



# **End violence: Women's rights and safety online**

## **Internet intermediaries and technology-related violence against women**

### **Mexico**

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# 1. Analytical report

## Introduction

This report shares the results of a research study that explores remedies for victims/survivors of technology-related forms of violence against women (VAW). The Association for Progressive Communication (APC) coordinates this research project in partnership with seven countries: Mexico, Colombia, Democratic Republic of Congo, Kenya, Philippines, Pakistan and Bosnia-Herzegovina.

The APC Women's Rights Program promotes gender equality for the design, implementation, access and use of information and communications technologies (ICT) and in decision making and political frameworks that regulate ICTs. The "End Violence: Women's Rights and Safety Online Project" focuses on technology-related forms of violence, from mobile phones to the internet.

The main objectives of this study for each country partner were to:

- Map pertinent domestic legislation
- Review corporate policies
- Document up to four in-depth case studies on victims/survivors of technology-based violence
- Interview law enforcers
- Interview NGOs directly concerned with violence against women
- Interview corporate representatives from ICT companies: internet service providers (ISPs), mobile phone companies, and their policy departments

## Research summary

This report shares the findings of research carried out from a rights based approach in Mexico between November 2013 and April 2014, based on four in-depth case histories of women who experienced violence through the use of technology. Each of the women sought justice through the competent authorities, technology intermediaries, or both.

We interviewed three of the women - Luisa, Berenice, and Morgana<sup>1</sup> - in person and engaged in e-mail correspondence before and after the interviews. This electronic exchange of letters allowed exploration of background information, the women's feelings and fact-checking. In the fourth case we were unable to speak directly to the young woman in question (Mary), but on more than one occasion we were able to talk with one of the social workers who provided her with legal advice when she registered her complaint.

Luisa's case had been studied as part of a previous APC project and had been written up in an earlier article that was very useful for constructing the timeline of events and preparing the interview.

Before meeting with the women we compiled existing laws and corporate policies in Mexico in the fields of human rights, violence against women (VAW) and information and communications

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<sup>1</sup> Names of all respondents have been changed.

technologies (ICT). The compilation was assembled from a feminist perspective rather than a legal one and we found a great deal of material, mainly on the first two topics.

In order to reach a better understanding of support procedures, over and above the written regulations, we telephoned support personnel at internet and telephony access intermediaries, as well as citizen services (the police and the National Council to Prevent Discrimination (CONAPRED - Consejo Nacional para Prevenir la Discriminación).

We also carried out two interviews with social workers in direct contact with women victims of violence and held a round table with men and women experts on women's human rights and digital rights.

This paper seeks to raise survivors' voices. It spotlights their testimonies and narration: their feelings, how they've processed what they experienced, and their learnings. Through their insights we hope we can identify routes to curb further tech-based violence against women, or at the very least, forge a clearer path for other women who face it.

### **Legislative and political context**

Formally, Mexico is a representative, democratic, secular, federal republic, comprising 31 free and sovereign states and one federal district. The supreme power in the Mexican federation is divided into legislative, executive and judicial branches.

Mexico is a country of contradictions. It has federal and local laws and has signed international treaties that, on paper, demonstrate unconditional support for civil rights, respect for women's lives and rights, and an open commitment to the eradication of all forms of discrimination and violence. However, in practice women's rights are violated in different ways and in different spheres, including that of government institutions.

The above may be explained by cultural factors, such as how Mexicans relate to one another and the way they perceive reality, the roles of men and women, the powers ascribed to authorities, et cetera. Mexican society has yet to fully accept equality between men and women, and this is reflected in family, school, work, community and institutional life and practice. Many women experience violence and attempts are often made to justify this by appealing to tradition and custom. Thus VAW is seen as normal.

Administrative and legal officials reflect this when they enforce the laws according to their own worldviews. This results in a generalised lack of access to justice by women.

In other words, laws exist but are not enforced; victims are unaware of their existence; and parties responsible for justice - agents from the public prosecutor's office (Ministerio Público) - either circumvent or disregard the law entirely, acting in accordance with their own patriarchal traditions, which minimise and discriminate against women and attempt to make them invisible, rather than simply complying with the law. These public servants overlook the fact that all people are entitled to register a complaint, whether or not a crime has been committed, and yet they repeatedly deny women access to this right.

The public prosecutor's office is the only place that citizens can lodge a complaint. This agency is the public servant that files formal accusation in representation of society, seeking to enforce the law. This public prosecutor may be federal or local, depending on the crime to be investigated. Public prosecutors offices can be found in major urban areas, meaning that people living in rural areas must travel to larger cities in the state to even file a complaint.

The public prosecutor is the accusing party in all types of penal action that, as a public office and on behalf of the State, demands punitive charges (punishment) from parties who commit illegal actions (crimes) and, when possible, that demands compensation or redress for harm.<sup>2</sup> The public prosecutor is independent from the Judicial and Executive branches of government, which are responsible for investigating crimes denounced based on evidence.

