it creates "two classes" of victims. I thus consider it good news that a new Director took over the Institute on 9 November 2004.

29. I met with the new Director, Ms Luisa Fernanda Gamberos Revilla, in Chihuahua last week, and was much impressed with the way she has "turned around" the institute following her election by the State Congress. The assistance programme for victims and their families has now been opened to all victims of "femicide" and gender-based violence. The Institute has also started to actively campaign against violence against women, and has started preventive programmes. If the Institute continues on this new course, it will have an important contribution to make at the state level.

B. Federal level

Federal Prosecutor's Office

30. In accordance with Mexican law, the Federal Prosecutor's Office (*PGR*) can only take over ("attract") those cases where organised crime is involved. For years, the *PGR* was very reluctant to claim that cases came under federal jurisdiction, even though NGOs and victims' families had been calling for the federal authorities to get involved since 1998, in view of the developing impunity and the inadequacy of the authorities' reaction at state level. In January 2004, a Special Federal Prosecutor's Office for the Homicides and Cases of Missing Women in Ciudad Juárez was created which is headed by Ms María López Urbina. It is currently running four programmes:

- a. a programme on the systematisation of information on the murders and related crimes;
- b. a programme on the murders themselves (in particular checking whether any can be "attracted" by the Federal Prosecutor's Office under the organised crime statute);

²⁶ Before becoming Chairperson of the Institute in February 2002, Ms Caraveo was a figurehead of the local NGO movement.

²⁷ Some victims' families, however, praised the "human quality" of the Institute's (and the Chairperson's) aid.

- c. a programme on disappeared persons;
- d. a programme on assistance to victims.

31. The Special Federal Prosecutor intends to publish a report every four months. She had just published her first report when I visited Mexico, which included the analysis of 50 of the 307 homicide cases (up to April 2004) in Ciudad Juárez covered by her mandate (she is not allowed to investigate the Chihuahua city cases). Ms López Urbina considered that the State Prosecutor's Office "had not worked very well" – quite an understatement for a prosecutor who found that nearly half of the state officials involved in the investigation of the cases could be held responsible (administratively or criminally)²⁸. However, the majority of the cases she treated in the first report were found not to have an organised crime component, which means that they have been sent back to the state level for further investigation – by the same officials who botched the investigations in the first place²⁹.

32. On 3 November 2004, Ms López Urbina presented her second interim report, which covers a further 105 cases in Ciudad Juárez, so that she had worked on about half of the total cases of homicides related to the women of that city which were "legally reported"³⁰. In it, apart from giving information on the progress of the afore-mentioned four programmes, the Special Federal Prosecutor recommends the opening of a new programme for the identification of so far unidentified victims of homicide³¹.

33. However, her main conclusion – derived from reviewing 155 files (76 criminal cases or proceedings and 79 preliminary investigations) – is that the murders of women in Ciudad Juárez are the "product of very diverse motives and not necessarily of a sexual motive", and that their majority "did not result from the actions of serial murderers or organized crime"³². Thus, the Federal Prosecutor's Office has taken over the cases of only 24 murdered women, contained in 9 investigations, apparently linked to organised crime. Of the 155 files analysed so far, 44 were found to be sexually motivated or to show sexually motivated characteristics or behaviour patterns, affecting 57 victims³³.

34. What saddens me is that Ms Urbina, based on these findings, rejects the "positions or perceptions of a subjective nature, such as those held by some non-governmental organizations or foreign visitors" – I expect she means the "femicide" theory to which I also subscribe – and dismisses this notion "that the aforementioned homicides are only a phenomena of the Mexican's Republic's northern border based on hatred of women"³⁴. I continue to believe that only a holistic approach, which recognises that even parricide or other non-sexually motivated murders of women can be gender-based, i.e. "femicides", can truly do justice to the events of the last decade in Ciudad Juárez and Chihuahua³⁵.

35. On 12 January 2005, Ms López Urbina presented her third interim report. The figures do not differ much from the second report, except that work on the systematization of data (with the help of the National Centre for planning, analysis and information on the fight against crime (CENAPI) has been progressing, with 205 files now analysed. However, this work may not be as useful as it seems: Since most, if not all, of the data in question is taken from the case files of the investigations at state level (many of which were botched and contained insufficient, incorrect and even falsified data), the conclusions reached and the leads produced by CENAPI may prove to be dead ends in many cases.

36. Ms López Urbina has found 10 of the 42 women still "disappeared" in Ciudad Juárez according to her tally, which is quite a success. So far, the PGR is assisting 21 victims' families. Plans to assist relatives of female homicide victims in Ciudad Juárez (Chihuahua City victims unfortunately do not seem to be covered) via the

²⁸ See paragraph 22 of this report.

²⁹ 9 cases involving 24 murder victims have been "attracted" by the PGR (including the cases of the bodies found in the cotton fields and at *Christo Negro*).

³⁰ The Special Prosecutor's Unit for Attention to Crimes related to the Homicides of Women in the Municipality of Juárez, Chihuahua: Second Report, October 2004, p. 7.

³¹ *Ibid*, p. 9.

³² *Ibid*, p. 99.

³³ *Ibid*, p. 103.

³⁴ *Ibid*, p. 100.

³⁵ Even if it is, of course, not possible to prosecute these crimes as "femicides" in court, as such a crime does not exist in the Mexican Criminal Codes.

establishment of a 61-million pesos trust fund are proceeding at pace, with authorisation of the amount of 25 million pesos by the President of Mexico, 5 million by the Governor of Chihuahua and 31 million by the Mexican Congress. However, the criteria according to which the funds will be distributed are not yet clear – it is important that they be fair, transparent and non-discriminatory. I hope that payouts from the fund can start soon. The *PGR* was also planning to open an office for victims' assistance in Ciudad Juárez on 28 April 2005, the second such office in Mexico. A DNA- database is being created, and 106 samples have been taken so far³⁶.

37. The *PGR* is pushing for constitutional reform, which would enable it to intervene when in grave human rights abuses of a systematic nature are taking place, but states are not living up to their responsibilities. A bill proposing such a constitutional amendment and empowering the Federal Prosecutor's Office to "hear and determine ordinary offences" when "necessary for compliance with international obligations derived from international treaties to which Mexico is party, when investigation thereof reveals acts or omissions that constitute violations of the human rights of the victims or injured parties" has been proposed by the President of Mexico to the parliament, and has been considered by our Venice Commission.

38. The Venice Commission concluded that "It would appear that there are international law arguments and persuasive ECHR jurisprudence to support the transfer of prosecutorial authority from the Mexican states to the Mexican federal power by means of constitutional amendment in order more effectively to prosecute the perpetrators of horrific and apparently systemic murder of women in Mexico"³⁷.

39. It continued: "It is reasonably foreseeable that where state prosecution for a crime has proved ineffective, where the elements of the offence remain the same, federal prosecution is not an unreasonable response. On the basis of the information available, it would appear that the change proposed in the Mexican law does not seem to retrospectively affect the existing criminal law to the extent that it does not impair or remove rights, does not create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction. In the circumstances, it appears to be a procedural change of the prosecutorial jurisdiction: a proportionate change for a legitimate reason and therefore permissible."³⁸

40. I fully support the conclusion of the Venice Commission: "In the circumstances, there does not appear to be any prohibition in international law on making retrospective the transfer to the federal prosecution authorities of those offences. Article 15 of the International Covenant on Civil and Political Rights in the case of the Mexican feminicides does not limit Mexico's obligations under Article 2 of the CEDAW. Indeed, in order to fulfil its obligation to enforce human rights and to give practical realisation to them a retrospective transfer is necessary in order to vindicate past wrongs."³⁹

Special Federal Commissioner

41. In October 2003, Ms Guadalupe Morfín Otero was appointed Special Federal Commissioner for Preventing and Eradicating Violence against Women in Ciudad Juárez. Her mandate includes: following-up on human rights violations, and facilitating access to justice for victims and their families, but she cannot, herself, take the place of prosecutors. Her main role is that of a co-ordinator – a role Ms Morfín confessed to us she found difficult sometimes, as some people did not want to coordinate or be coordinated.

