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Mexico

Submission to the UN Universal Periodic Review

**Fourth session of the UPR Working Group of
the Human Rights Council**

February 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

Under section B, Amnesty International raises concern in relation to human rights legislation, national human rights institutions, and the implementation of the Rome Statute of the International Criminal Court.

Section C highlights Amnesty International's concerns in the context of impunity for human rights violations, public security, torture and other serious human rights violations, social activists and human rights defenders, violence against women, and Indigenous and rural communities.

In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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Amnesty International submission to the UN Universal Periodic Review

Third session of the UPR Working Group, December 2008

B. Normative and institutional framework of the State

Human rights legislation

A key commitment of the Mexican government in recent years has been to harmonize domestic legislation with international human rights standards, including in the areas of women's rights, equality, non-discrimination and transparency. However, despite repeated commitments to introduce constitutional reforms to explicitly give effect to the rights contained in international human rights treaties and to improve the application of such treaties in domestic courts, the proposal currently before Congress has stalled after the government withdrew its support. It is hoped that the bill will advance in the next session of Congress.

In 2008, separate constitutional reforms relating to public security and criminal justice were adopted and an eight year transitional period for their introduction began. Some of these reforms are aimed at improving the right to due process of ordinary criminal suspects and, if implemented effectively, would strengthen the right to a fair trial. However, the reforms also increased the powers of the Public Prosecutor to hold organized crime suspects in pre-charge detention (*arraigo*) for a period up to 80 days. The process of drafting secondary legislation to implement these constitutional changes is pending. This will determine the degree to which international human rights standards are effectively incorporated into national legislation. Moreover, despite these federal-level improvements in legislation, many of Mexico's 31 state legislatures have not adequately harmonised their legislation with international standards. New federal legislation to protect women from violence was introduced in February 2007 and according to the National Women's Institute more than 20 states have introduced similar laws, though most states have not passed enabling legislation or regulations to ensure effective implementation.

Human rights institutions

Human rights units in the army, Public Prosecutor's offices and police forces have been established to coordinate human rights training and respond to investigations conducted by the network of Human Rights Commissions into allegations of human rights violations. However, these units are administrative in nature and largely without investigative powers. As a result, they have not proved effective at preventing human rights violations, such as arbitrary detention and torture. Some Public Prosecutor's offices have adopted a procedures based on the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) for evaluating torture allegations. However, this measure has not overcome the deficiencies in official judicial investigations into human rights violations, particularly the lack of independence and impartiality, as well as technical capacity, of many Public Prosecutor's offices and the police.

A national human rights programme, developed by the government, was published at the end of August 2008. Civil society was not widely consulted in the determination of this programme, and the mechanisms for delivering specific commitments and evaluating their impact have not yet been established.

The network of Human Rights Commissions, made up of the National Human Rights Commission, the 31 state level Commissions and the Federal District Human Rights Commission have in some instances proved

important mechanisms for publicising human rights violations and urging the authorities to take remedial action. However, some of these institutions are not sufficiently independent of local governments to fully exercise their role, while others are reluctant to act decisively on reports of human rights violations and to urge the authorities to bring to justice those responsible. As a result, the network of Human Rights Commissions has had only limited impact on ensuring access to justice for victims of human rights violations.

Implementation of the Rome Statute of the International Criminal Court

Although Mexico has been a State party to the Rome Statute of the International Criminal Court since 2005, domestic legislation implementing it has not yet been adopted. A bill on cooperation with the International Criminal Court was submitted to Congress for discussion, but no concrete steps have yet been taken. An initiative making crimes covered by the Rome Statute criminal under national law is also being drafted; however, it is not yet public. As a result, Mexico has not yet implemented the Rome Statute into national legislation.

