

Gender Analysis for USAID's Human Rights Development Objective

In response to agency guidelines regarding gender analysis as well as guidance received from the Office of Gender Equality and Women Empowerment, the Human Rights DO Design Team (DT) generated a series of queries and research to identify gender gaps related to human rights. Based on the potential gaps, the DT gathered relevant information about gender-based constraints and opportunities across three critical areas of human rights: (1) gender-based violence including violence against women, (2) access to justice, and (3) risks faced by women human rights defenders. Data was collected during May-June 2014 from internal and published reports and from key stakeholders' interviews held in Mexico City. A full list of reports and stakeholders consulted is attached.

The following gender analysis describes the relevant gender gaps and identifies programmatic responses to those gaps critical to achieving the Human Rights project's development objective.

Gender-based violence (GBV)

Beyond the private perpetrators, in Mexico violence against women is characterized by well-established patterns of discrimination from State actors as reported by non-governmental organizations, activists, independent media, and families of victims, and moreover, as ruled by the Inter American Court of Human Rights in the Cotton Field case.¹ This is, the Inter American Court of Human Rights (IACHR) recognized, a *context of structural discrimination in which the facts of [the Cotton Field] case occurred, which was acknowledged by the State [...]* and that *the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.*²

Other relevant reports and stakeholder interviews confirm that this same structural discrimination also applies equally to gender-based violence. GBV reflects and reinforces inequality between men and women and compromises the health, dignity, security and autonomy of its victims. It encompasses a wide range of human rights violations including: violence against LGBT persons, feminicide, and sexual assaults and rape as means of torture (both against men and women).

The IACHR has also recognized the need for efficient and specific health care to women victims of violence and their families, including physical and psychological assistance. The IACHR also found the measures and legislation to address violence against women insufficient. The allocation of budgetary resources to address these issues does not reflect equal treatment of men and women by public officials. The IACHR recommended an evaluation of the national policy on equitable treatment.

¹ Inter American Court of Human Rights, Gonzalez et al (Cotton Field) v Mexico (2009) para 15.

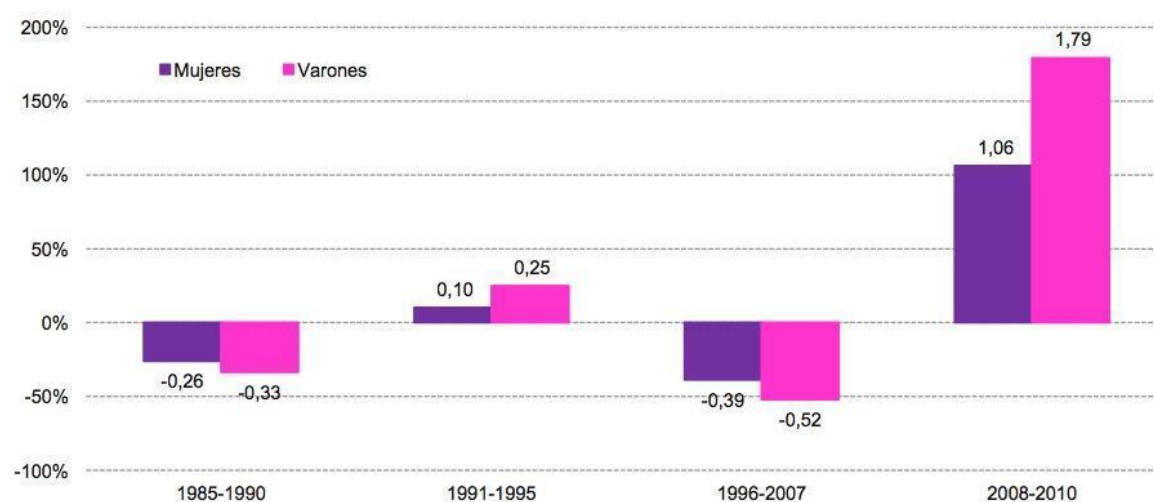
² Cotton Field, para 450, op. cit.

Women and men are affected differently by violence in Mexico. According to GOM figures, men make up the majority of the victims for most crimes.³ However, women make up the majority of victims of domestic violence and rape. A culture of machismo, traditional economic inequality between men and women, and the role of culture perpetuating the cycle of violence are key factors that contribute to GBV, including domestic violence and femicide.

Table 2, below, shows the total homicide rate for men and women comparing 2006 and 2011 figures. The table demonstrates that over the 5 year period, female victims of homicide have increased.