42. Ms Morfín published her first – and in my view most valuable – report on the situation in Ciudad Juárez and the state capital of Chihuahua (unlike that of the Special Federal Prosecutor, her mandate also extends to the cases in Chihuahua) in autumn 2004. In her first report, Ms Morfín emphasizes the need for the social fabric of both cities (but especially of Ciudad Juárez) to be repaired. One of her main objectives is to fight against discrimination and violence against women, involving all actors – including NGOs⁴⁰. She also insists on the need for reparation of damages, and the full investigation and sanctioning of those responsible for both the crimes themselves and the impunity currently reigning. She has highlighted the difficulty to protect witnesses, and fears

³⁶ NGOs impute the low uptake on the offer to store DNA-samples to previous botched DNA-examinations; some families have been given contradictory results from different tests.

³⁷ CDL –AD (2005) 006, p. 10.

³⁸ *Ibid*, p.10.

³⁹ *Ibid*, p.11.

⁴⁰ Her willingness to co-operate with NGOs has cost her some popularity with the state government of Chihuahua, and she has been repeatedly attacked in the local press because of it.

that the situation will become militarised if the federal police has to continue to take on this job in Chihuahua. Her tally of missing women and girls is higher than that of the Special Federal Prosecutor: 32 in Ciudad Juárez and 8 in Chihuahua.

43. The Special Federal Commissioner has not had an easy start to the tremendous task in front of her: Her mandate is so limited that she has not even been given access to the case files. The finances of her Commission are shaky (she enjoys no financial autonomy), so that the size of her office is far too small (she has 18 collaborators) and she did not even have an office in Ciudad Juárez for nearly six months. Everyone I spoke to⁴¹ during my first visit seemed to agree that the Special Federal Commissioner needs to be given more powers and more money – with the exception of the Federal Prosecutor's Office, which is increasingly trying to whittle down her mandate to "repairing the social fabric of the city" and "engaging in prevention work". Ms Morfín's ultimate aim is to turn her Commission into a type of "truth commission", but in the meantime she is concentrating on putting her 40-point plan into action, including the establishment of a recreational park in one of the poorest areas of the city.

44. Last autumn, the Special Federal Commissioner signed an agreement of co-operation with two Mexican NGOs (the Mexican Commission for the Promotion and Defence of Human Rights and "Justice for our Daughters") to invite a team of Argentinean forensic experts to come and study 21 of the non-identified bodies. This study was submitted in October 2004. It appears that the Federal Prosecutor's Office took offence, and suggested that another study be commissioned from the American NGO "Physicians for Human Rights". The State Prosecutor-General, Ms González Rodríguez, informed me in April 2005 that she had consulted the mothers of the victims on their preferences, and had decided to hire both teams: the Argentinean expert team to make a study of all the non-identified bodies (and those whose identity remains disputed), and "Physicians for Human Rights" to engage in a more general training activity. This seems like a sensible compromise to me.

45. At our last meeting in April 2005, Ms Morfín asked me to intervene in the two most obvious cases of torture, concerning David Mensa and Victor Garcia Uribe. When I raised this issue with the competent prosecutors on the state and federal level, I could not help having the impression that these two men were, in effect, being required to prove not only that they had been tortured (years after the fact), but also to prove their innocence in court. This would obviously go against the principle of the presumption of innocence, and I hope that progress will soon be made regarding the investigations of the torture allegations.

Parliament

46. Both houses of the Mexican parliament have created parliamentary commissions on the progress of investigations into the cases of murdered women in Ciudad Juárez. Both parliamentary commissions are following developments and starting to make suggestions for legislative and even constitutional reforms.

47. The Senate Commission sees itself as a body exercising parliamentary oversight⁴² and putting pressure on the executive to take action. The Commission considers the appointment of the Special Federal Commissioner as its first success, and is currently trying to have her mandate extended and her budget increased. It is taking similar action as regards the mandate and budget of the Special Federal Prosecutor. At the same time, the Commission is trying to underline the gender aspect of the murders and other gender-related violence, and is fighting to stop the impunity. As it accepts the definition of the murders as "femicides", and sees discrimination against women as their root cause, the Commission is considering whether femicides should not be classed as organised crime and thus federal crimes. The possibility of changing the constitution to do so is also invoked, as well as the possible appointment of a Special Federal Prosecutor on Violence against Women.

48. The Commission has reiterated the urgent need for integral legislative measures, at both federal level and the level of the states, in order to prevent, punish and eradicate all forms of violence against women and girls. In this connection, it has provided me with statistics on violence against women in other municipalities and

⁴¹ For example, members of the Senate Commission and the Mexican Commission for the Promotion and Defence of Human Rights.

⁴² For example by trying to clarify numbers, to collect recommendations and ensure they are followed up.

regions of the country: 106 women were murdered in Mexico federal district and 204 in Chiapas, Veracruz, in 2004; 72 were murdered in Cancun, Quintana Roo, in 2003; 87 women were reported missing in the La Laguna region in 2003.

49. The Chamber of Deputies Commission denounces the "war of figures" and the lack of effective co-operation between the state and federal level regarding the investigation of the crimes. The Deputy Irene Blanco Becerra even spoke of a "ping-pong of responsibility" between the different state and federal authorities. Like its Senate counterpart, it believes in the theory of "feminicides" and sees its primary goal as fighting the impunity by bringing the officials who botched the investigations to justice.

50. The Commission has recently changed its title and widened its mandate to include "feminicides" wherever they occur in Mexico. It has made a number of concrete proposals, including asking the Prosecutor General to protect staff working in women's shelters who had been threatened, and proposing the creation of the post of a Special Federal Prosecutor on crimes against women. It has also tabled a number of bills, including a proposal to change Article 73 of the Mexican Constitution to make it possible for the Federal Prosecutor's Office to "attract" cases of violence against women, a proposal on which it is trying to find common grounds with the Senate. Another bill tabled concerns a "General Law on Overseeing the Right of Women to a Life without Violence". This bill is connected with a proposal to dedicate 100 million pesos to legislative harmonisation and the creation of a parliamentary research institute on gender-based violence and "feminicides". In addition, the Commission has proposed putting the crime of "feminicide" onto the Mexican federal statute books, and preparing a nation-wide diagnostic study on the prevalence of gender-based violence and "feminicide". The Commission has visited several Mexican states and co-operates with Spanish and Guatemalan parliamentarians working on cases of "feminicide" in their own countries.

National Human Rights Commission (CNDH)

51. In 1998, Mexico's ombudsperson institution, the *CNDH*, which is the official institution responsible – among other things – for investigating complaints of human rights violations committed by officials, carried out an investigation into 81 cases of female murder in Chihuahua State. It concluded that several levels of the judicial authorities and the state and municipal government of Chihuahua were guilty of negligence and dereliction of duty, and called for the officials who were botching the investigations to be investigated themselves – a recommendation which was not followed up upon.