C. Promotion and protection of human rights on the ground

Impunity for human rights violations

Despite commitments by the government to prosecute officials responsible for systematic human rights violations committed in Mexico during the period of the 1960s through the 1980s, no official has yet been held to account. At the end of the administration of former President Vicente Fox, the Special Prosecutor for Past Political or Social Movements (FEMOSSP) was disbanded and the cases passed back to the Federal Attorney General's Office (*Procuraduría General de la República*). The cases have not advanced, despite the report by the Special Prosecutor indicating that more than 100 extrajudicial executions, 700 disappearances and thousands of cases of arbitrary detention and torture had been committed. The Supreme Court's decision to close several cases by ruling that statute of limitations apply to crimes against humanity and genocide, violates Mexico's obligations under international law and is a serious obstacle to effective prosecutions. Furthermore, the continued practice of allowing the military courts - which are neither impartial nor independent - to investigate and try cases of military officials accused of human rights violations has resulted in the premature closure of several important cases and the acquittal of the accused. The government has failed to remove some interpretative declarations and prohibited reservations to international human rights treaties, to which Mexico is a party. Such measures could enable prosecution before civilian courts and prohibit the application of statutory limitations for crimes under international law irrespective of the date of their commission. The government is reported to have established a fund to compensate victims. However, the criteria and methodology for assessing cases is not clear.

Public security

The government's strategy to combat organized criminal networks operating in several regions in the country has coincided with a significant increase in violent crime. At least 5,000 killings related to organized crime were reported in the media between January 2007 and July 2008. Members of the police and military have also been subject to numerous violent attacks. The government mobilized more than 25,000 military personnel to carry out policing operations to spearhead its strategy; however, the increased involvement by the military has led to a sharp increase in reports of human rights violations committed by military personnel. While there is no reliable data on the full extent of such violations, local human rights organizations reported at least 50 incidents of unlawful killings, rape, torture, arbitrary detention allegedly committed by military personnel between January 2007 and June 2008. A number of officials have been arrested; however, their cases are handled by the military courts the proceedings of which lack impartiality and transparency. The UN and Inter-American human rights mechanisms have recommended that the civilian authorities and courts should handle such cases. However, the National Human Rights Commission has not recommended that such cases be removed from military jurisdiction.

Torture and other serious human rights violations

Impunity for human rights violations committed in the context of public security operations remains endemic. In recent years there has been a number of high profile cases involving unlawful killings, torture, rape and arbitrary detention by municipal, state and federal police, in Guadalajara, Jalisco State, in 2004, and in Oaxaca State and in San Salvador Atenco, Mexico State, in 2006. A few officials have been prosecuted for minor offences in relation to these cases and almost all victims have been denied justice and reparations. In many of these cases, the state authorities have failed to carry out independent and impartial investigations and the federal authorities have argued that they do not have jurisdiction to investigate the responsibility of state level officials. Even in cases where federal authorities are directly implicated, investigations by the Federal Attorney General's Office have often failed to lead to prosecution. An underlying cause is the lack of independence of the federal and state Public Prosecutor's offices and the lack of independent specialist units to investigate and prosecute those responsible for human rights violations.

Social activists and human rights defenders

Social activists and human rights defenders face investigation, and sometimes prolonged detention, on the basis of fabricated or politically motivated criminal charges. In many cases, the police, prosecutors and courts at the local level lack impartiality and fail to deliver a fair trial.

Magdalena Garía Durán, an Indigenous woman detained during protests in San Salvador Atenco, Mexico State, spent 18 months in custody following unfair judicial proceedings by state level officials. During this time, Amnesty International adopted her as a prisoner of conscience. She was released in May 2006 after a federal judge twice ruled that local prosecutors had failed to provide sufficient evidence. Amnesty International has similar fair trial concerns regarding others convicted in the context of protests in San Salvador Atenco in May 2006. Diego Arcos, an Indigenous community leader from Nueva Tila was detained in Chiapas for more than a year on murder charges. Despite winning a federal injunction against the charges, he was only released when the State Minister of Justice agreed to review his case and subsequently ordered the charges against him to be dropped. The federal review courts (*amparo*) frequently offer the only means of securing an impartial review of cases and achieving justice. However, the procedures are extremely slow, lasting months or even years and often do not result in those responsible for bringing unfounded or politically motivated criminal charges being held to account.

