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MEX106336.E

Mexico: Procedures to initiate a criminal complaint or investigation, including whether a complaint may be registered over the phone and on the Internet, particularly in Mexico City, Nuevo León, Jalisco and Veracruz (2017-August 2019)

Research Directorate, Immigration and Refugee Board of Canada

1. Overview

According to the US Overseas Security Advisory Council (OSAC)'s Mexico 2019 Crime and Safety Report: Mexico City, the Office of the Attorney General of the Republic (Procuraduría General de la República, PGR) is "responsible for investigating and prosecuting federal crimes," while the Attorney General's Office (Procuraduría General de Justicia, PGJ) of each state or city is responsible for "investigating and prosecuting state and local crimes" (US 3 May 2019, 4). Similarly, the Mexican Commission for the Defence and Promotion of Human Rights (Comisión
Mexicana de Defensa y Promoción de los Derechos Humanos, AC, CMDPDH), a Mexican civil society organization that advocates for human rights and social justice (IDPC n.d.), indicates that individuals can file a complaint for criminal offenses under federal jurisdiction with the local office of the PGR, while criminal offences under state jurisdiction can be reported to the office of the attorney general or prosecutor in each state (CMDPDH n.d.). Sources indicate that the PGR was renamed Fiscalía General de la República (FGR) [also translated as Office of the Attorney General of the Republic] in [January (US 11 July 2019)] 2019 (US 11 July 2019; Mexico News Daily 7 May 2019a). According to the US Department of State, the new FGR "became autonomous from the executive branch" (US 11 July 2019).

Article 21 of Mexico's constitution, which was amended in 2019, provides the following:

The investigation of crimes corresponds to the Public Ministry and to the police, which will act under the leadership and command of that [person who] is in the exercise of this function.

The exercise of criminal proceedings [acción] before the tribunals corresponds to the Public Ministry. The law will determine the cases in which individuals can exercise the criminal proceedings before the judicial authority. (Mexico 1917, square brackets in original)

According to a guide to the Mexico criminal justice system by Justice in Mexico, a US-based initiative that conducts research and promote dialogue in order to "improve citizen security, strengthen the rule of law and protect human rights in Mexico" (Justice in Mexico n.d.), the agent of the Public Ministry (Ministerio Público) [1] headed by the Attorney General of the respective jurisdiction, initiates the preliminary investigation after taking the complaint (Justice in Mexico Mar. 2016, 15-16, 25).

According to the CMDPDH, offences that fall under federal jurisdiction include crimes committed by or against federal authorities or agents or crimes that are committed in [translation] "federal zones," such as airports and highways (CMDPDH n.d.). Justice in Mexico adds that crimes affecting "the health, economy and overall national security or interests" of Mexico, "including its structure, organization, operation and heritage," fall also under federal jurisdiction (Justice in Mexico Mar. 2016, 10). Sources indicate that crimes committed by individuals fall under state
jurisdiction (CMDPDH n.d.; Justice in Mexico Mar. 2016, 11) and can include "threats, property damage, sexual crimes, fraud and embezzlement, homicide, assault [and] robbery in all its forms" (Justice in Mexico Mar. 2016, 11).

In correspondence with the Research Directorate, a representative of the Human Rights Commission of the Federal District (Comisión de Derechos Humanos del Distrito Federal, CDHDF) [2] described the requirement of the Public Ministry to receive complaints in the format listed in Article 131 of the National Code of Criminal Procedures (Código Nacional de Procedimientos Penales) (Mexico City 22 July 2019), which provides the following:

[translation]
To receive complaints or legal actions submitted orally, in writing, or by digital means, including through anonymous complaints pursuant to the applicable legal provisions, concerning acts that might constitute a crime. (Mexico 2016, Art. 131 (ii))

In correspondence with the Research Directorate, a researcher at the National Institute of Criminal Sciences (Investigadora del Instituto Nacional de Ciencias Penales, INACIPE), indicated that Article 221 of the National Code of Criminal Procedures requires the Public Ministry to conduct an investigation upon receiving a complaint (Researcher 29 July 2019). Article 221 of said code provides the following:

[translation]
The investigation of acts that may be characterized as a crime may be initiated by reporting them, either as a complaint, a legal action or their equivalent where required to do so by law. The Public Prosecution Service and the Police are obliged to proceed with the investigation of the acts that they have become aware of, without imposing significant requirements.

