



UPR Submission

Mexico

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Since Mexico's previous Universal Periodic Review in 2009, some positive steps have been taken towards addressing the country's chronic human rights problems. For example, Mexico's Congress passed a comprehensive human rights reform to the Constitution, and the country's Supreme Court issued several landmark rulings declaring unconstitutional the use of the military justice system to investigate and prosecute cases of alleged human rights violations. Nevertheless, extremely serious human rights problems persist, many of which have been exacerbated by the persistent failure of the Mexican government to take adequate measures to address them. Military personnel and police have committed widespread human rights violations in the context of counternarcotics operations, including torture, extrajudicial executions, and disappearances. Virtually none of these crimes have been seriously prosecuted, due to routine delays, errors, and omissions by prosecutors. Indeed, rather than investigate these crimes, prosecutors and other authorities often blame the victims and their families, exacerbating their suffering and fostering a climate of impunity.

1. Impunity for Military Abuses

Mexico 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 grave human rights violations. From January 2007 to mid-November 2012, Mexico's National Human Rights Commission issued detailed reports of 109 cases in which it found that members of the army had committed serious human rights violations, and received complaints of 7,350 military abuses. One of the main reasons military abuses persist is because the soldiers who commit them are virtually never brought to justice. This occurs largely because such cases continue to be investigated and prosecuted in the military justice system. The military prosecutor's Office opened nearly 5,000 investigations into human rights violations by soldiers against civilians from January 2007 to April 2012, during which time military judges convicted only 38 military personnel for human rights violations. In August 2012, the Supreme Court ruled that the killing of an unarmed man by soldiers at a military checkpoint should be prosecuted in civilian jurisdiction, and that the article of the Military Code of Justice used to claim jurisdiction over human rights cases was unconstitutional. Nevertheless, efforts to reform the Military Code of Justice in Mexico's Congress have met with stiff resistance. The military has stated that it will continue to claim jurisdiction over cases of alleged abuses until its justice code is reformed.

2. Criminal Justice System

The criminal justice system routinely fails to provide justice to victims of violent crimes and human rights violations. The various causes of this failure include corruption, inadequate training and resources, and the complicity of prosecutors and public defenders. 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. But implementation of the reform, which authorities have until 2016 to complete, has been sluggish, and most changes have yet to be translated into practice. Many states continue to operate under Mexico's traditional system and tolerate its most insidious practices. Meanwhile, the few states where the new system has been introduced have passed significant counter-reforms or inserted exceptions that undercut the key

modifications of the oral system. 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. Detention without charge for up to 80 days violates Mexico's obligations regarding liberty and security and due process under international law. Many detainees are held well beyond the 80-day limit, and in some cases are subjected to torture in *arraigo* detention centers.

3. Enforced Disappearances

In February 2013, Human Rights Watch released a report titled, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, which found that Mexico's security forces participated in widespread enforced disappearances, virtually none of which have been seriously investigated. The report analyzed nearly 250 "disappearances" that occurred during the administration of former President Felipe Calderón (Dec. 2006 – Dec. 2012). In 149 of those cases, there is compelling evidence to conclude that they were enforced disappearances carried out with the participation of state agents. The nearly 250 disappearances analyzed for *Mexico's Disappeared* do not represent all of the disappearances that occurred in Mexico since 2007. On the contrary, official statistics—including a list released by the Mexican government following Human Rights Watch's February 2013 report, contains the names of more than 26,000 people who were "disappeared" or went missing since December 2006. Members of all branches of the security forces have carried out enforced disappearances: the Army, the Navy, and the federal and local police. In addition, in more than 60 cases, Human Rights Watch found evidence that state agents collaborated directly with organized crime groups to disappear people and extort their families. Prosecutors and law enforcement officials consistently fail to thoroughly and promptly search for disappeared persons or investigate those responsible for the disappearances, all too often blaming the victims and passing the responsibility to investigate onto their families. What limited steps prosecutors take are undermined by recurring delays, errors, and omissions.

The inept or altogether absent investigations exacerbate the suffering of the families of disappeared persons, for whom not knowing what happened to their loved ones is a source of perpetual anguish. Making matters worse, families of the disappeared may lose access to basic social services that are tied to the victim's employment, forcing them to fight costly, slow, and emotionally-draining battles to restore essential benefits such as childcare.

4. Torture

Torture remains a widespread practice in Mexico to obtain forced confessions and extract information about organized crime. Torture is most frequently applied in the period between when victims are arbitrarily detained and when they are handed to prosecutors, a time when they are often held incommunicado on military bases or other illegal detention sites. Common tactics include beatings, asphyxiation, waterboarding, electric shocks, sexual torture, and death threats. One perpetuating factor is that some judges continue to accept confessions obtained through torture and ill-treatment, despite the fact that the constitution prohibits the admission of such statements. Another is the failure to investigate and prosecute most torture cases. Only two federal officials have been convicted for torture since 1994. In contrast, the National Human Rights Commission received more than 100 complaints of torture and over 4,700 complaints of ill-treatment from 2007 to 2011. Mexico has committed to applying the Istanbul Protocol, an internationally recognized set of guiding principles to assess the condition of a potential victim of torture or ill-treatment. Yet justice officials rarely follow it, and medical examiners often omit evidence of abuse from their reports.

5. Prison Conditions

Prisons are overpopulated, unhygienic, and fail to provide basic security for most inmates. Prisoners who accuse guards or inmates of attacks or other abuses have no effective system to seek redress. Approximately 60 percent of prisons are under the control of organized crime, and corruption and violence are rampant, according to the National Human Rights Commission. Criminal groups use their control to extort the families of prisoners, threatening to torture inmates if they do not pay. In February 2012, guards in Apodaca prison in Nuevo León state allowed

prisoners from one criminal group to execute 44 prisoners who belonged to a rival group, and then allowed many of those responsible to escape.