■ Gráfica 3.

México: variaciones porcentuales en la tasa de defunciones con presunción de homicidio, según sexo de la víctima y periodo



GOM statistics show that women feel less secure than men in their communities. Women also demonstrate less trust in the security forces than men.⁴

Homophobia is common and used as a justification for violence against LGBT. The law prohibits discrimination against LGBT individuals; however, LGBT persons reported that the government did not always investigate and punish those complicit in abuses. Discrimination based on sexual orientation and gender identity was prevalent, despite a growing public acceptance of LGBT individuals. On October 6, two attackers released tear gas in an auditorium hosting the “Miss Gay 450 Durango” pageant, injuring several contestants and members of the audience. The Durango State Human Rights Commission condemned the attack and called on the community to promote tolerance and respect diversity.⁵ The National Commission of Human

³ Mexican National Institute of Statistic and Geography, 2012, page 4. More information see: <http://www.inegi.org.mx/inegi/contenidos/espanol/prensa/Contenidos/estadisticas/2013/noviencia0.pdf>

⁴ Idem

⁵ Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013, - See more at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

Rights, the national ombudsman, recommended the GOM include sexual diversity as one of the key issues to address under the human rights agenda.⁶

Violence against women (VAW)

The UN Committee responsible for overseeing the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) has determined all forms of violence against women (VAW) fall within the definition of discrimination against women as set out in the Convention.⁷ In that regard, in 2006 in its concluding observations on the review of the periodic report of Mexico the CEDAW Committee expressed its concern [...] *about the pervasiveness of patriarchal attitudes which impede the enjoyment by women of their human rights and constitute a root cause of violence against women. The Committee expresses concern about the general environment of discrimination and insecurity that prevails in communities; workplaces, including maquila factories; and territories with a military presence, such as the northern and southern border areas, which might put women at constant risk of becoming victims of violence, abuse and sexual harassment. While welcoming the efforts undertaken by the State party, the Committee is concerned about the persistence of the widespread and systematic violence against women, including homicides and disappearances[.]*⁸

UN Women, The National Women's Institute and the National Congress report *Violencia feminicida en México. Características, tendencias y nuevas expresiones en las entidades federativas (1985-2010)*, establishes that VAW is characterized by 3 elements: *invisibility, normanization and impunity*.

According to the UN and NGOs, rape victims rarely filed complaints, in part because of the authorities' ineffective and unsupportive approach to victims, victims' fear of publicity, and a perception that prosecution of cases was unlikely. Human rights organizations asserted that authorities did not take seriously reports of rape, and victims continued to be socially stigmatized and ostracized. Forced disappearances and sexual violence continued to be a widespread problem along the border region.⁹

Femicide

According to a joint report by UN Women, The National Women's Institute and the National Congress, estimates of violent deaths of women fluctuated from 1,000 to 1,800 per year from 1985 to 2009, reaching a total of 34,176 deaths during that period. Far from declining, between 2007 and 2009 incidence of femicide has increased on average by 68% and in certain states such as Durango, Baja California, Chiapas and Chihuahua the rate of increase is above 300%. According to a report published in late 2012 by SEGOB's Human Rights Office, the number of

⁶ National Human Rights Agenda 2013, National Commission of Human Rights, page 28. More information see: http://www.cndh.org.mx/sites/all/fuentes/documentos/conocenos/Agenda_2013_1.pdf

⁷ Report of the Secretary General, Ending Violence against Women: From Words to Action (Ending VAW) (2006), p. 10.

⁸ CEDAW Committee, Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico, 36th Session (2006), CEDAW/C/MEX/CO/6, para. 14.

⁹ Bureau of Democracy, Human Rights and Labor, op. cit.

female homicide victims increased dramatically from 2010 through 2012, particularly in the states of Chiapas, Chihuahua, Durango, Guerrero, Michoacan, Oaxaca, Sinaloa, Sonora, and the Federal District. The study cited regional disparities in the number of female homicide victims, stating that a woman between the ages of 20 and 24 from the northeastern region of the country was 29 times more likely to be killed than a woman of the same age elsewhere in the country. In addition, recently femicide has been accompanied by more vicious means than in the past, and strangulation, burning and stabbing/cutting are three times more probable in women's homicide than in men's.¹⁰

Additionally, the context of violence in Mexico adds to the prevalent *context of systematic VAW based on the erroneous idea that women are inferior*¹¹ and is conducive to prostitution, human trafficking and sexual violence which, according to CSOs, have increased. The context also cultivates the “macho” culture, which tolerates and rewards VAW. In other words, the context of violence not only obstructs the elimination of discrimination against women, but also generates more discrimination, with more extreme manifestations.