52. In January 2003, the *CNDH* began a new investigation into the murders and abductions of women in Ciudad Juárez and set up an office in the city. Over a period of 11 months, the *CNDH* investigated 263 murders of women⁴³ and the disappearances of 4581 of women in 1993-2003. They found that nearly all disappearances seemed to be solved, although only about 300 files existed on them – the "Second General Visitor" we spoke to, Mr Plascencia Villanueva found it quite unacceptable that the other files did not exist. 30 cases seemed to fit the *modus operandi* of the disappearances which had led to murder, i.e. the victims had been aged 12-25, had left to go to school, visit relatives or go shopping, never to be seen again. These cases practically did not seem to be investigated: in some cases, the state authorities had demanded that the family of the victim present the presumed author of the crime before even opening a criminal investigation. In November 2004, the *CNDH* published a 1.600 page special report based on the case files, a review of the press and other public material, interviews with victims' families, visits to crime scenes and places where bodies were found, expert analyses of autopsies, and interviews with the persons accused of the murders.

53. Mr Plascencia Villanueva showed himself disappointed by the reaction of the state and federal authorities so far. Having sent a 52.000 page copy of the original report (with all the findings for each individual case) to the Special Federal Prosecutor, he thought that Ms López Urbina's investigation of the first 50 cases had been too slow, especially in view of her conclusion that the State Prosecutor's Office needed to investigate the cases further. He noted that the victims' families were still demanding justice, and needed to see a change in the way investigations were run. This was probably only possible if the federal authorities took over the cases. On the ground, he was disappointed and worried that there was still no police surveillance of high-risk areas, and that the criteria of both the state and federal authorities as to the granting of aid to victims' families remained opaque. The *CNDH* itself continued to work with 120 victims' families, and hoped to enlarge the programme to all victims' families in 2004.

⁴³ The number corresponds to the judicial files they were allowed to see.

54. During my second visit in April 2005, Mr Villaneuva was not much more optimistic. While he recognized that since August 2004, the state and federal governments had taken some action and deblocked some funds, he was not satisfied with the progress made. The Special Federal Prosecutor was limiting herself to "auditing" the case files instead of investigating them in accordance with her mandate, the Special Federal Commissioner was having great problems coordinating the work done on the three levels (municipal, state and federal), and the problem was "bureaucratized". Meanwhile, the murders and disappearances continued, and the climate of impunity remained: 20 women had been murdered in Ciudad Juárez in 2004, and 10 in the first three months of 2005. The Mayor of the City was in denial – he did not want to recognise that the city had a problem. This had led to him – and the local employers' association – lashing out at the CNDH's President, Mr Soberanes, who had dared to declare the "feminicides" in Ciudad Juárez a slur on the honour of the city.

Federal Women's Institute

55. The Federal Women's Institute was created only four years ago. It concentrates on research and information and the development of strategy, for example the Institute is trying to introduce gender-disaggregated statistics. The Institute considers the events in Ciudad Juárez as just the tip of the iceberg: according to a recent representative study, 60% of women in Mexico are victims of some kind of violence. Society reportedly "blames" women for leaving the household, for studying, for working: the Institute notes a "discriminatory environment". Thus, for example domestic violence was criminalised in Mexico only during the last legislature.

National Centre for gender fairness and sexual health

56. According to data passed to me by this federal centre, headed by Ms Patricia Uribe Zúñiga, in Mexico City, 1 woman in 5 is subjected to violence by their current partner, 1 woman in 3 has been subjected to violent acts by a partner at least once in her lifetime, and 2 women in 3 have suffered violence at least once in their lifetime. At present the Centre provides care for 4 390 women subjected to violence in their everyday lives in the State of Chihuahua. In 2003 the Centre opened a shelter in Ciudad Juárez, which takes in women and children who fall victim to violence within the family. Ms Uribe stressed that violence against women is so commonplace that it is seen as "normal". Her centre is lobbying for violence against women to be regarded as a public health issue.

National Institute for Social Development

57. The Director of the National Institute for Social Development, Ms Cecilia Loría, considered the murders in Ciudad Juárez to be only the tip of the iceberg: the city's social fabric was torn, with gender-based violence rampant, and poverty, poor education and healthcare widespread. Two years ago, the Institute had started a programme in co-operation with local NGOs to fight the gender-based violence, *inter alia* by training officials and undertaking public policy initiatives. Violence against women, including so-called "intrafamily violence" and "crimes of passion" were a public problem, not a private one: it was the state's responsibility to react. One of the reasons why gender-based violence was tolerated in Ciudad Juárez was that it was invisible to the general public. But this violence had a cost for society: 1 million pesos were lost last year due to battered women being unable to go to work. It was an economic as well as a human issue.

IV. Involvement of other players: NGOs, victims' families, mayors, employers' associations and international organisations

58. It is NGOs and victims' families which deserve most of the credit for bringing the murders and disappearances of women in Ciudad Juárez and Chihuahua to the attention of the Mexican (and international) public, and thus forcing both the state and the federal authorities to take some action to tackle the problem. The problem, in their eyes, remains far from solved, however: Justice has yet to be done, and the root of the problem (discrimination and violence against women) is not yet being tackled. NGOs and victims' families alike stress the need for better preventive work, more respect for women, more public security, better working conditions in *maquiladoras* – and, of course, a more sensitive way of portraying the crimes in the press and a more effective way of investigating them.

59. Ms Gabriela Delgado, representing the NGO "Incid Social", told me of the deterioration of shelter and assistance facilities for families in Ciudad Juárez, worsened by the very high rate of migration. Mr Carlos Mario Gomez, speaking on behalf of the Mexico section of Amnesty International, condemned the harassment of those who spoke up for human rights. Mr Fabian Sanchez, representing the Mexican Commission for the Promotion and Defence of Human Rights, regretted that accusations were levelled against international organisations, which certain members of the Chihuahua State authorities held responsible for giving the region a poor image. He also told me that the mayor of Ciudad Juarez, Mr Hector Murguia, had just declared the President of the National Human Rights Commission, Mr Jose Luis Soberanes, "*persona non grata*", a sentiment echoed by the local employers' associations during our visit in April 2005.

60. Unfortunately, some NGOs and social organisations working with victims' families have come under attack in the past: a propaganda campaign was mounted against them in the local media, and their members were reportedly harassed by the state authorities. Some NGO activists were even threatened so much that they needed police protection (which, I would emphasize, they were granted). One of the founders of the NGO "Justice for our Daughters", Ms Cervantes from the city of Chihuahua, voiced her frustration at the case of her murdered daughter considered "closed" (a nephew of hers has been accused of the crime) - she claimed "we ask for justice - they pursue us". The mother of Sylvia Arce agreed, and told us how she had been beaten and persecuted last year, with the police coming to her house. There are at least 30 victims' families who continue to demand justice and who have lost in faith in the authorities.

61. Not all victims' families seem to trust the NGOs, however, with some having clearly turned against them. We heard some families accuse NGOs of misusing funds earmarked to help victims' families⁴⁴, of the "NGOs becoming rich". I have seen no evidence for such behaviour on the part of the NGOs. There is, however, clearly a problem as regards aid to victims' families, which seems to be doled out by both federal and state authorities in a very opaque and haphazard way, leading to injustice of treatment and jealousy between families. Hopefully, this problem will be solved when payouts from the 61 million pesos reparation fund begin, provided the payouts are made according to clear, fair, transparent and non-discriminatory criteria.

