

Mexico

Memorandum to the Mexican Federal Congress on reforms to the Constitution and criminal justice system

In March and April President Fox's government presented a series of proposals to the Congress of the Union to reform the Mexican Constitution¹ and the legislative framework of the criminal justice system. According to the government, the objective of these reforms is to improve the legal protection of human rights and strengthen the effectiveness of public security to combat crime. Several members of Congress have also made related proposals.

Over the last 40 years Amnesty International has documented human rights violations and impunity in Mexico and made numerous recommendations to the authorities to reform the operational and legal framework of the criminal justice system. In this memorandum to members of Congress of the Union, Amnesty International sets out a number of key areas where the domestic legislative framework should be harmonised with international human rights standards. While the reform proposals presented by the executive are wide-ranging, this memorandum is confined to the consideration of three broad issues: relating international human rights standards to the Mexican Constitution; international standards in due process and fair trial in primary and secondary legislation; and public security with accountability.

Since coming to office, Amnesty International has urged President Fox's government to carry out transparent and open consultations with civil society to draw up a National Human Rights Programme (NHRP) on the basis of the Technical Cooperation Programme with the Office of the United Nations High Commissioner for Human Rights (OHCHR). Most specifically on the basis of the Diagnostic of the Human Rights Situation in Mexico presented to President Fox by the OHCHR representative in Mexico in December 2003².

Political, civil, economic, social and cultural rights are universal and indivisible. The government's NHRP must ensure the implementation of these rights at every level of the state. The success of the NHRP will depend on the executive's capacity to ensure the legitimacy of the process through effective consultation, Congress' commitment to implement required legislative reforms as well as local or state authorities' willingness to ensure implementation. Legislation enacted by the Congress of the Union, particularly reforms to the Constitution, will provide a central reference for reforms at local level and will help create more effective national standards and institutions. Enshrining respect for human rights in the Constitution and the criminal justice system is one of the key challenges.

Amnesty International believes that wider and more effective coordination and consultation of the proposals with civil society and other important actors, such as the judiciary and political parties, would have helped secure consensus around key reforms prior to their presentation to

¹ Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos) henceforth referred to as the Constitution.

² See http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/index.htm

Congress.³ Despite this, the proposals are an important step and the organization believes that senators and deputies should overcome inter and cross party divisions to establish a clear majority prepared to listen to civil society and move forward on these pressing issues. In particular, the organization believes the UN Diagnostic on the Human Rights Situation should serve as the measure to evaluate and strengthen reform proposals.

1. INTERNATIONAL HUMAN RIGHTS STANDARDS

Mexico has ratified nearly all major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR)⁴. However, ambiguity continues to exist between the binding obligation to comply with the articles of the treaties and their actual status in domestic law⁵. The clear adherence to international human rights standards in the Constitution is vital to establish the universality and indivisibility of the rights of all citizens. Furthermore, it obliges state institutions to judge and be judged by these standards, making these rights enforceable in practice.

The executive's proposal to reform articles 1 and 15 of the Constitution is an improvement on the existing situation. However, by continuing to define human rights in the terms in which they are set out in the Constitution, without reference to international treaties, the proposal does not overcome this longstanding ambiguity and fails to adequately ensure access to the protection afforded in international human rights treaties.

- Congress should ensure that the Constitutional text explicitly states that in cases where there is inconsistency between constitutional norms and international human rights treaties the highest standard of protection of human rights will be adopted⁶.

³ Constitutional reforms agreed with a range of actors in the Sub-commission on Harmonization of the Policy Commission on Human Rights in the Interior Ministry were subsequently modified by the government prior to their presentation to Congress. The judiciary is currently carrying out a consultation process on judicial reform which has not apparently been coordinated with executive proposals.

⁴ The Senate should seek early ratification of a number of outstanding international human rights treaties. These include the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention against Torture, the Second Optional Protocol to the ICCPR. Reservations and interpretive declarations in place a number of key treaties to Mexico is already state party should be removed, in particular the reservation to Article IX of the American Convention on Forced Disappearances relating to military jurisdiction.

⁵ The 1999 Supreme Court interpretation of Article 133 specifically placed international treaties hierarchically below the Constitution but above federal and local laws.

⁶ The UN Diagnostic on the Human Rights Situation and agreements reached in the Policy Commission on Human Rights (*Comisión de Política Gubernamental en Materia de Derechos Humanos*) recommended that which ever standard afforded best protection to the individual affected should be applied.