Human rights defenders and social activists also face threats and harassment in reprisal for their legitimate human rights activities. The intimidation usually originates in the local environment in which human rights defenders and social activists operate. State-level investigations into such threats and harassment are usually inadequate and leave defenders at risk of further intimidation or attack. The failure to develop effective protection mechanisms independent of the local authorities, who may be implicated in the harassment, leaves many human rights defenders vulnerable. Under the UN Declaration on Human Rights Defenders, States, including Mexico, undertook to ensure that defenders are able to carry out their human rights work without interference, obstacles or fear of retaliation, to publicly recognize the legitimate work of human rights defenders and take specific measures to support and protect them and their work.

Violence against women

Despite advances in legislation to protect women from violence, in 2006 67% of women over the age of 15 reported some form of violence in the home, workplace, community or school, according to Mexico's National Survey on Family Relations (*Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares*). One in four women over the age of 15 living with a partner reported physical or sexual violence at the hands of her partner. Reporting, prosecution and conviction rates for such offences are extremely low. Amnesty International has found that officials are often reluctant to take complaints of domestic violence seriously and to investigate them effectively.

Although the number of refuges has increased, it is still insufficient to meet demand. Restraining orders and other protection measures are rarely issued and enforced leaving many women vulnerable to further attacks,

including murder. Reliable data on the number of women killed as a result of gender violence are not available, which prevents an effective evaluation of measures introduced to prevent, investigate and punish such crimes.

Despite welcome measures to prevent and punish violence against women in Ciudad Juárez and Chihuahua City, Chihuahua State, women and young girls continue to be murdered. More than 25 women were murdered between January and July 2008 in Ciudad Juárez. Officials responsible for the flawed investigations that were originally carried out into the murders dating back to 1993 have never been held to account and as a result few of those directly responsible for the murders have been identified and prosecuted. The 2007 legislation to prevent and punish violence against women has yet to be converted into practical tools for combating gender-based violence.

Indigenous and rural communities

Development projects in different parts of the country which negatively affect or threaten the livelihoods of indigenous and other rural communities continue to give rise to conflict. Amnesty International's research indicates that the failure to adopt measures to ensure the right to active participation in decision-making and consultation risks violating the human rights of such communities, including the threat of forced evictions. Communities opposed to the construction of La Parota hydro-electric dam in Guerrero State won several preliminary legal challenges on the basis that community approval had not been legally obtained. The project remains frozen, but many local communities fear the authorities intend to continue with construction without adequate consultation.

D. Recommendations for action by the State under review

Mexican governments over the last decade have committed themselves to respect and protect human rights and have ratified virtually all international human rights instruments, although some of them are subject to negative interpretive declarations and reservations. The invitation to all international human rights mechanisms of the UN and the Inter-American System has resulted in reports and recommendations by many of the major thematic and regional mechanisms. The government also recently reported to five of the UN treaty bodies. The establishment of an Office of the High Commissioner for Human Rights in Mexico has also helped advance the human rights agenda in conjunction with civil society. Despite slow progress, there have been some advances in harmonizing legislation with international human rights law. A new National Human Rights Programme has been enacted at federal level. There have been some efforts to improve medical assessment of torture cases.

Nevertheless, a wide gap remains between the government's commitment to international human rights standards and mechanisms and the delivery of improvements in the protection and respect for human rights domestically. The failure to effectively implement many of the recommendations issued by the human rights mechanisms of the United Nations and the Organization of American States has undermined efforts to address human rights violations. The federal authorities have often failed to show clear leadership in their commitment to the protection of human rights, particularly by failing to ensure that military officials accused of human rights violations are investigated and tried by civilian authorities. The authorities have also failed to ensure that federal, state and municipal officials accused of human rights violations are brought to justice. As a result impunity for human rights violations remains the norm and respect, protection and fulfilment of human rights in Mexico remains limited for many sections of the population.