As mentioned, abundant legislation exists on VAW, whereas ICT legislation is in its infancy. Debate on VAW and ICT is still academic and, in practice, self-regulation has filled the void left by the lack of national laws on technologies. Electronic commerce is incompletely regulated and women's human rights are not respected. Laws regulating VAW committed through the use of ICT are still a long way off.

## 2. Themes and trends

### Dynamics of VAW and ICT

Access to technological advances in Mexico has enabled bigger and better ways of communication and information, but also new ways to exercise VAW. A newer form of tech-based violence against women is psychological, although physical and sexual aspects continue to exist. Violence perpetrated using ICTs is not yet addressed by legislation in Mexico.

ICT safety knowledge and policies have not kept up with the pace of technological advancement. In general, women are poorly informed or are not fully aware of the scope of internet and social networks, or how they might be harmed by them.

The stories shared by women in the case studies point to ICT as central to increased and consistent contact by aggressors which would otherwise not have been possible. Both Mary and Luisa experienced violence via cell phones and Luisa was also attacked via email and her blog. In Mary's case the cell phone was the primary tool to first sexually harass her and control her mobility through death threats against her family forcing her to comply with her kidnapper. Luisa's geographical location was known thanks to technology and she was harassed and stalked online, never meeting her aggressor(s) face to face.

In the other two case studies, Berenice's privacy was violated when a webcam conversation was altered and posted on a pornographic site with her profession and location, violating her privacy and intimacy. In Morgana's case the violence began through a gossip site in social networks. In both

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<sup>2</sup> Ministerio Público de la Federación: [www.pgr.gob.mx/Combate a la Delincuencia/Ministerio\\_Publico.asp](http://www.pgr.gob.mx/Combate_a_la_Delincuencia/Ministerio_Publico.asp)

cases, psychological violence evolved into physical violence from others when Berenice experienced street harassment and Morgana suffered a physical assault.

In three of the cases, ICT also allowed the aggressors to remain anonymous (except in Mary's case as her assailant was known to her), giving them greater power over their targets.

## Harm

Most notably the women in all the cases experienced psychological harm although each case had variations and specificities, and in Mary's case reached an extreme of forced imprisonment.

Mary was initially subjected to sexual harassment, followed by threats against her physical integrity. She was blackmailed with the threat that her younger sisters would be raped and her mother and sister hurt or killed if she did not comply with her aggressor's demands. Her brother-in-law forced her to leave home, held her against her will and forced her to have sex with him. The physical violence produced even greater psychological violence: fear, loss of family relationships and damaged reputation.

The DIF [family services department - Desarrollo Integral Familiar] counselors scolded me saying I ran off with my boyfriend, that I was a problem child, 'my poor mother'... and I, well I was just fed up with it all and stayed silent and I didn't tell them anything about what that man [her brother-in-law] did to me," Mary told her social worker at one point.<sup>3</sup>

Luisa experienced harassment, threats and discrimination for being a lesbian. She was threatened with punitive rape, exposure or "outing" of her patients, raping her adoptive daughter and having her house burnt down. This psychological violence resulted in initial isolation, as well as limitation of mobility and reduction of her activism: "I was terrified, I didn't want to leave my house which was crazy because they wanted to burn it down." Luisa explains, "Yes, I was really frightened because we were being watched/under surveillance and they had our phone numbers. I didn't open up our space [her own home] for a meeting ever again."<sup>4</sup>

Berenice had to deal with the use of her face in a sexual video that was referenced to her city of residence and her occupation. In a society where women's sexuality is controlled and judged, this produced psychological violence: fear and paranoia, reduced mobility, impact on her professional capabilities, and fear that her teaching career would be affected by the harm to her public identity.

I was so afraid I couldn't go out, I felt a horrible pressure here [in her chest] and that everyone was looking at me... but more than anything I felt so much rage." Regarding

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<sup>3</sup>Interview with Rosa María Lua, legal counsel at the External Support Center of Morelos (CAEX), 13 February 2014.

<sup>4</sup>Interview with Luisa, 28 February 2014. For security reasons all names of the women in the case studies have been changed.

street harassment, she shared, “I was walking and two guys came up saying they recognised me and started to grab and pull at me and I broke away running.”<sup>5</sup>

For Morgana, a social networking gossip page resulted in psychological violence due to damage to her reputation and also fear for her safety. It also led to physical and economic violence: she was beaten by her husband and in-laws, subjected to surveillance by her estranged husband, and forced to leave her home and possessions. “I felt awful [when she heard the news about the gossip site], I had to lie down, I was exhausted, crying, sad because I didn't know how I was going to tell my husband, I was very afraid... I had a gut feeling he was going to take it badly.”<sup>6</sup>

## **Taking action**

The solution most used by the survivors was to limit or censor their use of technology: they changed their telephone number, opened another email account or unsubscribed from services.

