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## **Mexico's report to the Human Rights Council for the Universal Periodic Review demonstrates its failure to act on the Council's recommendations**

### **Mexico appears for its second review under the Universal Periodic Review of the UN Human Rights Council**

The report presented by the Mexican government ahead of its review on 23 October 2013 in the UN Human Rights Council demonstrates serious flaws in governmental measures to comply with the recommendations made in its previous review in 2009 and the limited effectiveness of its human rights initiatives.

The National Report asserts that Mexico is “a State that has secured momentous advances to guarantee the promotion, protection and defence of human rights”;<sup>1</sup> however, Amnesty International believes that its own research demonstrates that this is far from the case.

In 2009, Mexico agreed to comply with a wide range of recommendation including to:

- Incorporate international norms into domestic law [93.3, 4, 5, 6, 78]
  - Combat gender violence and discrimination [93.11-93.23]
  - Reduce marginalization and discrimination against Indigenous Peoples [93.49, 93.75, 76, 77]
  - Reform and implement legislation to end torture and enforced disappearance [93.24-28, 93.40-41]
  - Reform police and criminal justice system to end human rights violations [93.34-37]
  - Place protection of human rights at centre of public security policy
  - Respect rights of detainees and prisoners [93.29, 93.38]
  - Ensure effective investigation and accountability for human rights violations and combat impunity [93.43, 44, 45, 46, 48]
  - Improve recognition and protection of human rights defenders and journalists and accountability for those responsible for threats and attacks against them [93.52-60]
  - Improve protection of migrants rights [93.79-81]
  - Conduct an inclusive process to ensure implementation of UPR recommendations. [93.82-83]
- The government regrettably refused to implement other key recommendations, such as to abolish pre-charge detention orders “arraigo”<sup>2</sup>, reform the military justice system to

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<sup>1</sup> “..un Estado que ha logrado avances trascendentales para garantizar la promoción, protección y defensa de los derechos humanos”. National Report, paragraph 7

ensure all allegations of human rights violations committed by military personnel are investigated, prosecuted and tried by the civilian courts or renew measures to hold those responsible for grave human rights violations in the past.

Amnesty International's research indicates the measures taken to comply with the 2009 recommendations are inadequate and Mexico has not taken the decisive measures it committed itself to.

In particular, the State report includes many legal and administrative initiatives referred to below that in reality have not been applied or have not had any discernible impact, allowing the human rights situation to deteriorate. The absence of virtually any data in the report on the impact of these initiatives raises questions about the seriousness with which they have been undertaken. It is important to recall that the stated aims of policies are not sufficient basis to assume their success.

Despite the claims made in paragraph 1 and 2 of the National Report, there was no substantive inclusive process with civil society and other actors after the review in 2009 to ensure the implementation of accepted recommendations or the preparation of the 2013 National Report. The former government's National Human Rights Programme remained a dead letter and the new government, which has not developed hardly any substantive human rights policies, will not produce its own programme till December 2013.

Below Amnesty International assesses progress at the national level with regard to the implementation of recommendations from the 2009 review.

#### International human rights norms

- The principal advance in the last four years has been the Constitutional human rights reform in 2011 recognising the constitutional status of international human rights treaty obligations. However, the essential work of bringing federal and state law into line with these obligations has yet to begin.
- The impetus to apply international human rights norms in domestic courts and legislation has been undermined by a Supreme Court ruling of September 2013 limiting the interpretation of the 2011 reforms by conferring hierarchical superiority of the Constitution over international law in those cases where the Constitution establishes exceptions to international human rights norms, such as with "arraigo" detention. This is a set-back which the legislature and executive must address.
- Mexico has not fulfilled its commitment<sup>3</sup> to withdraw reservations and interpretative clauses to international human rights treaties. It has not approved implementing legislation for the Rome Statute of the International Criminal Court.

#### Impunity for grave human rights violations

- There are continuing reports of grave human rights violations such as enforced disappearances, torture and extrajudicial killings by police and security forces, but there have been no concrete measures by the government to end impunity and ensure access to justice for victims.
- The National Report asserts that respect for human rights is at the heart of all its public security policies<sup>4</sup>, but the government has not taken concrete measures to achieve this and it continues to deny the true scale of the human rights problems facing the country.