62. A number of international organisations has also become involved: above all, the Inter-American Commission on Human Rights and the United Nations (and its bodies and Rapporteurs: e.g. UNIFEM, CEDAW, the United Nations' Office on Drugs and Crime, the Special Rapporteur for Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Attorneys, the Special Rapporteur on Violence against Women⁴⁵). The Federal Mexican Government has co-operated well with these international organisations in the organisation of the visits (even allowing the experts of the United Nations' Office on Drugs and Crime unlimited access to the case files, for example); but many of the recommendations of the different institutions remain to be implemented. The appointment of the Special Federal Commissioner is one of the international recommendations which has been put into practice; it can be hoped that more will follow.

V. Conclusions and recommendations

63. Following my visit to Mexico last week, I have come to the conclusion that considerable efforts have been made by all players on all levels, both institutional and non-governmental, to get to the heart of the problem: Hundreds of pending cases of murders of women and girls in Ciudad Juárez (if not in Chihuahua) are being analysed, new leads are being followed, investigations and prosecutions are pursued with new vigour. However, despite a clearly discernible political will, a general commitment, and the efforts by the state and federal authorities, too many cases remain unsolved and too many victims unidentified. It is urgent to move from audit to action in order to end the climate of impunity for gender-based violence still prevalent in the region. Each branch of government has to face up to its responsibilities and tackle urgent tasks to produce rapid results and thus regain the confidence of victims' families and of civil society as a whole.

64. In fact, as the CNDH has noted, the involvement of so many agencies and institutions on state and federal level has brought with it the risk of bureaucratisation and inter-agency rivalry. So far, this threat seems to have been mostly contained (although the case of the Argentinean forensic expert team is a case in point), but

⁴⁴ There was talk of an anonymous website based in Los Angeles, USA, with the name of "savejuárez.com" which was collecting money, allegedly for the victims' families.

⁴⁵ The reports of these organisations are available either on their websites or on the website of the Mexican Foreign Ministry.

the risk is real. Creating more specialised agencies to deal with the problem is not the answer at this stage of the proceedings: rather, a co-ordinated effort of all players is needed to move from recognition and analysis of the problem to its solution.

65. I would like to point out here that it is important to recognise that while "femicides" may well exist also in other parts of Mexico, or indeed even outside Mexico, here in Europe, not all murders of women and girls can be classed as "femicides". The definition proposed by the Chamber of Deputies Special Commission is very important in this respect, as even a high number of murdered women in a given region do not necessarily indicate the climate of generalized violence against and disdain for women which characterizes "femicides" and leads to the lack of public interest in the crimes and hence the impunity for their authors so typical of this particular phenomenon. On the other hand, it is also essential to underline that the murders and disappearances in Ciudad Juárez and Chihuahua fit the description of "femicide" exactly, whether they resulted from domestic violence, so-called "crimes of passion", sexual crimes or other causes, and they will have to be treated as "femicides" by all those involved if a solution to the problem is to be found.

66. What can the Council of Europe, in particular the Parliamentary Assembly, do to help? Mexico is an observer state of the Council of Europe, and the Mexican parliament enjoys observer status with the Parliamentary Assembly. I would thus like to agree with the President of the CNDH, Mr Soberanes, who emphasized that the Council of Europe "can and should" make recommendations to Mexico on the murder and disappearance of hundreds of women and girls in the Mexican State of Chihuahua. I do not, however, consider that making mere recommendations is enough (other international organisations have already made quite a number of very valid recommendations, many of which are already being implemented by the Mexican authorities): I would consider it the Council of Europe's duty to assist the Mexican parliament and government to try and solve the problem and prevent it from recurring.

67. In the last ten years, the Council of Europe has practically doubled in size: It now has 46 member states, covers nearly the whole of Europe (with the exception of Belarus) and works for 800 million Europeans. Many of the Council's newer member states have faced problems similar to those faced by Mexico today: becoming a fully-fledged modern democracy, having to reform their justice systems, dealing with the thorny issues of migration, poverty, crime, and discrimination and violence against women. The Council of Europe has laid on multiple co-operation and assistance programmes with these countries over the years as the need arose, and has thus gathered a lot of "hands-on" human rights and equality expertise.

68. It is this expertise which I would like see put at the disposal of the Mexican authorities in the form of a technical co-operation programme with an observer state, if Mexico agrees. The Council of Europe could offer legislative expertise, training, exchange of best practices or other forms of concrete assistance in the framework of this programme. The main aims of such a programme could be:

A. Reform of the justice system (promoting, for example, equality of treatment (prosecution/accused); preventing torture and investigating allegations of torture; ensuring an effective investigation of crimes while respecting the rights of the victims and the defendants).

B. Promotion of equal opportunities for women and men (for example, campaigning against domestic violence and other forms of violence against women; ensuring equal participation of women and men in decision-making; fighting discrimination against women).

69. In the framework of this co-operation and assistance programme, the Committee of Ministers should take some specific measures, including :

- i. organising exchange and training programmes for Mexican prosecutors, members of the judicial police and forensic experts in the area of human rights and gender sensitivity;
- ii. offering legislative expertise in key areas, such as legislation on "femicides" and domestic violence;
- iii. helping to finance shelters for victims of domestic violence and the training of their staff, as well as equipment for the new forensic laboratory to be established in Ciudad Juárez.

70. There are, of course, a number of measures only Mexico itself can decide upon; where the Council of Europe and its Parliamentary Assembly can only make recommendations, and offer its assistance. At this stage of the proceedings, I would consider the most important to be:

A. for the Mexican Congress to:

- a. complete the envisaged constitutional and legislative reforms to fight past or future impunity for such grave human rights violations and to ensure that prosecutors efficiently, rapidly and transparently investigate every case of "feminicide", if necessary at the federal level, making possible the punishment both of the authors of the crimes and of officials who have perverted the course of justice, in accordance with the opinion of the Venice Commission;
- b. give positive consideration to the proposal of the Chamber of Deputies "Special Commission to study and review the investigations of murders perpetrated against women in Mexico and promote justice for the victims of feminicide" to put the crime of "feminicide" onto the Mexican federal statute books, and prepare a nation-wide diagnostic study on the prevalence of gender-based violence and "feminicide";
- c. ensure that reparation is made available in accordance with transparent and non-discriminatory criteria to all the families of victims of "feminicide" in Ciudad Juárez and Chihuahua from the reparation fund which has been set up with a generous contribution from the Mexican Congress and oversee the payouts;
- d. consider judicial and prosecutorial reforms to promote equality of treatment (prosecution/accused) and the rapid, impartial and transparent investigation of torture allegations;
- e. support programmes and campaigns aimed at preventing and fighting gender-based violence, including in schools;

B. for the Congress of the State of Chihuahua to:

- a. rapidly move to the adoption of the law on transparency and access to information;
- b. consider adding the crime of "feminicide" onto the state statute book;
- c. support the Chihuahua State Institute for Women, especially its programmes aimed at preventing and fighting gender-based violence.

C. for victims' families to be granted effective, co-ordinated aid, preferably by one body. The type and amount of aid offered should not be dependent on particular aspects of the crime (e.g. whether the crime involved sexual abuse). They should also be regularly informed about any progress made with regard to investigative or judicial proceedings.

D. for the Special Federal Commissioner and the Special Federal Prosecutor to have their mandates enlarged and more funds put at their disposal.

71. It would also be important for the Assembly to offer to associate the Mexican Congress and the Congress of the State of Chihuahua with the pan-European parliamentary campaign against domestic violence to be launched in 2006.

72. Indeed, the Assembly can also learn from its Mexican observers. It should resolve to study the concept of "feminicide" and, in co-operation with the Mexican Congress, to explore how this concept may usefully be applied in the European context, including its possible introduction into European Criminal Law.