… (Mexico 2016)

According to the CMDPDH, direct and indirect victims have the right to file a complaint with any attorney general's office; if the office determines that it does not have the jurisdiction to process the complaint, it is required to forward the complaint to the responsible office and notify the victim (CMDPDH n.d.). The Justice in Mexico report indicates that the Public Ministry is required to proceed with the investigation except when documentary evidence is "non-existent" or, in a case of a criminal
complaint (querella) [3], when the victim pardons the defendant (Justice in Mexico Mar. 2016, 25). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The CMDPDH indicates that if the criminal complaint is refused, a complaint of denial of access to justice can be filed in person, in writing, by phone or electronically to the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) or to any state human rights commission (CMDPDH n.d.). Similarly, the CDHDF representative stated that complaints of human rights violations committed by federal authorities or both federal and local authorities can be reported to the CNDH, while human rights violations committed by authorities in Mexico City can be filed with the CDHDF [translation] "in writing, orally, by telephone, by Mexican sign language, on the institutional web page or by email" (Mexico City 22 July 2019). The CMDPDH indicates that after an investigation, the CNDH or a [state] Human Rights Commission can intervene to end the violation, mediate between parties, demand assurances that the violation will not be repeated or issue a recommendation to the responsible authority (CMDPDH n.d.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the 2018 National Survey of Victimization and Perceptions of Public Security (Encuesta nacional de victimización y percepción sobre seguridad pública, ENVIPE) conducted by the National Institute of Statistics and Geography (Instituto Nacional de Estadística y Geografía, INEGI), cited in a report by the Institute for Economics and Peace (IEP), a "think tank dedicated to metrics to analyse peace and to quantify its economic value" (IEP n.d.), out of approximately 33.6 million crimes reported to have occurred in 2017:

• 3.48 million or 10.4 percent were reported to the authorities; and
• criminal investigations were opened in 2.27 million cases or 6.8 percent of the total (IEP Apr. 2019, 48).

The 2018 ENVIPE, cited by IEP, indicates that cifra negra (black number) [4] made up 93.2 percent of crimes in Mexico in 2017 (IEP Apr. 2019, 62). Victims provided the following reasons for not reporting crime:

• Reasons related to authorities (64 percent):
  ◦ 34.2 percent answered that it would be a waste of time;
  ◦ 16.5 percent answered that they lack trust in authorities;
7.7 percent answered that the procedure was long and difficult;
4.7 percent answered that the authorities had a hostile attitude; and
1.4 percent answered that they feared extortion.

• Reasons not related to the authorities (36 percent)
  10.5 percent answered that they were missing proof;
  10.1 percent answered that they perceived the crime as of low relevance;
  5.3 percent answered that they feared their aggressor;
  9 percent mentioned other causes; and
  0.5 percent did not specify the cause (IEP Apr. 2019, 62).

The 2018 ENVIPE survey, cited by the CDHDF representative, indicates that of the individuals who responded that it would be a waste of time, 31.6 percent indicated that it took 4 hours to file a complaint (Mexico City 22 July 2019).

2. Requirements and Procedures to Initiate a Complaint

According to the CMDPDH, in order to file a complaint in person, a national identification document with photo, such as a voter's card, professional ID, passport or military ID, is required (CMDPDH n.d.). The same source indicates that if a complaint is filed online, the complainant's name, address, telephone number and email address are required (CMDPDH n.d.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Article 221 of the National Code of Criminal Procedures provides the following:
[translation]
...

As regards [to] anonymous information, the Police will ascertain the truthfulness of the data provided through investigative means that are deemed appropriate for this purpose. The relevant investigation will start, provided the information is confirmed.

… (Mexico 2016)
2.1 Procedure to Initiate a Criminal Complaint in Mexico City

The CDHDF representative indicated that individuals can file a complaint in person, by telephone or online, and that anonymous complaints can be filed by telephone or online (Mexico City 22 July 2019). The same source added that the call center of the Mexico City Attorney General's office is open 24 hours a day, year round to receive complaints by phone (Mexico City 22 July 2019).

A 2017 article on how to report a crime in Mexico City published by Chilango, a monthly magazine focusing on Mexico City's art and culture (Portada 1 Jan. 2004), provides the following procedures to report a crime:

• contact the Public Ministry directly by going to the Timely Care Module (Módulo de Atención Oportuna, MAO) at the Public Ministry, where a lawyer will interview the complainant and refer the case to an agent responsible for opening an investigative file;
• file a complaint online through the [translation] "Virtual MP" (Chilango 16 Sept. 2017).