6. Freedom of Expression and the Human Rights Defenders

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 2000 to July 2012, 82 journalists were killed and 16 more disappeared. Participants in social media networks and the offices of news outlets have increasingly been the targets of violence. While many attacks on the press in 2012 were attributed to organized crime, evidence points to the involvement of state officials in some instances. Authorities have routinely failed to adequately investigate and prosecute crimes against members of the press or to protect journalists who face serious risk, fostering a climate of impunity and self-censorship. Mexico created a special prosecutor's office for crimes against freedom of expression in 2006, and endowed it with greater authority in 2010, but it has failed to effectively prosecute cases. More than 630 attacks on the press were reported from 2006 through mid-2012, yet the special prosecutor has obtained only one criminal conviction. In June 2012, Mexico passed a constitutional amendment that makes attacks on the press a federal crime, giving federal prosecutors the power to take over such investigations from local prosecutors, who are more susceptible to corruption and threats. Implementing legislation of the reform is pending. Human rights defenders continue to suffer harassment and attacks, sometimes directly at the hands of state officials. Meanwhile authorities consistently fail to provide adequate protection or to investigate crimes against defenders such as Margarita Martinez, who fled Chiapas state in June 2012 after repeated death threats and attacks tied to her work denouncing police abuses. In April 2012, Mexico's Congress passed a law to protect human rights defenders and journalists, which mandates formal protocols to evaluate the risk faced by individuals from these groups and protection when necessary. At this writing, the implementation of these processes—with civil society participation—remained ongoing.

7. Right to Health: Reproductive Rights and Access to Palliative Care

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, limiting women's ability to exercise their right to health. In 2010, the Supreme Court ruled that all states must provide emergency contraception and access to abortion for rape victims. However, in practice many women and girls face serious barriers to accessing abortions after sexual violence, including inaccurate information, undue delays, and intimidation by officials. Although since 2009 Mexican law provides for a right to home-based palliative care for patients with terminal illnesses—one of very few countries to do so—implementing regulations have not been passed. Consequently, tens of thousands of patients continue to face major and often insurmountable obstacles in accessing end-of-life care, leading to unnecessary suffering.

8. Gender-based Violence

Mexican laws do not adequately protect women and girls against domestic violence and sexual violence. Some provisions, including those that make the severity of punishments for some sexual offenses contingent on the "chastity" of the victim, contradict international standards. Women who have suffered these types of human rights violations generally do not report them to authorities, while those who do report them are generally met with suspicion, apathy, and disrespect.

9. Migrants

Hundreds of thousands of undocumented migrants pass through Mexico each year and many are subjected to grave abuses en route—such as disappearances and physical and sexual assault—at the hands of organized crime, migration authorities, and security forces. Approximately 22,000 migrants are kidnapped annually, according to the National Human Rights Commission, often with the aim of extorting payments from their relatives. Authorities have not taken adequate steps to protect migrants, or to investigate and prosecute those who abuse them. Migration

officials rarely inform migrants of their rights, such as the right to seek asylum. Authorities and criminal groups have threatened and harassed the staff of migrant shelters for assisting migrants.

10. Labor Rights

Agreements negotiated between management and pro-management unions continue to obstruct legitimate labor-organizing activity. These agreements often restrict workers' ability to obtain effective representation, undermining their ability bargain collectively and earn benefits beyond the minimums mandated by Mexican law. Workers who seek to form independent unions risk losing their jobs, as loopholes in labor laws and poor enforcement generally fail to protect them from retaliatory dismissals. In November 2012, Congress passed a far-reaching reform of labor law that imposes onerous preconditions for striking and makes it easier for employers to replace regular employees with workers on short-term contracts supplied by third-party brokers, further undermining fundamental labor rights and protections for workers.

Key Recommendations

Impunity

- Reform the military justice system to ensure that all alleged human rights violations committed by members of the military against civilians are investigated and prosecuted in the civilian justice system.
- Improve quality and efficiency of the implementation of the 2008 reform to transform the civilian justice system from an inquisitorial, written model, to an adversarial, oral one.
- End the practice of requiring victims and their families to gather evidence relating to the disappearances, torture, extrajudicial executions, and other serious human rights violations.
- Reform federal and state laws to abolish the practice of *arraigo* detentions.

Torture

- Sign an executive order mandating that all detainees be immediately presented before the public prosecutor's office and that under no circumstances should detainees be taken to military installations, police stations, or illegal detention facilities.
- Enforce the prohibition on evidence obtained through torture. For example, alleged "confessions" rendered on military bases, in police stations, or in other detention facilities where civilians are held illegally should be considered void for their content, and should only be used as evidence in allegations of rights violations.
- Order prosecutors to open criminal investigations and apply the Istanbul Protocol when detainees allege they were subjected to torture or other forms of ill-treatment.

Disappearances

- Develop a national protocol in conjunction with law enforcement officials for promptly and thoroughly searching for persons who have been reported as disappeared. Such efforts should be initiated without delay, and should involve the full range of security forces and other authorities.
- Amend or insert the definition of enforced disappearance in federal and state criminal codes to ensure that it is consistent across jurisdictions and includes all conduct included in the definitions established by the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. In particular, ensure that the definition includes disappearances committed by organized groups or private individuals acting on behalf of, or with the support (direct or indirect), consent, or acquiescence of state officials.