Appendix I

Programme of the fact-finding visit to Mexico of Mrs Vermot-Mangold, Rapporteur, accompanied by Mrs Kleinsorge, Secretary to the Committee, on 9-13 August 2004

Monday, 9 August 2004 (Mexico City)

- 10 am Meeting with the Special Senate Commission on the progress of investigations into the cases of murdered women in Ciudad Juárez
- 12.30 pm Working lunch with members of the Special Senate Commission
- 5 pm Meeting with the Mexican Commission for the Promotion and Defence of Human Rights (NGO)
- 7.30 pm Meeting with the Federal Deputy Prosecutor for Human Rights, Mr Mario I. Álvarez Ledesma, and members of his Office

Tuesday, 10 August 2004 (Mexico City)

- 10 am Meeting with President of the National Human Rights Commission (CNDH) Mr José Luis Soberanes, and the "Second General Visitor", Mr Raúl Plascencia Villanueva
- 12 noon Meeting with the Executive Secretary of the National Institute for Women (IMMUJERES), Ms María Elena Alvarez
- 1.30 pm Meeting with the Regional Director of UNIFEM, Ms Teresa A. Rodríguez
- 3 pm Working lunch with the Special Chamber of Deputies Commission on the progress of investigations into the cases of murdered women in Ciudad Juárez
- 5 pm Meeting with the Federal Under-Secretary of Legal Affairs and Human Rights, Mr Daniel F. Cabeza de Vaca Hernández, and Special Federal Commissioner, Ms Guadalupe Morfín Otero
- 6.15 pm Meeting with NGOs: *Milenio Feminista*, Global Organisation against Torture, and the Mexican Commission for the Promotion and Defence of Human Rights
- 8.40 pm Departure for Ciudad Juárez

Wednesday, 11 August 2004 (Ciudad Juárez)

- 10 am Meeting with local NGOs and victims' families, including:
- "Stop the Impunity" Coalition of NGOs
 - NGO "Justice for our Daughters"
 - NGO "Our Daughters Return Home" (NHRC)
 - NGO "Women in Black"
 - NGO *Casa Amiga*
 - NGO "Listen to me" (*Eschuchame*)
 - NGO *Casa de Cuidado Diario*
 - NGO *Compaz*
 - NGO *Red Ciudadana de NO Violencia y Organidad Humana*
 - Association of Social Workers
 - Human Rights Centre of *Paso del Norte*

- Violence against Women Network

- 2 pm Meeting with the Deputy Prosecutor General of the State of Chihuahua, Mr Rafael Maldonado Porras, and with the Prosecutor from the Mixed Prosecutor's Office, Ms Angela Talavera Lozoya
- 4 pm Visit to *Lomas de Poleo* (slum district on the outskirts of the city)
- 5.30 pm Meeting with the "First Special Visitor" of the Chihuahua State Human Rights Commission, Mr Victor Ortiz Vázquez
- 6.30 pm Meeting with the Special Federal Prosecutor Ms María López Urbina

Thursday, 12 August 2004 (Ciudad Juárez)

- 9.30 am Meeting with the Director General of the Municipal Institute for research and planning of Ciudad Juárez, Mr Luis Felipe Siquieros
- 11 am Meeting with judges from the Ciudad Juárez district
- 2 pm Meeting with the President of the Chihuahua State Women's Institute (ICHIMU), Ms Victoria Caraveo Vallina
- 3 pm Meeting with the Head of the Municipal Police of Ciudad Juárez, Mr Dominguez
- 4.30 pm Visit of a refuge for battered women run by the NGO *Casa Amiga*
- 7 pm Departure for Mexico City

Friday, 13 August 2004 (Mexico City)

- 11 am Debriefing meeting with the Chairperson of the Mexican parliamentary observer delegation, Senator Fernando Margáin Berlanga, the Chairperson of the Special Senate Commission on the progress of investigations into the cases of murdered women in Ciudad Juárez, Senator Sara Castellanos, and with the Special Federal Commissioner, Ms Guadalupe Morfín Otero
- 12.30 pm Press conference
- 8 pm Departure for Strasbourg

Appendix II

Programme of the fact-finding visit to Mexico of Mrs Vermot-Mangold, Rapporteur, accompanied by Mrs Kleinsorge, Secretary to the Committee, and Mr Francesc Ferrer, Communication Unit, on 18-22 April 2005

Monday, 18 April 2005 (Mexico City)

- 8.30 am Meeting with the UN High Commissioner for Human Rights Delegate, Mr Anders Kompass
- 10 am Meeting with the Mexican parliamentary observer delegation
- 12 noon Meeting with the Senate Committee on Gender Equality
- 1.30 pm Working lunch with the Special Senate Commission on the progress of investigations into the cases of murdered women in Ciudad Juárez
- 4 pm Meeting with NGOs: the Mexican Commission for the Promotion and Defence of Human Rights, *Incidé Social*, the Mexican section of Amnesty International
- 6.30 pm Meeting with the Director of the National Centre for gender fairness and sexual health, Ms Patricia Uribe Zúñiga

Tuesday, 19 April 2005 (Mexico City)

- 9.15 am Meeting with the Director of the National Institute for Social Development, Ms Ceclia Loria
- 10.15 am Meeting with the "First General Visitor" of the National Human Rights Commission (CNDH), Mr Raúl Plascencia Villanueva
- 11.45 am Visit to the National Centre for planning, analysis and information on the fight against crime (CENAPI), General Carlos Fernando Luque Luna
- 1.30 pm Working lunch with the Special Federal Commissioner, Ms Guadalupe Morfín Otero
- 4.15 pm Meeting with the Chamber of Deputies Special Commission to study and review the investigations of murders perpetrated against women in Mexico and promote justice for the victims of femicide
- 6.30 pm Meeting with the Federal Deputy Prosecutor for Human Rights, Mr Mario I. Álvarez Ledesma, and members of his Office

Wednesday, 20 April 2005 (Chihuahua)

- 9.30 am Departure for Chihuahua
- 11.40 am Meeting with victims' families and their lawyers
- 1 pm Meeting with local NGOs, including:
- NGO *Milenio Feminista Chihuahua*
 - NGO "Justice for our Daughters"
 - NGO "Women for Mexico in Chihuahua"
 - NGO *Circuito de Estudios de Género*
 - NGO *Fortalecimiento de la Sociedad*

- NGO *Comisión de Solidaridad y Defensa de los Derechos Humanos*
- Women from the City quarter of "St. Felipe"

2.30 pm Working lunch and meeting with the Special Federal Prosecutor Ms María López Urbina

6 pm Meeting with the Mayor of City of Chihuahua, Mr Juan Blanco Saldivar

Thursday, 21 April 2005 (Chihuahua)

8 am Working breakfast with the Speaker and members of the State Congress of Chihuahua

11 am Meeting with the Prosecutor-General of the State of Chihuahua,
Ms Patricia Lucila González Rodríguez

12.30 pm Meeting with the Governor of the State of Chihuahua, Mr José Reyes Baeza Terrazas

2.30 pm Working lunch with the President of the Chihuahua State Women's Institute (ICHIMU),
Ms Luisa Fernanda Gamberos Revilla

5 pm Departure for Mexico City

Friday, 22 April 2005 (Mexico City)

11 am Press conference

8 pm Departure for Strasbourg

Appendix III

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)**

**OPINION
ON CONSTITUTIONAL REFORMS RELATING TO THE DISAPPEARANCE AND MURDER OF A GREAT
NUMBER OF WOMEN AND GIRLS
IN MEXICO**

