



UPR Submission

Mexico

September 2008

Summary

Mexican law enforcement officials often neglect to investigate and prosecute those responsible for human rights violations, including abuses perpetrated nowadays during law enforcement operations and those committed during Mexico's "dirty war." A major shortcoming of the Mexican justice system is that it routinely leaves the task of investigating and prosecuting army abuses to military authorities.

Mexico's National Human Rights Commission, the official human rights body, has repeatedly failed to pursue remedies and promote reforms to improve Mexico's dismal human rights record.

Military Jurisdiction

Mexican soldiers have committed egregious abuses including torture, unlawful killings, and arbitrary detentions, while engaged in law enforcement activities. In May 2007, for example, soldiers arbitrarily detained 65 people in Michoacán state, holding some incommunicado at a military base, beating many of the detainees, and raping four minors. In June 2007 soldiers opened fire on a truck in Sinaloa, killing five people, including three children, and injuring three others. In October 2007, soldiers in Michoacán state arbitrarily entered a home and detained a man who was then subjected to torture, including electric shocks on his genitals and throwing water over his face, which had been covered with a towel.¹ In February 2008, soldiers in Tamaulipas opened fire against a car, killing one man and injuring another.² In April 2008, soldiers in Chihuahua allegedly detained four police women, two of whom were blindfolded and held naked in front of soldiers.³

A major shortcoming of the Mexican justice system is that it routinely leaves the task of investigating and prosecuting army abuses to military authorities. While the Mexican Constitution establishes military jurisdiction only for "offenses against military discipline,"⁴ the Code of Military Justice establishes a very expansive notion of such offenses that includes "offenses under common or federal law...when committed by military personnel on active service or in connection with active service."⁵ (In 2005, however, the Mexican Supreme Court limited the scope of the clause by defining "service" as "performing the inherent activities of the position that [he or she] is carrying out."⁶ Although at the time the court was not deciding a

¹ See "Mexico's National Human Rights Commission: A Critical Assessment," Human Rights Watch report, February 2008, p. 64.

² National Human Rights Commission, *Recommendation 35/2008*, July 11, 2008.

³ See, for example, Red Todos los Derechos para Todas y Todos, Press Release 3/2008, April 1, 2008.

⁴ Mexican Constitution, art. 13.

⁵ Code of Military Justice of Mexico, art. 57.

⁶ According to the Supreme Court, "service" is the "realización de las funciones propias e inherentes al cargo que desempeña." Mexican Supreme Court, Contradicción de Tesis 105/2005-PS, September 28, 2005.

human rights case, the decision suggests that human rights violations cannot be considered inherent to activities carried out by military officials.)

The Mexican military justice system is ill-equipped for the task of investigating and prosecuting army abuses, and the end result is impunity. The military justice system lacks the independence necessary to carry out credible investigations, and its operations are characterized by secrecy. Moreover, given the military's longstanding poor human rights record, the ability of military prosecutors to investigate army abuses is further undermined by a fear of the army, which is widespread in many rural communities and inhibits civilian victims and witnesses from providing information to military authorities.

Mexico is violating its international obligations by failing to provide victims of abuse with an effective remedy. Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy—including justice, truth, and adequate reparations—after they suffer a violation. Mexico is, in fact, party to several international treaties that impose an obligation to respect, protect, and fulfill the human rights listed in the treaties. Those same treaties also impose on the Mexican state the obligation to deter and prevent violations, and to investigate and remedy violations of those rights.⁷

Authoritative international human rights bodies have repeatedly found that military tribunals cannot be relied upon to provide such remedies. For that reason, they have called on states to transfer jurisdiction over these cases from military to civilian authorities.⁸ In 2007, the Inter American Court on Human Rights has held that “the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations.”⁹ This view has been affirmed and upheld in several subsequent decisions.¹⁰

⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Mexico on March 23, 1981; American Convention on Human Rights (ACHR) (“Pact of San Jose, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), acceded to by Mexico on March 2, 1981; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Mexico on January 23, 1986, arts. 2(1), 11, 16; Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force February 28, 1987, ratified by Mexico on February 11, 1987, arts. 1, 6; Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994), entered into force March 28, 1996, ratified by Mexico on February 28, 2002, art. 1.

