

## **Perspectives: No justice, no peace**

### **Mexico not aggressive fighting murders of women in Ciudad Juarez**

By M.C. Sungaila

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Fourteen years ago, I began my career as an appellate lawyer in a pro bono case, helping the Southern Poverty Law Center convince the United States Supreme Court to reinstate the civil rights conviction of a Tennessee judge who used his power to sexually assault and rape female court employees and litigants appearing before him.

A shocking abuse of power, to be sure.

More shocking, however, is the even longer-running, wide-scale murder of women and girls authorities have allowed to continue unchecked just across the United States border in Ciudad Juarez, Mexico.

For over 15 years, young women and girls in Ciudad Juarez, Mexico have disappeared and been killed at an alarming rate. In 2003, the

Rapporteurship on the Rights of Women of the Inter-American Commission reported that an estimated 268 women and girls had been murdered since 1993, that only 20 percent of these crimes ended in trials and convictions and that reported disappearances of an additional 250 women and girls also remained unsolved.

The number of women killed in Ciudad Juarez throughout the 1990s increased at twice the rate for men; the homicide rate for women in Juarez was more than three times as great as that in Tijuana, a border city of comparable size.

#### **Serial nature of crimes**

Even more troubling than the sheer volume of the killings is the apparent serial nature of many of them. The victims are generally between 15 and 25. They are either students or employed in local shops or businesses. Many work at the 300 large foreign-owned assembly plants known as maquiladoras that sprang up in town after the signing of NAFTA, so are newcomers to the town, having migrated from other parts of Mexico. Many are found days or months after their disappearances, their bodies abandoned in vacant lots and bearing signs of torture, sexual assault and in some cases mutilation.

Just the kind of case police and crime-solving behavioral analysts like those on television's "Criminal Minds" would seem keen to investigate and solve before another woman becomes a victim.

Thus far, however, the authorities in Mexico have done little about the ongoing tragedy. Indeed, in 2006, when the United Nations Special Rapporteur on Violence Against Women visited the region, she emphasized the brazenness and impunity associated with the crimes: The "majority of cases remain unsolved and the perpetrators continue to enjoy impunity. ... The failure to convict and curb the murders has been to a large part the result of extremely poor, indifferent and negligent investigations by the authorities of the State of Chihuahua, who have jurisdiction over these cases."

### **Inaction leads to murder**

The authorities' inaction has opened the door for even more murders. The unchecked epidemic of murders and disappearances of women and girls appears to have spread to the middle class, and to neighboring regions of Mexico.

Four years ago, Mexico acknowledged the severity of violence against women in Ciudad Juarez and asserted that, while the process would take time because of the entrenched gender-biased attitudes underlying it, Mexico had nonetheless begun to respond to the situation.

None of these efforts reflects a sustained and active - rather than just a verbal - commitment to eradicating violence against women. Nor have these efforts resulted in effective investigation and prosecution of a significant number of these crimes. These measures do not provide the effective remedies required by international law. And soon an international court may tell Mexico that its efforts have fallen short of its international obligations to effectively address and prevent violence against women.

Last week, the Inter-American Court of Human Rights, the regional human rights body for the Americas, met in Costa Rica to consider the merits of a human rights case brought by the mothers of three young women who disappeared and were killed in Ciudad Juarez. The case, Campo Algodonero, is named for the abandoned cotton fields in which the young women's three bodies were initially thought to have been found.

The mothers of these three girls claim that Mexico's indifferent and ineffective response to the violence violates both regional human rights and women's rights treaties.

### **A right to liberty**

The American Convention on Human Rights, by which Mexico is bound, says that every human being has a right to personal liberty and security as well as a right to have his or her life and physical, mental and moral integrity respected. It provides for the right to due process, judicial protection and a remedy for rights violations. The American Convention also provides that every "minor child has the right to the measures of protection required by his condition as a minor on the part of his

family, society, and the state" and that each person is entitled to equal protection under the law, without discrimination.

The American Convention on Human Rights further provides that member countries will "respect" and "ensure" fundamental human rights "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." The Convention also directs countries to take "legislative or other measures as may be necessary to give effect to those rights or freedoms." Taken together, these provisions impose affirmative obligations upon countries to respect and guarantee fundamental human rights.

### **The duty to prosecute**

In the landmark case *Velasquez-Rodriguez*, the Inter-American Court interpreted a country's duties under the American Convention to include an obligation to investigate, prosecute and punish human rights violators through the state's judicial tribunals.

The court has the authority to issue a broad range of remedies for violations of the American Convention. In the past, it has ordered complex restitution to compensate for disappearances, torture and detention; rehabilitation measures including scholarships, education and vocational assistance programs; public recognitions of wrongdoing; memorials and commemorations; legislative and policy reform; training and educational programs for state officials; and information gathering and analysis to further monitor and effect change.

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, known as the Convention Belem do Para, imposes a specific obligation on countries to take additional measures to protect the rights of women - in particular, vulnerable groups of women such as migrant women and young women and girls.

In *Maria da Penha Maia Fernandes v. Brazil*, the Inter-American Commission concluded that Brazil had violated Fernandes' rights under Belem do Para and the American Convention by delaying for more than 15 years the prosecution of her abusive husband for her attempted murder.

In response to the *Maria da Penha* decision, Brazil enacted the *Maria da Penha* law to provide protection from and remedies for domestic violence at the national level.

### **A holistic response**

The failure of countries to respond effectively to gender-based violence continues to vary in degrees throughout the Americas.

In order to effectively address this problem, a holistic response to gender-based violence that includes both criminal justice and economic, social and cultural dimensions is necessary. Indeed, countries' international obligations to eradicate violence against women and gender-based violence include not only having laws and policies on the books, but also effectively enforcing those laws and policies. The police's failure to meaningfully investigate the crimes in this case, together with Mexico's failure to prosecute these crimes or provide a remedy for this indifferent and negligent investigation, violate Mexico's obligations to respect, protect and fulfill the rights of women and girls to be free from gender-based violence.

To address these violations, the court should issue broad remedies to address the economic, political and social underpinnings of the violence and impunity.

A favorable ruling in this case would send a powerful message that, to comply with international human rights obligations, countries must exercise due diligence when investigating and responding to gender-based violence and ensure that local counterparts are doing the same.

By further providing a broad range of remedies for these violations, the court would also make clear that the due diligence obligation extends beyond the criminal justice context to encompass economic and social measures as well, particularly where, as here, large-scale violence against women has repeatedly occurred unchecked.

M.C. Sungaila, a partner at the Los Angeles law firm Horvitz & Levy, recently filed a brief pro bono in the Inter-American Court of Human Rights for Amnesty International and over 50 other groups and legal experts in the Campo Algodonero cases. She is a member of the Arts & Humanities Advisory Board at Claremont Graduate University.

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