

## MEXICO

Many of Mexico's most significant human rights issues in 2010 stemmed from violent confrontations between state security forces and organized crime, as well as clashes among criminal groups. The Mexican military continues to commit serious abuses in public security operations, yet those responsible are virtually never held accountable. Journalists, human rights defenders, and migrants are increasingly the targets of attacks by criminal groups and members of security forces, yet Mexico has failed to provide these vulnerable groups with protection or adequately investigate the crimes against them.

Efforts to implement comprehensive reform to the criminal justice system, which would address endemic problems such as police torture, continued to progress slowly in 2010, leaving in place a system rife with abuses. Meanwhile, serious restrictions on the exercise of reproductive rights remain and Mexican laws still provide inadequate protections against domestic violence and sexual abuse.

### ***Impunity for Military Abuses***

President Felipe Calderón has relied heavily on the military to fight drug-related violence and organized crime. While engaging in law enforcement activities, the armed forces have committed serious human rights violations, including killings, torture, and rapes. Mexico's National Human Rights Commission has issued detailed reports on 65 cases involving army abuses since 2007, and received complaints of more than 1,100 additional human rights violations in the first six months of 2010.

In April 2010 Martín and Bryan Almanza, ages nine and five, were killed, and five other people were wounded, when the car they were riding in came under fire in Tamaulipas. The army claimed it was a shoot-out between soldiers and criminals but a subsequent investigation by the National Human Rights Commission revealed that the military had manipulated the crime scene and that soldiers were responsible for the killings.

Military authorities routinely assert jurisdiction to investigate and prosecute crimes in which members of the military are accused; the vast majority are never

successfully prosecuted. The military justice system lacks the independence necessary to carry out reliable investigations and its operations suffer from a general lack of transparency. According to military authorities, since 2007 only one military officer has been sentenced by military courts for human rights violations.

In October President Calderón proposed a reform to the Code of Military Justice that would subject cases of rape, torture, and enforced disappearance to civilian jurisdiction; other serious violations would continue to be investigated and prosecuted within the military justice system. While the transfer of any cases of human rights violations from military to civilian jurisdiction represents a step in the right direction, the proposed reform would guarantee that serious abuses such as extrajudicial killings would still be investigated by the military justice system, leaving a significant gap in accountability for most abuses. It would also grant military authorities discretion in classifying abuses, despite a track record of downgrading the severity of charges against soldiers. At this writing, the reform is being debated by the Congress.

### ***Criminal Justice System***

The criminal justice system routinely fails to provide justice to victims of violent crime and human rights violations. The causes of this failure are varied and include corruption, inadequate training and resources, and abusive policing practices without accountability.

Torture remains a widespread problem. One perpetuating factor is the acceptance by some judges of confessions obtained through torture and other mistreatment. Another is the failure to investigate and prosecute most cases of torture.

Over 40 percent of prisoners in Mexico have never been convicted of a crime. Rather, they are held in pretrial detention, often waiting years for trial. The excessive use of pretrial detention contributes to prison overcrowding, which in turn leads to inhumane, unsanitary, and dangerous conditions. In January 2010, 23 prisoners were killed in a riot in an overcrowded prison in Durango.

Prison inmates are subject to abuses by guards, and are routinely denied adequate medical care, particularly among women. Children are often detained in poor conditions in police stations and other institutions.

In June 2008 Mexico passed a constitutional reform that creates the basis for an adversarial criminal justice system with oral trials, and contains measures that are critical for promoting greater respect for fundamental rights, such as including presumption of innocence in the constitution. The government has until 2016 to implement the reform. At present only a handful of states have undertaken substantive changes.

In addition to its positive aspects, the reform also introduced the provision of *arraigo*, which allows prosecutors, with judicial authorization, to detain individuals suspected of participating in organized crime for up to 80 days before they are charged with a crime—a power that is inconsistent with Mexico’s due process obligations under international law.

### ***Freedom of Expression***

Journalists, particularly those who have reported on drug trafficking or have been critical of security forces and authorities, have faced serious harassment and attacks. From 2007 to October 2010, 35 journalists were killed, and eight more are missing and feared dead. News outlets in Sinaloa, Coahuila, and several other states were attacked with explosives or firearms in 2010. In July, police officers in Veracruz kidnapped, robbed, and beat a journalist who had witnessed an earlier incident in which police attacked a reporter.

In spite of the increasing attacks, authorities have failed to adequately investigate and prosecute perpetrators or to protect journalists who face serious risk, generating a climate of impunity and self-censorship. In July 2010 the Office of the Special Prosecutor for Crimes against the Press was given a broader mandate and greater autonomy, but has since failed to improve on its poor record of prosecuting cases. In October Mexico announced plans to create a protection mechanism for journalists under threat, a positive step, but at this writing the system has not yet been created.

Defamation as a federal criminal offence was abolished in 2007. However, criminal defamation laws that remain in place in many states undermine freedom of expression.

A 2002 federal law on transparency and access to information and a 2007 constitutional reform increased avenues for public scrutiny of the Mexican government. However, progress in promoting transparency within the federal executive branch has not been matched in other parts of the government.

### ***Human Rights Defenders***

Human rights defenders continue to suffer harassment and attacks, and authorities consistently fail to provide them with adequate protection. For example, two human rights defenders in Tijuana received menacing phone calls and emails from November 2009 to May 2010 and were constantly followed by the police and the military. A masked man told one of the defenders to leave town if she did not want her family to be harmed, while a car was firebombed outside of the family home of the other defender. Receiving little protection from authorities, they eventually fled from Tijuana.