Mary's mother initially lodged a missing person report with the authorities. When Mary escaped her captor she went to family support services provided by the local government, who referred her to a women's shelter run by a non-governmental organisation (NGO), where she received psychological support. Later Mary and her mother decided to press charges through the public prosecutor's office for corruption of a minor and kidnapping. She changed her cell phone.

Luisa tried to file charges at the public prosecutor's office but was denied the right to do so by police officers who argued that making a threat is not categorised as a crime in her state, even if there is risk of physical harm. However, in Mexico the prosecutor's office is required to receive complaints and if she was not allowed to lodge one, if only to establish a precedent of evidence, she was being discriminated against. Luisa felt that her attempt to file a complaint was not taken seriously by the prosecutor's office because they dismissed the importance of the threats and their homophobic content: “we know you are converting women into lesbians”. By refusing to register the complaint, the prosecutor's office further contributed to minimising and hiding gender violence and discrimination based on sexual identity to which Luisa had been subjected as a lesbian and as a woman.

She presented her case to the federal anti-discrimination body CONAPRED whose answer confirmed her suspicions. CONAPRED issued a protection order, requiring the MP to “protect her physical integrity.” The police intervened and the harassment ceased. In later incidents, CONAPRED said it was not the competent authority. Luisa furthermore decided not to return to the prosecutor's office. Instead, she engaged social media and organised public protest to denounce the rape threats and harassment. She cancelled her telephone service, changed her email address and contacted a blog support service to increase security on her blog.

Berenice contacted the cyber police in Mexico City through their Facebook page and received advice. She was told to make a formal complaint to the public prosecutor's office in her state, with proof of the offences, and she was referred to the cyber police in her state. She never received a

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<sup>5</sup>Interview with Berenice, 1 April 2014.

<sup>6</sup>Interview with Morgana, 7 May 2014.

reply from this agency. She also contacted the state women's services and protection agency – the Institute for Women – for an appointment to receive support and guidance, and received a disdainful reply.

She contacted APC via Facebook and via its online tech-based VAW map. She changed all her online identities and passwords and stopped using her real name online. She constantly monitored images and video online using reverse image search and by searching porn sites. She asked an engineer friend for technical support and online education to improve her knowledge of digital risks and security.

Morgana sought psychological help from DIF family services, the local Institute for Women, and the justice of the peace<sup>7</sup> – the latter to make sure her husband could not accuse her of desertion. She pressed charges for physical injuries with the public prosecutor's office. She consulted APC through a referral from the women's help desk in her municipality.

For many women who face tech-based VAW a common recommendation from friends, family and law enforcement alike is to “just get off line” or “stop using Facebook”. Indeed avoiding spaces where abuse happens is frequently an initial reaction in cases documented in the Take Back the Tech! map<sup>8</sup>. Such advice ignores the increasing importance of the internet in access to information, self-expression, work, play, or basic communications. In effect it silences women's voices and ability to exercise their citizenship.

In spite of the role technologies played as tools for perpetuating acts of violence (Berenice and Luisa) or as a means of violence (Mary, Luisa, Morgana), all three women whom we interviewed directly held the view that the technologies themselves were not to blame and, thus, they did not cease to use them completely.

Berenice says ICTs are great tools for fighting crime and she knows they have infinite potential. Luisa thinks the internet is wonderful, “to promote yourself and your work because it's free – you pay your internet access fee and you are free to write what you want, take a stance on what you want. I couldn't, nor would I ever want to stop using internet. It's been so useful to me, it's given me so much.” Luisa asserts that the issue is to be careful and selective of the information that is posted.

### **Obstacles to accessing the legal framework**

Mexico has a very extensive legal framework with different laws dealing with non-discrimination and non-violence against women. There are specific laws to address each of these issues, such as the General Law for Women's Access to a Life Free from Violence (LMVLV), 30 state laws on LMVLV and a Federal Law to Prevent and Eliminate Discrimination, as well as general principles found in another 10 laws and in the constitution.

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<sup>7</sup> The Justice of the Peace is a judicial position at a local level, usually in a municipality where there are no first degree courts nor a public prosecutor's office. Since the justice of the peace tends not to have comparative knowledge of the law as a scholar of the law, conflicts submitted for his/her review are solved through conciliation. Justices of the Peace are only used to address civil controversies and minor criminal proceedings. The Justice of the Peace should reside in the same population where s/he serves.

<sup>8</sup><https://mx.takebackthetech.net/mapit>

However, the different types of violence that women specifically suffer (physical, psychological, patrimonial, obstetric, economic, sexual violence and feminicide) are not characterised as crimes in the federal or state penal codes. In practice, many authorities continue to consider these realities as “family violence” without taking into consideration that there are other surroundings (school, labor, institutional, community, ICT) where VAW occurs.

