TABLE OF CONTENTS

Mexico

Laws without justice: Human rights violations and impunity in the public security and criminal justice system

Introduction

Amnesty International hopes that the administration of Mexico's new president, Felipe Calderon, will seize the opportunity to achieve substantial and lasting progress in the protection of human rights within the country. A key challenge will be to advance some of the principal reforms to the criminal justice system proposed in 2004, but which have since remained stalled in Congress. This report examines in detail some of the failings of criminal justice system which often result in the arbitrary and unfair application of the law in Mexico, and presents recommendations to the government in five main areas: international human rights standards; public security and the criminal justice system; accountability; human rights defenders and rights of victims.

UN thematic mechanisms have consistently highlighted failings in the criminal justice system, particularly the lack of impartiality among key actors and the failure of the judiciary, prosecutors, police and military to uphold international human rights standards. In recent years there has been an apparent reduction in reports of human rights abuses committed by federal authorities.[1] However, only five percent of reported crime falls to the federal authorities to investigate and punish, while 95 percent takes place within the jurisdiction of Mexico's 31 states and the Federal District.[2] It is under these local jurisdictions that the population primarily comes into contact with the system of public security and justice and it is in this context that the majority of human rights violations are reported.

Impunity for human rights abuses remains the norm in many states, encouraging public security and criminal justice system officials to resort to abusive practices when carrying out their duties. Victims of these violations disproportionately come from the poorest and most marginalized sectors of society - members of indigenous communities, peasant farmers, women, children, migrants and socially excluded urban communities. Although the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) and the

[1] Mexico is a federal republic with 31 states and the Federal District. There is a federal executive, legislature and judiciary. The Mexican Constitution sets out the relation between federal and state governments, which are "free and sovereign", each with its own constitution, executive, legislature and judiciary. Each state also has its own law enforcement police, judicial police and Public Prosecutor's Office. State criminal codes establish proceedings and punishments for all offences that are not federal in nature. Federal offences are primarily international or cross state crimes, particularly organized crime. All other offences fall within the jurisdiction of the state authorities.

[2] According to the National Statistics Institute, *Instituto Nacional de Estadísticas, Geografía e Informatíca* (INEGI), 1,501,304 crimes were reported to the Public Prosecutor's offices in 2004. 1,419,756 were local state jurisdiction offences; that is 95%. www.inegi.gob.mx

network of state human rights commissions can play an important role in exerting pressure on the authorities to investigate abuses and punish those responsible, they often fail to adequately defend the rights of victims and secure redress.

In researching this report Amnesty International interviewed representatives of federal and various state governments, prosecutors, defence lawyers, members of the judiciary, non-governmental human rights organizations, victims of human rights abuses and their families. The organization's findings illustrate how law enforcement police, judicial police, prosecutors, judges and lawyers often fail to consistently enforce international fair trial standards.[3] These include the right not to be deprived of liberty arbitrarily, the right to physical integrity, the right to effective defence, the right to be presumed innocent until proven guilty and the right to effective legal recourse. In particular, it highlights the lack of impartiality among some police, prosecutors and judges, coupled with the significant discretional powers granted to the Public Prosecutor's Office in criminal proceedings, which undermine the principle of equality of arms between prosecution and defence.[4]

It is vital that the new government and members of the federal Congress assume the long overdue responsibility of introducing substantive reform of the public security and criminal justice system to ensure that the legal framework in force protects human rights. It is also vital that the federal authorities and state authorities take all necessary steps to ensure that state law and practice are consistent with these standards and that longstanding impunity for human rights abuses ends.

All too often, local public officials present the protection of human rights as an obstacle to combating crime, rather than a means of ensuring safe convictions, fair trial standards and the independence and impartiality of the justice system. If the new government is to succeed, it must show clear commitment to the protection of human rights as a fundamental step to securing improved effectiveness and public confidence in the criminal justice system. Only when laws consistent with international human rights standards are rigorously applied by all officials will there be equal access to justice for all.

[3] Refer to appendix for a description of institutions in the public security and criminal justice system at federal and state level.

[4] "Equality of arms" means that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage vis à vis the opposing party. Amnesty International Fair Trial Manual, December 1998, AI Index: POL 30/02/98; Chap. 13.2

Chapter 1: International human rights standards

The International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR) establish a number of minimum core obligations on state parties to protect the right to freedom and security of person, the rights of criminal suspects and the right to a fair trial.[5] Other international instruments to which Mexico is a state party, such as the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and the Convention on the Elimination of all forms of Discrimination, set out clear legal obligations for the Mexican authorities. The United Nations has also established a set of codes of minimum standard for agencies responsible for the criminal justice system and the administration of justice that member governments have agreed to implement. These include the Basic Principles for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Basic Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials, Principles on the Independence of the Judiciary, Basic Principles on the Role of Lawyers, Guidelines on the Role of Prosecutors, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Formal commitment to international human rights standards

The Mexican government has shown an important commitment to international human rights law. Despite limiting the application of at least two key treaties by adding reservations and interpretive clauses, Mexico has now signed and ratified most international and regional human rights instruments – including the Rome Statute and the Optional Protocol to the Convention Against Torture.[6] The government has undertaken a Technical Cooperation Programme with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and facilitated the presence of the OHCHR office in Mexico City. The government issued an open invitation to international and regional human rights mechanisms and non-governmental human rights organizations, which has resulted in field visits and reports by most of the human rights thematic mechanisms of the United Nations and the Inter-American Commission of Human Rights (IACHR).

This welcome engagement with international human rights bodies has produced a series of detailed recommendations to address Mexico's human rights situation, many focusing on the failure of the criminal justice system to guarantee the rights of criminal suspects and victims

[5] ICCPR ratified by Mexico 3 March 1981; ACHR ratified by Mexico 3 February 1982.

[6] The reservation on Article IX of the Inter American Convention on Forced Disappearances of Persons reinforces the role of military jurisdiction over alleged human right offences by military personnel. The general interpretive clauses placed on the same convention and the UN Convention on the Non-Applicability of the Statutory Limitations to War Crimes and Crimes against Humanity (ratified by Mexico in March 2002) seek to limit prosecution to only those offences committed subsequent to ratification, contradicting the aim and purpose of both conventions.

of crime.[7] In 2003 the office of the UNOHCHR carried out a wide consultation process to identify key human rights concerns and issued a set of recommendations to be implemented via a National Human Rights Programme. The OHCHR report recommended:

"The promotion of a profound transformation in the justice system in order to guarantee the rule of law at every level, including recognition of the rights of victims; the end of the inquisitorial model of criminal trials; the creation of specialized juvenile criminal justice; the inclusion of penitentiary justice and the restriction of military justice, as well as the extension of the protective reach of federal judicial review".[8]

In 2004 the government inaugurated the National Human Rights Programme (*Programa Nacional de Derechos Humanos*, PNDH) which took up some of the recommendations of the UN and IACHR. Unfortunately, the PNDH has so far lacked clear implementation mechanisms, resources or the widespread support of institutions and civil society necessary to secure many of the changes proposed. Nevertheless, it is vital that the progress made in identifying a concrete national human rights agenda is sustained.

Enforcing laws protecting international human rights standards

A key obstacle to improve the protection of human rights has been the failure to ensure that international human rights commitments assumed by the government of Mexico are applied in practice by the authorities throughout the country. Article 133 of the Constitution states that "This Constitution, the laws of the federal Congress that emanate from it and the treaties that are in accordance with it, are the Supreme Law of the Union…. State judges will abide by the federal Constitution, laws and treaties despite contradictory dispositions in state constitutions or laws".[9] This has always raised questions in practice about the precedence of international treaties over national legislations and particularly prevented the application of human rights

[7] Mexico country reports include: Report by the Committee against Torture under article 20 of the convention, CAT/C/75, 2003, 26 May 2003; Report of the Special Rapporteur on Torture, E/CN.4/1998/38/Add.2, 14 January 1998; Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72/Add.1, 24 January 2002; Report of the Special Rapporteur on the situation of human rights and fundamental liberties of indigenous peoples, E/CN.4/2004/80/Add.2, 1 December 2003; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3/Add.3, 25 November 1999; Report on Mexico by the Working Group on Arbitrary Detention, E/CN.4/2003/8/Add.3, 17 December 2002.

[8] "*Promover una profunda transformación en el sistema de justicia, que garantice el Estado de derecho en todos los órdenes, que comprenda el reconocimiento del derecho de las víctimas; el abandono del modelo de enjuicimiento penal inquisitorio; la creación de una jurisdicción especializada para adolescentes en conflicto con la ley; la incorporación de una justicia penitenciaria y el acotamiento de la justicia militar a su ámbito propio; así como la ampliación del alcance protector del juicio de amparo".* General Recommendation 11, Diagnóstico sobre la situación de los Derechos Humanos en México, Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en México, 2003 www.cinu.org.mx/prensa/especiales/2003/dh_2003/index.htm.

[9] "*Esta Constitución, las leyes del Congreso de la Unión que emanen de ella y todos los Tratados que estén de acuerdo con la misma, celebrados y que se celebren por el Presidente de la República, con aprobación del Senado, serán la Ley Suprema de toda la Unión. Los jueces de cada Estado se arreglarán a dicha Constitución, leyes y tratados, a pesar de las disposiciones en contrario que pueda haber en las Constituciones o leyes de los Estados."*

law that is deemed to be in contradiction with the Constitution. In 1999 the National Supreme Court (*Suprema Corte de Justicia de la Nación*, SCJN) issued an isolated ruling (*tesis aislada*) that international human rights treaties rank below the Constitution but above federal and state laws.[10] However, this ruling by the Constitutional chamber of the SCJN is not a binding precedent (*jurisprudencia obligatoria*) for lower federal and state courts, so is not generally applied.[11] As a result, while the government formally acknowledges Mexico's international human rights obligations, judicial rulings rarely take them into account and the SCJN has not taken steps to ensure its 1999 ruling is made into binding precedent. As a justice of the SCJN has recognized, defence lawyers, prosecutors and judges usually do not base their legal arguments on international human rights law, preferring to rely almost exclusively on the Constitution, federal law, jurisprudence and local state laws. [12] Even on the basis of national legislation the Supreme Court has been reluctant to develop jurisprudence effectively protecting due process rights of criminal suspects and victims.[13]

Another factor undermining the effective protection of human rights throughout Mexico is the failure of some of Mexico's 31 states and the Federal District, which the Constitution defines as "free and sovereign", to consistently protect human rights in their own jurisdictions and prevent impunity for abuses. Article 28 of the American Convention on Human Rights requires each government to "immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of this Convention". Despite this obligation on the Mexican state, the federal government has not established effective mechanisms to ensure international human rights standards, such as the ACHR, are enforced in all state jurisdictions. It is also the case that in many state jurisdictions police, prosecutors, lawyers and judges are even less likely to apply or refer to international human rights standards in the course of their work.

If a state level official is implicated in human rights violations, the state authorities, such as the local state police, Public Prosecutor's Office and courts, are responsible for holding perpetrators to account. While local authorities may frequently state that official conduct or subsequent investigations into human rights violations comply with their legal responsibilities,

[10] Tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en Segundo plano respecto de la constitución federal. Novena Epoca. Instancia Pleno. Semanario judicial de la Federación. Tomo X noviembre de 1999. Tesis: P. LXXVII/99 pagina 46, materia constitucional. Tesis aislada.

[11] Article 192 of the Amparo Law stipulates that the SCJN rulings only form binding jurisprudence for lower courts when there five consecutive decisions in the same vein on the same point of law.

[12] Comments by Supreme Court Justice, Cossio Díaz, "Cierto, la SCJN se pronuncia poco en derecho internacional: Cossío Díaz" La Jornada, 31 August 2005. This position was underscored by the 2005 decision of the Supreme Court to apply the statute of limitations to the prosecution of former president Echeverría for genocide, in contradiction with the UN Convention on the Non-Applicability of the Statutory Limitations to War Crimes and Crimes Against Humanity.

[13] Stephen Zamora, José Ramón Cossío, Leonel Pereznieto, José Roldán-Xopa and David Lopez; Mexican Law, Oxford University Press. 2005, page 349.

Amnesty International receives many cases which demonstrate that this is often not the case. Those included in this report are a sample of this wider pattern.

The primary legal means of overcoming this serious obstacle to access justice at local level are the federal injunction (*amparo*) for violation of constitutional guarantees or the intervention of a federal authority to investigate the conduct of state officials. The first is the principal instrument for securing redress, but is slow and costly and as yet *amparo* injunctions can only be filed on the basis of alleged violations in constitutional guarantees, not explicitly human rights protected in international treaties and conventions.

The second relies on the Federal Public Prosecutor's Office (*Procuraduría General de la República,* PGR) claiming and the courts confirming jurisdiction to investigate and prosecute cases that occur in local jurisdictions.[14] Only a limited number of offences are federal, such as criminal association, possession of illegal drugs, human trafficking or offences committed by federal agents. In instances where the authorities at local level fail to prevent human rights abuses, such as the lack of effective investigations into hundreds of cases of murdered women in Ciudad Juárez, Chihuahua state, the PGR has argued that it cannot legally assume responsibility for prosecuting cases, despite systemic failure of the Chihuahua state authorities to do so.[15] In such instances, the involvement of the PGR is limited to coordination and cooperation. While this approach may be intended to encourage local authorities to enforce human rights standards, the state Public Prosecutor's Office is not bound to comply and is not accountable to federal authorities.

Under the Fox administration there were a number of proposals discussed in Congress to amend the Constitution in order to strengthen the recognition and application of international human rights standards in all jurisdictions. These include: explicit obligation to protect international human rights standards in the constitutional text; increased scope for PGR intervention in state jurisdictions when local authorities fail to prevent or punish serious human rights violations; and extension of the scope of federal *amparo* procedures to include alleged violations of international human rights laws. However, at the time of writing, after more than two years of debate, Congress has not agreed or approved reforms. As a result, despite the Fox government's commitment, efforts to harmonise federal legislation with international human rights obligations did not produce major advances. Therefore removing this obstacle to the effective protection of human rights in Mexico remains a fundamental challenge for the Calderón administration and the new Congress.

[14] Another mechanism available, but rarely used, is an ad hoc National Supreme Court investigation. Most recently, such an enquiry was opened in the case of human rights defender Lydia Cacho. However, the findings of the Court in such enquiries are not binding.

[15] Of the 379 murders recorded by the PGR in Ciudad Juárez since 1993, only 24 have ever been investigated directly under federal jurisdiction.

Mexican legal guarantees

Mexico's Constitution establishes a number of important individual guarantees, many of which reflect the human rights enshrined in international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR). These include: the right not to be held in slavery (art 1); the right to non-discrimination (art 1); the rights to freedom of expression and association (art 6, 7 & 9); the right not be tried by a special court (or protected from prosecution by special privileges (*fuero*)) (art 11); the right not be tried by retroactive laws (art 12); the right to liberty and property (art 14); the right not to be subject to arbitrary arrest or search (art 16), the right to prompt, complete and impartial justice (art 17); the right not to be forced to testify, held incommunicado, intimidated or tortured (art 20, A, II); the right to be tried in a public hearing before a judge (art 20, A, VI); [16] the right to present evidence in one's defence (art 20, A V, VII) and be informed of one's rights and to a defence lawyer or person of confidence (art 20, A, XI); the right to receive legal advice as a victim of crime and assist the public prosecutor (*coadyuvar*) as well as receive compensation (art 20, B, I,II, IV), the right to appeal a conviction to no more than two higher courts (art 23); the right to federal judicial review of a law or official acts that violate these individual guarantees (art 103, I).

The obligation on the authorities to respect rights and ensure the due process of law are further elaborated in federal criminal, procedural and regulatory codes as well as the constitutions of the 31 states and the Federal District and their respective criminal and procedural codes and regulatory codes of law enforcement agencies, the public prosecutor's offices, public defenders offices and the judiciaries. Punishment for breaches in these procedures, both criminal and administrative, are also set out in statutes such as federal and state penal codes, the Law for the Prevention and Punishment of Torture and state and federal laws for the administrative responsibilities of public servants (*Ley de Responsabilidades de los Servidores Públicos*). The latter establish the disciplinary procedures for resolving complaints against public officials.

These rights and procedures offer important safeguards. However, as this report demonstrates, national legal safeguards are often not effectively enforced in many parts of Mexico, creating a wide gap between legal principle and the experience of those who come into contact with the public security and criminal justice system.

National surveys

The lack of reliable detailed official data relating to criminal justice practices hinders a comprehensive analysis of the faults in the public security and criminal justice system at federal, state and municipal level. However, in recent years this has started to change as a number of organizations and academic institutions have begun to gather more reliable information, exposing the wide gap between constitutional guarantees and their application in

[16] Criminal trials are held before a judge, with no jury.

the justice system.[17] This process is also being assisted by the 2002 Federal Access to Information Bill, an important new legal instrument to compel traditionally secretive state institutions to release information.[18] However, the legislation is in its infancy and has yet to be fully tested and many state governments have either chosen to introduce weaker freedom of information legislation or none at all.

In 2003 the academic institution, Centre for Investigation and Teaching of Economics (*Centro de Investigación y Docencia Económicas, CIDE*) published a survey of inmates in prisons in the Federal District, Morelos state and Mexico state.[19] One aspect of the study considered the compliance by police, prosecutors and courts with criminal justice laws. These included the right:

- to be informed of the reasons for detention and a suspect's rights during custody and trial,
- to be held in custody for no longer than legally stipulated time limits before being brought before a prosecutor and a judge,
- to make a phone call,
- to legal counsel and an adequate defence,

The study found widespread institutional failure to uphold these legal obligations:

Law enforcement or public security police
Only 31% of criminal suspects were informed by the arresting police officer of the reason for their detention. Public Security Police took longer than reasonable to transfer a suspect to the Public Prosecutor's Offices.

Public Prosecutor's Offices
91% of criminal suspects were not informed of differences between the Public Prosecutor's Office and the courts. 80% were not informed of their right not to testify. 72% were not informed of their right to make a phone call.

Courts
66% of suspects were not informed of their right not to testify before the judge. 27% did not have a lawyer when making their statement to the judge. 71% stated that the judge was not present when they testified. 80% never spoke to the judge during the trial. 59% of suspects stated they could not hear or did not understand what was happening during the trial.

[17] For example, Centro de Investigación y Docencia Económicas (CIDE), Instituto Ciudadano de Estudios sobre la Inseguridad (ICESI), Instituto para la Seguridad y la Democracia (INSYDE), Centro de Investigación para el Desarrollo (CIDAC).
[18] Ley federal de transparencia y acceso a la información pública gubernamental, Official gazette June 2002.
[19] Bergman, Marcelo. Delincuencia, Marginalidad y Desempeño Institucional. Resultados de la encuesta a población en reclusión en tres entidades de la República Mexicana: Distrito Federal, Morelos y Estado de México. Documentos de Investigación. México: Centro de Investigación y Docencia Económicas. 2003.

Defence lawyers and public defenders
70% of suspects did not have a lawyer while in the custody of the Public Prosecutors' Office and the majority of the remaining 30% were assigned a public defender by the prosecutor.
46% of those who had a lawyer present when making their statement to the judge were not allowed to consult with their lawyer before making their statement. 45% of defence lawyers did not present any evidence in favour of the defendant during the trial.