Adopted by the Venice Commission
at its 62nd Plenary Session
(Venice, 11-12 March 2005)

on the basis of comments by
Ms Finola FLANAGAN (Member, Ireland)
Mr Hans-Heinrich VOGEL (Substitute member, Sweden)

Introduction

1. By letter dated 13 December, the Chairperson of the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe, Ms. Cliveti, requested the Venice Commission to prepare an opinion on the question of constitutional reform in Mexico related to the distribution of powers between the Federation and the States regarding the investigation and punishment of serious and systematic human rights abuses such as the disappearance and murder of a great number of women and girls in Ciudad Juarez and Chihuahua – as well as the investigation and punishment of officials involved in the investigation and prosecution of these crimes. The request was accompanied by an introductory memorandum by the by the rapporteuse Ms Vermot-Mangold (AS/Ega(2004)39).
2. Following a visit by the President of the Parliamentary Assembly to Mexico, the Commission also received a revised introductory memorandum (AS/Ega(2005)8) and a draft Presidential decree amending Article 73 of the Mexican Constitution as well as a draft amendment to the Federal Code of Criminal Procedure and the Judicature Act of the Federation (CDL(2005)022).
3. The Commission appointed Ms Flanagan and Mr Vogel as rapporteurs. Their comments figure in documents CDL(2005)023 and 025 respectively. The present opinion has been adopted by the Commission at its 62nd Plenary Session (Venice, 11-12 March 2005).

Background

4. The Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe is preparing a report on the "disappearance and murder of a great number of women and girls in Mexico", which have taken place since 1993 and are referred to as "feminicides". According to the revised introductory memorandum (the "memorandum"), the criminal investigation of these cases in the northern Mexican border state of Chihuahua, and specifically in and around the border town of Ciudad Juarez and the state capital of Chihuahua, is seriously ineffective.

5. The memorandum describes the circumstances surrounding these murders and disappearances in considerable detail and requires to be read in order to understand the extent of the problem and the various issues of controversy associated with them. Several other studies, by international bodies like the CEDAW Committee, NGOs and state bodies, have been produced on the matter. Whilst the nature of the problem appears to be widely accepted, nonetheless the numbers of women who have been murdered and who have disappeared remains a matter of considerable controversy – Ms Vermot-Mangold comments (para.6) that "...different authorities (both state and federal) and NGOs (including those founded by victims' families) supplied vastly differing figures to [her] last year." Estimates of the numbers of those murdered in the past 10 years or so run from 263 to 400 with between 34 and 70 described as "missing". However, the National Human Rights Commission states that there have been 4,581 cases of missing women and girls registered in Ciudad Juarez alone.

6. This opinion is based on the facts as set out in the memorandum which have been assumed for the purposes of this opinion to be correct. However the Venice Commission has not conducted its own investigation.

7. The memorandum presents the facts (at para.4) as follows:

"Since 1993, hundreds of women and girls have been brutally murdered in the northern Mexican border state of Chihuahua. Most of them were killed in or around the border town of Ciudad Juarez, others in the state capital of Chihuahua. Many were abducted and sexually abused before they were killed and their bodies dumped in the desert; others became victims of domestic violence taken to the extreme; a few seem to have been involved in the drugs trade and revenge killings. Some were maquilladoras workers [assembly plants for the export trade], others students and schoolchildren; many were young mothers; most were poor, and aged between 13 and 30. In addition to the hundreds of women and girls killed, many disappeared (presumed abducted) and are still missing."

8. Ms Vermot-Mangold concludes that the "women were killed **because they were women**" (para.7) hence the use of the term "feminicides". She states that "[e]veryone admits that the social fabric of these two cities...is all but in tatters" (para.8). The rule of law is considered to have broken down and many (though not all (para.2)) consider that these murders and abductions of women arise because of entrenched inequality between the sexes and "the pervasive disregard of women and their needs and rights." As a result "they can be used, abused, raped, beaten and finally killed and "thrown away" with impunity" (para.9).

9. The State of Chihuahua has jurisdiction to prosecute these crimes. There is currently no jurisdiction at federal level to do so in the great majority of cases. However, the memorandum makes clear that the state authorities have made no adequate effort to investigate these crimes and prosecute the perpetrators. Indeed, it is considered that the state authorities sought to hide the problem and minimise its scope and attempted to keep it out of federal jurisdiction (para.16) though it is now accepted that there have been some improvement in approach in recent times (para.17). A new Prosecutor General of the State of Chihuahua and a Special Federal Prosecutor for the Homicides and Cases of Missing Women in Ciudad Juarez have both identified state officials responsible for investigating the murders and abductions who have failed in their responsibilities and who are considered "guilty of botching the investigations" (para.17). Incompetence, wilful neglect, corruption and direct involvement are referred to in the memorandum as reasons for the State's failure to investigate and prosecute (para. 13). Serious shortcomings exist at all stages, from receiving missing person reports, to opening a criminal investigation, to gathering evidence and taking criminal prosecutions. The notorious failure of the authorities to carry out effective searches has led families to organise their own searches for bodies and for physical

evidence⁴⁶. An important consequence is, as the NGOs complain, that the impunity with which these crimes can be committed has itself fostered a climate of violence against women (para.13).

10. The memorandum states (para.22) that "[in] accordance with Mexican law, the Federal Prosecutor's Office (PGR) can only take over ("attract") those cases where organised crime is involved". Therefore, according to Mexican law as it currently stands, only the individual states have jurisdiction to prosecute the majority of these crimes as they have been found by the Special Federal Prosecutor's Office not to have any component of organised crime and therefore have been sent back to the state level for further investigation by the same officials who, it would appear, previously mishandled the investigations. The PGR has taken over 24 murder cases which are apparently linked to organised crime.

11. The rapporteuse was unimpressed at her meeting with the state criminal court judges whom she criticises for a lack of due process and for not having proper regard to the presumption of innocence (para.19).

12. The memorandum concludes in paras 44 and 45 with a number of recommendations and proposals, of which the rapporteuse considers the most important to be

- a) that the Federal Prosecutor's Office – preferably the Special Federal Prosecutor – be given the power:
 - to itself investigate the reported "femicides", i.e. according to para. 7 of the memorandum the killing of women "because they were women", and disappearances and
 - to investigate the failings of state officials who reportedly have botched investigations in the first place;
- b) that the Special Federal Commissioner's mandate should be enlarged to allow her Commission to act as a kind of "truth Commission" after the Special Federal Prosecutor has completed her tasks (which would involve granting her access to all case files, as well as the necessary means to carry out her tasks effectively); and
- c) that victims' families should be granted effective and co-ordinated aid, preferably by one body (while type and amount of aid offered should not be dependent on particular aspects of the crime), and victims' families should also be regularly informed about any progress made with regard to investigative or judicial proceedings.

13. Ms Vermot-Mangold comments that this would probably involve a reform of the Mexican Constitution which "would have to be retroactive" though, she comments that "this should be possible as there is no change of material criminal law involved, only a change of investigating/prosecuting authority (and possibly of jurisdiction) – which is a purely procedural matter" (para.45.A).