The same source states that only some types of crime can be reported online, including

[translation]
theft without violence, breach of trust, fraud, fraudulent management, fraudulent insolvency to the detriment of creditors, dispossession, damage to property, assisted reproductive techniques and artificial insemination, risk of infection, sexual harassment, rape, crimes that infringe upon the obligation to provide maintenance, discrimination and threats. (Chilango 16 Sept. 2017)

The website of Mexico City's PGJ provides the following procedures to file an online complaint through the reporting system called MP Virtu@l 2.0:

• indicate whether the complainant is filing a querella or an acta especial (special record) [5];
• write or attach documents describing the incident;
• attach digitized official identification;
• confirm the complaint by affixing an electronic signature;
• once submitted, an acknowledgment will be sent to the complainant's email address (Mexico City n.d.a).
The same source indicates that once the complaint has been analyzed and determined that an investigative file will be opened, the complainant will receive an email containing the number of the investigative file, a PDF file with the electronic signature of the Public Prosecution Service, information on the procedure to follow up and email address for enquiries on the authenticity of the document (Mexico City n.d.a). According to the *Chilango* article, the complainant will be scheduled for an appointment with the relevant Prosecutor's office; attendance is mandatory in order to complete filing the complaint (*Chilango* 16 Sept. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The website of the Government of Mexico City indicates that an anonymous telephone line, "089," can be used to report various types of crime, including drugs, trafficking, weapons, corruption, kidnapping, illegal trade of vehicles, falsifying documents, domestic violence and persons involved in [translation] "illegal or suspicious activities" (Mexico City n.d.b). The Government of Mexico City states that information provided to 089 will be sent to the relevant public safety agencies, who can initiate the investigation (Mexico City n.d.b). The same source further indicates that the complainant will receive a [translation] "folio number," which can be used to monitor the progress of the complaint (Mexico City n.d.b).

According to the CDHDF representative, citing statistics provided by the Mexico City Attorney General's office, as of June 2019, the Mexico City Attorney General's office [translation] "only has in its possession" 19,959 investigative files for ordinary crimes committed in Mexico City; of these, 12,377 are "[c]rimes against property" (Mexico City 22 July 2019). *The Subnational Impunity in Mexico and its Dimensions IGI-MEX 2018 (La impunidad subnacional en México y sus dimensiones IGI-MEX 2018)*, a report coordinated by two political science professors at the Universidad de las Américas Puebla (UDLAP) (Le Clercq Ortega and Sánchez Lara Mar. 2018, 4) on impunity in Mexico indicates that the cifra negra in Mexico City represented 94.8 percent of crimes (Le Clercq Ortega and Sánchez Lara Mar. 2018, 71).

According to the CDHDF representative, the organization has criticized the Mexico City Attorney General's office for delays on conducting the preliminary investigation, including nineteen cases where delays and negligent investigation by the Attorney General's office led to breaches to the right to due process and access
2.2 Procedure to Initiate a Criminal Complaint in Nuevo León

In correspondence with the Research Directorate, a representative of the Human Rights Commission of the state of Nuevo León (Comisión Estatal de Derechos Humanos Nuevo León, CEDHNL), citing the website of the Attorney General's Office of Nuevo León, indicated that individuals can go to the office of the Attorney General or any [translation] "State Counselling and Reporting Centre" located throughout the State of Nuevo León, where a "Counselling Officer" will take the complaint and initiate the investigative process (Nuevo León 23 July 2019). The same source stated that specific documents are not necessary, but it is recommended that the complainant bring an official identification document, including voting card, military service card, passport or driver's license (Nuevo León 23 July 2019).