Amnesty International calls on the government to:

Human rights legislation:

Ensure that the obligation to comply with the provisions of international human rights treaties ratified by Mexico is explicitly incorporated in the federal Constitution and to accelerate the harmonization of federal and state law with international human rights standards, including the Rome Statute;

Ensure that legislation governing the public security and criminal justice system is consistent with international human rights standards;

Establish a clear timetable and mechanisms for the implementation and evaluation of the National Human Rights Programme at federal, state and municipal levels.

Human rights institutions

Establish independent, effective and well-trained police/prosecutor task forces with legal authority to investigate allegations of human rights violations in line with international human rights standards;

Establish a credible, independent and effective police complaints commission to investigate allegations of human rights violations committed by police officers;

Strengthen the network of human rights commissions to ensure that they are autonomous and effectively promote compliance with international human rights obligations.

Public security

Ensure that policy and practice to strengthen public security do not result in or tolerate human rights violations, such as arbitrary detention, unlawful killings, or torture and other ill-treatment;

Ensure that all police and security forces involved in policing operations are trained in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and held to account according to these standards;

Ensure that military personnel accused of human rights violations are investigated and tried in the civilian courts, including those accused of rape of indigenous women.

Human rights defenders and social activists

Ensure that human rights defenders and social activists can carry out their legitimate activities without fear of reprisals, including by effectively and impartially investigating all reports of threats and harassment and by holding those responsible to account;

Institute credible mechanisms to protect those at risk, ensuring that such mechanisms do not involve authorities suspected of involvement in harassment;

Ensure that defenders and social activists are not subject to unfair criminal proceedings and that those responsible for such misuse of the criminal justice system are held to account.

Violence against Women

Effectively implement and evaluate new federal and state legislation to protect women from violence;

Ensure that women are able to file complaints of domestic violence in a safe environment and that prompt, impartial and effective investigations are conducted to ensure that the perpetrators are held to account;

Adequately fund and enforce protection measures for women at risk of violence, including through increased financial support and training for emergency police response units and refuges.

Strengthen measures to prevent and punish violence against women in Ciudad Juarez and Chihuahua City and hold officials accountable for negligent investigations.

Impunity for human rights violations

Ensure that the victims of grave human rights violations committed in the 1960s, 70s and 80s, and their relatives, are granted access to truth, justice and reparations;

Remove interpretive clauses and reservations from the ratification of international human rights treaties.

Ensure that serious human rights violations committed in Guadalajara, Jalisco State in May 2004, San Salvador Atenco in Mexico State in May 2006 and Oaxaca City throughout 2006 are impartially and thoroughly investigated, those responsible are brought to justice and that victims and relatives receive adequate reparations.

Indigenous and rural communities

Ensure the full integration of economic, social and cultural rights in social development and poverty reduction schemes, specifically to address the needs of disadvantaged and marginalized individuals and groups.

Appendix: Amnesty International documents for further reference²

Mexico: Women's struggle for safety and justice (AI Index: AMR 41/021/2008);

Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system, (AI Index: AMR 41/002/2007);

Mexico: Human rights at risk in La Parota Dam Project (AI Index: AMR 41/029/2007);

Mexico: Oaxaca – clamour for justice (AI Index: AMR 41/031/2007);

Mexico: Violence against women and justice denied in Mexico State (AI Index: AMR 41/028/2006);

Mexico: "How can a life be worth so little?" Unlawful killings and impunity in the city of Reynosa (AI Index: AMR 41/27/2006);

Mexico: Allegations of abuse dismissed in Guadalajara: reluctance to investigate human rights violations perpetuates impunity (AI Index: AMR 41/034/2004);

Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua (AI Index: AMR 41/026/2003);

Mexico: Unfair trials: Unsafe convictions (AI Index: AMR 41/007/2003).

² All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/americas/central-america/mexico>