Proposed amendments to the Mexican Constitution and the law

14. The President of the Parliamentary Assembly has received (1) a draft Presidential decree amending Article 73 of the Mexican Constitution and (2) a draft amendment to the Federal Code of Criminal Procedure and the Judicature Act of the Federation (CDL(2005)022) the intended effect of which would be to give to the Federal authorities the power to prosecute "*ordinary offences related to human rights violations when they transcend the powers of the States.*" However, the amendments expressly provide that the federal jurisdiction would only apply to offences committed after the entry into force of implementing secondary legislation. This proposed secondary legislation amending the Criminal Code provides that federal jurisdiction in relation to ordinary offences will apply where it "*is necessary for compliance with international obligations derived from international treaties to which Mexico is a party...*" The human rights violation must be "*...derived from a situation of persistent perpetration of the same type of offence, where the local authority has failed to investigate the offences...*" Alternatively, the human rights violation must have "*...an impact, at the national or international level, on Mexico as a whole, by its nature transcending the interest of the...federal entity.*"

15. The draft explanatory memorandum accompanying these proposed amendments (only available in Spanish from the Secretariat) emphasises the sovereign nature, in all matters that concern their internal affairs, of the individual states or entities making up the federation (article 40 of the Constitution) and adverts to the fundamental norm of the distribution of competencies between the states and the federation that powers not expressly conceded by the Constitution to federal officials are reserved to the states (article 124). This memorandum explains that the Constitution permits the Federation to create offences committed against the Federation. However, at the same time the individual states have power to create offences in relation to matters within their sphere of responsibility. Nonetheless, exceptions can be made to this distribution of competencies

⁴⁶ Amnesty International Report, 11 August 2003, Mexico – Intolerable Killings

such as where the national interest requires and international agreements giving rise to international obligations of the Mexican State so require. The American Convention on Human Rights Article 28 is referred to. This requires that in cases of federal states the national government must ensure, in accordance with its constitutional laws that the entities take all necessary measures to comply with obligations under the Convention. It is stated that the proposed amendment to Article 73 of the Constitution is in order to avoid any doubt about the validity of the Criminal Code giving to the federal authorities the power to prosecute the crimes in question. The explanatory memorandum refers to several human rights treaties to which Mexico is a party. It recalls that Article 133 of the Constitution provides that the Constitution, the laws of Congress and international treaties are "the Supreme Law of all the Union" of Mexico and, in effect, superior to inconsistent provisions in the constitutions and laws of the states that make up the Union.

Analysis

16. Mexico has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 23 March 1981.⁴⁷ According to Article 2 – one of the core provisions of this Convention –

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women."

And Article 133 of the Mexican Constitution provides

17. "This Constitution, the laws of the Congress of the Union that come from it, and all the treaties that are in accord with it, that have been concluded and that are to be concluded by the President of the Republic with the approval of the Senate will be the Supreme Law of all the Union. The judges of every State will follow this Constitution and these laws and treaties in considering dispositions to the contrary that are contained in the constitutions or the laws of the States."

18. These two provisions combined place obligations not only on Mexican legislators but also on all other officials on both the State and the Federal level to act in a way which is consistent with the CEDAW.

19. In CEDAW the term "discrimination against women" means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

20. The UN General Assembly Declaration on the Elimination of Violence against Women⁴⁸ was agreed as a measure to assist in the effective implementation of CEDAW which, it was recognized, would contribute to the elimination of violence against women. The Declaration recognizes that some groups of women, including

⁴⁷ According to <http://www.un.org/womenwatch/daw/cedaw/states.htm> as updated on 10 February 2005.

⁴⁸ General Assembly resolution 48/104 of 20 December 1993

migrant and destitute women, "are especially vulnerable to violence" and that "violence against women in the family and society...had to be matched by urgent and effective steps to eliminate its incidence". Article 3 specifically refers to the fact that women are entitled to the equal enjoyment and protection of all human rights and that these include the "right to equal protection under the law". It recognizes that States should "...punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" and that women are entitled to "just and effective remedies for the harm that they have suffered" (article 4).

21. It is therefore clear that an effective guarantee of the human rights and fundamental freedoms of women is required by states in order to fulfil their international obligations and states must take all necessary measures to ensure that rights are upheld whether at local or central level, at state or federal level. It is clear from the memorandum that this has not happened in the Chihuahua state.

22. This apparently systemic failure to investigate and prosecute murders of women in the Chihuahua state and beyond amounts, arguably, to a distinction made on the basis of sex which impairs or nullifies the enjoyment of a woman's right to life and other human rights and fundamental freedoms. The obligation imposed by the Convention to achieve the 'practical realization' of non-discrimination, requires Mexico to ensure by appropriate means the effective investigation and prosecution of these murders. If fulfillment of this international law obligation requires constitutional change and change of prosecuting authority then this should be done.

23. Having regard to the memorandum of Ms Vermot-Mangold, which clearly describes the serious nature of the offences, the systemic incapacity of the state of Chihuahua to bring those responsible to justice and the implications that this fact has for the position, including the safety, of women in society in that state, effective action must be taken by Mexico to fulfil its obligations to enforce the human rights of those whose rights are infringed. To do so, both Ms. Vermot-Mangold and the President of Mexico consider it is essential for jurisdiction in relation to the cases in question to be transferred to the Federation. It is desirable that the federal power to prosecute these offences against women be put beyond dispute and an appropriate amendment to the Constitution is therefore to be recommended.

Retroactivity and change of prosecuting authority

24. The Venice Commission has been specifically asked to comment on whether there would be any unlawful retroactivity in the proposal to change the prosecuting authority. It is to be recalled that the amendments proposed by the Mexican authorities would apply only in relation to offences committed after their adoption and have no effect in relation to offences already committed.

25. The main rationale against retrospective criminal law is the need for certainty in the law in order to permit people to regulate their conduct in accordance with the law. Therefore, and crucially, the Mexican Authorities must minutely examine whether there is any difference between Mexican state and federal prosecutions which might materially affect the alleged offender *to his or her disadvantage or detriment* e.g. change in definition of the crime, a broader penalty or difference in the 'ingredients' of liability, and ensure that no such material differences exist.

Retroactivity in International Human Rights Law

26. It could be argued, however, that the obligation to act in a way which is consistent with the CEDAW may be limited by other provisions in instruments of international law. One such instrument is the International Covenant on Civil and Political Rights, which Mexico ratified on the same day as the CEDAW⁴⁹ without declaration or reservation concerning Article 15 – the Article of the Covenant which deals with the question of retroactivity in criminal matters:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

⁴⁹ <http://www.ohchr.org/english/countries/ratification/4.htm>

2. *Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.*"

27. For many years the interpretation of this Article has been somewhat vague.⁵⁰ However, the Article was subject to examination just over a year ago by the Human Rights Committee⁵¹. The author of the communication to the Committee complained that he was the victim of an impermissible application of a retroactive criminal law. The question put to the Committee was whether a lifting of a stay on prosecution and the conviction of the author resulting from the admission of formerly inadmissible evidence was a retroactive criminalization of conduct not criminal at the time it was committed. Whilst the facts do not concern a change of prosecutorial jurisdiction, the comments of the Committee on retroactive criminal law are pertinent. At paragraph 7.4 they state that the provisions of the offence in question at the time of commission "*remained materially unchanged throughout the relevant period from the offending conduct through to the trial and conviction*". Therefore, the Committee found that Article 15 was not violated in this case. The reasons that the Committee gave for non-violation were that "*all of the elements of the crime in question existed at the time the offence took place and each of these elements were proven by admissible evidence by the rules applicable at the time of the author's conviction*". Despite the retrospective change of law in relation to the Court's treatment of evidence, the Committee considered that the author was convicted "*according to clearly applicable law*".

Retroactivity in jurisprudence of the European Convention on Human Rights (ECHR)

28. It is of course the case that the ECHR does not bind Mexico, however the Court's reasoning might be persuasive and thus applied to the Mexican context. ECHR Article 7 prohibits retrospectivity of the criminal law in terms similar but not identical to Article 15 of ICCPR –

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.