Problems identified by civil society organizations in the current context of violence in Mexico is a heightened incidence of disappearances of women and girls¹², particularly due to the fact that Mexico is source, transit, and destination country for human trafficking. This constitutes an additional factor, which has a significant impact on the incidence of disappearances. The highest rate of disappearances of women and girls in Mexico is found among victims between 10 and 17 years of age.

Currently, there is no official assessment or statistical information on the disappearances of women and girls in Mexico. The Senate passed the Law on the National Registry of Disappeared Children, Teenagers and Adults in March 2012, thereby establishing a database to facilitate the search for disappeared people. At the time the registry has not been completed.

In general terms, analysts agree on several factors that contribute to the violent death of women over the past several years:

- A patriarchal and *macho* culture which enforces gender inequity and acceptance of GBV;
- Social, cultural and religious beliefs that preserve domestic violence as they are passed from fathers and mothers, but especially mothers to children;
- Structural discrimination that leads to impunity for those committing crimes against women, revictimization practices, and lack of gender perspectives in investigations and judicial processes.
- The prevalence of violence which exacerbates GBV.

Intra-familiar violence

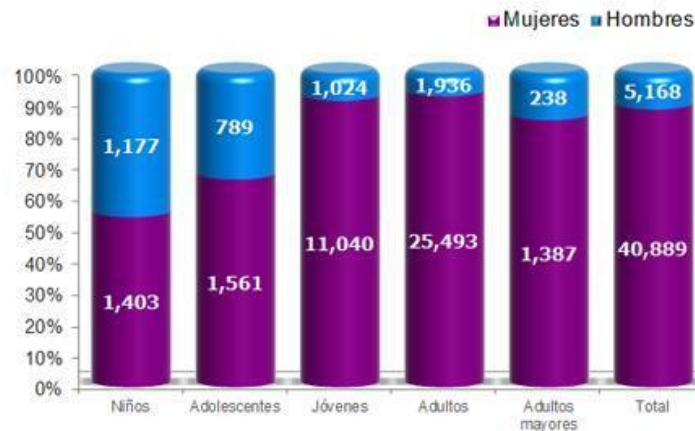
¹⁰ National Femicide Observatory (OCNF)

¹¹ Cotton Field, para 133

¹² OCNF, op. cit.

Domestic violence is a widespread problem in Mexico. Below are 2010 figures of women reported experiencing domestic violence at some point in their life.

Número de casos registrados de violencia intrafamiliar por grupos específicos, 2010



Fuente: SINAVE/DGE/Salud/Sistema de notificación semanal de casos nuevos/Acceso al cierre de 2010.
Consultado en <http://www.dgepi.salud.gob.mx/anuario/html/anuarios.html>

Figures taken from the Consejo Nacional de Población¹³, May 2012

Many Mexican women hold conservative attitudes about gender norms and roles, which contribute to a culture accepting of domestic violence and promoting its “invisibility.”

The impact of intra-familial violence includes physical injury and in the most extreme cases leads to death. Other impacts can include psychological and emotional distress.

GOM response

Despite the increasing number of cases and complaints regarding violence against women, public funding for prevention and attention of victims has reported to be insufficient. The GOM has taken measures such as:

- The General Law on Women's Access to a Life Free from Violence (Ley General de Acceso de las Mujeres a una Vida Libre de Violencia, LGAMVLV) was passed in 2008 after pressure from civil society and in response to the high levels of VAW in Ciudad Juárez. It sets standards for effective security and judicial actions at the regional level, mandates special reports on GBV, allocates budgetary resources to address VAW, and disseminates information about the measures to be implemented.

¹³ Report available at: http://www.violenciaenlafamilia.conapo.gob.mx/en/Violencia_Familiar/Tipos_de_violencia

- A Gender Violence Alert is established by the LGAMVLV. The gender alert allows a determination that a systematic violence against women exists in a state and determines the actions necessary to prevent further cases of aggressions against women. However, since its establishment only one request has been accepted for review. It is likely that state governments look to avoid a positive determination for a violence alert.
- Establishment of the Special Prosecuting Unit for Crimes Committed against Women and Human Trafficking (FEVIMTRA) within the Attorney General Office. USAID provided training on themes such as trafficking-in-persons, assistance to victims of serious crimes and investigation techniques to prevent and combat the sexual exploitation of children. Nevertheless, FEVIMTRA's faces challenges, such as having only 15 federal prosecutors countrywide. Moreover the unit has faced challenges in moving from investigations to convictions, although it has achieved several convictions. It has a limited mandate and stakeholders assert that the allocation of resources to the unit is not sufficient.
- In 2012 femicide was included as a specific crime at the federal level. and is now also a specific crime in half of the states. The challenge remains in harmonizing those provisions that remain discriminatory, for example those prescribing extenuating circumstances in the homicide related to "infidelity" or "violent emotions"; and the passage of the femicide crime in half of the states of the country.