The report's authors concluded that "In general it is not the most dangerous criminals who populate prisons, but the poorest ones (*En los penales no habitan en general los delincuentes más peligrosos sino los más pobres*) and that there was an "alarming failure to uphold minimum due process standards… irredeemably undermining the credibility of the whole criminal justice system" (*una alarmante falta de apego a estándares mínimos del debido proceso legal…irremediablemente, minan la credibilidad del sistema de Justicia penal en su conjunto).*[20]

Rights of victims
In Mexico victims of crime by law enjoy several important rights, including the right to receive legal advice from the prosecutor, the right of the victim or their legal adviser to act as an auxiliary to the prosecution, *coaduyvante;* and the right to compensation.[21] Nevertheless, the reality experienced by many victims indicates a broad lack of confidence in police and prosecutors. According to national surveys, only one in five victims of crime make a complaint to the Public Prosecutor's Offices, and only 11.4% of these reported offences led to a suspect being charged (*consignado*) by a prosecutor.[22]

Inequality and discrimination
"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." [23]

The UN Human Rights Committee has stated in its general comments to the ICCPR that the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose **or effect of** nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." [24]

[20] Ibid, page 11 & 12.
[21] Mexican Constitution, Art 20, B (I-VI).
[22] Instituto Ciudadano de Estudios sobre la Inseguridad, Segunda Encuesta Nacional sobre la inseguridad, http://www.warebox.net/icesi-org-mx/images/pdf/Inseg02.pdf & Zepeda, 2004, p198.
[23] ICCPR, Art 26.
[24] Para 7, Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 26 (1994). This definition also coincides with International Convention on the Elimination of All Forms of Racial Discrimination.

In 2001 the Mexican Constitution was reformed to prohibit "all discrimination on the grounds of ethnic or national origin, gender, age, disability, social status, health, religion, opinions, preferences, marital status or any other grounds that attack human dignity and have the aim of nullifying or undermining the rights and liberties of persons."[25] In 2003 the Federal Law on the prevention and elimination of discrimination entered the statute books and established the National Council for the Prevention of Discrimination (*Consejo Nacional para Prevenir la Discriminacion*, CONAPRED) to implement legislation and receive complaints. A few state legislatures have followed suit and reformed local legislation along similar lines, but in many states anti-discrimination legislation remains inadequate.

In May 2005 CONAPRED published the first National Survey on Discrimination.[26] The report indicates clearly how disadvantaged groups, such as indigenous peoples, persons with disabilities or HIV/AIDS, women, children, religious minorities, senior citizens (*adultos mayores*) and lesbian and gay people, continue to suffer discrimination in society, and the key role that discrimination plays in reinforcing poverty that many members of these groups suffer. Unfortunately, the survey considers neither the direct nor indirect impacts of discrimination in the criminal justice system.

In relation to Mexico's 13 million indigenous peoples, CONAPRED has noted: "In Mexico the equality of indigenous peoples with the rest of society has not been achieved. The reproduction of a vicious circle which moves from discrimination to poverty, from this to greater discrimination, keeps indigenous people in a position of social disadvantage and defencelessness from which the enjoyment and equality of fundamental rights is impractical."[27]

The Mexican government has also recently informed the United Nations Committee for the Elimination of all forms of Racial Discrimination that: "The treatment of indigenous peoples in the criminal justice system is routinely unfair, leaving many serving unfounded or disproportionate prison sentences.*"*[28]

[25] Mexican Constitution, art. 1: "*queda prohibida toda discriminación motivada por origen étnico o nacional, el género, la edad, las capacidades diferentes, la condición social, las condiciones de salud, la religión, las opiniones, las preferencias, el estado civil o cualquier otra que atente contra la dignidad humana y tenga por objeto anular o menoscabar los derechos y libertades de las personas.*"

[26] Primera Encuesta Nacional sobre Discriminación en México, May 2005, Sedesol, http://www.sedesol.gob.mx/subsecretarias/prospectiva/subse_discriminacion.htm.

[27] CONAPRED http://www.conapred.org.mx/index.php, *"En México no se ha logrado articular a los indígenas en una posición de igualdad con el resto de la sociedad. La reproducción del círculo vicioso que va de la discriminación a la pobreza y de ésta a una mayor discriminación, mantiene a los pueblos indígenas en una situación de desventaja e indefensión sociales desde la cual es impracticable la igualdad y el ejercicio de derechos fundamentales".*

[28] Mexican Government report to the United Nations Committee for Elimination of All forms of Racial Discrimination, CERD/C/473/Add.1, Para 167.

Lack of institutional credibility

In accordance with federal and state laws and regulations, the institutions primarily responsible for public security and criminal justice system are:

- Public security law enforcement police agencies at federal, state and municipal level responsible for maintaining public order. Each separate police force is under the control of the public security secretariat of the executive authority in federal, state and municipal governments;[29]
- Armed Forces, which have wide-ranging policing powers to combat drug trafficking in coordination with law enforcement agencies and the Federal Public Prosecutor's Office (PGR);
- Public Prosecutor's Offices and the judicial police that work directly under their control at federal and state level.[30] The Public Prosecutor's Offices are the only agencies empowered to open and run criminal investigations and bring prosecutions in each jurisdiction and represent the interests of the victim and wider society;
- Public defenders institutions in each jurisdiction;
- Federal and state judiciaries responsible for adjudicating criminal cases in their respective jurisdictions.

Mexico's Constitution states that the "conduct of police institutions will be governed by the principles of legality, efficiency, professionalism and honesty." (*La actuación de las instituciones policiales se regirá por los principios de legalidad, eficiencia, profesionalismo y honradez*).[31] The Organic Law of the Office of the Federal Attorney General states that judicial police, prosecutors and official forensic experts are bound by the principles of legality, efficiency, professionalism, honour and impartiality and respect for human rights (*legalidad, eficiencia, profesionalismo, honradez, lealtad e imparcialidad y de respeto a los derechos humanos*).[32] Similarly, advancement in judiciary is dependent on the official adhering to the principles of "excellence, professionalism, objectivity, impartiality, independence" (*excelencia, profesionalismo, objetividad, imparcialidad, independencia*).[33]

Nevertheless, public opinion continues to be distrustful of many of these institutions, particularly the police, due to widespread corruption, human rights violations and failure to

[29] Federal Preventive Police (*Policía Federal Preventiva*); 31 State Preventive Police (*Policía Preventiva Estatales*) and Federal District Preventive Police; and municipal police forces in many of Mexico's 2,445 municipalities.

[30] Federal Public Prosecutor's Office (*Procuraduría General de la República*, PGR); 31 State Public Prosecutors' Offices (*Procuradurías Generales de Justicia de los Estados*, PGJEs) and Federal District Public Prosecutor's Office. Each of prosecutor's offices have their own judicial or investigative police some of which are now called Federal Investigation Agency (*Agencia Federal de Investigación*) or State Investigation Agency (*Agencia Estatal de Investigación*).

[31] Mexican Constitution, art 21.

[32] Organic Law of the Office of the Federal Attorney General's Organic Law (*Ley Organica de la Procuraduría General de la República*), Art 30, IV.

[33] Organic Law of Federal Judiciary (*Ley Órganica del Poder Judicial de la Federación*), Art 105.

prevent high crime rates or bring to justice those responsible.[34] In 2002 the UN Special Rapporteur on Independence of judges and lawyers stated in his report that: "Impunity and corruption appear to have continued unabated. Whatever the changes and reforms, they are not seen in reality. Public suspicion, distrust and want of confidence in the institutions of the administration in general and the administration of justice in particular are still apparent." [35] In recent years there has been a degree of improvement in the reputation of some federal institutions, but in general distrust of institutions responsible for public security and justice remains high, particularly in many of Mexico's states.

Impartiality and independence

Representatives of the different public security law enforcement agencies, prosecution services and the judiciary regularly assert, as the law states, that their conduct is strictly determined by the impartial application of the rule of law. However, poor pay, limited resources, lack of training, and excessive workload, as well as continuing political interference in many spheres, often seriously undermines their independence and impartiality.

Law enforcement

UN Code of Conduct for Law Enforcement Officials:
Law enforcement officials shall at all times fulfil the duties imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. (art 1)
In the performance of their duty all law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. (art 2)

Law enforcement agencies are under the direct control of the executive at federal, state and municipal level. In recent years, the federal police have developed a professional code of conduct to strengthen the principles of legality and respect for human rights incumbent on all officials. However, this in itself is not enough to overcome many of the ingrained abusive practices and corruption or the traditions of political interference in police operations, in such states as Oaxaca, Guerrero, Chiapas, Mexico and Jalisco. These practices remain particularly entrenched in some states and at municipal level, where law enforcement agencies are frequently perceived as working directly on behalf of the interests of local authorities in the selective enforcement of laws against political opponents, human rights defenders or community representatives.

Public prosecutors and judicial police

The Public Prosecutor's Offices are the direct responsibility of the Attorney General of the Republic at federal level and the 32 Attorney Generals in the states and Federal District. The

[34] Consulta Mitofsky, Confianza en las instituciones, http://www.consulta.com.mx/interiores/99_pdfs/12_mexicanos_pdf/mxc_NA20050711_ConfianzaInstituciones.pdf

[35] Special Rapporteur on Independence of Judges and Lawyers, E/CN.4/2002/72/Add.1, 24 January 2002, Para. 166.

Federal Attorney General is nominated by the President and ratified by Congress.[36] This selection process applies in some state administrations, while in others local legislation continues to allow the governor to directly select the Attorney General. The President or the respective state governor usually has the authority to dismiss the Attorney General from office (the state of Chiapas is an exception where the Attorney General has a set six year tenure). The Attorney General of the Republic and the 32 state Attorney Generals are key members of the federal and state executives.

The 32 Attorney Generals in the states and the Federal District are not under the responsibility of the Federal Public Prosecutor's Office (PGR), but are accountable to the local state executive and legislature. The principal instrument of coordination between the 33 Public Prosecutor's Offices is the National Conference for the Procuration of Justice (*Conferencia Nacional de Procuración de Justicia*) which is based on cooperative agreements.

UN Guidelines on the Role of Prosecutors
Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. (art 12)
In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect. (art 13)

Despite the fact that representatives of Public Prosecutor's Offices (including judicial or investigative police and official forensic experts) are legally bound to impartially apply the law, they are also accountable to the Attorney General and the State Governor. As a result, and as some of the cases in this report highlight, in those states where practices of political interference remain strong, the executive authority can determine much of the conduct and priorities of the Public Prosecutor's Office, undermining the capacity of prosecutors and police to function impartially.[37]

Interference in dealings of the Public Prosecutor's Offices to initiate politically motivated prosecutions against critics or opponents or to hinder investigations against those suspected of involvement in human rights abuses has been a feature of Mexico's criminal justice system. Amnesty International has documented many cases over the last 40 years and adopted several prisoners of conscience imprisoned solely because of their legitimate activities, including in

[36] Mexican Constitution, Art 102.

[37] Inter-American Commission on Human Rights (IACHR), Report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Para 367, "the Office of the Public Prosecutor is really an office within the executive branch and under the President's (or Governor's) authority, and that has exclusive monopoly over the conduct of criminal proceedings. This has led to abuses and manipulations for which solutions have not been found".

the last decade General Francisco Gallardo, Rodolfo Montiel, Teodoro Cabrera, Isidro Baldenegro, Hermenegildo Rivas and Felipe Arreaga.[38]

This report details several cases where there has been a clear misuse of investigative and prosecutorial powers in state jurisdictions, highlighting the failure to ensure the impartiality and legality of investigations by judicial police and prosecutors.

The Attorney Generals at federal and state level are also integral members of the National and local Public Security System, which is responsible for coordinating measures to combat crime.[39] This has further weakened the independence of public prosecutors as the political determination of public security priorities may conflict with the impartial application of criminal law.[40] Public and media concern about high crime and impunity is often translated into pressure on police, prosecutors and judges to secure visible results, such as the rapid detention and charging of suspects.

Federal and state judiciaries

UN Basic Principles on the Independence of the Judiciary
The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. (art 1)
The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. (art 2)
The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. (art 6)

"Numerous complaints about corruption, lack of independence and impartiality have made the judicial branch in Mexico one of the organs that enjoys the least public prestige. This mistrust is most pronounced with respect to the judicial branch at the state level..."[41]

Since the 1994 reform of the federal judiciary, when substantive steps were taken to develop its independence, there has been welcome progress in strengthening its impartiality and capacity. Conditions of employment, security of tenure and competitive selection procedures are gradually improving through investment, the introduction of a (non-binding) code of ethics, training and the development of the administrative disciplinary functions of the Federal Judicial Council (*Consejo Federal de la Judicatura*).

[38] Refer to http://web.amnesty.org/library/esl-mex/index for previous Amnesty International reports.
[39] Mexican Constitution, Art 21; Ley General que establece las bases de coordinacion del sistema nacional de seguridad pública.
[40] IACHR country report, para 378.
[41] IACHR, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para 393.

Reforms have been replicated to varying degrees in many state judiciaries. Nevertheless, there has been much less progress in strengthening the capacity, effectiveness and impartiality in the 32 state level judiciaries, where investment has in general been significantly less. As a result, the quality and number of courts and judges in some states is frequently insufficient to handle increasing caseloads and they sometimes fail to ensure effective and impartial scrutiny and adjudication of judicial proceedings.

Tipping the scales in favour of the prosecution

"*The Public Prosecutor's Office has excessive powers to determine the value of evidence gathered, take statements from the accused, and restrict the defendant's access to an adequate defence. In practice, this allows cases that come before a judge to have strong procedural weight against the accused, as the case file is already completed.*" [42]

The weaknesses that undermine the impartiality of prosecutors and judges are further compounded by the procedures and practices that favour the prosecution case over the defence in criminal investigations and trials. National and international human rights organizations and lawyers have repeatedly highlighted the absence of equality of arms between prosecution and defence, which can lead to the denial of due process rights and sometimes result in unfair trials. [43]

When a crime is reported, an agent of the public prosecutor's office opens a preliminary investigation (*averiguación previa*) and, assisted by the judicial police, investigates to determine that a crime has taken place (*cuerpo de delito*) and to identify the probable perpetrator (*probable responsabilidad*).[44] Only once the prosecutor has gathered sufficient evidence to demonstrate these two points may the suspect be formally charged (*consignado*). If the suspect is already in detention, he or she is then brought before a judge, or if still at large, a judicial arrest warrant may be issued for his or her arrest. While prosecutors and

[42] United Nations Office of the High Commissioner for Human Rights (UNHCHR) Diagnostic of the Human rights situation, 2003, 2.1.1.1, "el ministerio público tiene excesivas facultades para apreciar el valor de las pruebas recabadas, tomar declaraciones al inculpado, y la limitación para una adecuada defensa por parte del indiciado, esto permite que en la práctica, los casos que llegan a ser del conocimiento de un juez tengan una fuerte carga procesal en contra del acusado, en virtud de que los expedientes llegan ante el juez correspondiente ya integrados."

[43] Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico, CAT/C/75, 26 May 2003, para 220 (i). "In general, efforts should be made, through any necessary legal reforms, to modify the markedly inquisitorial methods used in criminal proceedings, and particularly in the initial stages of the preliminary investigation. 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"; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35, E/CN.4/2000/3/Add.3Para 101, "The discretion placed with the public prosecutor to decide whether an investigation can be initiated in a criminal matter has resulted in gross injustice, resulting in impunity for perpetrators of human rights violations".

[44] Mexican Constitution, art 19; Federal Criminal Procedural Code, art1.

judicial police conduct a preliminary investigation they are considered by law to be impartial investigators gathering evidence both for and against a suspect. Only at the point a suspect is formally charged does the prosecutor officially begin to contend the case on behalf of the victim of the crime and society. The evidence and conclusions presented in the preliminary investigation are often the basis for subsequent convictions as there are significant obstacles to ensuring that its findings are effectively scrutinised and cross-examined during the trial stage. As this report illustrates, jurisprudence grants probative value to crucial evidence gathered during the preliminary investigation, and the criminal justice system in practice often restricts the right of defendants to challenge evidence and to effective defence counsel. The United Nations Working Group on Arbitrary Detentions referred to the powers of the public prosecutor during preliminary investigation as quasi-judicial because of the powers of the prosecutor to gather and evaluate evidence in judicial proceedings.[45]

Federal and state criminal procedural codes establish the judge's obligation to consider the evidence put forward in the preliminary investigation and during the trial on its merits.[46] However, procedural rules and jurisprudence encourage judges to presume the legality of evidence put forward by prosecutors, without ensuring that this is explicitly counter-balanced by the presumption of innocence of a criminal suspect.[47] In a number of case files that Amnesty International has studied, statements made by police officers to prosecutors implicating criminal suspects have been granted probative value in judicial proceedings by the presiding judge on the grounds that the Public Prosecutor's Office is an institution of public confidence (*fe pública*), so testimony certified by the public prosecutor is reliable. Only in cases where a defendant has an effective defence lawyer and an active presiding judge willing to question the credibility of prosecution of evidence, is there a possibility of such testimony undergoing rigorous cross examination in court.[48] The presumption of official impartiality often contrasts starkly with the treatment of criminal suspects or witnesses testifying in their

[45] Report of the working group on arbitrary detention on its visit to Mexico, E/CN.4/2003/8/Add.3, 17 December 2002, Para. 37, 38 "the Public Prosecutor's Office, which comes under the executive, performs quasi-judicial functions such as the presentation and evaluation of evidence, which are considered important by the courts, or taking statements from the accused, the value of which as evidence is not properly challenged even in the absence of an adequate defence."; "The lack of any regulation stipulating the presumption of innocence tends, de facto, to reverse the burden of proof."

[46] FCPC, art. 286: "The courts, according to the nature of the facts and logical and natural connections that necessarily exist, to a greater or lesser extent, between the known truth and that which is sought, will conscientiously evaluate the evidence to establish if it can be considered as plain proof (*Los tribunales, según la naturaleza de los hechos y el enlace lógico y natural, más o menos necesario que exista entre la verdad conocida y la que se busca, apreciaran en conciencia el valor de los indicios hasta poder considerarlos como prueba plena).*

[47] Criminal Procedural Code of the Federal District, art 286: "All procedures carried out by the Public Prosecutor's Office and judicial police will have full evidential weight, as long as they are in conformity with the rules of the penal code" (*Las diligencias practicadas por el Ministerio Público y por la policía judicial tendrán valor probatorio pleno, siempre que se ajusten a las reglas relativas de este código).*

[48] Police and prosecutors, like all public officials, are invested with fe pública (public confidence). This assumes their good faith and truthfulness, unless proven otherwise. In the same vein, it also enables them to certify the authenticity of documents.

defence. A suspect's denial of charges can be dismissed on the grounds it is solely a natural defensive reaction, while supporting witness evidence may be dismissed or granted less probative value if provided by colleagues, friends or family. In this climate the presumption of legality of the official investigation may be given greater weight than the presumption of innocence in favour of the accused, often placing the burden of proof on the accused to prove his or her innocence, rather than on the state to prove the charges.

The federal Government's reform proposals

The administration of President Fox acknowledged some of the weaknesses in the federal public security and criminal justice system. In 2004 the government proposed significant legislative reforms to Congress. However, the proposals were not substantially consulted and Congress has failed to approve key elements of the proposed reforms to the justice system at the time of writing. According to the government's website, these are the central elements of the reform package put forward by the Fox administration:

To fight crime effectively it is necessary to substantially strengthen police forces

1. Create the Federal Police: merge the Federal Agency of Investigations (*Agencia Federal de Investigación*) and the Preventive Federal Police (*Policía Federal Preventiva*).
2. Give the Federal, State and Municipal Police powers to investigate under the direction of prosecutors and eliminate the organic command of prosecutors over police.
3. Transform the Federal Attorney General's Office (*Procuraduría General de la República)* into the Federal Public Prosecutor's Office (*Fiscalía General de la Federación*), to direct and supervise the investigation of the police and to contend cases before the courts. Prosecutors retain the legal direction of the investigation and the process.
4. Integrate a national policing system, with the creation of a National policing curriculum, as well as a police career system, by standardizing the professionalism and equipment of the police bodies. In addition, integrate policing intelligence system, fusing criminal and preventive intelligence.
5. Create the position of sentencing adjudicating judge, in order to provide judicial guarantees in the resolution of conflicts and monitoring of criminal sentences.