Out of the different kinds of VAW, only feminicide has been defined as a crime in the Federal Penal Code (Chapter V) and in the Federal District’s and 30 state penal codes, with only the state of Chihuahua failing to consider it a crime. Some states, like Veracruz, have provisions for VAW as a crime; however, the rest of the states address these situations generally without taking into consideration gender factors, as in the case of rape or homicide<sup>9</sup> that are classified but lack gender perspective. More precise and harmonised legislation is needed each state (using the same concepts, types of crimes and punishments) to avoid several of the problems observed in the case studies.

For instance, when Mary registered her complaint, the federal Geolocation Law was still not in force<sup>10</sup>. In Luisa's state, threats are not regarded as a crime in the penal code. In Morgana's case, LMVLV could be applied at least for the case of psychological violence but in her state these laws are not included in the criminal code. Mexico’s state laws regarding defamation have slowly changed due to advocacy by freedom of expression groups, who have fought for decriminalisation to protect journalists from abuse by authorities. Only 13 states continue to regard defamation as a crime. It can be addressed via a civil case, but this requires prohibitive financial, legal and time resources and the burden of proof is upon the victim.

Another difficult problem with the laws (when they do exist) is enforcement. This is why the creation of regulations and protocols for the application of the law <sup>11</sup> is so important.

Beyond legislative problems, there are also social, administrative and institutional challenges to accessing justice. Our case studies documented chauvinistic - machista - and patriarchal social norms as a major obstacle, lack of knowledge about legal procedures and women's rights amongst women themselves and society in general, and perhaps the greatest challenge being the behaviour and discriminatory practices of authorities charged with providing access to justice.

Those women who were successful in gaining access to justice, whether or not damage reparations were made, had guidance and legal aid from NGOs or government institutions like CONAPRED. In this study, this was true in the case of Mary and Luisa.

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<sup>9</sup> It is important to clarify that there is almost no difference between the law and a code in Mexico. Both are legal norms of a general and obligatory nature that have resulted from specific processes of legislative creation. Likewise, both should be abstract, general and binding.

<sup>10</sup> In theory the geolocation law was promoted to permit swift identification of the whereabouts of a cell phone involved in a serious crime, without a warrant, but was challenged as a violation of civil rights. The law was upheld by the Supreme Court and is part of the Telecommunications Reform of 2014 but is still questioned by internet rights activists given Mexico’s historic impunity in solving cases and the possible abuse by authorities to use the law indiscriminately.

<sup>11</sup> Regulations or guidelines (of laws) indicate detailed dispositions established by the Legislative Branch for a pre-existing law in order to make them more concrete and applicable. These regulations should be in accordance with the law they were written for, as well as the Constitution.

The experience of the social workers we interviewed for this study is revealing in this regard. Rosa Lua said,

There are times when the prosecutor's office, the authorities, don't want to pay attention to women because they don't have visible marks on them, yet they have suffered psychological violence, mainly verbal, for years and their self-esteem is damaged. They are fearful, insecure, anxious and under a lot of stress ... yet when [the authorities] don't see visible injuries, they dismiss them lightly.

The situation is radically different when an advocate accompanies the woman to support and advise her. Carmen Genis, another social worker, told us:

I used to tell [women] to go and register their complaint, and the next day they would call to say their request had not been heeded. In the last two years I have learned to accompany them because otherwise they do not receive proper attention.

The reasons for this include lack of professionalism, training and sensitivity on the part of government officials, as well as their own beliefs and stereotypes about women.

In Mary's case, the offences that were pursued were probably chosen based on the speed of the investigation and of the likely priorities of the public prosecutor's office, rather than with regard to the length of the possible sentence. The lawyers felt there was insufficient evidence to prove rape since there was no longer any physical evidence. Moreover, despite the fact that Mary was under psychological duress and coerced to leave the house through threatening text messages, without evidence of the text messages, Mary could be perceived as having left home of her own volition and therefore of having had "consensual" sex. On the other hand, the investigation brought by the family assistance office, categorising Mary as a "problem child," shows the lack of official sensitivity. Instead of focusing on the causes that motivated Mary to abandon her home, the officials focused on the fact that she fled, as if this single action defined her as a person.

In Luisa's case, she was denied her right to register a complaint, which constitutes institutional violence. If the complaint had been lodged, the prosecution service would certainly have concluded that this was a case of discrimination, for which there is a law. But the authorities chose to do nothing. For its part, CONAPRED was also guilty of an administrative offence for not providing support for her subsequent experiences.

Berenice decided for herself not to press charges, but the help and guidance she requested were denied by the Institute for Women in her state, on the grounds that there were more serious cases. Again this was an administrative offence by the State.