### ***Migrants***

Hundreds of thousands of migrants pass through Mexico each year and many are subjected to grave abuses en route including physical and sexual assault, extortion, and theft. Approximately 18,000 migrants are kidnapped annually, often with the aim of extorting payments from their relatives in the United States. Seventy-two kidnapped migrants originating from Central and South America were executed en masse in August 2010 in Tamaulipas by armed gangs.

Authorities have not taken adequate steps to protect migrants, or to investigate and prosecute those who abuse them. Authorities rarely inform migrants of their rights, such as the right to seek asylum, and the authorities themselves are often the perpetrators of abuses. The National Migration Institute has fired 350 agents since 2007—roughly 15 percent of its total force—for suspected links with organized crime and crimes such as human trafficking. In September 2010, immigration agents beat and robbed more than 100 migrants as they disembarked from a train in Oaxaca.

The federal Population Law requires public officials to demand that foreign citizens show proof of their legal status before offering any service, such as provid-

ing medical care and registering human rights complaints. As a result, migrants who suffer abuses often choose not to report crimes out of fear of deportation. In September 2010 the Senate approved a reform that would require all authorities to attend to individuals who suffer abuses, regardless of their citizenship status. President Calderon signed the reform into law in November.

### ***National Human Rights Commission***

Mexico's official human rights institution has provided authoritative information on specific human rights cases and usefully documented some systemic problems. Under the leadership of President Dr. Raul Plascencia, the commission has played a decisive role in investigating landmark cases, such as the March killing of two students at Monterrey Tec, and in advocating for improved protection for human rights defenders and journalists.

### ***Human Rights Reforms to the Constitution***

In April 2010 the Senate approved a series of human rights reforms to the Constitution which would affirm the relevance of international law in Mexico, establish the circumstances in which a state of emergency may be declared, and protect against the arbitrary expulsion of foreigners, among other changes. The reform has not yet been approved by the House of Deputies.

### ***Domestic Violence, Reproductive Rights, and Same-Sex Marriage***

Mexican laws do not adequately protect women and girls against domestic violence and sexual abuse. Some provisions, including those that make the severity of punishments for some sexual offenses contingent on the "chastity" of the victim, contradict international standards. Ninety percent of women who have suffered human rights violations do not report them to authorities, while those who do report them are generally met with suspicion, apathy, and disrespect. Such underreporting undercuts pressure for necessary legal reforms and leads to impunity for violence against women and girls.

In August 2008 the Supreme Court affirmed the constitutionality of a Mexico City law that legalized abortion in the first 12 weeks of pregnancy. Since that time 16 of Mexico's 32 states have adopted reforms that recognize the right to life from the moment of conception. In May 2010 the Supreme Court ruled that all states must provide emergency contraception and access to abortion for rape victims. However, only five states have reformed their procedural codes accordingly and efforts to inform women and girls of their rights have been very limited.

In August 2010 the Supreme Court recognized the right of same-sex couples in Mexico City to adopt children and to marry, and ruled that all states in Mexico must recognize same-sex marriages that take place in Mexico City.

### ***Key International Actors***

The United States to date has allocated \$1.5 billion in aid to Mexico through the Merida Initiative, a multi-year aid package agreed upon in 2007 to help Mexico combat organized crime. Fifteen percent of the aid can be disbursed only after the US secretary of state reports to the US Congress that the Mexican government is meeting four human rights requirements: ensuring that civilian prosecutors and judicial authorities investigate and prosecute federal police and military officials who violate basic rights, consulting regularly with Mexican civil society organizations on Merida Initiative implementation, enforcing the prohibition on use of testimony obtained through torture or other ill-treatment, and improving the transparency and accountability of police forces.

The impact of these requirements, however, was undermined when the United States twice allocated the funds despite evidence that Mexico was not meeting the conditions, most recently in September 2010. In a positive step, the State Department announced in September that it would withhold an additional \$26 million in Merida aid for 2010 pending Mexico's passage of human rights reforms to the Constitution and issuance of a proposal to reform the military justice system.

In November 2009, the Inter-American Court ruled that Mexico was responsible for the forced disappearance of a Rosendo Radilla-Pacheco in 1974, and had failed to adequately investigate the crime. The binding decision ordered Mexico

to modify its Code of Military Justice to ensure that “under no circumstances can military jurisdiction be applied” in cases where the military violates the human rights of civilians. In August 2010, the Inter-American Court found that Valentina Rosendo Cantú and Inés Fernández Ortega, indigenous women from Guerrero, were raped and tortured by members of the army in 2002 and again ordered Mexico to modify its military code.

The OAS and UN special rapporteurs on freedom of expression conducted a joint visit to Mexico in August 2010, concluding that grave and diverse obstacles—including serious acts of violence against journalists and widespread impunity—continue to limit free expression in Mexico. In October, the UN special rapporteur on the independence of judges and lawyers released an initial report following her visit, highlighting the lack of access to justice for the poor and a “system deficient in the investigation of crimes,” among other problems.

The UN Human Rights Committee conducted its periodic review of Mexico in March. The committee urged Mexico, among other recommendations, to reestablish a special prosecutor’s office dedicated to investigating abuses committed during the country’s “dirty war” and eliminating *arraigo* detention from legislation and practice.