Abolition of the Death Penalty and treaty ratification

- Congress should ensure that the death penalty is expressly prohibited in the Constitution along with all forms of torture and cruel, inhuman and degrading treatment.

The Federation and human rights

The executive has proposed reform to art 73, XXI of the Constitution to enable federal intervention in human rights cases which would normally be under the jurisdiction of local authorities. Amnesty International welcomes this legislative initiative to respond to situations, such as the pattern of violence against women in Ciudad Juárez, to ensure that where local authorities fail to protect human rights the federal authorities may assume direct legal responsibility.

- Congress should ensure the Constitution establishes clear criteria for federal intervention in human rights cases, so that the mechanism is effective while preventing its inappropriate use.

2. THE RULE OF LAW AND DUE PROCESS

Along with many other national and international human rights organizations, Amnesty International has highlighted how the present legal framework of the criminal justice system contributes directly to human rights abuses and inefficiency in tackling crime. The proposed reforms put forward by the executive to transform the procedural system are the most significant step so far in the struggle to reform the criminal justice system. The proposals are complex and include numerous reforms to key Constitution articles governing individual guarantees (16, 17, 18, 19, 20, 21, 22 and 29) as well as a range of new or modified laws and codes.

Minimum standards on fair trials are established in two binding international treaties to which Mexico is state party: The ICCPR (articles 9, 10 and 14) and the ACHR (articles 7, 8 and 25)⁷.

- Amnesty International recommends that these minimum guarantees are expressly incorporated into the Constitution to ensure their application throughout the nation.

⁷ Other binding treaties which reinforce these standards and to which Mexico is a state party include the Convention against Torture, the Convention on the Rights of the Child, Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearances of Persons. Relevant non-treaty standards adopted by the United Nations include, the Universal Declaration of Human Rights, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Basic Principles on the Role of Lawyers; Guidelines on the Role of Prosecutors, Basic Principles on the Independence of the Judiciary. Opinions of human rights mechanisms such as the UN Committee against Torture, Special Thematic Rapporteurs and the Inter-American Commission on Human Rights (IACHR) are also important for standard setting and are cited in this memorandum.

The right to equality before the law

“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law”, (Art 24, ACHR)

While Congress recently enacted important legislation to combat discrimination⁸, in practice the criminal justice system is still affected by discrimination, with both victims and accused facing discrimination on the basis of race, gender, language, political opinion, social origin, birth or other status, including poverty.

- Congress should ensure that reforms to the criminal justice system expressly prevent, prohibit and punish all forms of discrimination.

Right to Personal Liberty and laws governing detention procedures

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” (Art 9(1) ICCPR)

National and international human rights organizations have repeatedly documented the widespread use of arbitrary detention. Broad criteria in criminal codes permitting “in flagrante delicto” detentions exceed the legal principle allowing arrest without judicial warrant of those caught in the act of or immediately after committing a criminal offence⁹. Similarly, “urgent” arrest warrants issued by prosecutors are frequently used to bypass judicial authorisation. The United Nations Human Right Committee has characterised existing legislation as a direct threat to security of person¹⁰. The Committee against Torture has called for an end to both practices¹¹.

- Congress should tighten legislation to ensure all detentions are carried out legally according to legislation that does not violate the principle of presumption of innocence or judicial control.

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” (Art 9(2) ICCPR)

⁸ Ley Federal para Prevenir y Eliminar la Discriminación, Vigente al 28 de junio de 2004.

⁹ Clause III, Art 193, Federal Criminal Procedural Code and Article 267. At present the law allows for a suspect to be detained up to 48 hour after the crime (72 in the Federal District) with limited evidential requirements, in effect legalising detention without judicial authorisation.

¹⁰ Concluding Observations of the Human Rights Committee, Mexico: 27/07/99, para 10.

¹¹ “The constitutional guarantee requiring a warrant before an arrest should be reinforced by revoking the power of the Public Prosecutor’s Office to issue warrants and ensuring that the only exception is arrest in flagrante delicto, which should be restricted to cases in which an individual is surprised in the act of committing an offence or immediately after doing so with the instruments used in the offence in his possession, or is pursued and caught immediately after committing an offence. Under no circumstances should arrest in flagrante delicto be possible more than 24 hours after the offence is committed. With regard to urgent cases, the current regulations should be replaced by an appropriate procedure enabling the Public Prosecutor’s Office to obtain arrest warrants from the court at any time”. Committee against Torture, Report on Mexico, CAT/C/75, 26 May 2003, para 220 (a)