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<sup>2 2</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. The chamber of deputies voted to reduce the maximum period to 35 day in April 2013

<sup>3</sup> Recommendation 93, 2, Report of the Working Group on the Universal Periodic Review

<sup>4</sup> Informe nacional presentado con arreglo al párrafo 5 del anexo de la resolución 16/21 del consejo de derechos humanos, para 67-69

- The absence of data in the National Report on prosecutions and convictions for these human rights crimes confirms the continuing failure to conduct effective investigations and to bring the perpetrators to justice. Experience around the world demonstrates that human rights training which is not backed up by rigorous accountability mechanisms has little impact on reducing abuses or ending impunity.

Examples:

- The apparent enforced disappearance of four people by marines in and near Nuevo Laredo, Tamaulipas state in July and August 2013 has been met with complete institutional silence, denial and the failure to conduct full investigations.
- In March 2013 the government acknowledged that more than 26,000 people had been reported missing or disappeared in the previous six years, many of which had never been investigated. It failed to acknowledge that many are cases of enforced disappearance and assigned only 12 federal investigators in the new unit set up to search for the disappeared. A senior prosecutor has publicly acknowledged his frustration at the lack of government prioritization of the issue. The National register of disappeared and missing is not operational. Mexico has not recognised the competence of the UN Committee on Enforced disappearance to consider individual cases. It should invite the Committee to visit at the earliest opportunity.
- The extensive government annual report to Congress in September 2013 contained almost no reference to specific human rights initiatives and did not identify a single measure to combat rampant torture and ill-treatment.
- Legislation on torture and enforced disappearance has not been brought into line with international standards. The government report asserts that torture is criminalised in Guerrero state, but in fact it is only recognised in the founding legislation of the state human rights commission and not in the criminal code.<sup>5</sup>
- Between 2006 and 2012 the National Human Rights Commission received more than 2,120 complaints for torture. In the last ten years, the Federal Attorney General's Office (Procuraduría General de la República, PGR) carried out 302 medical examinations of alleged victims of torture of procedures based on the Istanbul Protocol.<sup>6</sup> In 128 cases it found evidence of torture or ill-treatment, but the National Report could not confirm a single successful prosecution for torture.<sup>7</sup>
- Important reforms to Amparo legislation<sup>8</sup> were passed, but the law remains ineffective in cases of enforced disappearance.
- On the basis of increased powers of investigation established in 2011 Constitutional human rights reforms, the National Human Rights Commission conducted an investigation and recommended a full criminal enquiry into the extrajudicial killing, torture and ill-treatment of students from the Ayotzinapa teacher training college in Guerrero. Its recommendations remain largely unimplemented and no one has been held to account.

Access to justice

- As the government acknowledges in the National Report only three states have fully applied the new accusatorial procedural system since the 2008 judicial reforms. One of these is the state of Chihuahua where evidence obtained under torture, such as in the case of Israel Arzate continues to be accepted in judicial proceedings. There is no procedure in place to ensure ongoing judicial reforms are accelerated or uphold the protection of human rights.
- Indigenous peoples continue to be routinely denied access to justice: in November 2012, José Ramón Aniceto Gómez and Pascual Agustín Cruz, two Indigenous

<sup>5</sup> Mexico, Known abusers, but victims ignored: Torture and ill-treatment in Mexico, AI Index: AMR 41/063/2012, October 2012, page 14,

<sup>6</sup> Freedom of information request by Centro de Derechos Humanos de la Montaña Tlachinollan to the PGR, [www.ifai.org.mx](http://www.ifai.org.mx), Folio 0001700151712 & 0001700152112.

<sup>7</sup> National Report, paragraph 83

<sup>8</sup> The Amparo law establish a mechanism of judicial review and remedy of alleged violations in Constitutional rights. Amongst other measures, the reform enables amparo petitions on the basis of violations of international human rights norms.

activists were released from prison after spending three years in jail on trumped up charges in reprisal for their work defending access to water in Atla, in the central state of Puebla. In September 2013, a federal court rejected the final legal challenge available to Indigenous prisoner, Alberto Patishtán. He was sentenced to 60 years in jail in 2002, after being convicted in an unfair trial for the killing of police officers in Chiapas state in 2000. Despite evidence of his unfair trial and unsafe conviction, the judicial system has failed to correct this injustice.