Another factor to take into account is the lack of resources in offices where victims receive assistance. There are few agencies specialised in crimes against women, which means immediate service cannot be provided to all women throughout the entire country. Not every district has expert professionals available (in social work, psychology and medicine) for cases of gender-based

crime, sexual violence and femicide. Furthermore, officials may not have sufficient technological knowledge to even understand that tech-based VAW is possible, much less recognise and investigate it.

Although legal services are free, gaining access and follow-up require time and payment of transport costs, making expedite services even more important. Corruption is rampant and bribes are frequently expected to oil the justice process.

The only gateway to justice for the lower and middle classes is legally through the justice service. The upper classes have other means at their disposal, thanks to their economic power, that are not necessarily restricted to the legal framework. For instance, they can pay a judge or a public prosecutor sums of money to speed up an investigation, they can hire private defence lawyers or they can take the law into their own hands (by having an aggressor beaten up or made to disappear). According to a 2014 report by the World Justice Project (WJP) – on a scale of 1 to 10, on which 10 is very serious – surveyed persons considered that the duration of trials in Mexico is a serious problem (8.3) and they relate this to the corruption of judges and judicial officials, who fail to speed along trials unless external influence or money comes into play.<sup>12</sup>

### **Corporate mechanisms**

As part of this study, we mapped the policies, services and conditions of the most representative providers of technological services (internet, cell telephony, social networks, email, web browsers) in Mexico, using available statistics.<sup>13,14</sup> This list includes the Telmex, Telcel, and Prodigy company of the America Móvil giant; Iusacell, Google-Gmail, Outlook-Microsoft Office, Yahoo México, Facebook, Twitter and the xVideos pornographic page, the latter which was included due to its importance to this research than for its true representative value.

We found that the wider the service – as in the case of access intermediaries (internet connections, cell phone service) – the fewer written policies there were about gender-based violence or violence in general, such as harassment and threats.

Access intermediaries (connection services for internet and cell phones, such as Prodigy, Telmex, Telcel or Iusacell) distance themselves completely from issues of content, focusing their attention exclusively on sales and technical aspects, such as proper use of their equipment and prompt payment of service contracts.

Providers of mid-level services like web browsers and/or email evince a certain amount of concern, but only on certain topics, such as identity theft, spam messaging, equipment security, parental control, use of personal data belonging to other users, and above all intellectual property rights. Far from having a gender perspective, their guidelines do not include specific policies on VAW.

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<sup>12</sup> Michel, E. (26 May 2014). Reprueba México en justicia en AL. *El Universal*. [www.eluniversal.com.mx/nacion-mexico/2014/impreso/reprueba-mexico-en-justicia-en-al-215842.html](http://www.eluniversal.com.mx/nacion-mexico/2014/impreso/reprueba-mexico-en-justicia-en-al-215842.html)

<sup>13</sup> Menéndez, P. and Enríquez, E. (2014) *Estudio sobre hábitos de los usuarios de internet en México 2013*. Asociación Mexicana de Internet. Consulted on February 10, 2014. [www.amipci.org.mx/estudios/habitos\\_de\\_internet/Estudio\\_Habitos\\_del\\_Internauta\\_Mexicano\\_2014\\_V\\_MD.pdf](http://www.amipci.org.mx/estudios/habitos_de_internet/Estudio_Habitos_del_Internauta_Mexicano_2014_V_MD.pdf)

<sup>14</sup> Notimex (26 January 2014). Movistar ya ve en sus redes a los usuarios de Telcel. *El Economista*. Consulted on February 10, 2014. [eleconomista.com.mx/industrias/2014/01/26/movistar-ya-ve-sus-redes-usuarios-telcel](http://eleconomista.com.mx/industrias/2014/01/26/movistar-ya-ve-sus-redes-usuarios-telcel)

As for social networks (Facebook and Twitter), their guidelines on what is allowed or prohibited are more inclusive and specific. Their weakness resides not in their codes, rules and policies per se, but in the lack of detail and definition of certain concepts like pornography, graphic violence, abuse and hate speech, as well as in their discretionary use. The lack of a gender perspective also permeates the policies of these intermediaries; violence, abuse and discrimination are discussed in very general terms and without specific regard to women.

In Mary's case, in particular, the cell phone company was probably never contacted by the police to investigate the location of the telephone that sent threatening SMS messages to her and her mother. Moreover, individuals cannot request that a number be blocked from contacting them. Some mobile phones have an operating system code that allows certain numbers to be blocked, but Mary's did not, so Mary and her mother eventually chose to change their telephone numbers.

As for Luisa's experience, we can see that the provider of the blog site (Mex.tl, which in turn is part of Infored<sup>15</sup>) expressed concern about the abuse and gave Luisa guidance on how to filter comments. However, Luisa felt betrayed when she discovered that the filter was optional rather than obligatory for commenters. In other words, the intermediaries' regulations filtered their members' interventions but not those of visitors to the site.