To protect human rights by transforming the criminal procedural system from a written system to an oral one

1. Change the current semi-inquisitorial written system to an adversarial and oral accusatory system to reinforce the principles of the due process, equally for the victim as for the accused.
2. Introduce expressly the presumption of innocence to the constitution.
3. Increase the quality of legal defence, eliminating the possibility of a "person of confidence" representing a suspect rather than a professionally qualified lawyer.
4. Guarantee that all statements made by the accused will have to be made before a judge in the presence of his/her lawyer.
5. Create alternative procedures to criminal trials.
6. Establish abbreviated procedures (when there is an agreement between the defence and the prosecutor, in relation with the execution of the punishment).

7. Create a criminal justice system for juveniles with due process guarantees.
8. Establish the position of a judge to control the pre-trial procedures to ensure that due process rights are upheld and ensure the equality of arms between defence and prosecution.[49]

In 2004 Amnesty International wrote to members of Congress urging the approval of some important elements of the proposal, such as ending the practice of granting probative value to statements made to prosecutors without the presence of a judge and the requirement for evidence to be scrutinised in open court before the judge. However, the organization also called for other elements of the proposals to be strengthened, particularly the removal of wide-ranging exemptions from the new guarantees and for major improvements in the internal and external accountability mechanisms of the police, prosecutors and judges to end impunity for abuses.[50]

[49] See http://seguridadyjusticia.presidencia.gob.mx/index.php?idseccion=105

[50] Memorandum to Congress on reforms to the Constitution and Criminal Justice System, (AI Index: AMR AMR41/032/2004). Serious flaws in the proposed legislation included the planned wide-ranging regime of exceptions from judicial protection for the category of criminal suspects accused of organized crime offences.

Chapter 2: Preliminary investigation, arrest, charges and committal proceedings[51]

1. Every person has the right to personal liberty and security; 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. (ACHR, art 7)

According to Article 16 of the Constitution, no one can be detained without a judicial arrest warrant, which can only be issued once a legally recognized criminal offence meriting a prison sentence has been reported and the commission of the crime and the probable responsibility of the suspect has been demonstrated before a judge in a preliminary investigation (*averiguación previa*). Anyone detained on the basis of a judicial warrant must be placed at the disposition of the judge "without any delay" (*sin dilación alguna*). The same article allows two circumstances in which a judicial warrant is not required to carry out an arrest: a) when someone is detained red handed or shortly after committing a criminal offence (*en flagrante)* and must be taken without delay to the Public Prosecutor's Office, or b) in "urgent cases", when a prosecutor may authorise the arrest of a suspect of a serious crime if a judge is not available to issue a warrant.

A suspect can be held for 48 hours in the custody of the Public Prosecutor's Office - the crucial period when a suspect is interrogated by judicial or investigative police. After that time he or she must be released or charged and placed in prison under the authority of a judge.[52] An exception to this rule is when the Public Prosecutor's Office is investigating organized crime offences and can extend the period of custody to 96 hours. Breaches in these procedures are a criminal offence.[53]

When a prosecutor files charges before a judge and requests an arrest warrant on the basis of a preliminary investigation, this is supposed to ensure that the evidence gathered is scrutinised and to prevent inadequately founded charges progressing. When there is insufficient evidence to proceed, a case is closed and archived or left on file pending new information. High crime rates and lack of resources often mean that this is the fate of many official investigations. This

[51] Committal proceedings are when a judge must determine if there is sufficient evidence to proceed to the trial and confirm the detention, bail terms or release of the suspect unconditionally or pending further investigation.
[52] A further exception to this rule exists where a judge can order a suspect to be retained in *arraigo* by the public prosecutor for up to 90 days without charge pending further investigations, amounting to a form of administrative detention. *Arraigo* continues to be used widely despite a National Supreme Court ruling in 2005 that its use in Chihuahua State violated the constitutional right to liberty.
[53] Mexican Constitution, art 16.

backlog of cases can stimulate discretional decisions by prosecutors to keep preliminary investigations on file for many months or years before bringing charges and seeking an arrest warrant. Furthermore, prosecutors are not required to substantially justify delays in filing charges before the courts. As a result, the principle of legal certainty of alleged suspects may not be upheld in practice.

Furthermore, as this report shows, the lack of effective and/or impartial judicial control when charges are filed can sometimes result in the authorization of arrest warrants and prosecutions on the basis of insufficient or fabricated evidence. This is particularly the case when judges have insufficient time or resources to scrutinize the preliminary investigation and are under intense pressure not to hinder the efforts of police and prosecutors to detain suspects.

When an arrest warrant is issued, the suspect may not be detained for many years or at all – even when he or she continues to live openly in the community. Public Prosecutor's Offices often argue that the widespread failure to carry out their legal obligation to enforce arrest warrants is the result of lack of manpower or the flight of the accused. Nevertheless, the result is that arrest warrants are often left on file and their enforcement may be left to the discretion of the judicial police or prosecutors or may depend on political decisions. The enforcement rate of arrest warrants varies greatly between states, but in 2000 in Oaxaca and Guerrero only 15% of warrants were acted on.[54] Reasons for delays in the enforcement are also not adequately scrutinised by the judiciary once a suspect is brought before court in committal proceedings.

As the cases highlighted below demonstrate, many local social or political activists in Mexico face the threat of criminal charges, are subject to ongoing preliminary investigations or live under the threat of unenforced arrest warrants that remain pending for years. For local authorities, this may serve to deter legitimate protests and induce individuals and organizations to withdraw social demands or complaints of official wrongdoing.

Procedures for committal to trial

When a suspect is charged (*consignado*) and placed under the authority of the courts, the judge assumes responsibility for the process (*auto de radicación)*. The judge then has a maximum of 72 hours to determine if there are sufficient grounds to proceed to trial with an *auto de formal prisión* or to order the suspect's release.[55] This time period may be extended to 144 hours, but only on the request of the defence. If a judge fails to issue an *auto de formal prisión,* prison authorities must take steps to release the suspect. Failure to comply with these time limits is punishable by law.[56] This constitutional time period is the crucial point of

[54] Guillermo Zepeda Lecuona; Crimen Sin Castigo, Procuración de Justicia penal y Ministerio Público en México, CIDAC, Fondo de Cultura Económica, 2004, page 208. In the case of Oaxacan indigenous social activist, Alejandro Cruz López, his 2005 arrest was carried out seven years after a warrant was issued in 1998.

[55] In Mexican law the trial is made up of the evidentiary proceedings (*instrucción*) and the juicio (judgement).

[56] Mexican Constitution , art 19.

judicial control both to confirm that a detainee's rights have been respected and to assess the evidence put forward in the public prosecutor's preliminary investigation.

Within the first 48 hours after being placed under a judicial authority, the suspect must appear in court to hear the case against him or her and may make his or her first statement in response (*declaración preparatoria*).[57] According to the Federal Criminal Procedural Code, if the custody under the Public Prosecutor's Office exceeds the legal time limits, the judge should rule the suspect's first statement inadmissible on the grounds that he or she has been held incommunicado.[58] However, an independent survey of judicial practices in the Federal District in 2002 found that these custody time limits were routinely broken with impunity. Fifty-percent of suspects were detained in excess of the 48-hour legal limit in public prosecutor custody, and 96% of such cases were still ruled to be legal.[59] The 2003 CIDE survey also found that the 72-hour (or 144 hours) time limit for the judge to determine the legal status of the suspect was broken on 50% of occasions.[60]

During the 72-hour time period when the judge must determine if there are grounds to proceed to trial, the prosecution and defence may present further evidence. In theory, this allows the defence to demonstrate that prosecution evidence does not meet the threshold of "probable responsibility" and enables prosecutors to strengthen the case put forward in the preliminary investigation. The Constitution guarantees the rights of suspects to all information required for their defence and which is part of judicial proceedings.[61] However, human rights organizations and lawyers have repeatedly highlighted to Amnesty International delegates that bureaucratic hurdles often limit access of lawyers to prosecution evidence contained in case files, particularly during initial proceedings. Prosecutors or police may claim files are unavailable, being updated or the files at the court may not contain all prosecution evidence. Defendants may also be unable to afford to pay for the copy of the case file limiting their lawyer's opportunity to study the evidence to the discretion of prosecutors. In reality, this

[57] Art 20, A, III, Constitution "In a public hearing within 48 hours of being charged, the suspect will be informed of the name of his accuser, the nature and cause of the accusation, with the aim of ensuring he fully understands the offence he is accused of and can respond to the charge, making his preparatory statement in the same hearing" (*Se le hará saber en audiencia pública, y dentro de las cuarenta y ocho horas siguientes a su consignación a la justicia, el nombre de su acusador y la naturaleza y causa de la acusación, a fin de que conozca bien el hecho punible que se le atribuye y pueda contestar el cargo, rindiendo en este acto su declaración preparatoria*).

[58] Art 134, FCPC, "In cases which the detention of the person exceeds the periods stipulated in article 16 of the Consitution, it will be assumed that he was held incommunicado and statements made by the accused will not have legal value" (*En caso de que la detención de una persona exceda los plazos señalados en el artículo 16 de la Constitución Política citada, se presumirá que estuvo incomunicada, y las declaraciones que haya emitido el indiciado no tendrán validez*).

[59] Ana Laura Magaloni and Layda Negrete, Coords; Justicia y Seguridad Ciudadana, Centro de Investigación y Docencia Económicas and the TSJDF, 2002.

[60] Bergman, Marcelo, *Delincuencia, Marginalidad y Desempeño Institucional. Resultados de la encuesta a población en reclusión en tres entidades de la República Mexicana: Distrito Federal, Morelos y Estado de México. Documentos de Investigación,* México: Centro de Investigación y Docencia Económicas (CIDE), 2003.

[61] Mexican Constitution, art 20, A, VII: (*Le serán facilitados todos los datos que solicite para su defensa y que consten en el proceso*).

decisive period is not sufficient time for the defence to gather evidence and present witnesses, particularly if suspects are unfamiliar with judicial proceedings or lack resources. Witnesses may need to be located and persuaded to appear before court, which may require them to travel long distances and incur considerable costs. The poorest defendants, who rely on public defenders or poorly qualified private lawyers, frequently do not present any defence evidence in the committal stage. As a result, the defence is at a severe disadvantage during the earliest and most crucial stage of the process, seriously undermining basic fair trial standards.

Furthermore, the overload in the court system means that judges may have to make committal decisions in up to 20 cases over a three-day period, seriously restricting their capacity to substantively assess evidence put forward.[62] As a result the evaluation of evidence made by the prosecutor in the conclusions of the preliminary investigation is frequently the determining factor in many judges' decisions to commit a suspect to trial. In many cases this may also be the basis for the verdict at the end of the trial.

While defendants with more resources are more likely to be able to ensure that their right to effective defence is upheld at this stage, for many others the judge's committal decision may be a formality rather than the crucial hearing to determine both the procedural and substantial merits of the case. Furthermore, as the evidential conclusions of the prosecutor's preliminary investigation are transferred directly to the court record, this can also serve as the moment when the impartiality and good faith of prosecution evidence is validated by the judge. This is particularly important as the excessive caseload of many criminal courts means that judges are often not present to direct the limited number of evidentiary public hearings in the pre-trial and trial stages. Court officials are routinely delegated the responsibility of documenting these hearings and the judge signs the official record which is appended to the casefile (*expediente*). In the primarily written judicial process, the case file, which includes the prosecutor's preliminary investigation, contains the evidence that the judge will deliberate over when reaching a verdict.[63]

Defendants with resources to secure effective defence counsel may be able to take advantage of their constitutional right to be given access to "all information requested for their defence" ("*todos los datos que soliciten para su defensa"*, MC 20, A, VII) and challenge prosecution evidence in court. However, there is no requirement for evidence presented in the preliminary enquiry to be repeated and cross-examined in open court unless the defence requests and the witnesses obey court summonses. As a result, the lack of access to effective defence council for many defendants means that evidence put forward in the preliminary investigation is often insufficiently challenged or scrutinised in trial proceedings. Mexican criminal legal expert Guillermo Zepeda Lecuona notes that, "By the extension and reach of the powers of the

[62] Zepeda (2004), page 250.

[63] Only 8 % of inmates believed the judge controlled the hearings and the judge was not present when 79% of defendants made their first judicial statement, Bergman, Marcelo; Delincuencia, Marginalidad y Desempeño Institucional; CIDE 2003, page 47.

public prosecutor during this stage (the preliminary enquiry), just as the procedural importance granted the preliminary investigation by legislation and jurisprudence, this is the decisive stage in the trial process and in the delivery of justice".[64]

Preventive pre-trial detention

"It shall not be the general rule that persons awaiting trial shall be detained in custody" (ICCPR, Art9, 3).

The use of preventive detention while a suspect is on trial is widespread in Mexico. In 2004 88,000 suspects were in pre-trial detention, making up 42.7% of the prison population.[65] Despite legislation stipulating that criminal trial proceedings should last no longer than a year, and only four months for minor offences, these time limits are routinely broken without any impact on proceedings. In some states suspects can spend years on remand facing criminal charges before finally being acquitted and released.

The Inter-American Commission on Human Rights stated in its 1998 country report on Mexico that: "*Another reason for the serious overcrowding in Mexican prisons is the widespread recourse to preventive detention for accused persons. The IACHR has established that preventive detention as a norm of general application in criminal cases is contrary to the provisions of the Convention, since it violates the right to personal freedom and the presumption of innocence".*[66]

The Constitution establishes the obligation on the judge to grant freedom under caution on the request of a criminal suspect, except, a) in cases for serious offences or, b) in non-serious cases when the Public Prosecutor shows that the suspect has been convicted of a serious offence in the past or constitutes a threat to the victim or society.[67]

The federal and state criminal codes contain a long list of crimes categorised as serious. As a result the presiding judge is compelled to order pre-trial detention in these cases and is prevented from setting bail conditions on a judicial assessment of the details of the case or the circumstances of the suspect. The long list of serious offences under federal and state law may also encourage prosecutors to file disproportionate charges in order to ensure the suspect's detention.

[64] Guillermo Zepeda Lecuona, *Crimen sin castigo: Procuración de Justicia Penal y Ministerio Público en México*, Fondo de Cultura Económica y Centro de Investigación para el Desarrollo (CIDAC), Mexico City, 2004, page 111 (*Por la extensión y alcance de las atribuciones del ministerio público durante esta etapa, asi como la trascendencia procesal que la legislación y los criterios jurisprudenciales otorgan a la averiguación previa, esta etapa resulta determinante para el proceso penal y para el rumbo de la impartición de Justicia*)

[65] Open society Justice Initiative, *Myths of Pretrial detention*, © 2005 Open Society Institute, page 6.

[66] OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para 233.

[67] Mexican Constitution, 20, A, I.

The IACHR has defined the legitimate grounds for determining pretrial detention as "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 order".[68] The present law prevents judges in many cases from weighing these factors in relation to individual cases and encourages an environment of widespread pre-trial detention.

Compensation

Despite the fact that detainees can spend months or years in custody awaiting the outcome of their trial, there is no right to compensation if charges are dropped during the course of proceedings or if they are found innocent. In such cases, the authorities consider that justice has run its course. In 2002 the Constitution was amended in order that "administrative irregularities" causing damage to the goods or rights of individuals are the responsibility of the state and liable to compensation claims.[69] However, a successful case depends on proving that the prosecution was mounted in bad faith or that preventive detention was not merited or excessively long. As chapter 5 demonstrates, the weakness of accountability mechanisms makes proving such wrongdoing extremely difficult for compensation claims to succeed.

Amnesty International continues to regularly document violations in due process and misuse of the criminal justice system in many different Mexican states. The cases included in this section are a representative sample of the cases the organization receives. They highlight the misuse of the criminal justice system in order to secure the detention and prosecution of social or political activists and human rights defenders. In the majority of these cases the accused have eventually been released because of the efforts of non-governmental human rights organizations and defence lawyers. However, Amnesty International is not aware of the authorities carrying out investigations into the conduct of officials involved or sanctioning those responsible for unwarranted detentions and prosecutions (An exception is the case of Lydia Cacho where the National Supreme Court is carrying out an enquiry). Neither is it aware of any case in which the victims have received reparations.

Agustín Sosa

Agustín Sosa, a grassroots political activist of the United Front of Huautla (Frente Unión Huautleco) linked to the Party of the Democratic Revolution (*Partido de la Revolución Democratica*, PRD), was detained on 10 December 2004 at his home in Huautla de Jiménez, Oaxaca State. Over subsequent months he was subject to unfounded criminal charges apparently in reprisal for his role in opposing the election of state governor Ulises Ruiz Ortiz of the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI) in July 2004.

[68] Ibid, footnote 39.
[69] Mexican Constitution, art 113.

Agustin Sosa's family, lawyer and supporters ©AI

On 27 July 2004, PRI and PRD activists clashed in the town of Huautla de Jiménez, when PRD supporters tried to prevent PRI activists holding a political rally in Ulises Ruiz Ortiz's election campaign. During the clash retired teacher and PRD supporter, Serafín García Contreras, was beaten to death with sticks by a number of PRI activists. His murder was caught on camera and several PRI activists were arrested in the following days. However, prosecutors also opened a preliminary investigation against a leading local PRD activist, Agustín Sosa. In the preliminary investigation, prosecutors argued that Agustín Sosa was responsible for the murder because he "somehow instigated" (*de alguna forma instigó*) the PRD to set up the roadblock, and was therefore directly responsible for the murder of Serafín García Contreras. Despite the absence of evidence linking him to the murder or the crime scene, the prosecutor concluded that by "making a natural logical connection between a fact and the truth sought, circumstantially we are drawn to the conclusion that the accused Sosa is probably responsible".[70] The judge accepted the prosecutor's arguments without further evidence and ordered his detention and then his committal for trial with an *auto de formal prisión* for murder and aggravated injuries (*lesiones calificadas*).

Agustín Sosa and his lawyers, believing the charges to be politically motivated filed a federal injunction (*amparo*) against the state judge's decision to proceed to trial (*auto de formal prisión*) on the grounds of lack of evidence. In February a federal court accepted the petition and ordered his release. However, as Agustín Sosa was about to leave prison further charges

[70] "*haciendo un enlace lógico natural que existe entre el hecho cierto y la verdad que se busca, circunstancialmente nos llevan a la conclusión de que el inculpado Sosa es probable responsable*" (page XXXVII of the case file).

of aggravated assault (*asalto calificado*) and robbery with violence were filed against him, alleging that he had seized a lorry containing building materials to be distributed by the PRI in Huautla prior to the state elections. Once again the judge accepted the charges and he was placed in custody pending trial. His defence lawyers filed another federal injunction against the *auto de formal prisión* as the complainant and prosecution witness acknowledged under cross-examination in the committal hearing that he was unsure whether a robbery had actually taken place. The first federal injunction sought by the Agustín Sosa's lawyer was rejected, but in June a higher federal court reversed this decision. On 10 June 2005 he was finally released from custody without charge.