- Legislation should guarantee the obligation to inform suspects of the reasons for their arrest at the time of detention, to advise them of their rights in the criminal proceedings in a manner which they understand, particularly their right to counsel and to remain silent.
- Legislation should guarantee the right of a suspect to an interpreter or translator throughout legal proceedings, if he or she has difficulty understanding, speaking or reading Spanish, such as may be the case with an indigenous person¹².
- Legislation should guarantee the right of detainees to access to the outside world, including access to family and medical attention. Incommunicado detention should be punished by law.¹³

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful” (Art 9(4) ICCPR, Art. 5(5) ACHR)

The *Amparo* law (*Ley de Amparo*) does not properly guarantee the right to personal liberty. A change in the legal status of a detainee, such as subsequent judicial ratification of a detention, may invalidate an *amparo* petition leaving the illegal detention unchallenged and encouraging arbitrary arrests. Furthermore, requirements that the petitioner must include details of the location of the detainee and the authority responsible does not provide adequate protection against forced disappearance.

- Congress should ensure that proposals to reform the *amparo* law incorporate measures that guarantee effective redress against illegal detention.

“Any person detained shall be brought promptly before a judge or other judicial officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time” (Art 7.6 of ACHR,)

Article 16 of the Constitution permits those detained without judicial warrants- ie“ as “urgent cases” or arrested “in flagrante delicto” - to spend up to 48 hours in the custody of the Public Prosecutor (96 hours in organized crime cases) before being brought before a judge.

- Congress should reform article 16 to ensure that all those detained with or without a judicial arrest warrant are brought before a judge *without delay*¹⁴.
- Legislation should ensure the defendant is tried within a reasonable time period. Failure to do so should provide grounds to legally challenge the fairness of the judicial process.

¹² Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

¹³ Principle 15, 19 and 24, Ibid.

¹⁴ The UN Committee Against Torture has recommended that detentions should be reported immediately and suspects should be brought before a judge no longer than 24 hours after detention, CAT/C/75, 26 May 2003, para 220(b)

“It shall not be the general rule that persons awaiting trial shall be detained in custody” (Art 9(3), ICCPR)

Under the present inquisitorial system detention during the trial and pre-trial period is the norm, breaching the right to personal liberty and the presumption of innocence.

- Legislation should clearly limit the criteria by which judges may order pre-trial detention. These should adhere to Inter American Commission on Human Rights guidelines: “the presumption that the accused has committed a crime, the risk of flight, the risk that new crimes will be committed, the need to investigate and the need for collusion, the risk that pressure will be brought to bear against witnesses and the preservation of public order¹⁵”.
- Judicial determinations on pre-trial detention and bail should be made by a judge not involved in trial proceedings and should be non-discriminatory and open to effective appeal.

The Right to Legal counsel

“All persons who are arrested must immediately have access to counsel”¹⁶

The absence of an explicit constitutional right to legal counsel immediately after detention and throughout all criminal proceedings is a key factor permitting abuses in criminal investigations.

- The Constitution should guarantee the right to legal council from the moment of detention and throughout legal proceedings, particularly before and during interrogation.
- The Constitution should ensure the provision of professionally qualified defence lawyers in cases where defendants cannot afford their own defence counsel. The right to communicate with sufficient time and in confidence with counsel should be guaranteed. The use of “persons of confidence” in place of defence lawyers should be ended and the law should make clear that incompetent defence counsel is a violation in due process and the right to a fair trial.
- Legislation should guarantee the professional and ethical quality of the legal profession. The independence and quality of the Public Defenders’ Office (*Defensoría Pública*) at federal and local level should be ensured.

¹⁵IACHR Country report on Mexico, OEA/Ser.L/V/II.100 Doc. 7 rev. 1 September 1998, para 233, footnote 39.

¹⁶ Concluding observations of the Human Rights Committee, Georgia, UN Doc CCPR/C/79 Add.75, April 1, 1997 para 27. Other relevant standards, items 5 and 8 of The Basic Principle on the Role of Lawyers; Principle 17.1 of the Body of Principles for the protection of All Persons under Any form of Detention or Imprisonment.

Presumption of innocence

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law” (Art 14 (2), ICCPR; Art 8(1) ACHR)

The absence of this principle underlying criminal and trial procedures is a grave violation of due process. The excessive powers ascribed to the Public Prosecutor’s Office in the present criminal procedural system, particularly in the evaluation of evidence in the pre trial period clearly violate this principle and place the burden of proof on the defendant to prove his or her innocence¹⁷.

