



# MEXICO

## **AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 17<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, OCTOBER/NOVEMBER 2013**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

In Mexico's first Universal Periodic Review (UPR) in 2009, Mexico accepted recommendations related to harmonizing domestic legal framework with international human rights norms,<sup>1</sup> combating discrimination and violence against women,<sup>2</sup> enforced disappearances,<sup>3</sup> torture,<sup>4</sup> protecting the rights of migrants,<sup>5</sup> Indigenous Peoples,<sup>6</sup> attacks on human rights defenders<sup>7</sup> and journalists,<sup>8</sup> and public security operations and judicial reforms.<sup>9</sup>

In December 2012, ex-president Calderon left office and the new president, Enrique Peña Nieto, was sworn in. Whereas the previous government was characterised by a positive human rights discourse, this was not backed-up with implementation measures.<sup>10</sup> The new government of Enrique Peña Nieto has made some welcome commitments to strengthen protection of human rights. Nevertheless, so far these have also not been followed up with clear implementation and evaluation measures. Hence, there has been little progress with respect to many key recommendations accepted by Mexico at its first review.

#### **Harmonization of national law with international human rights standards**

In July 2011, constitutional reforms established the obligation to comply with international human rights law and on occasions where there is contradiction between the Constitution and international human rights treaties, the norm most favorable to the protection of the person (pro-persona principle) shall be applied. However, the process of harmonizing domestic legislation with this constitutional advance has yet to begin. This is essential to have direct impact on the protection, respect and fulfillment of rights of all.<sup>11</sup>

#### **Violence against women**

Although Mexico accepted a series of recommendations to combat discrimination and violence against women, these commitments have not translated into effective measures to reduce violence and impunity. In particular, the "General Law on women's access to a life free from violence" has remained toothless. Relatives of victims in Chihuahua, as well as other states such as Nuevo Leon, Mexico state and Oaxaca have not been successful in pressing for patterns of attacks, abductions and killings of women to be effectively investigated. In Ciudad Juarez, human rights activists and relatives of victims continue to demand full compliance with the Inter-American Court of Human Rights judgement on the Cotton Field case.<sup>12</sup>

#### **Migrants**

Similarly, Mexico's acceptance of recommendations to strengthen the protection of irregular migrants in Mexico has not led to an improvement in their situation. The extortion, abduction, rape, killing of irregular migrants continues on the transit routes to the US border. Few criminals or officials responsible are ever prosecuted. Between the federal, state and municipal authorities there continues to be a lack of leadership, coordination and accountability for protecting irregular migrants. A new law on migration adopted in 2011 improved the recognition of migrants' rights.<sup>13</sup> However, a new regulatory code,<sup>14</sup> published in September 2012, raises concern as it grants wide discretionary powers to the Federal Police and officials of the National Migration Institute,<sup>15</sup> which in the past have led to abuses.

#### **Human rights defenders and journalists**

Threats, harassment and killings of human rights defenders and journalists continue and impunity for the perpetrators remains the norm. In 2012, a law established a protection mechanism for human rights defenders and journalists. The new government has agreed to support the mechanism; however, resources and high-level political support are essential to ensure its effectiveness. The investigation of attacks remains deficient. The Special Federal Prosecutor's Office for crimes against journalists remains without sufficiently powers to conduct full investigations and prosecutions.

### **Indigenous Peoples**

Indigenous communities are some of the most marginalized in Mexico, with limited access to justice, housing, education, healthcare, water and employment. They are also often denied their right to free, prior and informed consent on development and resources projects affecting their traditional lands. The government has promised to protect Indigenous rights, but has not provided any details on how it will achieve this.

## **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

### **National Human Rights Program**

The National Human Rights Program of previous governments has not reached beyond the federal public administration and remains largely unimplemented. The failure to ensure the compliance of state governments and other branches of the State remains a key obstacle. The new government has yet to consult with civil society or other authorities on the program.

### **National and state human rights commissions**

Despite legal reforms to strengthen human rights institutions, the capacity and impartiality of many of these remain limited. The National Human Rights Commission (CNDH) is well resourced and produces some important research and findings. However, it is bureaucratic and timid, and frequently unable to complete timely investigations into the thousands of complaints it receives, and it is frequently ineffective at securing compliance with its recommendations. Despite this, the government consistently uses its recommendations as the only measure of human rights violations. In many of the 32 states, local human rights commissions are weak - with important exceptions, such as the Federal District.