The manner in which prosecutors carried out investigations and brought unsubstantiated and unfounded criminal charges, coupled with the failure of the state court judge to ensure impartial scrutiny of evidence, enabled charges to proceed against Agustín Sosa, keeping him in custody for six months. In the face of intense national and international pressure highlighting the misuse of the justice system, no further charges were filed against him. However, the local authorities simply maintained the law had been applied impartially and to Amnesty International's knowledge there was no enquiry into the conduct of police, prosecutors or judges involved.

Felipe Arreaga Sánchez
In November 2004, state judicial police arrested human rights defender Felipe Arreaga Sánchez at his home in Petatlán municipality, Guerrero State, for the 1998 murder of Abel Bautista, the son of a local political boss (*cacique*).

Felipe Arreaga, a well-known local peasant-farmer environmentalist who has campaigned for an end to excessive logging of the forests in the municipality, was a founder member of the Peasant Environmentalist Organization of Petatlán Mountains (*Organización Campesina Ecologista de la Sierra de Petatlán*, OCESP). In recent years, he had worked with the organization established by his wife, Celsa Valdovinos, the Environmentalist Women's Organization, *Organización de Mujeres Ecologistas*.

In 1999 OCESP activists Rodolfo Montiel and Teodoro Cabrera were detained and tortured by members of the military and forced to make false confessions to drug and arms possession. In 2001 under intense international pressure, the two men were released. However, neither military personnel nor local *caciques*, who were reportedly behind their detention and prosecution, were ever held to account. On Felipe Arreaga's arrest, the warrant for his detention also ordered the capture of many of the other founding members of the OCESP, including Rodolfo Montiel.

Despite witness statements in Felipe Arreaga's favour, he was committed for trial and placed in preventive detention by a judge on the basis of the evidence in the preliminary investigation. This contained serious irregularities: unexplained delays in the investigation and filing of charges; witnesses not questioned nor the crime scene inspected until two years

Felipe Arreaga Sánchez celebrates his release from prison with his granddaughter © private

after the event; one of the suspects who was reportedly identified by the half brother of the victim - the only reported eyewitness - was already dead at the time of the murder; and no steps were taken to establish the veracity of the principle testimony or check the whereabouts of the accused by investigators.

In January 2005 human rights lawyers representing Felipe Arreaga presented witnesses and video footage demonstrating that he had been in a distant community at the time of the murder. When the only other material witness besides the eyewitness was questioned in court, he admitted under cross examination that he had been forced to fabricate his statement on the orders of the local political boss (cacique) and a judicial police investigator. Other community witnesses also confirmed Felipe Arreaga's good character in contrast to the evidence put forward in the preliminary investigation. Nevertheless, the Attorney General of Guerrero refused to halt the prosecution.

Felipe Arreaga's defence lawyers helped secure international attention, effective judicial scrutiny of prosecution evidence and substantive defence evidence. This helped ensure that the judge ordered the only direct eyewitness and the *cacique* to appear in court to face cross-examination. In addition the judge visited the crime scene to verify the details of the prosecution case. As a result, Felipe Arreaga was acquitted in September 2005.

Felipe Arreaga regained his freedom, but the State Attorney General stated that the Public Prosecutor's Office had applied the law impartially. Amnesty International is not aware of any measures to review procedures that led to the fabrication of evidence and his unfounded prosecution. Furthermore, during the trial the *cacique* reportedly made threats against Felipe Arreaga, raising concern for the safety of him and his family.

Víctor Ramírez de Santiago
Víctor Ramírez de Santiago is a lawyer who often advises local indigenous peasant farmers (*campesinos*) communities in the Huasteca region of San Luis Potosí State on land rights issues. He has been subject to repeated judicial investigation and threatened with criminal charges since 2003. On 9 February 2005 police arrested him in his offices in Ciudad Valles with a warrant on charges of criminal association and theft (*asociación delictuosa y despojo en su calidad de autor intelectual)*. The Public Prosecutor had filed charges against him on the grounds that the lawyer had allegedly induced a group of indigenous peasant farmers to illegally occupy a disputed plot of land.

A local judge had issued the warrant on the basis of statements made to the public prosecutor by several of the 34 detained indigenous farmers in which they allegedly named the lawyer as their leader. According to reports, the Huasteca indigenous detainees were not provided with legal assistance or interpreters when making their initial statements to the public prosecutor (*declaración preparatoria*). They subsequently retracted the statements when brought before a judge, stating that Víctor Ramírez de Santiago was not involved in the land occupation. Despite this, the judge reportedly accepted the initial statements as evidence and on 15 February 2005 committed Víctor Ramírez de Santiago to trial. Criminal association is categorised as a serious criminal offence incurring mandatory preventive detention during the trial with no right to bail.

In March 2005 the lawyer won a federal injunction against the state judge's decision to commit him to trial. The federal judge stated that the evidence "is insufficient to demonstrate he was responsible for theft". However, the state prosecutor filed an appeal against this decision. Only when this appeal was rejected in July 2005 were the charges dropped against Víctor Ramírez who was released after spending six months in custody. Amnesty International believes that his detention and the charges filed against him were unfounded and intended to prevent him from providing legal advice and defence to peasant farmers in the region.

Despite being denied their legal rights to translators when making their statements, the testimony of the indigenous farmers served as primary evidence in their trial and in bringing charges against Víctor Ramírez de Santiago. Nevertheless, Amnesty International is not aware of any action by the state authorities to investigate the filing of unfounded charges against Víctor Rámirez Santiago, except the commitment by the president of the State Human Rights Commission to "give orders to remain alert in following up on this case".[71]

Lydia Cacho
On 16 December 2005 at the women's refuge which she runs, Lydia Cacho, a women's rights defender and journalist, was arrested in Cancún, Quintana Roo State. Judicial police from

[71] *"..independientemente de la libertad ortorgada al abogado de referencia, he girado instrucciones al Segundo Visitador de mantanerse alerta en el seguimiento del caso*."

Public Prosecutor's Office in Puebla State travelled to Cancún to arrest her on the basis of a warrant issued by a Puebla State court judge for the criminal offence of defamation. A powerful local businessman had filed a complaint against Lydia Cacho for allegedly defaming his reputation in her book, *Los Demonios del Edén,* published earlier in the year.

Lydia Cacho was taken by road by her arresting officers to Puebla City. According to her testimony, during the 20 hour journey police reportedly implied that she might suffer ill-treatment, sexual assault and "disappearance". On arriving in Puebla City she was held for several more hours before being released on bail and ordered to register at the Puebla court on a weekly basis pending the outcome of her trial. In January 2006, in the face of widespread national and international concern, judicial proceedings were transferred to her home state of Quintana Roo.

On 14 February 2006, audiotapes were leaked to the media reportedly containing telephone conversations between senior government officials in Puebla, including the governor, and leading businessmen, including the complainant in the Lydia Cacho case. In one alleged conversation recorded prior to Lydia Cacho's arrest, the Governor reportedly agreed to organize the detention of Lydia Cacho on behalf of the businessman, who reportedly expected Lydia Cacho to be sexually assaulted while in detention. The tape caused a major public outcry at the apparently illegal conduct of senior officials and increased concern for the safety of Lydia Cacho. It also appeared to demonstrate that interference in the judicial system for personal or political interests remains an important factor in judicial decisions. At the time of writing, federal deputies are pursuing measures to try the governor for misuse of public office. The National Supreme Court has undertaken an investigation, the results of which are pending.

Defamation is a criminal offence in most states, with a prison term of between six months and four years in Puebla state.[72] Amnesty International has documented the use of defamation laws on several occasions in state jurisdictions to detain and prosecute journalists and human rights defenders who are legitimately seeking to expose official wrongdoing. The Inter-American Commission on Human Rights has repeatedly called for defamation to be a non-custodial civil law offence. In April 2006, in direct response to this case, the federal congress decriminalised defamation in the federal criminal code, but it remains a criminal offence in state laws.

Martín Barrios Hernández

On 29 December 2005 human rights defender Martín Barrios Hernández was detained at his home in Tehuacán, Puebla State, on charges of blackmail. Despite compelling evidence that the case against him had been fabricated in reprisal for supporting sacked factory workers, a local judge confirmed his detention and committed him to trial on 4 January 2006. Blackmail is categorised as a serious criminal offence in the state criminal code, making suspects ineligible for bail.

[72] Art 357, Código de Defensa Social del Estado Libre y Soberano de Puebla, http://info4.juridicas.unam.mx/adprojus/leg/22/524/385.htm?s=

Martín Barrios Hernández ©AI

Martín Barrios Hernández is the coordinator of the Human and Labour Rights Commission of Tehuacán Valley (*Comisión de Derechos Humanos y Laborales del Valle de Tehuacán)*, which campaigns for labour rights in Tehuacan's many textile factories. In 2003 the Labour Commission, in collaboration with the Maquila Solidarity Network (*Red de Solidaridad de la Maquila)*, produced a report highlighting the role of the international clothing industry and alleged violations of international labour rights standards.[73] In 2003 Martín Barrios was threatened and seriously assaulted by unknown assailants apparently in reprisal for the Labour Commission's legitimate work.

In November 2005, the Labour Commission was supporting protests and legal action by sacked workers from the *Calidad de Confecciones* textile plant. On 24 November, the factory owner filed a criminal suit with the State Public Prosecutor's Office. He alleged that on 22 November 2004 Martín Barrios had demanded 150,000 Mexican pesos to call off the workers protests. When the factory owner refused, he alleged that Martín Barrrios returned the next day making threats and had ordered protesters to attack him at his home. The judge issued the arrest warrant on 13 December 2005.

During the committal proceedings, Martín Barrios' defence provided evidence demonstrating his presence at a public meeting during the time the offence was supposed to have been committed and further evidence that the demonstration outside the factory owner's house the

[73] "Tehuacán: del calzón de manta a los blue jeans" Martín Barrios Hernández y Rodrigo Santiago Hernández de la Comisión de Derechos Humanos y Laborales del Valle de Tehuacán, México, enero de 2003.

7next day had been peaceful. Despite this, on 4 January the judge remanded Martín Barrios into custody and committed him to trial.

However, his unfounded prosecution sparked a national and international outcry and on 12 January 2006 the factory owner "forgave" Martín Barrios - a legal formula for ending the prosecution. Martín Barrios was released unconditionally without charge, but stated he had not committed any offence to be "forgiven".

The factory owner and state authorities did not acknowledge that his prosecution had been unfounded and politically motivated. Later the same month, death threats were reportedly made against Martín Barrios and other members of the Labour Commission resulting in the Inter American Commission on Human Rights requesting the Mexican Government take precautionary measures to guarantee his safety. At the time of writing Amnesty International is not aware of any steps to hold to account those responsible for bringing unfounded and unsubstantiated criminal charges against Martín Barrios.

Chapter 3: Torture, ill-treatment and impunity

> No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. (ACHR, Art. 5, 2).

Despite a welcome reduction in the reports of torture in recent years, particularly at federal level, its use remains widespread in many parts of Mexico. A suspect is most vulnerable to coercion while in pre-trial detention in the custody of judicial police of the Public Prosecutor's Office, before being placed under judicial authority. This is when a suspect makes his or her first official statement (*declaración ministerial*) to the prosecutor. This statement is often granted primary evidential weight in judicial proceedings, despite the absence of judicial supervision.[74] While Article 20 (IX) of the Constitution requires a suspect to be adequately represented by a lawyer or a person of his or her confidence (*persona de su confianza*) in all stages of the criminal proceedings (*actos del proceso*), this report shows how criminal suspects are frequently denied the opportunity to effectively consult with a lawyer during custody prior to signing their first statement.[75]

In 2003, 34 % of convicted inmates surveyed by the *Centro de Investigación y Docencia Económicas* stated that they had made confessions while in the custody of the Public Prosecutor's Office, and of these, 35% said they made the confession because of torture or threats, primarily by judicial police.[76] This indicates that perhaps one in nine suspects confessed to a crime due to torture or ill-treatment.

Following a visit to Mexico, the UN Committee against Torture concluded in 2003 that the use of torture was not restricted to "exceptional situations or occasional violations committed by a few police officers but that, on the contrary, the police commonly use torture and resort to it systematically as another method of criminal investigation, readily available whenever required in order to advance the process".[77] Amnesty International continues to document cases of torture in many different states in Mexico.[78]

---

[74] "the Public Prosecutor's Office is the "representative of society" and presumed unfailingly to act in good faith. It is for this reason that a statement made to the Public Prosecutor's Office carries so much weight in judicial proceedings". UN Special Rapporteur on Torture, Report on Mexico, E/CN.4/1998/38/Add.2, 14 January 1998, para 41.

[75] The 2003 CIDE survey found 70% of defendants did not have access to a lawyer during Public Prosecutor custody; the remaining 30% were assigned a public defender by the prosecutor; Delincuencia, Marginalidad y Desempeño Institucional, 2003, pages 48-49.

[76] Ibid, page 46.

[77] Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico, CAT/C/75, 26 May 2003, para 218.

[78] Amnesty International reports include**:** *Allegations of abuse dismissed in Guadalajara: reluctance to investigate human rights violations perpetuates impunity* (AI index: AMR 41/034/2004); *Indigenous women and military injustice* (AI index: AMR 41/033/2004); *Unfair trials: unsafe convictions* (AI index: AMR 41/007/2003);

In 2003 the US-based non-governmental organization Physicians for Human Rights carried out an anonymous survey of nearly 200 forensic doctors working for the federal and state Public Prosecutors' Offices who conduct the official medical examinations of detainees. Forty–nine percent of federal doctors and 58% of state doctors said that torture is a severe problem for detainees in Mexico.[79]

In November 2005 the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) issued General Recommendation 10 highlighting that torture remains widespread in Mexico. The methods used in the 2,166 torture complaints documented by the CNDH between 1990 and 2004 (this does not include cases reported to the state human rights commissions) included: "beatings to hands and feet with hard objects; beating of buttocks and ears with sticks; asphyxiation and suffocation with water or carbonated water in the nose, mouth and ears; immersion in rivers, wells, streams or buckets; as well as plastic bags over the head; electric shock to testicles, rectum, feet, legs and thorax; burns from cigarettes, irons and car exhausts; permanent injuries such as gun shot wounds; sexual violence; suspension by the feet, fingers and neck; exposure to chemicals such as the introduction of rags covered in petrol in the mouth; and torture by positions or postures straining tendons, joints and muscles".[80]

Flagrante delicto detentions

Torture and ill-treatment most commonly occur when suspects are detained under *flagrante delicto* exceptions to the requirement for judicial arrest warrants. Federal and state legislation defining the scope of *flagrante delicto* detentions extend the scope of these legitimate powers beyond their "natural and obvious meaning" for serious offences so that arrests can take place up to 48 hours after the offence – 72 hours in the case of the Federal District.[81] In effect these are "less stringent criteria than the Public Prosecutor's Office must meet in order to obtain an arrest warrant from the courts".[82]

Ten years of abductions and murders of women in Ciudad Juárez and Chihuahua (AI Index: AMR 41/026/2003); Torture cases - calling out for justice (AI index: AMR 41/08/01).

[79] Dr Michele Heisler, Assessment of Torture and Ill Treatment of Detainees in Mexico, Attitudes and Experiences of Forensic Physicians; Physicians for Human Rights; Journal of the American Medical Association, Vol. 289 No. 16, April 23, 2003.

[80] "traumatismos por golpes con manos, pies u objetos contundentes, golpes con tablas en glúteos y oídos, asfixia o ahogamiento con aplicación de agua simple o gaseosa en nariz, boca y orejas, e inmersiones en ríos, pozos, piletas o cubetas, así como colocación de bolsas de plástico en la cabeza; descargas eléctricas en testículos, recto, pies, piernas y tórax; quemaduras con cigarrillos, con fierros calientes o escapes de motor; lesiones permanentes tales como heridas de arma de fuego; violencia sexual; suspensión colgado de los pies, los dedos o el cuello, exposición a sustancias químicas tales como la introducción de estopa con gasolina en la boca, y tortura a partir de posiciones o posturas que afectan tendones, articulaciones y músculos". CNDH press release to General Recommendation 10, CGCP/135/05, México, D. F., a 22 de noviembre de 2005.

[81] Committee Against Torture, CAT/C/75, 26 May 2003, para 177.

[82] Ibid, para 178.

The 48 hours (or 96 hours for organized crime offences) that a suspect may then spend in the custody of judicial police and prosecutors is a crucial period for gathering evidence to file charges. Sixty percent of arrests are carried out using *en flagrante* exceptions, so judicial scrutiny of arrests is therefore routinely avoided until the suspect is already in custody and has made his or her first statement.[83]

The UN Working Group on Arbitrary Detentions (WGAD) has called for these exceptions to judicial control "incompatible with the principles of presumption of innocence and generate danger of arbitrary detention and extortion" and called for legislation governing their use to be brought into line with international human rights treaties ratified by Mexico. [84] The 2003 report of the Office of the High Commissioner for Human Rights called for the authorities to: "restrict the concept of flagrancy in line with its constitutional meaning, which permits the detention of a suspect by any person only on the basis that there is certainty that he or she is responsible for the crime".[85] However, neither the Government nor legislators have taken such steps nor has the judiciary established jurisprudence to tighten the criteria for judges to scrutinise such detentions and determine their legality.

Jurisprudence

Despite the widespread use of torture or ill-treatment, the judiciary continues to uphold an interpretation of the rule of procedural immediacy that grants greater evidential weight to the first statement taken by the public prosecutor (*declaración ministerial*) during the preliminary investigation when a suspect is held in judicial police custody, than any subsequent statement made before a judge or court.[86] By law a judge cannot convict on the basis of a confession alone. However, the evidence provided by prosecutors to support a confession, such as testimony of arresting officers, is not required to stand alone to prove the probable responsibility of the suspect and it may be used in conjunction with a coerced confession to secure convictions.

[83] Crimen Sin Castigo, Procuración de Justicia penal y Ministerio Público en Mexico, Guillermo Zepeda Lecuona, CIDAC, Fondo de Cultura Economica, 2004, Page 245

[84] Working group on Arbitrary Detentions, E/CN.4/2003/8/Add.3 para39 and 72(a)

[85] "*Delimitar el concepto de flagrancia, para adecuarlo a su sentido constitucional, en el que se permite la detención de la o el infractor por parte de cualquier persona sólo en razón de la certeza de que existe la autoría del delito*", Office of the United Nations High Commissioner for Human Rights, Analysis of the Human Rights Situation in Mexico, 2.1.1.14, page 14. http://www.cinu.org.mx/prensa/especiales/2003/dh_2003

[86] Confesión, Primera declaración del Reo., Segundo Tribunal Colegiado del Segundo Circuito, SJF Parte: 64. Abril de 1993, Tesis: II. 2o. J/5 Pagina: 33. *Segundo Tribunal Colegiado del Sexto Circuito, SJF, Tomo XIV, Julio 1994, Página 515,* "Value of confession: The first statement rendered by the prisoner to a prosecutor should prevail over later manifestations made in the first statement to the judge, because it is to be presumed that this latter is due only to a defensive reaction of the individual as it is in contradiction with previous statements and is not supported by any other fact, whereas the first statement rendered without sufficient time to be coached deserves greater credence"*(Confesión Valor de: Debe Prevalecer la confesión rendida por el reo en su primera declaración ante el representante social, sobre posterior manifestación hecha en la ampliación de la declaración preparatoria, en virtud de que ésta se presume obedece solamente a un reflejo defensivo del quejoso, por ser contraria a las anteriores declaraciones y no estar apoyada por ningún otro dato, mientras que su primera declaración efectuada sin tiempo suficiente de alecccionamiento merece mayor crédito).*

Federal jurisprudence further strengthens the evidential value of information obtained in the initial statement and restricts a defendant's capacity to challenge the legality with which it was secured by encouraging judges to dismiss the retraction of a confession or allegations of torture by detainees on the grounds that this is an inevitable reaction of a criminal suspect.[87] Other jurisprudence permits judges to accept confessions even when gained through violence; to dismiss allegations of ill-treatment even when documented during medical examination unless a suspect can prove a particular official caused a particular wound; and, to set aside those parts of a confession that contradict the prosecution case, while granting probative value to those parts that are consistent with the prosecution case. [88]

International human rights organizations have repeatedly criticised both the interpretation of the rule of procedural immediacy and the excessive burden of proof on defendants to prove they have been tortured into making a confession.[89] The Inter-American Commission on Human Rights has stated: "The Mexican State is construing the guarantee of procedural immediacy in a way which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons. Instead of being brought promptly before an impartial and competent organ for the protection of their rights, such as the competent judge in each specific case, accused persons are held for 48 hours or 96 hours by the judicial police without any judicial oversight".[90] Or as another Mexican legal expert has called it: "when the accused's individual guarantees are least protected, the greater the value granted the evidence gathered, meanwhile the more these guarantees are protected (before a judge), the less the evidence is worth".[91]

[87] Ibid.