When Luisa asked the mobile telephony company to identify the aggressor, the Telcel company told her they could only reveal that information to authorities with a judicial warrant (difficult to obtain given the police would not even let her file a complaint) and that they also could not block a telephone number from the Axtel company. As a result and after continual harassment, Luisa elected to cancel her telephone service.

The pornographic site XVideos that hosted the photomontage video of Berenice responded positively to the request to remove it. The video was removed because the person requesting its removal stated that it depicted his sister. Site policy does emphasise that all subjects portrayed should be in agreement. In case of copyright dispute the site demands evidence of intellectual property rights backed up by official documentation. However, other requests for removal of videos posted in the same profile that were clearly filmed without the girls' knowledge were ignored. Berenice's request to close the entire profile given that it had blatantly violated the sites' policy regarding consent was denied, and the user was fully backed by the site. Such discretionary and arbitrary responses rather than clear platform policy and processes limit user recourse.

Hotmail gave clear instructions on how to recover a hacked email account, even though the user had lost access nearly two years before.

The Facebook profile with defamatory content about Morgana is still online in spite of reports filed against it. In addition to its slanderous content and frequent posts with intimate photos, the profile violates Facebook's Declaration of Rights and Responsibilities<sup>16</sup> because it is not in the name of a person and it is explicitly forbidden to create a false identity for an organisation, Once again we are

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<sup>15</sup> Infored is a "portal of Mexican companies and classified ads in Mexico, where you can publish free advertisements and buy and sell on internet," [www.infored.com.mx](http://www.infored.com.mx)

<sup>16</sup> Facebook Statement of Rights and Responsibilities, [www.facebook.com/legal/terms](http://www.facebook.com/legal/terms)

facing a situation of discretionary practice by internet intermediaries – in this case Facebook – that are acting based on perceptions and judgments that are not reflected in company policy.

### **Justice system dynamics**

In some of the Mexican cases, the concept of access to justice involves a response by the State. Mary, for instance, denounced her aggressor for illegal deprivation of liberty and corruption of a minor in the hope that he would be sent to prison, and Luisa went to the authorities with the expectation that they would grant her a protection order, and later to CONAPRED to get them to advocate on her behalf with the public prosecutor's office.

When they saw that legal penalties against the perpetrators were beyond their reach (in Mary's case, her aggressor was never arrested), the women said they had at least hoped that the intermediaries would take punitive action, such as issuing a warning, cancelling the aggressors' accounts and/or expelling them from the virtual community.

However, although the women victims of violence through the use of ICT found ways to curb the violence, they did not necessarily have recourse to justice.

In the cases of Mary and Luisa, their solution was not to appeal to telephony intermediaries but to cancel their telephone service. In Berenice's case, her video was removed from one porn website but her image still appears on several others. Morgana has been unable to close down the defamatory profile that refers to her.

As we can see, responsibility for taking action has remained with the victims; they are the ones who have sought recourse. The possibility of a formal complaint is almost impossible for all of the aforementioned reasons. In many cases, as both Morgana and Berenice were told, in order to have access to a formal complaint in the penal system, they would have had to compile the evidence in order to be able to file a case.

Mary's case is also an example of a lack of police will and skill: although her mother filed a complaint with the public prosecutor, there was never an investigation. Mary returned, left and returned once more without the authorities even realising it and the missing person investigation continued unresolved until Mary filed charges for deprivation of freedom and corruption of a minor.

In Mexico, according to these cases, access to justice would appear to be the victim's responsibility rather than a responsibility of intermediaries or the State.

### **Other aspects: culture**

As we have said throughout this report, cultural aspects are essential to understanding VAW in Mexico. Deciphering structural discrimination against women in Mexico is basic to an understanding of women's access to justice.

In Mexico, laws exist and 2% of the budget of government institutions and political parties is earmarked for expenditure on gender equality issues. In other words, there are public resources devoted to awareness raising and training of government personnel, in addition to public monies for gender equality programmes. In the justice service, there is also funding for devising protocols

and training justice officials. In other words, in theory there is no reason for women to be discriminated against in terms of access to justice; however, in reality results indicate otherwise.

Most of the population tends to disregard equal rights for women and men. Society tends to belittle violence against women, even more so in the case of violence through the use of ICT. VAW is effectively rendered invisible, seen as something completely normal that does not require special attention, nor merit special action. Thus we see that women are not encouraged to denounce acts of violence and when they do, women often have to deal with public officials who again belittle their experiences, as is customary outside the institutional setting. For example, this was what happened between Morgana and her husband. As a federal police officer assigned to the public prosecutor's office in their area, he discouraged her from lodging a complaint and became physically violent; when she left him, he monitored her movements.

So we found that at agencies responsible for receiving and lodging formal denunciations of violence - some of which belong to the public prosecutor's office and are specialised in VAW - women experience the same discriminatory treatment that they receive elsewhere. This is mainly due to lack of training of personnel (prosecution service agents, police officers, psychologists, doctors, etc.) in laws and protocols, as well as lack of training with a gender perspective.