- The presumption of innocence should be a Constitutional right to be upheld at every stage of legal proceedings from the moment of detention unless and until the accused is proved guilty on the completion of a fair judicial process according to law.
- The power of the Public Prosecutor to evaluate evidence in the preliminary investigation should be ended. As far as possible, only evidence presented and examined in open court before a judge, and open to rebuttal by the defence, should have probative value. Exceptions to this rule should be legally justified.
- It should be a criminal offence for officials to publicly assert the guilt of suspects in any way and at any stage of the judicial process.

Legal proceedings

“All persons shall be equal before the courts and tribunals” (Art 14(1), ICCPR; Art 8(2) ACHR)

For a trial to be fair it is essential that there is “equality of arms” between the defence and the prosecution throughout the legal process, ensuring that there is procedural equality during the course of the trial to make their respective cases. At present, the evidence gathered in the preliminary investigation (*averiguación previa*) by judicial police and the public prosecutor, which may have probative value in a trial, limit the defence’s capacity to challenge evidence and places the defendant at a procedural disadvantage. In effect it encourages police and prosecutors to manufacture evidence to secure convictions.

- Legislation should guarantee proper judicial control of proceedings to ensure equality of arms between defence and prosecution.
- Legislation should ensure that the principle of procedural immediacy is interpreted as giving precedence to only that evidence presented and examined before a judge in a public hearing.

¹⁷ The executive’s reform proposals strengthen the presumption of innocence for those accused of most crimes. However, those accused of the special category of Organized Crime offences will continue to be subject to the excessive power of the prosecutor in rules governing evidence and other related procedures. In effect there will be a two tier system of justice with restricted due process rights for those accused of organized crime. The proposal to give these reforms Constitutional status may also encourage further procedural restrictions in secondary legislation. These initiatives put at risk the right to equality before the law.

“Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” (Art 14 (1), ICCPR)

A fair trial is premised on the active and impartial control of proceedings by a competent and impartial judge in public hearings. In 1999 when reviewing Mexico adherence to the ICCPR the United Nations Human Rights Committee stated that *“The criminal procedure established and applied in Mexico constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge, in the presence of the accused person and at a public hearing. The State party should establish a procedure ensuring that accused persons enjoy all their rights in a suit at law in accordance with the above-mentioned article 14.”*¹⁸ The common absence of the judge from trial proceedings and the delegation of authority to the court secretary, particularly the examination of evidence or witnesses, undermine the integrity of the judicial process. The fact that only a limited number of trial proceedings are public also restricts the basic rights of the accused to a fair and public hearing. Furthermore, court and prison installations frequently deny defendants adequate time to prepare their defence in confidence with counsel. Effective public access to proceedings is also limited. In 2003 the Committee against Torture recommended the end of the present inquisitorial procedural system in favour of an accusatorial system to ensure procedural equality and protect due process.¹⁹

- Legislation should ensure fair public hearings with the obligatory presence of judges, prosecutor, accused and defence in all proceedings. Judicial absence from any proceedings should be grounds to appeal and should result in disciplinary proceedings against the judge. Adequate time and facilities should be provided for accused to consult with their counsel in order to prepare their defence. All possible measures should be taken to ensure that as much evidence as possible can be presented and examined directly before the court.

Right to Recourse

“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights” (Art 24(1), ACHR)

While the *amparo* appeal has developed as a mechanism for legal redress against violations of individual guarantees in the Constitution, it is widely regarded as failing to provide timely and effective judicial remedy.

¹⁸ Concluding Observations of the Human Rights Committee, Mexico, U.N. Doc. CCPR/C/79/Add.109 (1999), para 11.

¹⁹ “Such reforms should aim to institute a genuinely open, transparent accusatory procedure that includes appropriate mechanisms to maintain the necessary balance of powers and rights among the various parties to criminal proceedings - judges, public prosecutors, victims and accused, counsel and police - and control mechanisms and resources to correct any violations” Committee Against Torture report on Mexico, CAT/C/75,26 May 2003, para 220 (i)

- Congress should ensure that reform proposals presently under consideration meet fundamental criteria for access to a prompt and effective recourse²⁰.

Torture and the admissibility of evidence

“Statements made by detainees should not be considered as having probative value unless made before a judge”²¹ Torture and coercion continue to be used to extract confessions or statements, particularly in the preliminary declaration before the Public Prosecutor’s Office, which may be used later to serve as evidence in court.