[88] *Tercer Tribunal Colegiado del Segundo Circuito. SJF Tomo 58, octubre de 1992 tesis II.30. J/35 Pagina 43, Confesión.* If the coercion that the suspect claims that he or she suffered in order to extract the confession is not proven, the retraction of the confession is insufficient to deny it probative value *(Confesión. Si no se comprueba la coacción que el quejoso dice sufrió para emitirla, su retracción es insuficiente para negarles valor probatorio) Tribunal Colegiado del Vigésimo Circuito, SJF Tomo 78, junio 1994, tesis XX. J/61 pagina 81:* Co-accused's confession. Even when medical certificates and validation exists of injuries, if it is not proven that these were caused by the police, the confession has probative value *(Confesión del coacusado. Aún cuando en autos exista certificado y fé de lesiones si no se demostró que esas alteraciones las hubiese producido la policía, tiene valor probatorio).*

[89] "A statement by the accused, even one made under duress, carries such weight that it is difficult to refute on other grounds given prevailing attitudes". UN Special Rapporteur on Torture, Report on Mexico, E/CN.4/1998/38/Add.2, 14 January 1998, para 39, 40.

[90] "*El Estado mexicano está concibiendo el principio de inmediación procesal en una forma tal que, en vez de servir como una garantía procesal para los inculpados de los delitos, tiende a transformarse en su antítesis, en una fuente de abusos para los inculpados. Ello se debe a que en vez de llevar sin demora a los inculpados ante el órgano imparcial y adecuado para la cautela de sus derechos, como es el juez competente en cada caso concreto, son retenidos por 48 o 96 horas por policías judiciales sin supervisión judicial alguna"*. IACHR, 1998 Mexico Report, para 315

[91] "*cuando menos garantías tiene el acusado, mayor es el valor de las pruebas, mientras que en la medida en que cuenta con mayores garantías (ante el juez), se reduce el valor de las pruebas*", Miguel Sarre, Control del Ministerio Público, en Anuario de Derecho Público 1997: los controles constitucionales, ITAM-McGraw-Hill, México, 1998, páginas 131-149.

The United Nations Special Rapporteur on Torture has stated that: *"where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment".* [92]

International standards explicitly state that no confession obtained with the use of torture shall be invoked as evidence and require those responsible to be punished. These include the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Mexico in 23 January 1986, the Inter-American Convention to Prevent and Punish Torture ratified by Mexico on 23 June 1987. While the 1991 Federal Law for the Prevention and Punishment of Torture codifies some of the key elements of international standards in the case of federal offences, the majority of legislation enacted by the 32 federal entities to criminalise torture in local jurisdictions fails to meet international standards.

Furthermore, when allegations of torture are filed with police, Public Prosecutor's Offices or Human Rights Commissions, these are routinely reclassified as lesser offences such as abuse of authority or injuries (*lesiones*) which frequently result in solely disciplinary action against the official.

Jurisprudence applied in criminal courts across the country often seriously undermines legal protections against the use of torture. In its latest 2005 report to the Committee Against Torture the federal government has recognized this anomaly. However, it highlights the government-proposed judicial reform which sought to end the probative value of statements made to prosecutors and to ensure that only those statements made before a judge in the presence of a lawyer could be used as evidence in judicial proceedings.[93] However, as this proposed reform has yet to be approved, the fact remains that courts continue to accept unreliable evidence extracted under torture, thereby continuing to stimulate its use as an effective method of evidence gathering and investigation.

Medical evidence

In recent years the Federal Public Prosecutor's Office (*Procuraduría General de la República*, PGR) has developed procedures for documenting medical evidence of torture based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Istanbul Protocol") adopted by the UN. In August 2003 the Federal Attorney General ordered the new procedures be applied by all PGR officials in cases of alleged torture or ill-treatment.[94] A number of State Public Prosecutor's Offices are also developing such procedures with the assistance of the PGR. These procedures and increased training of forensic doctors appear to be an improvement on those previously in

[92] Para 169, E/CN.4/2001/66/Add.2. "Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43. Visit to Brazil, 30 March 2001.

[93] Periodic report provided by the Mexican government to the United Nations Committee Against Torture; CAT/C/55/Add.12, 28 Febrero de 2005, Para 271-279.,

[94] Acuerdo Oficial A/05/2003

place, which frequently led to the improper or inadequate evaluation and documentation of evidence of ill-treatment or torture. However, there has not so far been an independent assessment of the effectiveness of the new procedures to investigate allegations of torture to determine whether many of the obstacles that prevented effective documentation and punishment have been overcome, particularly the impartiality of those responsible for carrying out the assessment.

The key problem that has repeatedly undermined official medical examination of evidence of ill-treatment and torture remains. Forensic doctors are part of the Public Prosecutor's Office and work under the direct orders of prosecutors. The procedures for investigating allegations of torture or ill-treatment, particularly when implicated officials belong to the Public Prosecutor's Office, often do not meet the standard of an independent and impartial enquiry. Furthermore, in the majority of states, forensic services are of limited quality; necessary equipment, trained-staff and procedures to ensure the standard, integrity and reliability of official forensic evidence are often lacking. Despite these limitations, when a defendant wishes to counter the prosecutor's forensic evidence, studies or examinations carried out by private doctors or technical experts are generally accorded less evidential weight by the judge than that of the official forensic services, making it extremely difficult to challenge official findings.[95] Some local human rights organizations have argued that this tendency has been exacerbated by the apparent efforts of the PGR to promote its new procedures for assessing evidence of torture as the legal standard for the application of "Istanbul Protocol", ignoring the concerns that exist about the impartiality with which procedures are applied.

At federal level, there are proposals to make forensic services an autonomous agency separate from PGR. However, states that have introduced similar reforms, such as Jalisco, retain the Governor's power to appoint and dismiss the director of the institute, enabling the executive to maintain considerable influence over forensic services.

The cases below illustrate how the use of torture and ill-treatment to secure confessions or testimony implicating other suspects remains a crucial part of many criminal investigations, particularly at state level. These cases are only a sample of those documented by Amnesty International in recent years, but demonstrate how evidence gathered by coercion is frequently the primary basis for securing pre-trial detention and subsequent convictions. Despite compelling evidence presented by defendants, lawyers and independent medical experts that evidence has been gained through coercion, prosecutors and judges routinely fail to institute a separate and impartial enquiry to establish if the defendant's allegations are founded. Some defence lawyers may also discourage defendants from reporting ill-treatment or torture, and judges often do not take steps to assess the physical condition of a defendant brought to court unless the defendant and defence lawyer specifically raise the issue. Once a

[95] According to the criminal procedural code when the conclusions of prosecution and defence experts (peritos) disagree, a third expert is named to resolve the contradiction. However, this will usually be an official expert from the prosecutor's office. (FCPC, Art 236)

complaint of torture has been officially filed, a defendant must overcome insurmountable obstacles to demonstrate the substance of the allegations, and even this may not be enough to ensure that evidence gained through torture is ruled inadmissible. The failure of legislators and courts to end reliance on the first statement made to the public prosecutors as the primary evidence in mounting prosecution cases against criminal suspects, continues to encourage the widespread use of torture as an investigative technique. In the cases that follow, Amnesty International is not aware of any official being held to account for their involvement in human rights violations.

Víctor Javier García

In 2004 **Víctor Javier García** was convicted of the murder of eight women in Ciudad Juárez on the basis of a confession reportedly extracted under torture. The judge in passing sentence rejected the allegation of torture largely on the grounds that the confession contained details that matched those of the crimes and could only have been known to the perpetrator. However, this common argument of using the content of a confession to validate its reliability ignores the possibility that police or prosecutors might have supplied this information to ensure the credibility of the confession.[96] In his ruling the judge cited precedents and academic literature stressing that allegations of torture by criminal suspects are inevitable and should be dismissed, ignoring the principle that such allegations should be evaluated on the concrete circumstances of each case.

When reviewing the cases of men reportedly tortured into confessing to involvement in the abduction and murder of women in Ciudad Juárez, a special team of international prosecutors from the UN Office on Drug and Crime concluded that the weighing of evidence by the presiding judges in reaching their verdicts was frequently discretional and not substantiated in an objective evaluation of the merits of the evidence. Such practices often resulted in apparently unsound convictions which were reliant on deeply flawed preliminary investigations (in which allegations of torture were simply ignored).[97] On 14 July 2005 Víctor Javier García was released on appeal on the grounds that he had been detained illegally. However, the appeal failed to consider the allegations of torture and those responsible have not been brought to justice. Those responsible for the murder of the eight young women also remain at large.

Torture used to secure detention and conviction of protestors in Guadalajara

On 28 May 2004 a group of demonstrators clashed with police in Guadalajara, Jalisco state, at the end of the Summit of Latin American, Caribbean and European Union Heads of State, resulting in injuries and damage to property. In response, police detained more than 100

[96] Sentence of trial judge.

[97] Report of the commission of international experts of the United Nations Office on Drug and Crime on the misión to Ciudad Juárez, Chihuahua, Mexico. UN Office on Drug and Crime, November 2003, page 25 (*Informe de la Comisión de Expertos Internacionales de la Oficina de las Naciones Unidas contra la Droga y el Delito, sobre la Misión en Ciudad Juárez, Chihuahua, México, Oficina De Las Naciones Unidas contra la Droga y el Delito, noviembre 2003, página 25*).

people during and after the disturbances. Police later recorded that all arrests had been made of suspects caught *en flagrante* committing criminal offences. Forty-five people were subsequently charged with criminal offences.

Dagoberto Rivera Servín, aged 26, said that he was detained on 28 May after the disturbances, while receiving medical attention at a Red Cross station to head wounds caused by a flying bottle. On 29 May he was taken to the State Public Prosecutor's Office (PGJE) where he remained handcuffed in a cell for seven hours and was reportedly threatened and punched by the judicial police. He was later transferred to another PGJE office where he was reportedly beaten up again during interrogation. On 30 May he was coerced into signing a confession, admitting criminal offences and implicating other suspects. A public defender did not reportedly assist him during the first statement (*declaración ministerial*), which he was not allowed to read. When brought before the judge he stated that he had been forced to sign the confession, that he had not seen a lawyer and that he had not been allowed to read his statement. On 7 June, the judge committed him to trial for a number of offences including injuries, riot, gang activity and offences against public officials (*lesiones, motín, pandillerismo, delitos cometidos contra representantes de la autoridad*). Despite the allegations of torture and violations in due process, the judge ruled that his first statement to the prosecutor had probative value without further investigation. Dagoberto Rivera Servín spent several months in prison before being released on bail pending the outcome of his trial which continues at the time of writing.

Dagoberto Rivera Servín © AI

According to 19-year old **Aarón Alejandro García García,** he was beaten and kicked by municipal police officers during the disturbances. He was arrested and placed in PGJE custody, where he was forced to undress and hit with a gun. During the next day, he and others were interrogated while being beaten and threatened. He was also forced to lie on the floor while police jumped on him and was then partially asphyxiated with a plastic bag over his head. As a result, he signed a confession and on 31 May was charged. When brought before a judge he stated that his confession had been extracted under torture. However, no investigation was undertaken and this confession served to secure his subsequent conviction for offences against public officials and injuries (*lesiones y delitos contra representantes de la autoridad*). He spent 10 months in prison.

The National Human Rights Commission carried out an investigation and found that at least 19 of the detainees had been tortured and recommended a full investigation, but the Jalisco state authorities refused to comply. [98] Amnesty International has also raised the case with the state authorities who stated that the allegations of torture were invented by demonstrators. The federal authorities have denied they have jurisdiction in the case. Amnesty International is not aware of any official facing disciplinary or criminal proceedings as a result of the abuses.

Central American migrants in Saltillo, Coahuila recounting their experiences to AI delegates. Undocumented migrants are vulnerable to abuses by police and private security guards, but rarely file official complaints. © AI

[98] Special Report of the CNDH relating to the violence which took place in the City of Guadalajara, Jalisco state, on 28 May 2004, in the context of the III Latin America, Caribbean and European Union Summit, CNDH Gazette, No 169, August 2004. (*Informe Especial de la CNDH relativo a los hechos de violencia suscitados en la ciudad de Guadalajara, Jalisco, el 28 de mayo de 2004, con motivo de la celebración de la III Cumbre de América Latina, el Caribe y la Unión Europea., Gaceta de la CNDH, No. 169, agosto 2004*).

Chapter 4: The right to effective defence

"*The services of public defenders and counselling assistants are the only legal aid services provided by the Government. Though measures appear to be being undertaken to improve these services, the poor quality of services provided by public defenders continues to be a source of concern. This is more the case in the States. Lack of manpower, overwork, insufficient qualification or experience, and low salaries, particularly in the States, are some of the causes.*"[99]

Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice. If the person cannot afford to hire a lawyer, effective and qualified counsel should be assigned. The person must be given adequate time and facilities to communicate with their lawyer. Access to counsel should be immediate.[100] International human rights law also establishes other correlated rights which underpin the right to effective defence that come into effect immediately on arrest:

- The right to be informed immediately of the reasons for arrest.
- The right to be informed of the rights a detained suspect and how to avail her or himself of these rights, including the right to be notified of the right to legal counsel.
- The right to be informed promptly of the charges against them.
- The right to be informed of the above in a language the detainee understands, and for a competent interpreter to be made available to ensure this right.
- The right to communicate with the outside world and not to be held in prolonged incommunicado detention.
- The right to silence.[101]

The Mexican Constitution guarantees many of these rights, including the right to an adequate defence. "From the beginning of the process the suspect will be informed of his or her rights enshrined in the Constitution and will have the right to an adequate defence, conducted by the suspect, by a lawyer or a person of confidence. If the accused cannot or will not name a defender, after being required to do so, a judge will designate a public defender."[102] However, the criminal procedural codes do not identify the "beginning of the process" as the moment of

[99] Para 184, Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72/Add.1, 24 January 2002.

[100] Chapter 3, Amnesty International Fair Trial Manual, first published December 1998, AI Index: POL 30/02/98; Art 1, Basic Principles on the Role of Lawyers, 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; Art. 17 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly, resolution 43/173 of 9 December 1988.

[101] ICCPR (Articles 9(2) and 14(3)(a), ACHRs Articles 7(4) and 8(2)(b); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988".

[102] MC Art. 20, A IX Desde el inicio de su proceso será informado de los derechos que en su favor consigna esta Constitución y tendrá derecho a una defensa adecuada, por sí, por abogado, o por persona de su confianza. Si no quiere o no puede nombrar defensor, después de haber sido requerido para hacerlo, el juez le designará un defensor de oficio.

detention. As a result, the practice of prosecutors, which is routinely accepted by courts, is to allow access to defence counsel when it is first required by law: when the defendant makes a statement to the prosecutor or is brought before a judge. As a result, when a suspect is detained *en flagrante*, access to defence counsel is usually denied during the hours spent in the hands of law enforcement police and with the judicial police during interrogation before making the first statement to the prosecutor.

Furthermore, Amnesty International research (which is supported by the CIDE survey) indicates that in many states access to legal counsel is often routinely denied or seriously deficient even during those stages of proceedings, such as the first statement to the prosecutor or judge, when criminal procedural laws require their participation.[103] This seriously undermines the right to a fair trial and disproportionately impacts the poorest and least equipped to understand and defend themselves against criminal charges.

A statement made by a defendant before the public prosecutor or judge is only admissible as evidence in the indictment or trial if defence counsel or a "person of his or her confidence" assists the accused and he or she is duly informed of the procedures and the process.[104] In determining the compliance with these obligations the courts rely on the presence of the signature of the defence council or "person of confidence" on the official record. However, defendants in several cases have informed Amnesty International that when making their first statement in a busy Public Prosecutor's Office that there was no opportunity to consult with the public defender who signed their statement.

Anyone accused of a criminal offence must have adequate time and facilities to consult with their lawyer to prepare their defence as well as have the opportunity to present evidence and cross-examine or challenge prosecution evidence in open court.[105] Nevertheless, according to one study in 2003 only 1 in 10 criminal suspects were able to consult with their lawyers before making their initial statement in Morelos state, Mexico state and the Federal District.[106]

The majority of criminal suspects do not have the knowledge or resources to organize a private lawyer to attend the first statement before the public prosecutor. In several cases reported to Amnesty International, prosecutors would only allow defendants to be represented by public defenders during the initial statements preventing access to private lawyers. As a result, defendants are reliant on the prosecutor to assign a public defender or a "person of confidence" to act as their legal counsel.

[103] Bergman, Marcelo. Delincuencia, Marginalidad y Desempeño Institucional. Resultados de la encuesta a población en reclusión en tres entidades de la República Mexicana: Distrito Federal, Morelos y Estado de México. Documentos de Investigación. México: Centro de Investigación y Docencia Económicas. 2003.
[104] Mexican Constitution, art 20, A, II; Federal Criminal Procedural Code, Art 287.
[105] Article 14(3)(b) of the ICCPR, Article 8(2)(c) of the American Convention).
[106] Bergman, Marcelo,CIDE, 2003.

A "person of confidence" does not need to possess legal expertise or to have any prior knowledge of the defendant and as such falls short of international human rights law protecting the right to effective defence.

Public defenders

International human rights standards require the authorities to ensure that state appointed lawyers have the experience and competence commensurate with the nature of the offence of which their client is accused.[107] The authorities have a special duty to take measures to ensure that the accused is effectively represented[108]. If the appointed counsel is not effective, the authorities must ensure that counsel performs their duties or is replaced.[109]

However, this is frequently not the case in Mexico. According to the UN, the gravest deficiencies in state appointed legal assistance exist in Mexico's 31 states and the Federal District, and leave the poorest and most disadvantaged with least protection, seriously undermining the fairness of judicial procedures. [110]

In recent years, following federal reforms to create the Federal Public Defence Institute (*Instituto Federal de Defensoría Pública, IFDP)*, there have been welcome improvements in the quality and capacity of federal public defenders. A few state governments have initiated similar reforms, making the Office of Public Defenders autonomous agencies in the judiciary. However, public defenders continue to answer directly to local interior ministry (*Secretaría de Gobierno*) or other executive authorities in many states. At federal level the IFDP has received increased resources for recruitment, training, and conditions of employment and supervision for public defenders to raise their status nearer to that of prosecutors. Nevertheless, in the majority of states there has not been comparable investment or

[107] Principle 6 of the Basic Principles on the Role of Lawyers.