To this we add the general population's lack of knowledge about mechanisms available for access to justice.

### **3. Recommendations**

#### **Further research**

- Further analysis of the four main case studies and other VAW and ICT cases not included in this piece of research, from the APC Take Back the Tech mapping exercise,<sup>17</sup> and other studies is necessary. Although the situation may appear bleak in many ways, it also sheds important light and above all it leads us to recognise the critical need for efforts in Mexico to promote and defend women's human rights.

#### **Legal aspects**

- Federal legislation on VAW is good but could be improved by giving specific recognition to violence against women using ICTs. In this way, psychological violence experienced through ICT would be contemplated as violence against women. Other specifications might include violating consent for the dissemination of intimate photos, being able to submit examples of online violence such as harrasing text messages to establish a precedent. Online violence should be recognised as part of the continuum of violence against women.
- We also consider it important that the forms of VAW established in the General Law and local laws on Women's Access to a Life Free of Violence should become part of federal and state criminal codes.
- We should seek for tech-based VAW to be included as acceptable justification for seeking a restraining order, whether or not there are formal charges. Specific measures of protection

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<sup>17</sup> [www.takebackthetech.net/mapit/](http://www.takebackthetech.net/mapit/)

are necessary, for example, to counteract defamation and discrediting that women suffer through technology.

- A revision of local criminal codes is urgently needed and efforts should be made to harmonise them with federal criminal codes, as these are more closely in line with international human rights treaties signed by Mexico.
- Another potential and important action would be the general application of protocols<sup>18</sup> on how to act in particular circumstances, like the Protocol for Judging with a Gender Perspective issued by the Supreme Court. “The idea of the protocol is to eliminate or reduce negative impacts of the law, so that judges detect and combat gender stereotypes and make it clear that women do not necessarily have to be 'maternal, superficial, sensitive and dramatic',” said Supreme Court Justice Olga Sánchez-Cordero.<sup>19</sup> Such protocols could help avoid “blame the victim” attitudes and moral judgments regarding women’s internet activities, among judges but also at the level of the public prosecutor’s office.
- Currently Mexico’s well-publicised legislation regarding an individual’s right to privacy and data privacy is not applicable in the majority of tech-based VAW cases. Violations of women’s right to privacy i.e. in cases of dissemination of intimate photos and videos and the linking of names with photos and other information such as location and telephone numbers, even when such information is compiled from public sources, should be addressed.
- Women’s right to live free from violence, and their right to freedom of expression, should not necessarily be limited in favor of an aggressor’s freedom of expression as if it were an absolute right. Nor should women’s safety be justification for invasive surveillance and data retention measures. Laws should balance the rights to privacy, the right to live free from violence and harassment, and the right to freedom of expression.
- Not all solutions for tech-based violence against women can or should be resolved by an improved criminal code. Effective civil code solutions are important, as well as other measures taken by a variety of stakeholders.

### **Administrative context**

- We believe more training on women's human rights - including women's sexual rights - and gender equality is needed at all levels of public administration, from the highest levels of Cabinet to the lowest echelons, with special emphasis on officials who work in courts and tribunals. Discrimination is the breeding ground for other forms of aggression because it contributes to blaming the victim instead of the perpetrator. Discriminatory attitudes among officials responsible for imparting justice mean that crimes are not properly investigated. We are convinced that this training would give women greater access to justice and could also be reflected in terms of how women are treated in everyday life.
- Officials also need training in technology and tech-based VAW. For example, each public prosecutor’s office could have a a point-person who is up-to-date on technology trends,

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<sup>18</sup> Protocols of laws have the objective of providing a practical-theoretical framework of reference for the application and legal interpretation of the law; they establish concrete rules to facilitate application, thus permitting the optimization of resources and better service provision by personnel responsible for providing attention to the public.

<sup>19</sup> García Martínez, A. (9 May 2014) “Muy complicado” que jueces apliquen ley con visión de género. *Cimacnoticias*. [www.cimacnoticias.com.mx/node/66430](http://www.cimacnoticias.com.mx/node/66430)

understands how ICT can be used to carry out VAW, and can quickly activate channels to cyber police and requests to internet intermediaries to aid investigation following due process procedure. Furthermore officers should be trained in how to secure digital evidence, especially that which is of an intimate nature, and avoid expressing moral judgments regarding women's internet activity.