The website of the Attorney General's office of Nuevo León indicates that crime, including abuse of authority, telephone extortion, mistreatment, drug trafficking and other types of offences, can be reported anonymously by telephone (Nuevo León n.d.a). The same source further explains that complainants can dial 089, where the operator will record the information, provide a case number and direct the complaint to the relevant organization (Nuevo León n.d.a).
According to the Attorney General of Nuevo León, quoted in an article by *El Financiero*, a Mexican newspaper specializing in finance, economics and business (*El Financiero* n.d.), a new online system for lodging complaints was launched in January 2019; the program is in effect as of 7 January 2019 for the municipality of Guadalupe and 8 January 2019 for the municipality of Santa Catarina, and the program will be [translation] "gradually released" in the municipalities of Nuevo León and is expected to be in place by year’s end throughout the state (*El Financiero* 8 Jan. 2019). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The website of the Attorney General’s office of Nuevo León indicates that "any" crime, including robbery, assaults, domestic abuse and drug trafficking, can be reported anonymously on their website by entering information describing the time and location of the incident and other relevant details (Nuevo León n.d.b). According to the same source, individuals can file a preliminary report of a crime through a cellphone application or online (Nuevo León n.d.c). Crimes including theft, home burglary, road accident, and domestic violence can be reported by cellphone application; crimes including theft, injuries, domestic violence and damage to property can be reported online (Nuevo León n.d.c). The complainant will be required to provide personal information and official identification (Nuevo León n.d.c).

According to the CEDHNL representative, individuals are required to go in person to the Counselling and Reporting Centre to formalize the complaint within 72 hours of filing the preliminary report by cellphone application (Nuevo León 23 July 2019).

The CEDHNL representative indicated that it has issued 14 recommendations from January 2016 to June 2019 regarding unjustifiable delays in investigations (Nuevo León 23 July 2019). The same source further stated that there is a lack of trust among citizens towards the institutions responsible for prosecuting crimes and administering justice, and that it is common for people not to report crimes due to the fear of consequences by getting involved in the criminal justice process (Nuevo León 23 July 2019). According to the office of the Attorney General in Nuevo León, cited in *El Financiero*, 17 out of every 100 offences are reported (*El Financiero* 8 Jan. 2019). The same source reported a cifra negra of 83 percent in Nuevo León (*El Financiero* 8 Jan. 2019). The IGI-MEX 2018 reports a cifra negra of 92.8 percent in Nuevo León.

2.3 Procedure to Initiate a Criminal Complaint in Jalisco

The website of the State Government of Jalisco describes the following procedure to report crime anonymously online:

[translation]

1. Search the official website of the Government of the State of Jalisco for the criminal complaints area;
2. Indicate that your criminal complaint will be anonymous;
3. Enter information on the complainant;
4. Provide information on the person against whom the criminal complaint is filed;
5. Indicate the crime or misdemeanor committed by the person;
6. Indicate the address of the defendant [including,] municipality, neighbourhood, main street, crossroads and characteristics of the property;
7. Indicate the address at which the misdemeanors were committed;
8. Narrate how the person…carried out the crime or misdemeanor;
9. If any public servant is involved, provide information on that person: (badges, authority, name and date);
10. Submit the complaint online. (Jalisco n.d.a)

The same source describes the following procedure to report crime anonymously by telephone:

[translation]

1. Dial 089 from any phone;
2. Be ready to give the address and a description of the person who is the subject of your criminal complaint;
3. Provide a brief narration of how the person you are reporting carried out the crime;
4. If any public servant is involved, provide information on that person: (badges, authority, name and date). (Jalisco n.d.a)
The source indicates that the Jalisco Attorney General's office has eight weeks to investigate the criminal complaint submitted anonymously online and by telephone and to provide a response (Jalisco n.d.a).

The State Government of Jalisco website describes the following procedure to report crime in person:

- the complainant must go to any location where criminal complaints are taken where they will be informed whether the complaint will be taken in writing or orally;
- if filing in writing, they must complete a written form with general information and description of the criminal acts; three photocopies of the form will be taken; the original and the three photocopies must be submitted for [translation] "validation"; the forms will be stamped and the complainant will be provided with one of the copies; the remaining forms will be sent to the responsible authorities in order to initiate the investigation;
- if filing orally, the complainant must provide an oral statement, including their personal information and a description of the criminal acts; the complainant will be scheduled for an appointment to confirm the criminal complaint to the responsible agency (Jalisco n.d.b).

The same source indicates that the complainant is required to provide an official identity document, such as a voter's card, driver's license or passport (Jalisco n.d.b). The same source states that the complaint can be filed by the victim, their parents, their guardian or their legal representatives; children under the age of eighteen must be accompanied by an adult (Jalisco n.d.b).