- The national system for the attention of victims derived from the General Law on victims is positive but has yet to be established and there is no commitment to measure its impact on attention received by victims.
- The budget on prisons is not tied concretely to improving the grave human rights situation facing inmates in the prison system as is implied in the government report.

#### Violence against women

- Violence against women and impunity for such violence remain widespread. Federal and local laws enacted since 2007 have been largely ineffective or not enforced, leaving women and girls at continued risk. There has been a complete failure to evaluate or modify legislation or effectively address deficiencies in the handling of cases.
- Efforts by human rights organizations to trigger the gender violence alert mechanism established in legislation to ensure federal intervention and coordination of measures to address widespread gender violence in specific regions, have been consistently blocked by executive authorities. As a result the law has remained toothless.

#### Human rights defenders and journalists

- Amnesty International has welcomed the establishment in law of the mechanism for the protection of human rights defenders and journalists. Nevertheless, many of the 98 defenders and journalists at risk who have sought protection measures have not received a timely or effective response. The mechanism is far from being operational and effective.
- Investigations into attacks on defenders and journalists remain gravely deficient, including the special federal prosecutor for crimes against journalists. Virtually no one has been brought to justice.
- The underlying causes that have led to attacks on journalists and defenders, which often involve state and municipal authorities, are almost never investigated or resolved.

#### Migrants' rights

- Reforms to migration legislation have not been effectively implemented to protect migrants' rights. Abuses against migrants, including kidnappings, killings, rape and arbitrary detention remain routine and impunity for these crimes continues. Despite the provisions in the legislation, access to temporary visas for migrant who are victims of crime has decreased. Paragraphs 114 of the National Report cites the 2010 National strategy to combat kidnapping of migrants but the government has repeatedly failed to provide any information on prosecutions of perpetrators. Instead, the primary focus is on people smugglers where migrants are not treated as victims. Amnesty International believes that measures to combat criminal gangs targeting migrants remain a low priority.
- Migrant's rights defenders face consistent threats and attacks, but those responsible are never brought to justice. The protection measures provided have not been sufficient to deter new incidents.

#### Indigenous Peoples

- Measures to reduce marginalization of Indigenous communities and to increase their access to essential services remain insufficient and frequently avoid involving

communities in the design and implementation of projects that affect them. The government programmes do not change this paradigm.

- Resource exploitation projects frequently provoke polarization and disputes in affected indigenous communities due to failure to provide adequate impartial information and conduct a transparent consultation process to obtain free, prior and informed consent of Indigenous peoples.

#### Military jurisdiction

- The Inter-American Court of Human Rights (IACtHR) has issued binding judgements against Mexico requiring reform of the military code of justice to exclude human rights violations. This has not taken place and the proposed bill presently under discussion in Congress does not meet the criteria established by the IACtHR.
- Despite government assertions that civilian authorities are now investigating the majority of cases in which military officials are implicated in human rights violations against civilians, there is still no evidence of prosecutions or convictions.

#### Arraigo

- The government has failed to abolish “arraigo”, despite the Federal Attorney General suggesting this was its intention.<sup>9</sup> The Chamber of Deputies has voted to reduce the time limit to 35 days, but this does not alter the violation of rights of those held under “arraigo” orders. All but three states continue to use “arraigo” detentions.

#### Crimes of the past

- The government has been silent on and refused to take any measures to ensure that victims of grave human rights violations committed during the 1960s, 70s and 80s have access to justice and truth.

#### **Background**

Mexico’s human rights record will be reviewed in the UPR Working Group of the UN Human Rights Council on 23 October 2013. Three documents form the basis for the review: the National Report, compiled by the government; the Compilation of UN Information, which includes an overview of the state’s cooperation with the UN human rights mechanisms and recent recommendations by UN bodies to the state under review; and the Stakeholder Summary, based on submissions of information from NGOs and other civil society groups, including Amnesty International:

<http://www.amnesty.org/en/library/asset/AMR41/019/2013/en/ebaf7242-0583-47d8-8121-c1f68379ea69/amr410192013en.pdf>.

Public Document

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<sup>9</sup> <http://www.ultra.com.mx/noticias/puebla/Nacional/20315-murillo-en-pro-de-la-abolicion-del-arraigo.html>