## **THE HUMAN RIGHTS SITUATION ON THE GROUND**

### **Public security and enforced disappearances**

The public security crisis in Mexico over the last six years has resulted in more than 60,000 killings, mainly by organized crimes groups, but also by police and security forces, who is also responsible for arbitrary arrests, torture, and enforced disappearances. In February 2012, the government acknowledged that there were more than 26,000 persons reported missing or disappeared between 2006 and 2012 - an unknown number of which are enforced disappearances. The government has yet to take measures to combat disappearances or to act on the demands of victims' groups.<sup>16</sup> There have been no advances on achieving accountability for enforced disappearances and other gross human rights violations committed during the 1960s, 70s and 80s.

The new government has stated that it wishes to reduce violence and human rights violations, but so far the militarized public security strategy continues. It has proposed reform of the police, including establishing a gendarmerie, but without reference to improving the protection of human rights or strengthening investigations into alleged abuses.

### **Arbitrary detention and torture and other ill-treatment**

Arbitrary detention, torture, ill-treatment and excessive use of force are routinely used by the security forces and the police.<sup>17</sup> There was not a single conviction for torture of a federal official resulting from such complaints during the last administration.<sup>18</sup> Criminal law offences of enforced disappearance and torture in federal and state jurisdictions do not meet international human rights standards, and Guerrero state does not have an autonomous criminal offence of torture.

During the last administration the Federal Attorney General's office used Arraigo pre-charge detention orders to detain

almost 8,000 people in the federal jurisdiction.<sup>19</sup> There have been complaints of torture and ill-treatment and of violations of the right to a fair trial of those held in Arraigo.<sup>20</sup>

### **Military jurisdiction**

Between the end of 2006 and 2012, there were 7,441 complaints of abuses committed by the armed forces; however, these resulted in only 27 convictions against military personnel, all under military jurisdiction. In August 2012, Supreme Court judgments confirmed the jurisprudence of the Inter-American Court of Human Rights on the exclusion of human rights violations from the competence of the military justice system. However, the Supreme Court has not established binding precedent for lower courts. A proposed reform to the Code of Military Justice was blocked in April 2012. The new government and the legislature have yet to enact the necessary reforms, which are vital to ensure that civilian prosecutors conduct full investigations.<sup>21</sup>

### **Justice system**

Criminal justice reforms passed in 2008 have hardly been implemented.<sup>22</sup> The denial of the right to a fair trial for criminal suspects remains routine, particularly the right to presumption of innocence and to effective defence. Indigenous suspects are most at risk of fabricated or unsubstantiated criminal charges, resulting in prolonged detention and unsafe convictions. Human rights defenders and other social activists also face spurious criminal charges in reprisal for their legitimate activities.

The new government has removed the veto on the General Victim's Law after Congress approved the bill in 2012. The law establishes the rights of victims of crime and human rights violations, as well as the obligations of the State to ensure access to truth, justice and reparations. Implementation of the law is currently pending.

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Mexico:**

#### *Harmonization of national law with International human rights standards*

- To establish a timetable for review and reform of federal and state level legislation to ensure its consistency with international human rights standards.

#### *Violence against women*

- To prioritise measures to prevent and punish violence against women in Mexico's 31 states, particularly those high reporting of killings and attacks of women and girls, such as Chihuahua, Nuevo Leon, Mexico state and Oaxaca;
- To reform implementing legislation of the "General Law on women's access to a life free from violence" to ensure that public officials are fully accountable if they fail to diligently ensure the protection of women at risk and the investigation and prosecution of perpetrators;
- To implement in full the Inter-American Court of Human Rights judgement on the Cotton Field case.

#### *Migrants*

- To lead federal, state and municipal authorities in concerted actions to prevent and punish abuses against migrants, including by criminal gangs and public officials, and to publish the results;
- To ensure migrants have access to effective complaints mechanisms and protection, including temporary visas, when victims or witness of abuse;
- To establish a database of missing migrants;
- To ensure the protection of migrants' rights defenders and the full involvement of civil society in monitoring the implementation of migration laws.