29. According to the memorandum, murder, whether of women or others, is currently a criminal offence under the law of the individual Mexican states, but is not prosecutable under federal law in the cases in question here.

30. In *Kokkinakis v Greece*⁵² the Court, commenting on article 7 stated –

"The Court points out that Article 7 para. 1 (art. 7-1) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable."[Emphasis added]

31. In *SW v United Kingdom*⁵³ the European Court of Human Rights held, in relation to the removal of the marital rape exemption by the House of Lords ie by judicial interpretation, that this did not amount to a retrospective change in the elements of the offence.

⁵⁰ Cf. Sarah Joseph et al.: *The International Covenant on Civil and Political Rights*, Oxford University Press, Oxford 2000, p. 340–346.

⁵¹ Communication No. 1080/2002: Australia 24/03/2004; CCPR/C/80/D/1080/2002 (Jurisprudence) 24 March 2004

⁵² (1993) 17 EHRR 397 at paragraph 52

⁵³ [1995] [ECHR 20166/92 paragraph 36.

"Article 7 (art. 7) of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen"
[Emphasis added]

32. In applying this to the circumstances in Mexico as presented in the memorandum, a strong argument can be made that the essential conditions to permit retroactive criminal law are satisfied: (1) the change should not disadvantage the accused (2) the definition of the crime should remain unchanged (3) the penalty should remain unchanged (4) the accused already should have knowledge (from the wording of the existing state provision) what the ingredients of liability are, and these should not change. In general, it can be said that a change of prosecuting authority does not retrospectively 'apply' criminal law – the particular criminal law has always applied, the change is a purely procedural or administrative one.

Proposed wording of constitutional amendments and law

33. Subject to the comments above concerning retrospectivity, taken together, the proposed amendments to the Constitution and the law would seek to meet the requirements of the situation described in the memorandum. What is essential is that criminal justice be brought to bear in relation to the offences in an effective manner so as to vindicate the human rights of those affected. It is for the Mexican authorities to ensure that the transfer in the terms suggested, to the Federal authorities of the power to "*hear and determine ordinary offences related to human rights violations when they transcend the powers of the State or the Federal District*", is sufficient to meet the international human rights obligations of Mexico.

34. According to the memorandum, it is the case that the prosecution authorities in Chihuahua currently have the power and laws to investigate and prosecute the human rights violations in question namely murder, disappearances etc. It is therefore not necessarily the case that these violations "transcend the powers" of the State of Chihuahua. The problem is that the state authorities seem to have failed to exercise the powers that they already have. This wording may therefore present difficulties. However, when the constitutional amendment is read with the draft amendment of the Federal Code which expands on the meaning of the constitutional amendment, it seems to be intended that jurisdiction be transferred

- where compliance with international obligations concerning human rights so requires provided:

- o there is persistent perpetration of the same type of offence and the local authority has failed to investigate or
- o the human rights violation has an impact, at the national or international level, on Mexico as a whole by its nature transcending the interest of the corresponding federal entity.

35. It would be important that the decision whether there is a "situation of perpetration of the same type of offence" and there is a failure by the local authority to investigate, and the human rights violation transcends the interest of the federal entity be taken by the federal authorities and not be left to the states. This requirement should perhaps be made explicit in the law itself.

Conclusions

36. The Mexican Constitution is very complex – as obviously are the Mexican rules and legislative acts on cooperation and interaction of federal and state authorities and courts of law which were mentioned or referred to in this matter concerning feminicides. Without further research on the details of administrative and judicial regulation and on political feasibility of intended reforms it will not be possible to express a firm opinion on which path of legislative or constitutional reform to choose in order to achieve the goals envisaged in the Memorandum. However, there cannot be any doubt concerning the obligations of Mexico as a State Party to the CEDAW to take the necessary measures concerning the feminicides as reported in the Memorandum.

37. It would appear that there are international law arguments and persuasive ECHR jurisprudence to support the transfer of prosecutorial authority from the Mexican states to the Mexican federal power by means of constitutional amendment in order more effectively to prosecute the perpetrators of horrific and apparently systemic murder of women in Mexico.

38. It is reasonably foreseeable that where state prosecution for a crime has proved ineffective, where the elements of the offence remain the same, federal prosecution is not an unreasonable response. On the basis of the information available, it would appear that the change proposed in the Mexican law does not seem to retrospectively affect the existing criminal law to the extent that it does not impair or remove rights, does not create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction. In the circumstances, it appears to be a procedural change of the prosecutorial jurisdiction: a proportionate change for a legitimate reason and therefore permissible.

39. In the circumstances, there does not appear to be any prohibition in international law on making retrospective the transfer to the federal prosecution authorities of those offences. Article 15 of the International Covenant on Civil and Political Rights in the case of the Mexican feminicides does not limit Mexico's obligations under Article 2 of the CEDAW. Indeed, in order to fulfil its obligation to enforce human rights and to give practical realisation to them a retrospective transfer is necessary in order to vindicate past wrongs.

Doc. 10551

Reporting committee: Committee on Equal Opportunities for Women and Men

Reference to Committee: Doc 10088, reference N° 2936 of 2 March 2004

Draft resolution and draft recommendation unanimously adopted by the Committee on 28 April 2005.

Members of the Committee: Mrs Minodora **Cliveti** (Chairperson), Mrs Rosmarie **Zapfi-Helbling** (1st Vice-Chairperson), Mrs Anna **Curdova** (2nd Vice-Chairperson), Mrs Svetlana **Smirnova** (3rd Vice-Chairperson), Mrs Manuela Aguiar, Mrs Edita Angyalova, Mrs Antunović, Mr John Austin, Mr Oleksiy Baburin, Mr Denis Badré (alternate: Mr Guy **Branger**), Mrs Gülsün **Bilgehan**, Mrs Ingrida **Circene**, Mr Brendan **Daly**, Mrs Krystyna Doktorowicz, Mrs Lydie **Err**, Mrs Catherine Fautrier, Mrs Maria Emelina Fernández Soriano, Mr George **Foulkes**, Mr Guiseppe Gaburro, Mr Pierre Goldberg, Ms Gultakin Hadjiyeva, Mrs **Carina Hägg**, Mr Hedeboe (alternate: Mr Axel **Nielsen**), Mrs Eleonora Katseli (alternate: Mrs Maria **Damanaki**), Mrs Synnove Konglevoll Jorunn **Ringstad**, Mrs Monika Kryemadhi, Mrs Minna **Lintonen**, Mrs Danguté Mikutiene, Mrs Fausta Morganti, Mrs Hermine Naghdalyan, Mr Hilmo Neimarlija, Mrs Vera Oskina, Mrs Patrizia Paoletti Tangheroni, Ms Riorita Patereu, Mrs Fatma Pehlivan, Mrs Antigoni **Pericleous-Papadopoulos**, Mr Leo **Platvoet**, Mrs Majda **Potrata**, Mr Jeffrey Pullicino Orlando, Ms Valentina Radulović-Šćepanović, Mrs Claudia Roth, Mrs Marlene Rupprecht, Mr Össur Skarphéðinsson, Mrs Darinka Stantcheva, Ms Agnes **Vadai**, Mrs Gisela **Wurm**, Mr Andrej Zernovski.

N.B. The names of the members who took part in the meeting are printed **in bold**.

Secretaries of the Committee: Mrs Kleinsorge, Mrs Affholder, Ms Devaux