⁸ The U.N. Human Rights Committee (HRC), which monitors states' compliance with the ICCPR, has repeatedly called on states parties to subject military personnel alleged to have committed human rights violations to civilian jurisdiction. For example, in 1997 it urged the Colombian government to take “all necessary steps . . . to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts,” specifically recommending “that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts.” Concluding observations of the Human Rights Committee: Colombia, U.N. Doc. CCPR/C/79/Add. 76, May 3, 1997, para. 34. The Committee has made similar recommendations to the governments of Chile and Peru, on the grounds that the “wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel . . . contribute[s] to the impunity which such personnel enjoy against punishment for serious human rights violations.” Concluding observations of the Human Rights Committee: Chile, U.N. Doc. CCPR/C/79/Add. 104, March 30, 1999, para. 9. See also U.N. Doc. CCPR/C/79/Add. 67, July 25, 1996, para. 23.

⁹ Inter-American Court, *Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Inter-Am. Ct. H.R. (Series C) No. 163, para. 200 (emphasis added).

¹⁰ See, e.g., Inter-American Court, *Escue-Zapata v. Colombia*, Judgment of July 4, 2007, Inter-Am. Ct. H.R. (Series C) No. 165, para. 105 and Inter-American Court, *Zambrano Velez v. Ecuador*, Judgment of July 4, 2007, Inter-Am. Ct. H.R. (Series C) No. 166, para. 66.

In the case of Mexico, the U.N. Special Rapporteur on Torture found that Mexican military personnel who committed abuses were “generally protected by military justice” and concluded that “[c]ases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice.”¹¹

Impunity for “Dirty War” Crimes

In March 2007 President Calderon officially closed the Special Prosecutor’s Office that former President Vicente Fox had established to address abuses committed during the country’s “dirty war” in the 1960s, ‘70s and ‘80s.¹² After launching this ambitious initiative, the Fox administration failed to ensure that the office possessed the credibility, technical expertise, and powers it needed to succeed. It also failed to ensure active collaboration from other institutions, including the federal investigative police who have been unable or unwilling to execute a majority of the arrest warrants in these cases, and, most importantly, the Mexican military, which has refused to cooperate in a serious fashion with the investigation and prosecution of these cases.

During its five-year existence the office made very limited progress in investigating and prosecuting these crimes. Its initial advances—such as the 2003 Supreme Court ruling authorizing prosecution of decades-old “disappearance” cases—were offset by significant failures. It did not obtain a single criminal conviction. Of the more than 600 “disappearance” cases, it filed charges in 16 cases and obtained indictments in nine; the office determined the whereabouts of only six “disappeared” individuals.

After the Special Prosecutor’s Office closed, the cases were transferred to another, non-specialized office within the federal Attorney General’s Office. Notwithstanding recent excavations conducted in Guerrero in response to a decision by the Inter American Commission, which did not lead to determining the whereabouts of any “disappeared” people, at the time of this writing there have been no significant advances in the investigations.

National Human Rights Commission

As documented in Human Rights Watch’s report *Mexico’s National Human Rights Commission: A Critical Assessment*, the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH), Mexico’s national human rights institution, has made some valuable contributions to human rights promotion in Mexico over the years, providing detailed and authoritative information on specific human rights cases and usefully documenting some systemic obstacles to human rights progress. But the CNDH has repeatedly failed to pursue remedies and promote reforms to improve Mexico’s dismal human rights record.

The CNDH’s failure to carry out these functions effectively has not been due to a lack of resources. The CNDH’s 2008 budget of approximately US\$79 million is by far the largest of any ombudsman’s office in the Americas and one of the largest in the world. It has over 1,000 employees, including knowledgeable and experienced professionals who are genuinely

¹¹ United Nations, Question of the human rights of all persons subjected to any form of detention or prison and, in particular, torture and other cruel, inhuman, or degrading treatment or punishment. Report of Special Rapporteur Nigel Rodley, submitted pursuant to Resolution 1997/38 of the Commission on Human Rights, E/CN.4/1998/38/Add.2, January 14, 1998, paras. 86, 88[j].

¹² The attorney general’s decision to close the Special Prosecutor’s Office, adopted in November 2006, stated that it was “opportune to orient the Attorney General Office’s efforts to other citizen demands that relate to the investigation of illicit acts that particularly damage society, such as crimes against women, attacks to journalists’ freedom of expression, and violent crimes committed in the borders, among others.” Attorney General Office, Accord A/317/06, November 30, 2006. The accord was published in the official gazette in March 2007.

committed to promoting human rights. Nor has the problem been the CNDH's mandate, which is broadly defined to include both "protecting" and "promoting" human rights, or its legal powers, which provide ample tools to pursue this broad mandate.