USAID has supported the GOM to establish Women Justice Centers, but there are still a limited number of centers able to provide assistance to women and their children, especially in rural areas. While different GOM entities support the creation of such centers, the GOM has not supported their operation and the allocation of sufficient resources.

Relevant to USAID

Women make up the majority of victims of domestic violence, sexual-related crimes and trafficking in persons. While men have a higher expectation of being a victim of a crime, women generally feel more insecure than men. Women are vulnerable to domestic violence and suffer a very high homicide rate. Children of both sexes are demonstrably affected by the presence of domestic violence and are likely to repeat cycles of violence as adults.

USAID has identified the need for programming on preventing GBV as well as on the protection of, and assistance to, victims of crime. Moreover, violence in Mexico has generated an increasing demand from civil society to improve victim's assistance services and legal protection.

Potential Project Responses:

- Integrate a gender perspective in the efforts to institutionalize the human rights approach into the GOM initiatives. While DO1 focuses on the replication of crime and violence prevention initiatives at the local and community level, and DO2 supports access to justice for women within the criminal justice reform, DO3 will complement these efforts at a national and local policy-level.
- Support efforts to raise awareness of citizens' rights, particularly those of women and the LGBT community to empower these groups to demand the protection of their rights.
- Support the promotion of policy and programming that increases legal assistance and protection for victims of GBV, including women and children, and LGBT victims of violence.

- Support the development of tailored training to GOM officials with a gender perspective and that promote assistance to GBV victims.
- Promote accountability systems to ensure that gender perspectives are considered in GOM decision-making.
- Raise awareness of LGBT rights among public officials and citizenry.
- Support the development of adequate policy measures to protect the rights of LGBT.

Access to justice

According to the National Citizens' Observatory on Femicide (Observatorio Ciudadano Nacional de Femicidio, OCNF), a suspect is detained for approximately one out of five femicide cases and just four out of 100 cases reach the last stage of trial. The outcome for that 4 percent remains unclear as the judicial branch has not report on the final resolution.

While impunity prevails across Mexico for the majority of crimes with an estimated rate of 98 percent¹⁴, gender bias and acceptance of violence against women is the norm which characterizes impunity. GBV has also been a problem for those persons under investigation and while in police detention. Public reports have denounced cases sexual abuse against women as a form of torture to pressure self-incrimination, and the innocent have been subjected to prosecution for GBV crimes.

Irregularities in the investigations and judicial processes have resulted in delayed investigations, including investigative files falling inactive, negligence and irregularities in gathering evidence and conducting examinations, failure to identify victims, loss of information and evidence, and misplacement of body parts in the custody of the prosecutors' offices.¹⁵ All of which results in exoneration of perpetrators and the incrimination of the innocent.

Frequently, when families report women's disappearances within the very first hours or days, police officers ask them to come back after a few more days claiming that the girls or women are likely with their boyfriends. In other cases, they receive the claim without undertaking any investigation.

Stakeholders explained that the legal framework, institutional design and lack of resources impact on the effective investigation on gender-based violence. Even though there is a regular allocation of funds to address gender issues by the Congress, funds seldom reach the Attorney General's Office (PGR) Special Prosecuting Unit for Crimes Committed against Women and Human Trafficking (FEVIMTRA) under a discretionary distribution of funds by the PGR. For example, Trafficking in Persons (TIP) is not considered under FEVIMTRA's mandate and those investigations and funds are in fact allocated to the Assistant PGR for Special Investigations on Organized Crime (SEIDO).

¹⁴ Diverse sources including Academia and the President of the National Human Rights Commission recognize at least 98% of impunity in Mexico.

¹⁵ Cotton Field, para 150, op. cit..

Stakeholders remark that the effective implementation of the legal protections to prevent GBV depends on incorporating protocols for criminal investigations in order to provide guidelines for acting with due diligence on the GBV cases. Otherwise, the subjective criteria of prosecutors impede the adequate application of the new legislation protecting victims of GBV.