- Legislation should ensure that only those statements given freely before a judge and in the presence of a defence lawyer should be admissible in court. When a complaint of torture is made, the law should clearly establish the obligation on the authorities to carry out a prompt and impartial investigation on the basis of international human rights standards, including an independent medical examination of the alleged victim according to the principles of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). In determining the admissibility of a confession, legislation should make clear that the burden of proof rests with the State to demonstrate that a confession is given with the free will of the suspect.
- Rules governing admissibility of evidence in general should be strengthened and explicit in order that all evidence gathered illegally or as a result of illegal actions or procedures employed by the police or Public Prosecutor’s Office should be made inadmissible in court.
- Legislation should clearly criminalise violations in due process, including arbitrary or incommunicado detention and torture, as well making it a criminal offence not to report violations committed by third parties. Congress should commission research into the effective prosecution of such offences.

Public Prosecutor’s Office

“Strengthen the autonomy and independence of the Office of the Public Prosecutor”²²

The Public Prosecutor’s Office continues to form part of the executive at federal and state level frequently making the investigation and prosecution of crimes open to political pressures.

²⁰ The Special Rapporteur on the independence of judges and lawyers called for “a review of the *amparo* procedure and the law with a view to making it less costly, simpler, speedier and more effective in cases of violations of individual guarantees Report of the E/CN.4/2002/72/Add.1, para 192(I).

²¹ Special Rapporteur on Torture. Report on his visit to Mexico, E/CN.4/1998/38/Add.2 of 14 January 1998, para. 88 (d).

²² 1998 IACHR report, OEA/Ser.L/V/11.100. Doc7 Rev 1, Sept 1998, para 730

- Legislation should ensure the autonomy of the Public Prosecutor's Office from the executive while limiting its powers to those consistent with its mandate in order to end its quasi-judicial role in the criminal justice system. Regulation of the Public Prosecutor's Office should ensure effective recruitment and training and disciplinary procedures of agents in accordance with UN Guidelines on the role of Prosecutors²³.

Forensic services

- Legislation should ensure the forensic services, which presently come under the control of the Public Prosecutor's Office are an autonomous agency with clear operational independence. Regulation should ensure its work is carried out on the basis of protocols developed from international standards for the collection, storage and assessment of forensic evidence. It should be staffed by appropriately qualified, trained and remunerated staff.

Rights of the victim

Victims of crime, including human rights violations, are routinely denied redress and access to justice.

- The rights of victims in the criminal process should be explicitly set out in legislation, including facilitating the process of reporting crime. The rights of the victims to redress and to initiate legal action should be strengthened. The right to assist in the criminal investigation (*coadyuvar*) of the Public Prosecutor's Office should be enhanced to ensure greater access to justice and scrutiny of the actions of the police and prosecutors.
- Legislation should ensure there are legal mechanisms available to victims and their relatives to pursue criminal actions against public officials accused of directly committing human rights abuses or failing in their duty to investigate.

Judiciary

- Legislation should strengthen the autonomy and independence of the Judicial Councils, including from the Supreme Court, in order to ensure the professional capacities of judges and supervision of the profession without infringing the impartiality of judicial decisions.
- Mechanisms should be elaborated for the effective implementation of the UN Basic Principles on the Independence of the Judiciary²⁴ and the incorporation of international human rights law and jurisprudence should be promoted in judicial decisions.

²³ Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

²⁴ UN Basic Principles on the Independence of the Judiciary and Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Rights of the Child

Legislation is urgently required to ensure that rights of minors are properly protected in a juvenile justice system which meets international human rights standards contained in Art 37, 39, 40 of the Convention on the Rights of the Child²⁵.

Prison regulation and oversight

- Congress should ensure effective judicial control and oversight of both sentencing and prison conditions to ensure international norms²⁶ on prisons and treatment of prisoners are clearly incorporated into legislation.

3. PUBLIC SECURITY WITH ACCOUNTABILITY

The creation of effective mechanisms for preventing and combating crime is a fundamental duty of the state. Establishing effective judicial control of procedural guarantees as outlined above is the most effective means of ensuring the rights of suspects, witnesses and victims of crimes, and making certain that only those actually responsible for committing crimes are found guilty and punished according to the law. In this respect, the executive's reform proposals are an important advance in clearly linking public security with the protection of human rights. To build public confidence in the criminal justice system it is essential to develop law enforcement and investigative agencies with the highest technical and professional capacity, whose operational practices protect internationally recognised human rights while efficiently tackling crime. To achieve this it is vital that judicial procedures are not made subordinate to public security interests as has been the tendency in many recent reforms. There should be a wide debate on the nature of law enforcement agencies, their relationship to prosecutors and the range of mechanisms that should be introduced to ensure that police forces are accountable to society.