[108] [*Kelly v. Jamaica* (253/1987), 8 April 1991, Report of the HRC, (A/46/40), 1991, at 248, para. 5.10]

[109] [*Artico Case*, 13 May 1980, 37 Ser. A 16]

[110] 2.2.2.9 Strengthening the public defenders service, page 13, *Analysis of the Human Rights Situation in Mexico*, UNOHCHR, 2003: "In general, in the states the Public Defender's Offices function in a very deficient manner. They have few staff, are extraordinarily badly paid with an excessive workload. It is a publicly known fact that in many cases public defenders only turn up to sign official records of hearing or proceedings that they were not actually present during. Their performance does not constitute a real defence of the accused, rather a formality to be complied with, but without any real content. Only on rare occasions do they file motions and they limit themselves to the minimum. It can be stated that the majority of poor people that are forced to use a public defender, do not have a defence during criminal trial proceedings". (*Fortalecimiento de la defensoría pública, página 13, Diagnostico sobre la situación de los Derechos Humanos en México, OACNUDH, 2003 (En general, en las entidades federativas las defensorías funcionan de manera muy deficiente. Cuentan con muy poco personal, extraordinariamente mal pagado y con excesivas cargas de trabajo. Es un hecho de conocimiento público que muchas veces los abogados de oficio se presentan solamente a firmar las diligencias a las que ni siquiera han asistido, su actuación no constituye una verdadera defensa del procesado o procesada, sino una formalidad que se debe cumplir, pero sin ningún contenido real. En raras ocasiones interponen algún recurso y se limitan a hacer lo mínimo. Se puede afirmar que la mayoría de la gente pobre que se ve obligada a recurrir a la defensoría de oficio, no tiene defensa en un juicio penal*).

improvement in the service provided. As a result public defenders rarely win cases - one public defender in the Federal District claimed the rate was as low as six in 100 cases.[111]

In 2001 constitutional reforms guaranteed the right of Mexico's 13 million indigenous peoples to be represented by a lawyer with knowledge of their language and culture.[112] According to a census conducted by the IFDP in 2004 there were only 82 lawyers with the required qualifications. The IFDP is reportedly investing in increased funding of public defenders to meet this requirement.

Despite the Constitution and criminal procedural codes including the right to "adequate" defence, and requiring defence lawyers to carry out a minimum number of actions on behalf of their clients, it is extremely difficult to prove that these actions have not been carried out substantively through the appeal process. An example of this is the dependence on the signed court record of a suspect's statement as the proof that the defendant had access to legal council, without requiring a substantive evaluation of the defence of the client's interests. Legislators have not established sufficiently high standards for the right to effective defence in criminal codes and higher federal courts have failed to establish jurisprudence to ensure the right to adequate defence meets the standards required by international law, particularly in the pre-trial period of detention in the custody of judicial police.

Private defence

Paying for a private defence lawyer is the only other means of avoiding the often inadequate legal assistance provided by many public defenders. Families of poor detainees may take on substantial debts to hire a private lawyer. However, the service provided is extremely variable with virtually no means of holding lawyers to account for misconduct. In 2002 the UN Special Rapporteur on Independence of Judge and Lawyers was highly critical of the organization of the legal profession and called for change in order that "its integrity, independence and accountability are respected by the Government and society in general".[113] There has not been substantial progress in implementing this recommendation.

The failure of the authorities to effectively incorporate and apply Mexico's international human rights obligations in domestic law at federal and state level, as well as insufficient attention on international human rights law in the training of lawyers, has also deterred defence lawyers and judges from basing their legal arguments on the greater protection offered in international human rights treaties, preferring to refer solely on national and local legislation and jurisprudence.

[111] "Falta preparación a defensores de oficio", Reforma, 26 May 2005, *http://www.reforma.com/justicia/articulo/527953/*.

[112] Mexican Constitution, art 2. A VII. In 2002 article 15 of the Federal Criminal Procedural Code was reformed requiring indigenous defendants to be assisted by lawyers with full knowledge of their language and culture.

[113] Special Rapporteur on independence of judges and lawyers, E/CN.4/2002/72/Add.1, 24 January 2002, para 181.

Indigenous peoples and the right to an interpreter

International minimum fair trial standards require that all suspects shall be entitled to the free assistance of an interpreter or translator if he or she does not understand or does not speak the language of the court.[114] Widespread violations of this right led the UN Committee on the Elimination of Racial Discrimination to recommend the Mexican Government to *"guarantee the right of indigenous peoples to use interpreters and court-appointed defence counsel who are familiar with the language, culture and customs of the indigenous communities."*[115]

Members of marginalized groups that suffer discrimination, such as indigenous peoples are particularly vulnerable to abuses in the right to effective defence. By the Mexican Government's own admission, "*the trials in which indigenous peoples are involved are often plagued by irregularities, not only because of the lack of trained translators and public defenders, but also because the public prosecutors and judges usually ignore indigenous customs. On occasions the sentences passed are out of all proportion to the alleged crime*".[116]

The right to an interpreter is formally guaranteed during the preliminary investigation and trial.[117] In the case of indigenous peoples, the law also states that the defence lawyer as well as the interpreter must have full knowledge (*pleno conocimiento*) of the defendant's language and culture and that the judge should also take into account the specific social, cultural and economic characteristics of an indigenous defendant.[118] However, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples found during his visit to Mexico in 2003 that "that many indigenous suspects are unprotected when facing a public prosecutor or judge since they do not speak or understand Spanish and there is no interpreter available to translate into their own language, although this right is laid down by law."[119] Amnesty International frequently receives reports, such as those included in this report, that the right to an interpreter has not been upheld in practice, particularly during public prosecutor custody.

As the cases in this section indicate, if a defendant fails from the outset to stipulate that he or she wishes to have an interpreter, this may be understood at a later date by a judge to indicate

[114] ICCPR, Art 14, (3)(f); ACHR, art 8(2)(a).

[115] Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/MEX/CO/15 (2006). March 2006, para 13.

[116] Report submitted by the Mexican Government to the UN Committee on the Elimiation of All Forms of Racial Discrimination, CERD/C/473/Add.1, May 2005, para 167: "*los juicios en que se ven involucardo los indigenas están con frecucncia plagados de irregularidades, no solamente por la falta de intérpretes y defensores capacitados, sino también porque el Ministerio Público y los jueces suelen ignorar las costumbres indígenas. En ocasiones las sentencias dictadas están fuera de toda proporción con los delitos imputados*".

[117] Federal Criminal Procedural Code, Art. 124 Bis.

[118] Ibid, Art. 146.

[119] (*muchos indígenas indiciados se encuentran desamparados ante los agentes del ministerio público o el juez por no hablar o entender el castellano y no contar con un interprete en su lengua, a pesar de que la ley establece este derecho*.) Special Rapporteur on Indigenous Peoples , E/CN.4/2004/80/Add.2, 23 December 2003,para 29.

that he or she understood the proceedings and did not require an interpreter and even that the defendant is not in fact indigenous. In such cases it may be difficult to win an appeal for violation of this vital due process right or ensure that statements rendered without an interpreter are inadmissible as evidence. As such, in all judicial proceedings burden of proof should rest with the State to demonstrate that the defendant has had access to an interpreter and fully understands the process.

In recent years the National Commission for the Development of Indigenous Peoples (*Comisión Nacional de Desarollo de los Pueblos Indígenas,* CNDPI), a governmental body that promotes indigenous rights and development, has sought to foster better provision of interpreters and lawyers at federal and state level who speak and understand local indigenous languages and cultures and some states have established specialist state appointed Indigenous Public Defender's Offices, (*Defensorías del Indígena).* The CNDPI helped secure interpreters in 287 cases in 2003.[120] However, this is insufficient to cater for the number of indigenous defendants at federal level alone.

In recent years, in recognition of the injustices often suffered by indigenous peoples in the justice system, the federal government and some state governments in collaboration with the CNDH have apparently secured the early release of a number of indigenous prisoners convicted of less serious crimes. [121] The head of the CNDPI also recently announced the development of forms of alternative justice in indigenous communities to deal with lesser offences. While these measures are welcome, they do not address many of the underlying issues of social exclusion affecting indigenous communities nor the direct or indirect discrimination indigenous peoples suffer when coming into contact with the justice system and which may lead to serious miscarriages of justice.

The three cases that follow are illustrative of the regular denial of due process rights to indigenous suspects, in particular the right to an interpreter and lawyer who speak and understand their language and culture. The cases also exemplify how public defenders assigned to the most disadvantaged defendants often fail to effectively defend their rights or represent their client's interests in judicial proceedings. Despite this, it is often extremely difficult to demonstrate inadequate defence and prove the unreliability of prosecution evidence.

Felipe García Mejía, aged 17, and his older brother, Eduardo García Mejía, both from a Mazateco indigenous community in Oaxaca State, were detained in Mexico City on 2 January 2004 in connection with a robbery and taken to the Federal District Public Prosecutor's Office. According to the investigations subsequently undertaken by the Federal District Human

[120] Para 181, Examen de los Informes Presentados por los Estados Partes de Conformidad con el Artículo 9 de la Convención International Sobre la Eliminación de todas formas de Discriminación. CERD/C/473/Add.1.
[121] On the basis of CNDH recommendations federal and state executive bodies reportedly ordered early releases of 1,206 indigenous prisoner in 2002 and 688 in 2003. Para 180 CERD/C/473/Add 1.

Rights Commission (CDHDF), the brothers could hardly speak Spanish, and could not read, but at no time were they given an interpreter. When they were charged, the judge committed them to trial and placed them both in preventive custody in an adult prison. On 16 January Felipe García Mejía was killed by another inmate. According to Eduardo García Mejía, while in the custody of the public prosecutor he was pressured to sign a statement that he could not read and when brought before the court, the judge failed to take into account the absence of an interpreter. When CDHDF investigated the case, the judge justified his failure to uphold the right to an interpreter stating: "the accused spoke and understood Spanish perfectly because the police who detained them did not indicate otherwise." (*los agraviados hablaban y entendían perfectamente el español porque los policías que los detuvieron no realizaron una manifestación contraria).*[122] The CDHDF also verified that when making their first statement, the public prosecutor had failed to make any reference to the ethnicity, race or language spoken by the defendants. The CDHDF also found the prosecutor, judge and public defender had all failed in their legal responsibility to verify Felipe's age before sending him to an adult prison.

Ricardo Ucán Seca, from an indigenous Maya community, was arrested and convicted of the murder of a neighbour, Bernardino Chan Ek, in Akil, Yucatán State on 5 June 2000. In Ricardo Ucán's first statement he stated that he understood and spoke little Spanish and could not read or write. He was not assigned a translator and his public defender did not discernibly participate in the process nor did she sign the record of his statement. When making his statement before the judge, Ricardo Ucán stated that he had shot Chan Ek in self-defence. The judge failed to take into account the absence of the public defender's signature from the record (which was mysteriously amended in subsequent copies) and also failed to provide an interpreter. During the trial, the first statement before the prosecutor was granted probative value. The public defender failed to challenge this or effectively argue that Ricardo Ucán had acted in self-defence. He was subsequently convicted of premeditated murder and sentenced to more than 20 years in prison.

Petitions filed to the State Superior Court and federal judiciary (*amparo*) against the sentence were subsequently rejected on the grounds Ricardo Ucán did not inform the prosecutor or judge that he required a translator, that there was not sufficient evidence to prove his limited knowledge of Spanish and that the judge and prosecutor spoke some Maya. Nevertheless, the appeal courts failed to place any burden on the judge or prosecutor to ensure that the defendant fully understood the judicial proceedings and ruled the translator is for the benefit of the judge not the defendant.

Despite recognizing that Ricardo Ucán Seca spoke Maya and little Spanish, the appeal rulings also determined there was no proof that Ricardo Ucán Seca belonged to an indigenous group with clearly specific customs (*con costumbres claramente específicas*) and as a result there was no requirement to guarantee the right to an interpreter. This conclusion appears to use

[122] Comisión de Derechos Humanos del Distrito Federal; http://www.cdhdf.org.mx/index.php?id=bol6004

Article 2 of the Constitution, which recognizes that indigenous peoples have their own "social, economic, cultural and political institutions" (*institutiones sociales, económicas, culturales y políticas*) as criteria by which the court can determine which defendant is indigenous and therefore eligible for an interpreter. As such, the judgement appears to undermine the right to an interpreter of any defendant who does not sufficiently understand or speak the language of the court.

Ricardo Ucán remains in prison. The case has been filed with the IACHR by a local human rights organization, *Grupo Indignación,* and the Yucatan State Human Rights Commission.

In December 2001 three Tzotzil indigenous men, **Vicente López Pérez** and his two sons, **Vicente López Rodríguez** and 17-year-old **Mariano López Rodríguez**, were detained in Simojovel de Allende, Chiapas State, accused of murder and robbery. Despite reportedly being tortured by members of the state judicial police (*Agencia Estatal de Investigación*), the three men denied involvement in the crimes in their statements to the public prosecutor and judge. Vicente López Pérez was released without charge, but his sons were charged. In 2002, despite evidence that prosecutors had altered key witness statements, Vicente López Rodríguez was convicted of murder and robbery and sentenced to 12 years in prison. His brother, Mariano López Rodríguez, was convicted by the Juvenile Council (*Consejo del Menor*) and sentenced to 5 years.

In 2002 Vicente López won an appeal on the grounds that when he made his initial statement, the interpreter had not signed the document and a retrial was ordered. In 2003 the human rights organization *Centro de Derechos Humanos Fray Bartolomé de las Casas*, which had originally filed the complaint on behalf of the family, took over the legal defence of Vicente López and Mariano López, after concluding that they had not been effectively defended. The new lawyers presented witnesses who testified to Vicente Lopez's presence in another location at the time of the crimes; demonstrated that police and prosecutors continued to press charges of robbery even after the complainants informed them money had not in fact been stolen; that the only eye witnesses had not in fact identified the brothers (they had never been cross examined in the first trial); and that statements had been altered with corrector fluid to falsely implicate the defendants.

In November 2005 Mariano López was unconditionally released from custody after winning a federal appeal on the grounds of lack of adequate defence. In March 2006 Vicente López won his appeal on the grounds of lack of evidence. Amnesty International is not aware of any review of the case by the authorities to establish if there were criminal or administrative responsibility of officials involved in their prosecution and conviction.

Chapter 5: Impunity and accountability

The failure to consistently hold to account officials responsible for committing abuses or failing to carry out their duties diligently to investigate crimes, whether committed by non-state actors or other officials, remains a key obstacle to ending impunity and ensuring the impartial and effective application of justice.

Discrimination against marginalized and vulnerable sectors of society, which often undermines access to justice, also tends to limit access to these accountability mechanisms. Amnesty International has consistently documented cases of indigenous peoples unsuccessfully seeking official action for abuses suffered either at the hands of officials or *caciques*; women seeking redress for official failure to investigate allegations of violence, or undocumented migrants who are afraid to file complaints against those officials responsible for committing abuses.

In Ciudad Juárez and Chihuahua City, many of those responsible for the murder and abduction of 400 women since 1993 evaded detection and prosecution. At the very least, this can be attributed to the lack of due diligence over several years of officials from the local State Public Prosecutor's Office responsible for investigations. The recent federal review of these investigations concluded that 177 officials from the State Public Prosecutor's Office may have committed disciplinary or criminal offences in the mishandling of investigations. Despite this, the state authorities have failed to satisfactorily prosecute any of those responsible.

Although there have been advances over the last decade in developing accountability mechanisms to expose abuses and enable victims to bring complaints against officials, these have not proved sufficient to overcome many of the obstacles that frequently prevent holding those responsible to account. The continuing lack of public confidence, particularly in law enforcement agencies and judicial police, indicates the limited advances in this area.

Domestic accountability mechanisms:

1. Redress though the courts, particularly *amparo* injunction;
2. Internal disciplinary procedures of the institutions responsible for the alleged abuse;
3. Criminal investigations conducted by the Public Prosecutor's office;
4. A complaint to the National Human Rights Commission or the network of 32 local Human Rights Commissions.

1. *Amparo* and appeal

The judiciary is responsible for determining the legality of arrest warrants and detentions; setting the terms of pre-trial bail or custody; evaluating the evidence in order to commit a suspect to trial; convicting or acquitting a suspect at the end of the trial and determining sentences. A defendant may appeal these judicial decisions to a second instance court.

However, an appeal is often considered a less effective judicial remedy than a federal amparo injunction, particularly in state jurisdictions. This is because the federal judiciary is generally considered to be more impartial and the legal challenge is based on whether the action of a public official or agency is unconstitutional, rather than the application of secondary legislation. Amparo legislation empowers federal courts to review the contested action and issue an order nullifying its effects. If it considers the action or potential action violates the constitutional rights of the victims, the court ruling has the effect of requiring the government authority not to carry out the action and re-establish the rights of the victim.[123]

A successful amparo may overturn a lower court decision or a judicial order and require the reestablishment of violated rights, for example suspending an arrest warrant or court order to imprison a suspect pending trial (auto de formal prisión). In the cases of Agustin Sosa and Víctor Ramírez de Santiago amparo injunctions were essential to ensuring access to justice which state judicial authorities had denied.

However, a federal injunction does not address issues of possible criminal responsibility of officials who may have violated human rights, leaving unchallenged breaches in procedures and ethics that are common in the criminal justice system, which give rise to the abuses. It has also been argued that the overarching role of federal judiciary through amparo injunction to overrule all state court decisions has prevented necessary attention to state courts to ensure their greater impartiality and effectiveness.[124] In addition, an amparo injunction may take many months to go through the courts, is costly and to be successful generally requires an expert private lawyer. The state only provides the services of public defenders for lower court and first instance appeals, not for amparo injunctions, often leaving the poorest defendants reliant on the justice they can secure in state jurisdiction.

While an amparo injunction also functions as a form of habeas corpus to challenge illegal detention and possible forced disappearance, it is not necessarily effective. One of the legal requirements for filing an injunction in such cases is that the petitioner states where the detainee is being held and which authority was responsible. This is the very information that may not be available to the petitioner, such as a family member. Also once a suspect has been formally committed for trial with the auto de formal prisión, federal jurisprudence prevents an amparo ruling on the legality of the original detention.[125]

[123] This report does not deal in detail with the many different aspects of *amparo* injunctions and their central role Mexico's legal system.

[124] "this appear to have generate a relative lack of attention to local justice: if every case can end in the federal courts, there is little reason to invest in state level justice" (*parece haber generado un relativo descuido de la justicia local: si todo puede terminar en los tribunales federales, no hay muchas razones para invertir en justicia local)* Informe sobre Desarrrollo Humano México 2004, © 2005 por Programa de las Naciones Unidas para el Desarrollo, http://saul.nueve.com.mx/informes/index.html p156,

[125] "Ratification of the detention: the amparo against this is inadmissible, because of change in the legal situaiton once the formal prison committal order has been emitted" (*Ratificación de la detención: el amparo en su contra es*

For several years there have been discussions about the reform of the *amparo* legislation. Nevertheless, this has yet to produce results and it also remains unclear what impact if any the proposed reforms would have in extending access to justice.

2. Disciplinary or administrative investigations

Laws governing public administration at federal and state level establish a Comptroller (Auditor) General (*Contraloría General)* to evaluate and monitor public institutions, as well as receive citizens' complaints. The Federal Law on the administrative responsibilities of public officials (*Ley federal de responsabilidades administrativas de los servidores públicos)*, and regulatory laws and codes for all public institutions at federal and state level, including the police, Public Prosecutor's Office, judiciary or Public Defenders Office, establish the standards of conduct of officials.