According to the IGI-MEX 2018 report, lack of training can be observed at all levels of the criminal justice system in Jalisco, by the number of completed investigative files (Le Clercq Ortega and Sánchez Lara Mar. 2018, 95). The same source, citing the [translation] "2016 National Census on the Procurement of Justice in the States" (Censo Nacional de Procuración de Justicia Estatal 2016), indicates that 95,329 investigative files were opened and 95,458 offences were recorded at the Attorney General's office; however, "only" 30,652 investigative files were kept (Le Clercq Ortega and Sánchez Lara Mar. 2018, 95). The same source indicates that out of the 13,027 offences recorded in [translation] "first-instance" criminal cases [6], 267 sentences were handed down (Le Clercq Ortega and Sánchez Lara Mar. 2018, 95). IGI-MEX 2018 reports a cifra negra of 94.2 percent in Jalisco (Le Clercq Ortega and
Sánchez Lara Mar. 2018, 95). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 2.4 Procedure to Initiate a Criminal Complaint in Veracruz

Information on the procedure to initiate a criminal complaint in Veracruz could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to sources, the State Government of Veracruz filed a criminal complaint against the Veracruz attorney general for hiding at least 100 (BBC 31 July 2019) or more than 150 (Mexico News Daily 7 May 2019b) arrest warrants (BBC 31 July 2019; Mexico News Daily 7 May 2019b).

According to information provided by the State Attorney's General Office in Veracruz, cited an article in *Diario de Xalapa*, a newspaper in Veracruz, 74,456 investigative files were opened in 2017 while 1,304 or 1.75 percent were prosecuted; 65,091 investigative files were opened in 2018 while 1,066 cases or 1.64 percent were prosecuted (*Diario de Xalapa* 21 June 2019). The same source indicates that as of January 2019, a total of 103,308 investigative files had been opened; 40,094 has been classified as temporary files [7] and 4,316 or 4.18 percent has been classified as crimes (*Diario de Xalapa* 21 June 2019). The IGI-MEX 2018 reports a cifra negra of 94.81 percent in Veracruz (Le Clercq Ortega and Sánchez Lara Mar. 2018, 140). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

**Notes**

[1] Agents are the attorneys "performing the function of the Public Ministry" (Justice in Mexico Mar. 2016, 16).
The Human Rights Commission of the Federal District (Comisión de Derechos Humanos del Distrito Federal, CDHDF) is a "public autonomous body" established by Mexican judicial order, which is "responsible for the protection, defence, monitoring, promotion, as well as for the study, education and diffusion of human rights" (Mexico City Aug. 2017, 3).

A querella can only be submitted by the person impacted by the crime and they must have the intent to punish those responsible (Justice in Mexico Mar. 2016, 25).

Cifra negra or black number are crimes that "do not appear in official statistics because they are not reported or investigated" (IEP Apr. 2018, 62).

A special record deals with lost documents (Chilango 16 Sept. 2017).

Cases brought before the Courts of the First Instance (Justice in Mexico Mar. 2016, 16).

A file is sent to "temporary reserve" if it lacks evidence to allow the attorney general's office to either proceed with or "stop" the criminal case (Le Clercq Ortega and Sánchez Lara 20 Feb. 2016, 93).

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Nuevo León. 23 July 2019. Comisión Estatal de Derechos Humanos Nuevo Léon (CEDHNL). Correspondence from a representative to the Research Directorate.


Nuevo León. N.d.c. "Descarga la App de la PGJ NL y realiza tu denuncia express" (Download the PGJ NL App and File an Express Report). Translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 29 July 2019]


Additional Sources Consulted

Oral sources: Comisión Mexicana de Defensa y Promoción de los Derechos Humanos; Due Process of Law Foundation; Fundación para la Justicia y el Estado Democrático de Derecho; Jalisco – Comisión Estatal de los Derechos Humanos; lawyer practising criminal law in Veracruz; lawyer practising human rights law in Veracruz; law professor who conducted research on Mexican state institutions and democracy; México Evalúa; professor who conducts research on the justice system in Veracruz; Veracruz – Comisión Estatal de Derechos Humanos, Dirección General de Consolidación del Sistema de Justicia Penal y Derechos Humanos, Fiscalía General del Estado.

Internet sites, including: Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (Centro Prodh); Due Process of Law Foundation; ecoi.net; El Universal; Human Rights Watch; International Crisis Group; InSight Crime; Mexico – Fiscalía General de la República; UN – Committee Against Torture, Refworld; Veracruz – Fiscalía General del Estado; Washington Office on Latin America; World Justice Project.
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