#### *Human rights defenders and journalists*

- To end threats, attacks and killings of human rights defenders and journalists and ensure full and effective investigation to bring those responsible to justice;
- To provide both financial and political support to the protection mechanism for human rights defenders and journalists so that those at risk receive effective protection;
- To ensure the full cooperation of state and municipal governments in compliance with the protection measures for human rights defenders and to prevent public officials from making statements questioning the legitimacy of human rights work.

#### *Indigenous Peoples*

- To ensure that Indigenous communities are fully consulted during the development and delivery of policies to strengthen their access to housing, healthcare, education, water and other essential services;
- To ensure that Indigenous communities are fully consulted on the development or resource exploitation projects affecting their ancestral lands in order to obtain their free, prior and informed consent.

#### *Impunity and justice system*

- To accelerate judicial reforms and to uphold human rights protections, such as the inadmissibility of evidence obtained under torture or ill-treatment and the right to effective defence;
- To end the misuse of the criminal justice system to detain and prosecute human rights defenders, Indigenous Peoples and others on the basis of fabricated or unsubstantiated evidence;
- To ensure access to truth, justice and reparations for victims of human rights violations and other crimes, including full implementation of the General Victims' Law;
- To fully implement the judgements against Mexico of the Inter-American Court of Human Rights, including to reform the Code of Military Justice to exclude human rights violations from military jurisdiction.

#### *Public security and enforced disappearances*

- To place protection of human rights at centre of public security measures;
- To fully investigate all allegations of human rights violations, including where public officials are accused of authorization, support or acquiescence, and ensure that the perpetrators are brought to justice and victims receive reparations;
- To implement in full the recommendations of the UN Working Group on enforced or involuntary disappearances;
- To institute in consultation with victims' groups a comprehensive nationwide database of the disappeared, and to put in place a rapid search mechanism;
- To ensure that prompt and high-quality investigations are carried out in order to establish the truth and the whereabouts of victims, and to guarantee reliable exhumation and identification processes.

#### *Arbitrary detention and torture*

- To implement in full the recommendations of the UN Committee against Torture;
- To abolish Arraigo orders at federal and state level and to ensure all detentions are carried out legally and registered in detail on a national database which affected parties can access;
- To reform the criminal offences of enforced disappearance and torture at federal level and in all 32 state entities in line with international standards, and to ensure that Guerrero state immediately creates an autonomous criminal offence of torture;
- To establish specialist units to investigate and prosecute allegations of gross human rights violations, such as torture, and to make their findings public;

- To ensure that alleged victims of torture and other ill-treatment have prompt access to independent and reliable medical examinations in line with international standards and that their findings have the same evidential status as official medical examinations in criminal proceedings;
- To ensure that the new gendarmerie is established in consultation with civil society to ensure effective mechanisms of supervision and accountability.

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Mexico*, A/HRC/11/27, 29 May 2009, paragraphs 93.3 (Morocco); 94.4 (Spain); 93.5 (Azerbaijan); 93.6 (Bolivia, Guatemala, Spain, Turkey, Uruguay); and 93.7 (Canada, Switzerland).

<sup>2</sup> A/HRC/11/27, paragraphs 93.8 (Brazil, Chile); 93.11 (United Kingdom); 93.12 (Pakistan); 93.13 (New Zealand); 93.14 (Japan, Turkey); 93.15 (Netherlands, Chile, Ireland); 93.16 (Indonesia, Sweden, Algeria); 93.17 (Azerbaijan); 93.18 (Panama, Finland); 93.19 (Ukraine); 93.20 (Italy); 93.21 (Bangladesh); 93.22 (Austria); 93.23 (Belgium); and 93.48 (Bolivia, Sweden).

<sup>3</sup> A/HRC/11/27, paragraphs 93.17 (Azerbaijan); 93.24 (Colombia); 93.25 (Uruguay); and 93.40 (Italy).

<sup>4</sup> A/HRC/11/27, paragraphs 93.26 (Algeria, Portugal); 93.27 (Japan, Uzbekistan, France); 93.28 (Uzbekistan, France, Japan); 93.40 (Italy); and 93.46 (Cuba, Bangladesh, Azerbaijan, Denmark).

<sup>5</sup> A/HRC/11/27, paragraphs 93.79 (Pakistan); 93.80 (Guatemala); and 93.81 (Uzbekistan, Guatemala).