Legal codes of conduct require any official who believes he or she has been ordered to break the law to communicate in writing directly to the institution's director. All officials are also obliged to report any violations by colleagues to their immediate superior.[126] Every institution is required to establish its own internal control mechanisms to monitor institutional performance, investigate complaints against officials and administer disciplinary punishments where appropriate. When the allegations of wrongdoing are of a criminal nature, the case should also be passed to the Public Prosecutor's Office in the respective jurisdiction for criminal investigation.

Efforts have been made at federal level in recent years to improve the impartiality and credibility of these internal oversight mechanisms with strengthened procedures. They usually rely on fulltime officers responsible for investigations and committees made up of senior institutional officials to hear complaints and consider the evidence. Nevertheless, they are not open to public scrutiny and do not generally involve representatives of civil society or other independent monitors which might strengthen their impartiality and engender public confidence.[127]

At federal level, there have been improvements in making public some of the basic information surrounding internal disciplinary investigations, but these are usually restricted to number of complaints, procedures concluded, and punishments. At state level, even such limited information is often difficult to ascertain. Furthermore, many state level internal

improcedente, por cambio de situación jurídica, cuando con posterioridad se dicta auto de formal prisión) (interpretación de la fracción X del artículo 73 de la ley de amparo, vigente a partir del nueve de febrero de mil novecientos noventa y nueve). Novena Epoca Instancia: Primera Sala Fuente: Semanario Judicial de la Federación y su Gaceta Tomo: XIX, Mayo de 2004 Tesis: 1a./J. 14/2004 Página: 441 Materia: Penal Jurisprudencia

[126] Federal Law on administrative responsibilities of public servants, Art. 47.

[127] The PGR internal control panel envisages the participation in its procedures of two academics.

oversight procedures are often much weaker and reliant on the discretion of the executive authority with little accountability or transparency.[128]

The creation of the Federal Judicial Council has strengthened the internal disciplinary procedures in the federal judiciary. However, even here the record of holding officials to account for alleged offences against the administration of justice does not appear to be sufficiently effective. In 2005 it was reported that of 800 complaints received against judges and judicial officials in the decade, only 20 judges or court administrators (*secretario de acuerdos*) were dismissed. Even in these cases, the National Supreme Court reinstated a quarter of the officials on review.[129]

Furthermore, internal oversight procedures may take considerable time before referring a case to the Public Prosecutor's Office for criminal investigation, potentially weakening the possibility of successful prosecutions. In the cases highlighted in this report, despite the strong evidence of fabrication of evidence, torture and ill-treatment or failure to carry out legal duties, officials have not been prosecuted. In these cases, disciplinary procedures appear to serve as an alternative to criminal investigations rather than a parallel process. As a result, internal investigations are often perceived as a means of protecting the interests of the institution, rather than ensuring justice for a complainant and appropriate punishment for an official.

Internal accountability mechanisms are vital for the effective management of public security and criminal justice agencies. However, at federal and state level they often fail to provide an environment in which victims of alleged abuses can have confidence that a complaint will lead to an impartial and effective disciplinary procedure, or that where appropriate, criminal prosecutions will take place.

In recent years many federal and state institutions, particularly the Public Prosecutors' Offices, have established human rights divisions or units. These units sometimes provide an important means of promoting and coordinating institutional human rights initiatives and training, and are often primarily responsible for following up recommendations or agreements on cases with the National or State human rights commissions or cases presented by non–governmental human rights organizations. However, the regulatory codes setting out the functions and powers of the Public Prosecutors' Offices establish these offices as separate from either the main investigative agencies or internal enquiries bodies of the institutions. As a result, national non-governmental human rights organizations have questioned the primary purpose of many of these human rights units as some appear to concentrate resources more on

[128] For example, Art 103 of Oaxaca Organic code of the Public Prosecutor's Office grants authority to the Attorney General to impose sanctions on personnel that commit minor offences without establishing criteria or procedures for effective and impartial investigations or punishment mechanisms.
[129] La Jornada, 1 November 2005. "*En el Poder Judicial, ínfima cifra de castigos en relación a quejas*".

improving the external reputation of the institution, rather than effectively addressing the lack of accountability of officials accused of human rights violations.

3. Criminal investigation by Public Prosecutor's Offices

When an alleged criminal offence is brought to the attention of the Public Prosecutor's Office - whether through a complaint of the victim, their family, or a witness, or as a result of an internal enquiry into misconduct of an official or a recommendation by the National or State human rights commissions – a preliminary investigation must be opened.

In cases where the implicated official is not a member of the Public Prosecutor's Office, such as members of the law enforcement police, there may be more likelihood of a successful investigation and prosecution. However, the process for holding officials to account is extremely slow and inadequate. Furthermore, where a representative of the Public Prosecutor's Office, whether a prosecutor, judicial police officer or forensic expert, is accused of negligence, wrongful arrest, torture and ill-treatment, fabrication of evidence, malicious prosecution or other irregularities, the alleged perpetrator belongs to the institution that is solely responsible for conducting the criminal investigation. As a result, such investigations may fail to meet minimum standards of impartiality and independence.

At federal level there have been efforts to strengthen the credibility of these investigative units. However, progress in developing independent and credible mechanisms to carry out criminal investigations against colleagues from the same institutions have been limited, particularly in many states where the primary responsibility for criminal investigations falls to the general investigation unit (*Averiguaciones Previas*).[130] As a result those responsible for carrying out the investigation may have worked alongside those implicated or may be hindered by the institutional culture.

Furthermore, the fact that the Public Prosecutor's Office remains part of the executive significantly increases the likelihood of political interference in the accountability mechanisms, particularly at state level. Therefore, despite the fact that the majority of complaints made to human rights commissions usually relate to alleged abuses by representatives of the Public Prosecutor's Offices, successful prosecutions for human rights violations are very rare. [131]

[130] As set out for example in the Regulations of the Organic Law of Public Prosecutor's Office of Puebla State (*Reglamento de la ley Orgánica de la Procuraduría General de Justicia del Estado de Puebla*).

[131] For example, in 2005 the Federal District Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF) in Mexico City received 5518 complaints against the PGJDF, 33.5% of all complaints against Federal District authorities (page 137), http://www.cdhdf.org.mx/informes/aldf/2006/DEFENSA.pdf). In 2005 the CNDH reported that 675 complaints received against the PGR (675) were second only to 807 against the Mexican Institute for Social Security (807); Informe de actividades 2005, www.cndh.org.mx

Under Mexican law, only if the Public Prosecutor's Office takes the decision to prosecute or not to prosecute (*acción penal*), can the victim or their relatives challenge the decision via an *amparo* injunction to the federal courts to review the prosecutor's decision.[132] However, given the prosecutor's control of investigations and evidence, it is extremely difficult to mount a successful challenge. Furthermore, it is much more common for prosecutors and police to demand the complainant provide the evidence of the offence and the probable perpetrator, while leaving the case formally open on file without carrying out an active official investigation. In such instances, the victim does not have an effective means of appealing against the lack of due diligence of the Public Prosecutor's Office.

Military courts

Amnesty International issued a report in 2004 highlighting the ongoing impunity generated by the wide scope granted military jurisdiction.[133] For this reason this report does not focus on this pressing issue. Nevertheless, it is important to reiterate that in cases of serious human rights violations allegedly committed by military personnel, the federal judiciary continues to interpret Article 13 of the Constitution to grant jurisdiction to the military justice system to carry out investigations and prosecutions before military courts. Amnesty International and other international and national human rights organizations have repeatedly documented the lack of impartiality and independence of the military justice system, which has consistently ensured impunity for those military officials accused of serious human rights violations, denying victims and their families their right to truth and justice. International human rights mechanisms from the UN and IACHR have called for Mexico to ensure such cases are investigated and tried by the appropriate civilian authorities.

All the cases of indigneous women reportedly raped by military personnel documented in Amnesty Inernational's 2004 report remain under military jurisdiction, despite the Minister of Defence acknowledging that rape could never be related to legitmate mlitary functions.[134] Amnesty International is not aware of any steps by the Mexican authorities to bring these cases under civilian jurisdiction and ensure access to justice for the victims.

In 2005 the National Supreme Court confirmed the judicial precedent of granting military jurisdiction wide scope when determining the criminal responsibility of military officials even when not on active duty or carrying out military activities.[135] This ruling also has particularly

[132] "The resolutions of the Public Prosecutor's Office on wether to prosecute or not may be appealed via judicial review in the manner set out in the law" (*Las resoluciones del Ministerio Público sobre el no ejercicio y desistimiento de la acción penal, podrán ser impugnadas por vía jurisdiccional en los términos que establezca la ley),* Mexican Constitution, art 21.

[133] *Indigenous women and military injustice*; November 2004; AI Index: AMR 41/033/2004.

[134] Meeting held between Secretary General, Irene Khan, and General Clemente Vega, the Minister of Defence in August 2005.

[135] Novena Epoca Instancia: Primera Sala Fuente: Semanario Judicial de la Federación y su Gaceta Tomo: XXIII, Febrero de 2006 Tesis: 1a./J. 148/2005 Página: 247 Materia: Penal Jurisprudencia. "Offences against military discipline referred to in paragraph i of Article 57 of the Military Penal Code. To demonstrate they have occurred it

important ramifications due to the intensive involvement of the military in policing operations to combat drugs trafficking in recent years. Furthermore, many military officials have been transferred as active members of the armed forces to the Federal Preventive Police raising serious concern that these officials carrying out civilian policing functions are not clearly subject to civilian oversight.

4. Human Rights Ombudsman

In 1990 the government founded the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) to protect and promote human rights. Constitutional reforms to Article 102 B in 1999 made the Federal Congress responsible for establishing the CNDH and granted the institution "administrative and budgetary autonomy". The 32 legislative assemblies of the federal entities are responsible for establishing state human rights commissions (*Comisiones Estatales de Derechos Humanos*, CEDHs) in their jurisdictions. The commissions are not competent to deal with environmental, electoral, labour or judicial issues.

Anyone can present a report of an abuse by a public authority to a human rights commission. If the agent implicated is federal (and any other agents belong to state or municipal authorities), this is within the competence of the CNDH. If the agent or agents solely belong to state or municipal authorities the complaint is within the competence of the relevant CEDH. The Commissions are legally bound to register a complaint and open an enquiry unless it is manifestly unfounded or not within its competence. From the outset the ombudsman must inform the authority accused and "try to reach reconciliation between the interests of the parties, always respecting the human rights of those affected, in order to secure an immediate solution to the conflict".[136] If the Commission does not find a satisfactory solution to the complaint or identify the official responsible, the case is archived, unless the complainant files a request within 90 days for the enquiry to be reopened. If the Commission judges that the complaint does not merit its involvement, it requests further justification from the complainant. If no response is received, the case is archived on grounds of lack of interest. All information and documentation on cases is kept confidential, unless a recommendation is issued in which case some information is released in the report.

If an investigation does not lead to conciliation, the commission may either find the authority not responsible, in which instance the case is closed, or if the authority is found responsible a recommendation is issued. Whilst a recommendation is not binding, the authority must respond within 15 days informing the commission whether it accepts the recommendation or not. If it accepts, it has a further 15 days to inform what measures have been taken to comply with the recommendation. The commission may make public the failure or refusal of an

is enough that the subject who commits them is a military official on active service" (*Delitos contra la disciplina militar a que se refiere la fracción i del artículo 57 del código de justicia militar. Para su acreditación basta que el sujeto que los realice tenga la calidad de militar en activo*).

[136] Law of the National Human Rights Commission, art 36.

authority to implement a recommendation. However, this often only amounts to a reference to the case in the commission's annual report.

The CNDH is also responsible for resolving disputes arising from recommendations, agreements and omissions by the 32 state human rights commissions, either by individuals complaining about decisions of their local commission; or against recommendations issued by the local commission or failure of local authorities to comply with a recommendation. This latter can result in a modification of the local commission's recommendation or its ratification backed up by a direct recommendation by the CNDH to the relevant authority. The CNDH is also responsible for a range of measures to promote human rights and prevent violations and may recommend modifications to practice and legislation to this effect.

The Federal Senate is responsible for selecting the president of the CNDH, who serves a five-year term and can only be removed via an impeachment process for misconduct. The Senate can re-elect the president for a further a term of office. The president of the CNDH reports annually to three branches of the state on its activities and is questioned by Congress.

In the 32 federal entities, the process of selecting the president of each CEDH and tenure of the office varies considerably. However, in most situations the local governor maintains direct or indirect control through the local governing party's majority in the legislature and the limited autonomous status of CEDHs.

The selection procedures at national and state level fall short of the effective participation of civil society, particularly of non-governmental human rights organizations, in determining the composition of the Commissions as set out in the Paris Principles on National Institutions for the protection and promotion of Human Rights.[137]

The emergence of the network of human rights ombudsmen's offices has been an important factor in promoting and protecting human rights in Mexico. Several human rights commissions, such as that of Guerrero and the Federal District have played important roles in highlighting abuses and seeking to hold relevant authorities to account. However, the performance of many other commissions is inconsistent and some lack sufficient independence to operate effectively. In those states where CEDHs are weakest, this acts as a deterrent to the reporting of human rights abuses by victims or non governmental human rights organizations. As a result, the information gathered on abuses in some state jurisdictions by CEDHs is at best incomplete.

President of a State Human Rights Commission

The president of the Chiapas State Human Rights Commission, **Pedro Raúl López Hernández**, reportedly received death threats and was subject to a smear campaign by the state authorities questioning his capacity during 2003 and 2004, which appeared to be linked to strongly critical recommendations issued by the commission. The threats were never effectively investigated and in August 2004 a dispute over procedures to carry out an audit of the Commission led to the impeachment of the president of the CEDH, forcing him from office. The local Congress named a former public prosecutor, with a reported record of failing to investigate allegations of human rights violations, in his place without a consultation process with civil society. Many local non-governmental human rights organizations have concluded that the manner in which the former president was removed and the replacement selected has left the institution without legitimacy or credibility.

Efforts by civil society to evaluate the performance of the CNDH using freedom of information legislation have been hampered by the CNDH's interpretation of its legal statute that prevents access to virtually all substantive case information – including by the complainants themselves. In particular, criticism has focused on the high number of cases that are archived because of lack of interest of the complainant; the high number of cases that result in conciliation agreements between the complainant and the authority (where there is no available information to determine whether conciliation was appropriate or if the authority complied); and the very few number of cases that result in recommendations. Without impartial and transparent audit of these cases it is impossible to determine the standard of performance of the CNDH and CEDHs.

The legislative framework of the CNDH also tends to reinforce national interpretation of human rights guarantees, as the institution is mandated to protect human rights recognized in Mexican legislation, rather than international human rights standards. The CNDH and CEDHs have not generally been at the forefront of efforts to ensure the effective application of international human rights standards in Mexican law.

Non-governmental human rights organizations and academics in Mexico have also criticised the failure of the CNDH and CEDHs to follow up vigorously on recommendations or conciliation agreements. While these agreements are not binding, failure to either publicise recommendations sufficiently or to effectively evaluate compliance, limits their effectiveness. In many cases, when commissions recommend an authority to improve training of officials and open an official investigation into an alleged abuse, it is not clear what steps are taken to assess if the relevant authority has substantively complied.

The cases included in this section illustrate the obstacles that victims of serious human rights violations and their families face when filing complaints and seeking justice, particularly if identified by the police as criminal suspects. Despite some improvements in accountability mechanisms in recent years, these cases show how difficult it is to challenge the legality of police conduct and force the authorities to undertake serious and impartial investigations to hold those responsible to account. Human rights violations, particularly committed by public security and judicial police, frequently go unreported as victims and their families have little trust in the reliability or fairness of official investigations. As a result, impunity for human rights violations remains the norm and victims and their families are denied access to justice and redress.

Nadia Ernestina Zepeda Molina

On the evening of 23 January 2003, 18-year-old student Nadia Ernestina Zepeda Molina was walking with two young men in the streets of Iztacalco District (*Delegación*) of Mexico City. According to her testimony, she and the two men were approached and detained by the Federal District Law Enforcement Police (*Policía Preventiva del Distrito Federal*) when they observed a police anti-drugs raid on a nearby house. Officers reportedly tried to force her to

undress in the street, and once placed in a police vehicle, she was threatened and insulted. One officer then reportedly sexually assaulted her while others shouted encouragement.

When the police finally presented the detainees to representatives of the PGR, they stated that the three suspects were reportedly carrying illegal drugs when they were stopped and searched. The two male suspects made statements that they only vaguely knew Nadia Zepeda and were released without charge. While in the custody of the public prosecutor, she was reportedly denied her right to make a phone call and forced to sign a document she was not permitted to read. Her initial statement (*declaración ministerial*) was taken in which she denied possessing drugs. She was then charged and placed in judicial custody.

Nadia Ernestina Zepeda Molina © private

During the first few days of detention, forensic doctors of the PGR reportedly examined Nadia Zepeda on three occasions, but failed to document bruises that were reportedly visible on various parts of her body. No investigation was undertaken into her treatment during arrest. In May 2004 she was sentenced to five years in prison.

In July 2003 Nadia Zepeda filed a complaint with Federal District Human Rights Commission (*Comisión de Derechos Humanos del Distrito Federal*, CDHDF) for sexual assault. In April 2005 she filed another complaint for sexual assault against the three arresting police officers with the Federal District Public Prosecutor's Office (*Procuraduría General de Justicia del Distrito Federal,* PGJDF). The CDHDF concluded that the Federal District Law Enforcement Police failed to provide accurate information relating to Nadia Zepeda's detention and proposed that the three implicated officers be investigated. Nevertheless, the criminal investigation against the three officials was closed by the PGJDF in 2006, despite her lawyers' efforts to appeal this decision to the courts.

In 2005 a medical examination by the special unit for sexual violence cases of the PGJDF identified previously undocumented psychological evidence of her sexual assault. Nevertheless, in 2006 PGJDF also sought to close the criminal investigation for lack of evidence. Her lawyers are seeking to appeal this decision.

In August 2005 Nadia Zepeda was released early from prison after completing two thirds of her five-year sentence.

Unlawful police killings in Reynosa

According to reports, on the night of 21 May 2005 22-year-old **Hernán Alemán Serrato,** was driving through the city of Reynosa, State of Tamaulipas with his friends, **Jorge Castillo Fuentes** and **José Reyes Avendaño García**, when they were overtaken by a police van containing at least 30 members of Federal Support Forces to the Federal Preventive Police (*Fuerzas Federales de Apoyo de la Policía Federal Preventiva)*. Shortly afterwards, the agents reportedly opened fire on their car without warning or provocation. More than 100 bullets reportedly hit the vehicle, killing Jorge Castillo Fuentes and José Reyes Avendaño. Hernán Alemán Serrato was taken to hospital where he later recovered. A federal police officer, **Pedro Moreno Feria**, who participated in the police operation, also died the same night in circumstances that have not been clarified.

Almost an hour later 22-year-old **Alberto Jorge González** was driving nearby when three Federal Preventive Police agents stopped him. He was forced to get out of the car and held face down while a police officer held a gun to his head. After the police checked his car, he was allowed to go. According to reports, shortly afterwards Alberto Jorge's vehicle crashed and police then opened fire on the car, killing Alberto Jorge González.

A statement issued by the Federal Preventive Police immediately after the two shootings claimed that the police had returned fire after being shot at by four members of organised crime. The report alleged that guns had been discovered in the two vehicles at the scene of the incidents. However, witnesses contradicted this version of events and claimed the attack had been unprovoked. On 30 June 2005 an administrative investigation carried out by the internal oversight body of the PFP (*Órgano Interno de Control*) was archived, concluding there was no evidence of police misconduct.