Police and Prosecutors

The reform proposals put forward by the executive require the unification of federal police forces under a single interior ministry, ending the division between judicial police and preventive police and empowering all police to carry out investigative tasks. The proposals give the new federal police force operational autonomy to receive reports of crimes and conduct initial investigations independent of the Public Prosecutor's Office. At the same time, the Public Prosecutor's Office will have a "functional" authority over the police in the direction of investigations.

²⁵“Effectively implement a juvenile justice system in accordance with the Convention and other related international standards”, Concluding Observations of the Committee on the Rights of the Child : Mexico. 10/11/99.CRC/C/15/Add.112

²⁶ Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The proposals are intended to remove bureaucratic hurdles to criminal investigations, increase coordination and produce a professionally competent police force accountable to a single executive authority, capable of responding to security demands. However, Amnesty International believes there are a number of clear dangers that have not been adequately addressed in the proposals. Firstly, the complex relationship between prosecutor and police is defined by the ambiguous term “functional”, which may lead to confusion, lack of chain of command authority and reduced accountability. In particular, the greatly expanded investigative role of all police potentially encourages police to fit investigative strategies to security demands and fabricate evidence presented to prosecutors. The lack of clear authority over police and/or shortage of resources available to prosecutors to verify pre-trial investigation material may make them over dependent on the new police force and unable to provide effective scrutiny of police work.

- Legislation should clearly establish the nature of the relationship between police and prosecutors to ensure effective and impartial investigations with adequate safeguards to protect human rights.

At present the proposals risk creating a large police force with wide-ranging powers, but do not strengthen internal or external oversight mechanism to monitor and address abuses or deficiencies. Corrupt, incompetent and abusive policing is deeply ingrained in many forces. Changing this culture is central to ensuring public security with human rights and can only be achieved by ensuring that police are accountable to the public they serve. Internal investigation units and the National and network of local Human Rights Commissions do not presently ensure effective accountability; therefore more vigorous and credible mechanisms should be developed specifically for this task²⁷.

Democratic and legal accountability will encourage the end of confession-led policing to one based on prevention, intelligence gathering and high-quality technical and scientific investigations. Securing community consent and confidence is central to the success of this process. For this reason members of the legislature should seek to ensure that reform of the police and Public Prosecutor’s Office is one that is consulted widely both amongst the academic and legal community, but also with other sections of civil society and relevant experts

- Congress should ensure that police recruitment, training and operational procedures incorporate international standards and best practice. Codes of conducts should provide strict rules on protection of human rights, record-taking, registration of detentions, interrogation procedures and the use of force and firearms based on necessity and proportionality. These procedures should be monitored and enforced.
- Legislation should ensure there are a range of effective accountability mechanisms to enable police managers to modify practice to make policing more effective, while

²⁷ Exploring Roads to Police Reform: Six Recommendations, Robert O. Varenik, Lawyers Committee for Human Rights. <http://repositories.cdlib.org/usmex/prajm/varenik/>

opening up police actions to public scrutiny and effective and impartial disciplinary or criminal procedures where appropriate.

Military jurisdiction

The interpretation by the courts of the Constitution in favour of military jurisdiction when military officials are implicated in internationally recognised human rights violations continues to legitimise impunity and the denial of justice. International human rights organizations such as the UN thematic mechanisms and IACHR have repeatedly called on the authorities to restrict military jurisdiction and ensure a strict separation of military tasks from police law enforcement functions²⁸.

- Constitutional reforms should expressly guarantee that all allegations of human rights violations committed by military personnel are investigated and tried in the civilian criminal courts.
- Legislation should ensure the separation of the military from police law and order functions.

Conclusion

In conclusion Amnesty International welcomes the proposals put forward by the executive to reform the constitution and the criminal justice system, and calls on members of Congress to ensure that legislation addresses the recommendations contained in this memorandum. Furthermore, the organization is aware that while the constitutional and legal framework is vital in order to establish the fundamental principles by which any State should function, the real test is operationalising these principles in the everyday life of Mexican society. To this effect Amnesty International calls on the Senate and the Chamber of Deputies to consult closely with civil society in developing, monitoring and assessing the impact of reforms.

²⁸ Para 72, e) Working Group on Arbitrary Detentions report on Mexico, E/CN.4/2003/8/Add.3
17 de diciembre de 2002