### **Internet intermediaries**

- Intermediaries should adopt and integrate gender perspective in their service conditions, policies, guidelines, codes of conduct and employee training, explicitly including and addressing VAM related matters.
- Greater transparency and clarity are needed in regards to removal request mechanisms for uploaded/posted content, as well as swift response times. Both Facebook and XVideos showed that despite having complaint tools, the final decision continues to be completely discretionary.
- Platforms must place more emphasis on user privacy, with user-friendly explanations for privacy configurations, clear alerts when changes in programming may affect that configuration, and preferably the option to opt-out of greater privacy control, rather than default public profiles.
- The complaint process should not entail the sharing of sensitive information (name and location) of the complainant with the accused party as it may jeopardise the complainant's physical integrity.
- Specifically in the case of pornographic sites, consent should be strictly enforced, and burden of proof of consent and copyright should rest on the user who uploads information, rather than on the person depicted.
- Efficient and coordinated efforts by internet intermediaries to address technology related VAW and offer women and authorities swift recourse, including but not limited to content take-down, especially when women's physical integrity is at risk.

### **Education and awareness raising**

- Education about new technologies is without doubt an opportunity and a tool to combat the violence committed through ICT.

For an explanation of this point, we listen to the voices of several of the women interviewed for this study, whose views on this matter coincided.

Regarding the importance she attributes to education, social worker Carmen Genis commented, "My main work is to run workshops for people to learn and know about this, because offences through the social networks are on the increase. The problem is that there is no protocol, nor trained personnel who are sensitive to the issue. They treat it as any other crime, there is no protocol, no care for the women victims, nothing at all."

This view was also shared by Berenice, "There should be workshops in schools about how to use technology, and not only in schools but also in the streets in outdoor public areas. People should be told that if they are going to use technology, there are certain problems they need to know about."

- Likewise, reforming the perception of VAW is important in order to stop it from being an issue of morality and to frame it as an issue of discrimination and human rights, since current conceptions reinforce control over women's sexual behavior and punish women who transgress gender norms.

### **A new culture of technology**

- Andrea Medina Rosas<sup>20</sup>, a lawyer and consultant with over 20 years of experience as a women's human rights defender, said that a new culture of technology use is needed, a culture of self-regulation and boundaries. It is not only a matter of ICT regulation via legislation, she said. The legal system is an aid to establishing limits and penalties, but above all it is a means to build working agreements and shared concepts.

This culture Andrea described will definitely only be achieved by working within different spheres: political, legal, educational, the media and ICT themselves.

## **4. Description of cases<sup>21</sup>**

### **Mary**

The life of this 13-year-old girl, a primary school dropout from a poor family living in a semi-rural area in central Mexico, was turned upside down in 2012 when her older sister's boyfriend began to sexually harass her and to threaten her by cell phone, ultimately abducting her. For three months she was deprived of her liberty, beaten and sexually abused. During this period she was forced to send cell phone messages claiming she was well and living with the boyfriend. When she was finally able to escape, she was referred to a shelter where she received psychological care. After a month of effort, she and her mother registered a legal complaint for kidnapping and corruption of a minor with the public prosecutor's office. The last we heard was that the aggressor had not been found.

### **Luisa**

A psychologist and activist for women's and LGTTBI rights, Luisa was subjected to threats, discrimination and surveillance by cell phone, email and social networks because of her lesbian activism. The public prosecutor refused to register her complaint and investigate her case, arguing that no crime had been committed. She contacted the federal agency for prevention of discrimination CONAPRED – the National Council to Prevent Discrimination – that intervened only in the first of her complaints (about a threat to burn down her house), getting the public prosecutor to take action without a formal denunciation. In the subsequent cases of aggression, Luisa went straight to the media and resorted to public protests because CONAPRED and the public prosecutor failed to respond, which added institutional violence to her case. The response by intermediaries was lukewarm: the telephone company did not provide a solution and the solution put forward by the blog host was not really effective.

<sup>20</sup> Session with women rights legal defenders and internet rights experts, 14 May 2014.

<sup>21</sup> Summaries as well as the full case studies are available at <http://www.genderit.org/es/node/4238>, in addition to the brief case descriptions listed.

## **Berenice**

This 31-year-old student teacher was subjected to hacking and photomontage in a pornographic video labeled with her city and occupation. She was accosted on two occasions by men in the street who said they had seen her video. One of her friends contacted the porn website and had the video removed, however there are still images of her circulating on similar web pages. She used social networks to contact the cyber police and the government agency for women's services and protection - the Institute for Women - but she did not make a formal complaint. The women's institute in fact belittled her situation. She learned technological skills, increased her privacy online and constantly monitors websites looking for her image.

## **Morgana**

This 30-year-old teacher was subjected to defamation in a Facebook profile devoted to gossip, mainly about women and gays in her community. This led to physical and psychological violence from her husband and his family. She was obliged to leave her home after 10 years of marriage. She approached the cyber police who asked her to provide proof and make a formal complaint. She contacted other women who had been attacked on the same page and subsequently suffered violence from their partners. She has not registered a complaint for the online attacks, but she has done so for her physical injuries. She has filed for divorce from her husband who is an officer with the ministerial police.