Following an official complaint presented by the families of the victims, the PGR opened a preliminary investigation into the killings. Amnesty International was informed in January 2006 that the investigation was being handled by the PGR's Special Unit to Investigate Crimes Committed by Public Officials and Against the Administration of Justice (*Unidad Especializada en Investigación de Delitos por Servidores Públicos y contra la Administración de Justicia)* and the Internal Affairs Unit within the Federal Preventive Police (*Dirección General de Asuntos Internos)* was conducting a new administrative investigation.

A local human rights organization, the *Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos,* and families of the victims also filed a complaint with the National Human Rights Commission (CNDH), which undertook an investigation and issued a

recommendation of 20 December 2005. The CNDH concluded that the use of lethal force by the police was disproportionate and contrary to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials According to its report, chemical forensic tests confirmed that the victims had not used firearms; and that the guns allegedly found inside the vehicles were probably placed there afterwards, suggesting the manipulation of evidence in order to divert the course of the investigation.

Rosa Elba Avendaño, sister of José Reyes Avendaño © private

Despite the seriousness of the evidence exposed by the CNDH report, the recommendation issued to the authorities focused on human rights training of police and compensation for the victims' families. The recommendation called for an internal administrative investigation and criminal enquiry into the incident – already ongoing. However, it did not highlight specific conduct or evidence to be investigated or refer to the possible fabrication of evidence. Despite the limited nature of the recommendation, the PGR and Federal Public Security Secretariat (*Secretaría de Seguridad Pública*, SSP) both refused to comply. However, the CNDH did not make public this information and failed to inform the families or their representatives until June 2006, advising them that the only public reference to the case would be made in the next CNDH annual report of activities. In June 2006 Amnesty International published a document on the case, but at the time of writing the organization has not received a response from the PGR, PFP or CNDH. [138]

Ill-treatment, torture and unfair trials: San Salvador Atenco

On 3 and 4 May 2006, municipal, state and federal police operations in the town of Texcoco and **San Salvador Atenco**, Mexico state, resulted in the detention of 211 people, the death of two civilians and scores of injured protesters and police. On 4 May, more than 2000 state police entered San Salvador Atenco in response to disturbances and released at least 4 police officers still reportedly being held hostage by supporters of a local political organization, the People's Front for the Defence of Land, (*Frente de Pueblos en Defensa de la Tierra*, FPDT).

According to information gathered by Amnesty International, police carried out indiscriminate detentions against members of the population using excessive force, ill-treatment and torture. **José Gregorio Arnulfo Pacheco**, his wife and their son were beaten

[138] *"How can a life be worth so little?"*, Unlawful killings and impunity in the city of Reynosa (AI Index: AMR 41/027/2006).

and arrested in their home by police early in the morning of 4 May. When his wife and son informed police that José Gregorio Arnulfo suffered from a degenerative disease severely restricting his balance, movement and speech, officers refused to believe them. They repeatedly beat and kicked José Gregorio Arnulfo as he was dragged to waiting police vehicles. As with the other detainees, his head was covered and he was forced to lie on the floor of the police vehicle while others were made to walk on top of him. He was repeatedly beaten and threatened. Amnesty International recently issued a report documenting the cases of several of the 47 women detained who reported suffering sexual assault during the bus journey to the state prison of Santiaguito.[139]

The severity of José Gregorio Arnulfo's physical injuries led prison doctors to order his transfer to a hospital in nearby Toluca. He was subsequently diagnosed with fractured ribs, a fractured trachea, cranial fissures and severe bruising. Despite his medical condition and his degenerative illness, he was returned to the prison hospital wing after five days.

Even though he had not been brought before a judge to make an official statement or made aware of the charges against him, on 10 May the presiding judge remanded José Gregorio Arnulfo into custody, along with 28 other detainees on charges of attacking public roads and kidnapping. His wife and son were charged with attacking public roads, a lesser offence, and released on bail.

The charges against José Gregorio Arnulfo were based on the statement made to a prosecutor by a police officer, alleging that he was the person who bound and gagged her while being held in San Salvador Atenco. However, the officer did not appear in court to substantiate the statement or verify the identification of José Gregorio Arnulfo. He spent a further month in prison in a serious condition without receiving adequate medical attention.

On 21 June he was brought before the judge and ordered to lift various objects. As a result of this hearing, the judge ordered his release on 23 June on grounds of lack of evidence. The Public Prosecutor's Office has appealed against his release. Amnesty International is not aware of any investigations arising from the arbitrary detention, ill-treatment and the unfounded prosecution of José Gregorio Arnulfo Pacheco

At the time of writing, investigations conducted into the police operation in San Salvador Atenco have resulted in disciplinary proceedings against nine police officers and criminal charges against 22 for the minor offence of abuse of authority. Despite concerns about the fairness of judicial procedures, more than 150 people of those arrested are being prosecuted for attacking public roads, 31 of whom are in detention facing further charges of kidnapping.

[139] Violence against women and justice denied in Mexico state (AI Index: AMR 41/028/2006).

Chapter 6: Conclusions and recommendations

Amnesty International continues to document cases of arbitrary detention, torture, ill-treatment, denial of due process rights and unfair trials, particularly at state level. The human rights abuses that occur in the public security and criminal justice systems are not primarily due to lack of resources. As evidenced in this report, the inadequate legal recognition of international human rights standards, the widespread failure to enforce existing legislation and continuing political interference in the administration of justice, prevent full respect for human rights across the country. Furthermore, deficient accountability mechanisms result in widespread impunity for those responsible for human rights abuses.

The lack of effective and impartial judicial scrutiny of the preliminary investigation carried out by the Public Prosecutor's Offices often establishes a significant procedural advantage in favour of the prosecution. This is also closely linked to the lack of explicit constitutional protection of the presumption of innocence, which tends to strengthen the presumption of legality of prosecution evidence and leads to excessive use of preventive detention. The evidential weight granted statements rendered to the prosecutor over those made in court has the effect of encouraging torture and miscarriages of justice. The lack of independent, well-trained and adequately paid state-appointed lawyers and the denial of access to legal counsel in the early period of detention often deny the right to effective defence. Criminal suspects and victims from the poorest and most marginalized communities are the most vulnerable and least well equipped to challenge the police and prosecution evidence. Their treatment by the criminal justice system often amounts to discrimination.

The impartiality and independence of the judiciary, particularly at state level, is weak. Excessive case workloads and court practices which do not require judges to actively direct all hearings, lead to inadequate judicial scrutiny of police, prosecutors and lawyers during the pre-trial and trial stages. The National Supreme Court has not established binding jurisprudence on the application of international human rights treaties in domestic law. The higher federal courts have not developed jurisprudence to ensure that due process rights are sufficiently protected in substance or prosecution evidence ruled inadmissible where appropriate.

The functions of the Public Prosecutor's Office are highly susceptible to political or personal influence to secure unwarranted or even fabricated prosecutions against opponents, community leaders and human rights defenders. The failure of the authorities to ensure representatives of key institutions, such as police, prosecutors, state-appointed lawyers and judges act in accordance with standards of impartiality and legality to protect human rights allows the frequent misuse of the justice system.

The internal and external accountability mechanisms to investigate and hold to account officials responsible for human rights violations are frequently ineffective. As a result many victims are denied access to justice and the public security and judicial institutions charged with upholding the law and protecting human rights are often not answerable to the community they serve.

The frequent failure of Mexico's public security and criminal justice system to ensure security or justice has been widely documented by national and international human rights organizations and academics. There is wide recognition that the justice system is not serving society adequately and needs substantial reform to ensure effectiveness and respect for the human rights of both criminal suspects and victims of crime. However, legal reforms are a necessary but not sufficient condition to ensure respect for human rights in the criminal justice system. Real change can only be measured in the effective and impartial application of appropriate legislation in which the protection of human rights is fully integrated.

It is time for the new federal government and legislature, as well as state governments and legislatures, to respond to the needs of Mexican society and ensure that law and practice is reformed at federal, state and municipal level to guarantee equal access to justice and respect for human rights.

Amnesty International recommendations to the Mexican Government:

International human rights standards and mechanisms

- Amend the Constitution and secondary legislation to ensure that Mexico's international human rights treaty obligations are fully enshrined in law and upheld by all public institutions.
- Amend the Constitution to enable direct federal involvement in state jurisdictions in specific cases where conflict of interests or inadequate judicial remedies violate international human rights standards requiring the prevention and punishment of serious human rights violations as recognized in international human rights law.
- Comply with Mexico's obligations under the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment by establishing a system of regular visits, reporting and follow-up by an independent national mechanism, in which diverse representatives of civil society play an active role, to places where people are deprived of their liberty.
- In consultation with the UN Office of High Commissioner for Human Rights in Mexico, review and strengthen the role of office in order to improve its capacity to support the development of measures to protect human rights at national and state level.

Public security and criminal justice system

- Reform the criminal procedural system to ensure that federal and state judiciaries vigorously uphold international fair trial standards. The right to the presumption of innocence should be established in Constitution. All evidence gathered in the prosecutor's preliminary investigation should be subject to effective judicial control and rigorous testing, including through cross examination in public hearings before a judge.
- Take immediate steps, in line with international human rights standards, to:

- ❖ Amend the Constitution and procedural codes in order that only statements rendered before a judge and in the presence of defence lawyer are admissible as evidence;
- ❖ ensure that judges proactively and impartially assess the circumstances under which suspects are detained and held in custody in order to guarantee any evidence of torture or other ill-treatment, illegal detention, coercion, or failure to ensure effective access to legal counsel, family or medical assistance is impartially and effectively investigated and where appropriate sanctioned;
- ❖ establish clear criteria for the use of information and admissibility of evidence, placing the burden of proof on the prosecution to demonstrate it has been obtained legally, particularly where suspects allege arbitrary arrest or torture or other ill-treatment;
- ❖ ensure in practice the right to effective defence, and an interpreter when appropriate, from the moment of detention;
- ❖ amend legislation on *en flagrante* arrests to bring it in line with international human rights standards;
- ❖ ensure that preventive custody is the exception not the rule and that judges are authorized to remand a criminal suspect into custody only on the criteria established by the IACHR that include: "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 order".[140]
- ❖ Restrict the scope of military jurisdiction in order that military personnel accused of committing human rights violations are investigated and tried by civilian authorities.

- Ensure that international human rights standards, including guidelines, are integrated into public security and investigative police operations and procedures.
- Establish the autonomy of the Public Prosecutor's Offices from the executive authority at federal and state level; ensure that the Offices are subject to effective judicial oversight and provide full and transparent account of their activities to civil society.
- Establish the effective autonomy of forensic services from the Public Prosecutor's Offices. Internationally recognized protocols on the collection, storage and assessment of forensic evidence should be enforced and monitored.
- Develop investigative procedures and resources that prioritise the use of scientific-based forensic evidence to avoid reliance on insufficiently corroborated statements by suspects or witnesses.
- Strengthen judicial independence and impartiality, particularly at state level, to ensure judges actively guarantee the equality of arms between defence and prosecution at all

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

stages of the judicial process and uphold the presumption of innocence and all other due process rights. Presiding judges should be legally bound to be present and actively direct pre-trial and trial hearings and proceedings (*audiencias y diligencias*). Failure to do so should be grounds for appeal. Ensure knowledge of international human rights law is an integral element of training and recruitment of all judicial officials.

- Reform *amparo* legislation to ensure prompt and equal access to justice and to guarantee its effectiveness in cases of alleged human rights violations, including arbitrary detention, torture and forced disappearance.
- Establish a regulatory framework for the legal profession, to ensure its members are subject to uniform training, qualifications and an enforceable ethical code.
- Ensure the autonomy of the Public Defender's Offices in all states. Guarantee sufficient investment in training, pay and conditions of state appointed lawyers and ensure their work is regularly scrutinised in order to uphold the right to effective defence of all criminal suspects.
- Ensure the sufficiency of well-trained public defenders and interpreters who speak and understand fully the different indigenous languages.
- Gather reliable data on access to justice and discrimination against persons on the basis of their status or membership of a disadvantaged group, whether as criminal suspects or victims of crime.
- Develop specific measures to ensure that individuals from these groups enjoy equal access to justice, taking into particular account the situation of the poorest and most socially excluded and their right to effective defence.

Accountability

- Recruit, train, evaluate and discipline police, prosecutors, public defenders, state forensic experts and judicial officials on the basis of statutory professional ethical codes in line with international guidelines on the role of each profession.
- All public officials and lawyers should be required to receive substantive training in international human rights law.
- Ensure effective, credible, impartial and prompt criminal investigation of officials implicated in human rights violations, including failure to report abuses or prevent abuses by others. The investigating authority should report publicly on its findings.
- Strengthen the capacity and independence of Public Prosecutor's Offices to conduct impartial and effective criminal investigations of officials accused of human rights violations, particularly in cases where the accused work for the Public Prosecutor's Office. In order to strengthen the credibility of these mechanisms, procedures should be transparent and involve representatives of civil society.
- Strengthen the internal supervisory mechanisms of the police, public prosecutors office, public defenders office and judiciary in order to ensure credible, effective and transparent disciplinary investigations of alleged wrongdoing and breaches in professional ethical codes. Disciplinary proceedings should be open to public scrutiny

and should not replace the responsibility to prosecute officials implicated in criminal offences.

- Investigate promptly and effectively allegations of misuse of the criminal justice system by public officials or private individuals for political or other motives without judicial foundation.
- Strengthen the National Human Rights Commission and State Human Rights Commissions to ensure their autonomy and their obligation to promote and monitor the implementation of international human rights standards; develop their legal faculties to enhance investigative procedures and their obligation to monitor and question the failure of authorities to comply with agreements or recommendations; and ensure their practices and procedures are transparent and open to public scrutiny.
- Strengthen the capacity of Judicial Councils to ensure the impartial and effective supervision and discipline of the judiciary in every jurisdiction.
- Ensure the effective application of freedom of information legislation and introduction of and strengthening of such legislation in all states.

Human rights defenders, community representatives and political opponents

- Ensure that human rights defenders, community representatives and political opponents, are not subject to unsubstantiated or fabricated criminal charges in relation to legitimate activities and the exercise of their fundamental freedoms.
- Develop national and state plans of action to implement the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental.

Rights of victims

- Reinforce and guarantee in practice the rights of victims of crime in order to ensure that filing a complaint is not excessively costly or time consuming; that police and prosecutors carry out impartial, prompt and thorough investigations; that victims can participate actively in proceedings as auxiliaries (*coadyuvantes);* that victims have the right to receive independent legal advice; and that victims are adequately protected from reprisals.
- Ensure that victims of human rights violations, including arbitrary detention and unfounded prosecutions, enjoy the right to full remedy and reparation, as provided under international law and standards, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Appendix: Institutions in Mexico's criminal justice system at federal and state level

Mexico is a federal republic with 31 states and the Federal District. There is a federal executive, legislature and judiciary. The Mexican Constitution establishes the relation between federal and state governments, which each has its own constitution, legislation, executive, legislature and judiciary, which must not violated the Constitution of the Union. State criminal and procedural codes establish proceedings and punishments for all offences that are not federal in nature. Federal offences are primarily limited to international or cross state crimes, particularly organized crime. The vast majority of criminal offences, from petty crime to murder, kidnapping, rape and other violent crimes are investigated and tried in state jurisdictions, unless federal agents or organized crime is involved.

Law Enforcement or Public Security Police are generally under the control of the **Public Security Secretariats (*Secretarías de Seguridad Pública*)** of federal and state governments, while municipal police answer to locally elected officials. These police forces are responsible for crime prevention and public order on the streets, as well as acting as auxiliaries to prosecutors and investigative police to enforce arrest warrants.

Judicial or Investigative Police (*Agencia Federal de Investigación and Agencia Estatal de Investigación* – known variously as *policia ministerial, policia investigativa or policia judicial*) work under the authority each of the Public Prosecutor's Offices at federal level, the 31 states and the Federal District. They carry out investigations and arrests under the order of public prosecutors (*agentes del ministerio público*).

The Federal **Public Prosecutor's Offices** (Ministerio Público federal) is part the Office of the Attorney General of the Republic (*Procuraduría General de la República,PGR)*. The Public Proscecutor' Offices in the 31 states and the Federal Distrcit are part of state Attorney General's Offices (*las Procuradurías Generales de Justicia de los Estados, PGJE)* and the Federal District Attorney General's Office (*Procuraduría General de Justicia del Distrito Federal, PGJDF)*. The Public Prosecutor's Offices are the only institution in each jurisdiction that are legally empowered to investigate and prosecute offences.

The **National Supreme Court of Justice** (*Suprema Corte de Justicia de la Nación*, SCJN) is responsible for the federal judiciary (along with the **Federal Judicial Council**, *Consejo de la Judicatura Federal*), whose criminal court division is made up of first instance district courts (juzgado de distrito) and unitary and collegiate courts which are appellate courts, including for amparo injunctions. There are 31 **state judiciaries** and Federal District judicary, whose criminal courts adjudicate in cases in relation to criminal offences committed in each state's jurisdiction. Justices of the **State Superior Courts** function as appeal court judges. The president of the State Superior Court is head of the state judiciary.

The authorities in each jurisdiction are responsible for providing state appointed legal advice (public defenders) via the **Public Defenders' Office** (*Defensoría Publica*) for those who cannot afford their own legal representation.

The **National Human Rights Commission** (*Comisión Nacional de los Derechos Humanos, CNDH*), 31 **State Human Rights Commissions** (*Comisiones Estatales de Derechos Humanos, CEDH*) and the **Federal District Human Rights Commission** (*Comisión de Derechos Humanos del Distrito Federal, CDHDF*) are autonomous state institutions empowered to receive complaints of abuses committed by officials and to carry out non-judicial investigations and make recommendations to the relevant authorities.

Glossary

ACHR	American Convention on Human Rights
AFI	*Agencia Federal de Investigación*, Federal Investigation Agency (formerly the federal judicial police)
AEI	*Agencia Estatal de Investigación*, State Investigation Agency (formerly the state judical police)
CEDH	*Comisión Estatal de Derechos Humanos*, State Human Rights Commission
CNDH	*Comisión Nacional de Derechos Humanos*, National Human Rights Comisión
IACHR	Inter-American Comission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
INEGI	*Instituto Nacional de Estadística, Geografía e Informática*, National Institute of Statistics, Geography and Computing
MP	*Ministerio Público*, (Public Ministry) – Public Prosecutor. The prosecution services are part of the Office of the State Attorney Generals or State Public Prosecutor's Office in the 31 states and the Federal District.
MPF	*Ministerio Público Federal*, Federal Public Prosecutor. Federal prosecution services are part of the Office of the Attorney General of the Republic.
NGO	Non-governmental organization
OACNUDH	*Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos*(Office of the United Nations High Commissioner for Human Rights)
PAN	*Partido Acción Nacional*, National Action Party
PFP	*Policía Federal Preventiva*, Federal Preventive Police
PGJE	*Procuraduría General de Justicia del Estado*, State Public Prosecutor's Office
PGJDF	*Procuraduría General de Justicia del Distrito Federal*, Federal District Public Prosecutor's Office
PGR	*Procuraduría General de la República*, Office of the Attorney General of the Republic or Federal Public Prosecutor's Office
PJE	*Policía Judicial del Estado*, State Judicial Police
PRI	*Partido Revolucionario Institucional*, Institucional Revolutionary Party
PRD	*Partido de la Revolución Democrática*, Party of the Democratic Revolution.

SCJN	*Suprema Corte de Justicia de la Nación*, Nacional Supreme Court of Justice
SEGOB	*Secretaría de Gobernación*, Interior Ministry
SSP	*Secretaria Seguridad Pública*, Public Security Secretariat