

MEXICO

Mexican security forces have committed widespread human rights violations in efforts to combat powerful organized crime groups, including killings, disappearances, and torture. Almost none of these abuses are adequately investigated, exacerbating a climate of violence and impunity in many parts of the country.

In an historic decision in August 2012, the Supreme Court ruled that the use of military jurisdiction to prosecute a human rights violation was unconstitutional. Nonetheless, most abuses by military personnel continue to be prosecuted in military courts, which lack independence and impartiality.

Criminal groups and members of security forces continue to threaten or attack human rights defenders and journalists. The government has failed to provide these vulnerable groups with adequate protection or investigate the crimes committed against them. In April, Mexico passed legislation to create a protection mechanism for human rights defenders and journalists, but protocols to evaluate risk and assign protection are still being designed.

Military Abuses and Impunity

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 sentenced 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.

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 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 sentenced 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.

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.

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.

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 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 sentence.

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.

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.

Reproductive Rights

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.

Same-Sex Marriage

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 Mexican states must recognize same-sex marriages that take place in Mexico City. Yet the ruling does not require that states recognize the right themselves, and many still deny same-sex couples the right to marry.

Access to Palliative Care

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.

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.

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.

Human Rights Defenders

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.

Key International Actors

The United States has allocated over US\$2 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 select portions of the assistance 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, which include ensuring that military abuses are investigated in the civilian justice system, and prohibiting the use of testimony obtained through torture.

However, the impact of these requirements has been undermined by the fact that the US State Department has repeatedly reported to the US Congress that they are being met, despite overwhelming evidence to the contrary, leading Congress to release the funds. For example, the State Department's 2012 human rights report on Mexico found that

“widespread impunity for human rights abuses by officials remained a problem in both civilian and military jurisdictions,” which violates one of the requirements.

In November 2011, a Mexican lawyer submitted a petition asking the Office of the Prosecutor of the International Criminal Court (OTP) to open an investigation into the alleged responsibility of President Felipe Calderón and other officials for war crimes and crimes against humanity, which was signed by more than 23,000 Mexicans. A press release that the presidency released in response called the accusations in the petition slander, and said it was exploring legal options against those who had made them. The prosecutor’s office was still reviewing this petition at this writing.

The Inter-American Court of Human Rights (IACtHR) has issued decisions in four cases since 2009 mandating that the military justice system should not be used to investigate and prosecute human rights abuses committed by the military. These rulings precipitated a Supreme Court decision in July 2011, which recognized that the jurisprudence of the Inter-American Court was binding and stated that Mexican judges should take its rulings into account in their judgments.

The United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) conducted a fact-finding mission to Mexico in 2011, concluding that, “sufficient efforts are not being made to determine the fate or whereabouts of persons who have disappeared, to punish those responsible and to guarantee the right to the truth and reparation.”

Mexico appeared before the UN Committee Against Torture (CAT) in October 2012. During the hearing, committee experts expressed concern regarding the ongoing use of torture to obtain confessions and the unlawful practice of *arraigo* detention, among other abusive patterns.