Relevant to USAID

Impunity promotes further violence and crimes, and together with the challenges faced by victims while cases are under investigation and within the judicial processes, feelings of revictimization hinders the willingness of victims and witnesses to continue the process. The Mission's DO2 of the CDCS works closely with the GOM on reform of the justice system and should ultimately have an impact on the level of impunity and also promote appropriate assistance and protection for victims, while the Human Rights DO3 will complement these efforts at the policy level through the following:

Potential Project Responses:

- Support the development of protocols within the Attorney General Office at the national and local level;
- Develop protection and assistance protocols to victims of GBV as recommended by the human rights international bodies (UN and OAS); and,
- Support the institutional strengthening of the newly created National Victims System and its Executive Commission on addressing GBV.

Lack of information

In addition to the challenges within the access to justice arena, there is a need for generating and reporting accurate information of cases of GBV, particularly for feminicides. Moreover, the Special Commission on Feminicides formed by representatives of several political parties has admitted that the prosecutor's offices at the state level provide contradictory statistics on femicide.¹⁶

The GOM has created a system to produce statistics on cases of VAW, the National Data and Information Bank on Cases of Violence Against Women (Banco Nacional de Datos e Información sobre Casos de Violencia contra las Mujeres, BANAVIM). The National Security Commission is in charge of its operation, but has been unable to produce statistics due to the absence of information from the states. According to stakeholders, although the BANAVIM has been allocated budget of 15.3 million Mexican pesos since 2010, it has not yet begun to fulfill its mandate.

Relevant to USAID

The lack of available and reliable information for stakeholders has hindered the creation of public policies that would address GBV. There is a need for demographic (sex, age, LGBT, indigenous/ethnic) disaggregated data collection and systematization to inform policy-making to respond to GBV.

¹⁶ Federación Internacional de Derechos Humanos, Misión Internacional de Investigación. *El feminicidio en México y Guatemala*, 2006, p. 12.

Potential Project Responses:

- Support the efforts to monitor and advocate for the release of official information; and,
- Support academic studies that inform both the policy making and the opportunities for CSOs to advocate for a response to GBV.

Role and impact of CSOs working on gender issues

At the national level, women's organizations and movements are strong and well organized. They have worked to institute significant changes, including the enactment of key legislation, and the establishment of new state entities to address gender issues. In general, organizations that support LGBT issues face challenges to achieve impact.

Civil society representatives report that there has been progress in the advancement of GOM measures to address VAW, but the implementation and budget for these efforts have been inadequate. There remains a need of public pressure to improve the response to this issue.

In an effort to overcome impunity, relatives of murdered and disappeared women have become activists, looking for justice not just for their cases but also for other acts of femicide in their communities. In Mexico, women who engage in human rights defense, particularly those seeking justice in cases of femicide, have been targeted in order to repress and silence them. These activists are especially vulnerable because their efforts "defy the inequality structure and the existing discrimination"¹⁷ that exists in Mexico.

The GOM official mechanism to protect human rights defenders established in July 2011 is not yet fully operational, and women human rights defenders have been harassed and suffered threats, both individually and to members of their families. These attacks have also resulted in the murders of prominent activists and members of their families. In states such as Chihuahua, Nuevo León, Oaxaca and Guerrero the risk of physical attack for pursuing justice in cases of VAW is extremely high.¹⁸

Relevant to USAID

Promoting the safety and security of activists against GBV and violence against women is vital to advancing these human rights given their role in advancing women's rights and eradicating impunity in cases of femicide, and other forms of GBV.

- Potential Project Responses:

¹⁷ Miguel Concha, "Mujeres y defensa de los derechos humanos", La Jornada On-Line, 11 February 2012.

¹⁸ Susana Chávez, poet and activist against femicide, was murdered and mutilated in early 2011. Norma Andrade, an activist who founded the NGO Our Daughters Back Home and mother of a young femicide victim, was shot five times in 2011, two months later she was stabbed on several occasions. Marisela Escobedo, who fought for justice in the femicide case of her teenage daughter, was shot while holding a public protest after the release of her daughter's ex-boyfriend and sentenced killer.

- Support the strengthening of the National Protection Mechanism for Human Rights Defenders and Journalists, with an emphasis in the different protection needs based on gender.
- Support efforts on self-protection training with an emphasis in the different prevention and protection needs based on gender.