<sup>6</sup> A/HRC/11/27, paragraphs 93.8 (Brazil, Chile); 93.11 (United Kingdom); 93.48 (Bolivia, Sweden); 93.49 (Finland); 93.64 (Japan); 93.67 (Algeria, Azerbaijan, Philippines, Honduras); 93.68 (Azerbaijan); 93.69 (Holy See, Honduras); 93.70 (Saudi Arabia, Vietnam); 93.73 (Algeria); 93.75 (Azerbaijan, Panama, Bangladesh); 93.76 (Guatemala, Pakistan); 93.77 (Argentina, Bolivia, Denmark); and 93.78 (New Zealand).

<sup>7</sup> A/HRC/11/27, paragraphs 93.23 (Belgium); 93.52 (United Kingdom); 93.58 (Azerbaijan, Germany, Denmark); 93.59 (Norway); and 93.60 (Germany, Norway).

<sup>8</sup> A/HRC/11/27, paragraphs 93.48 (Sweden); 93.53 (Norway); 93.54 (Germany); 93.56 (United Kingdom, Bangladesh, Denmark, Peru); 93.57 (Netherlands); 93.58 (Azerbaijan, Germany, Denmark); 93.59 (Norway); and 93.60 (Germany, Norway).

<sup>9</sup> A/HRC/11/27, paragraphs 93.35 (Turkey, Austria); 93.37 (New Zealand); 93.42 (Chile); and 93.50 (Honduras).

<sup>10</sup> In fact, the determination of the previous government to deny the seriously worsening human rights situation in the country - in no small part due to its public security strategy of militarized combat of organized crime - strengthened impunity and allowed human rights violations, such as torture and ill-treatment, to become widespread and systematic.

<sup>11</sup> The precariousness of the reforms were illustrated recently when a senior legislator from the governing party temporarily proposed a regressive reform to remove the pro-persona principle to reinstate the supremacy of the Mexican Constitution over international human rights law. Such a reform, if approved, would once again close the door to direct application of international human rights standards.

<sup>12</sup> The 2009 judgement by the Inter-American Court of Human Rights on the killing of three young women in Ciudad Juarez in 2001 found the Mexican state responsible for a series of treaty violations, including discrimination, failure to protect the lives of the victims, failure of due diligence to effectively investigate and failure to hold to account officials responsible.

<sup>13</sup> Migration law (ley de migración), May 2011.

<sup>14</sup> Regulatory code of the Migration law ([http://www.dof.gob.mx/nota\\_detalle.php?codigo=5270615&fecha=28/09/2012](http://www.dof.gob.mx/nota_detalle.php?codigo=5270615&fecha=28/09/2012)), September 2012.

<sup>15</sup> Instituto Nacional de Migración, agency responsible for applying migration law.

<sup>16</sup> These include establishing a nationwide database of the disappeared, new national legislation, rapid search mechanisms, prompt and high quality investigations to establish the truth and whereabouts of victims, reliable exhumation and identification process and prosecution of perpetrators.

<sup>17</sup> In 2012, the National Human Rights Commission received 1,662 reports of torture and ill-treatment by federal police and security forces. In previous years, there were 1,669 complaints in 2011, 1,161 in 2010; 1,055 in 2009 and 564 in 2008.

<sup>18</sup> In November 2012, the UN Committee against Torture issued a series of new recommendations, highlighting the increase in reports of torture and lack of progress on eradication.

<sup>19</sup> Arraigo orders are granted by a special judge to allow a suspect to be held by the prosecutor for up to 80 days to investigate without needing to file charges. Suspects may be held in military barracks and have severely restricted access to family, legal advice, independent medical examinations and are not brought before a court unless formally charged.

<sup>20</sup> The Committee against Torture is the latest human rights mechanism to call for arraigo to be abolished.

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<sup>21</sup> The State has also failed to comply in full with the five other judgments issued by the Inter-American Court of Human Rights since 2009.

<sup>22</sup> Despite criminal justice reforms approved in 2008 to introduce an oral accusatorial procedural system and improve protection of the rights of victims and criminal suspects, only two states have completed reforms. Nine other states have introduced partial reforms and 22 other states and the federal district continue operating under the inquisitorial procedural system – at least until the deadline for introducing the reforms in 2016. Even in those states that have introduced reforms, protections have been weakened, allowing torture to continue to go unpunished, such as the case of David Arzate documented in Amnesty International’s report, “Know abuses, and victims ignored”.