Rather, the reason for the CNDH's limited impact has been its own policies and practices. The CNDH has not made full use of its broad mandate and immense resources. Specifically, it has routinely failed to:

- Ensure that the abuses are remedied by abandoning the human rights cases it documents before they are resolved. After documenting violations and issuing recommendations for redressing them, CNDH officials choose not to monitor implementation of these recommendations. By failing to follow up effectively on its own recommendations, the CNDH, despite the considerable work it does documenting abuses and recommending remedies, has limited impact on human rights practices in Mexico.
- Promote the reforms that are needed to prevent future abuses. Rather than challenging national laws that are inconsistent with international human rights standards, the CNDH too often does just the opposite, tolerating abusive practices by deferring to existing national laws, rather than advocating their reform. CNDH officials justify the failure to promote reform with an unnecessarily limited interpretation of what their own role can and should be. Yet on several occasions the CNDH has in fact defied these self-limiting interpretations and played a far more active and constructive role in promoting reform. If it did so more often, the CNDH would have a far greater impact on curbing human rights abuses in Mexico than it does now.
- Seek victims' consent and participation prior to conciliating their cases with government authorities. The CNDH excludes victims from the "conciliation" process, signing agreements directly with government institutions without involving the petitioners in the drafting of the terms, or even seeking their consent to close cases in this fashion. By failing to create a constructive relationship with all relevant actors, the CNDH has helped generate an atmosphere of distrust that hinders human rights progress.

Recommendations

On Military Jurisdiction:

Mexico should end the use of military jurisdiction in cases that allege abuses by members of the military. To promote accountability of military abuses, the government of Mexico should:

- Ensure that civilian authorities investigate and prosecute human rights abuses committed by the military; and
- Guarantee that military officials are fully cooperating with civilian prosecutors and judicial authorities in prosecuting and punishing in civilian courts military officials of all ranks who have been credibly alleged to have committed human rights abuses by, for example, providing requested information, access to witnesses, and military documents or other information.

On Impunity for "Dirty War" Crimes:

In light of the lack of results after decades of impunity of abuses committed during Mexico's "dirty war," the Calderon administration should prioritize the investigation and prosecution of these cases. To promote accountability of past human rights abuses, the government of Mexico should:

- Request the Attorney General's Office to prioritize these cases by assigning personnel and funds to the office in charge of the investigations, as well as by providing the political support necessary to advance them;

- Order the minister of defense to end the military obstruction to these investigations by ensuring that military officials provide full support to prosecutors handling these cases; and
- Establish a truth commission to reinforce the work of prosecutors. To have the credibility necessary to carry out its functions, the commission must be an independent, non-partisan body, made up of knowledgeable and prestigious members. It must also be allocated the resources necessary to conduct thorough and fair investigations. It must be required to operate with full transparency. And it must be granted the legal authority to obtain documents and cooperation from other government institutions.

On the National Human Rights Commission:

To advance human rights progress in Mexico, it is key to improve the CNDH's performance and impact. For this purpose, Mexico should ensure that the CNDH:

- Actively presses state institutions to remedy human rights abuses by taking concrete steps to promote greater implementation of all its non-binding recommendations such as, for example, advocating for administrative sanctions to be imposed on officials who fail to address the human rights violations it documents or taking cases to international human rights bodies when the government fails to respond to its recommendations;
- Promotes reforms to harmonize Mexican law with international human rights norms by taking concrete steps, such as drafting legislation and advocating for its passage, to promote changes to those Mexican laws and policies that directly violate international human rights standards or indirectly serve to perpetuate abusive practices; and
- Ensures active participation of victims and their family members during its amicable settlement process by reaching conciliation agreements only in those instances where it has first obtained the explicit consent of petitioners; consulting with petitioners regarding the content of conciliation agreements prior to signing; and keeping petitioners informed of the extent to which government officials comply with the agreements.

To contribute to improving the CNDH's work, the Mexican Senate Human Rights Commission should conduct routine and rigorous evaluations of the CNDH's performance and impact, and promote civil society participation in the process of vetting candidates for the CNDH presidency and advisory council.

Annexes:

1. "Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox," Human Rights Watch report, May 2006.
2. "Mexico's National Human Rights Commission: A Critical Assessment," Human Rights Watch report, February 2008.