

HUMAN RIGHTS CHALLENGES FACING MEXICO

**Amnesty International memorandum
to President Enrique Peña Nieto**

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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HUMAN RIGHTS CHALLENGES FACING MEXICO

AMNESTY INTERNATIONAL MEMORANDUM TO PRESIDENT ENRIQUE PEÑA NIETO

On the occasion of the visit of Amnesty International's Secretary General to Mexico, the organization urges the government of President Enrique Peña Nieto to place human rights at the centre of its efforts to improve the lives of the population. Effectively combatting ongoing patterns of grave human rights violations and impunity is essential to ending the daily threats to the wellbeing of many sections of the population and to enable them to fully enjoy their rights.

In March 2014 the government will formally announce which of the 176 recommendations made by the United Nations Human Rights Council in 2013 it will adopt. The adoption of those recommendations that are consistent with international human rights standards followed by their rapid implementation with concrete actions that ensure lasting impact will be a test of how seriously the government takes its human rights obligations.

Amnesty International appreciates Mexico's continuing role on the international stage supporting human right initiatives and strengthening regional and international mechanisms, such as the support for and ratification of the Arms Trade Treaty. However, the government must now show the same commitment to secure real advances domestically.

Mexico continues to face serious challenges to the rule of law and respect for human rights. The alarming security situation in many parts of the country and the consequences of militarized combat of organized crime and drug cartels, initiated by the previous administration, has increased insecurity and violence in many regions, leaving many communities unprotected and at risk from all sides of the conflict. Reports of human rights abuses committed by police and security forces, including enforced disappearances, torture and arbitrary detention continue and impunity for all crimes remains the norm. Human rights defenders and journalist, who often try to support victims and expose abuses, face increasing attacks. Women, Indigenous peoples and migrants face discrimination and violence, but their chances of redress are slim. The justice system continues to fail victims, accused and society. These are just some of the human rights problems that people have to face in their daily lives, but so far the government has not responded to this critical situation.

On the other hand, the government has made much nationally and internationally of the economic and political reforms it has prioritized since taking office. However, public commitments and decisive action on human rights have been notable by their absence. There appears to be an assumption within the government that human rights do not need to be a priority issue, particularly in the President's agenda. This has resulted in human rights issues being relegated to mid-ranking administrative functions of the Ministry of Interior (SEGOB) and other institutions with limited authority and capacity to drive through substantial change.

Amnesty International's experience around the world has shown that when a government wants to really change the prevailing culture of human rights abuses and impunity, it must demonstrate that it is prepared to make this a real political priority and not pay mere lip-service to international human rights commitments; making clear that officials can no longer ignore or relegate human rights to the slow lane. Above all, in order to show that impunity will no longer be tolerated, it must demonstrate in practice that anyone implicated directly or indirectly in human rights abuses will face justice and victims will have access to truth and reparations. Amnesty International urges the President and his cabinet to show this strong determination and commitment to address the critical human rights situation in the country.

In this context, Amnesty International would like to raise a number of pressing concerns about the human rights situation in Mexico and to make a series of recommendation to President Peña Nieto and his administration:

Human rights reforms

The 2011 constitutional human rights reform is potentially the most important change to Mexico's legal framework in decades. It provides a vital mechanism for upholding international human rights standards in national law, but as yet the government and legislature have failed to adopt implementing legislation or send a clear message that international human rights standards will be enforced in practice.

- The government must establish a legislative agenda in consultation with civil society to fully incorporate constitutional human rights reforms into domestic legislation at every level.

Public security and human rights

It is no surprise that Michoacán state is the most visible example of the ongoing public security crisis. The state which witnessed the start of the ill-fated militarized combat of organized crime has endured years of violence and insecurity at the hands of criminal gangs as well as police and security forces, some of whom operate in collusion with criminal gangs. Self-defence groups appear to be a response to this neglect and abuse, but themselves now test the State's willingness to meet security and human rights obligations. The challenge for the present administration is to rebuild the social fabric and forge institutions which the population can trust and that do not resort to human rights violations. It is one thing to affirm that human rights are respected in public security policy, another is to really ensure that credible accountability mechanisms are in place to detect and uphold these standards, including to prevent and punish any abuses committed by self-defence groups. So far there is no evidence that the government is prepared to ensure that this is the case and make a clear break with the practices of the previous government. In other states like Veracruz, Tamaulipas, Coahuila, Chihuahua and Guerrero, where violence, insecurity and human rights violations remain a daily

threat to local populations, they receive little attention of policy makers or media.

- The government must ensure all police and security forces, as well as self-defence groups, respect international human rights norms on the use of force and prohibiting other human rights violations;
- The president should take every opportunity to send a strong public message that abuses will not be tolerated. He should direct that all allegations of noncompliance with international norms on the use of force or other human rights be immediately, exhaustively, and impartially investigated, with the perpetrators brought to justice and victims receiving full reparations.

Disappearances, torture and ill –treatment

A year on from the government making public the database of more than 26,000 people reported disappeared or missing during the last administration, the government has yet to publish a revised database of those people who remain victims of abduction by criminal gangs or enforced disappearances in which public officials are implicated. The promised national database of disappeared persons remains inoperative. The special search unit established in the Federal Attorney General's Office (PGR) has yet to publish results of its activities or demonstrate that it is capable of intervening effectively on behalf of the many scores of relatives of disappeared persons who have sought its assistance in the face of omission or complicity of other authorities. The new Executive Commission for the Attention of Victims has yet to make clear how it will improve the attention provided to victims and ensure respect for their rights. There has been little advance in locating victims of disappearance or holding to account those responsible.

When, as presidential candidate, Enrique Peña Nieto told Amnesty International that he assumed “the clear commitment to implement policies and actions to eradicate any act of torture” (*el pleno compromiso de implementar políticas y acciones que erradiquen cualquier acto de tortura*), the organization hoped that this would be the first serious step to acknowledging the true scale of torture and ill- treatment used by security forces and police at all levels in Mexico. However, torture and ill-treatment are rife. Most existing preventive measures appear more designed to under-record levels of torture and ill-treatment and ensure perpetrators avoid justice. As a result, the criminal justice system continues to rely on torture as the primary means of investigation.

- Ensure rapid and effective federal and state mechanisms to search for disappeared, taking steps to promote coordination between state and federal authorities and between the authorities of different states.
- Promptly secure and analyse all relevant evidence, including physical evidence and cell phone records, and identify and interview possible eyewitnesses.
- Take steps to ensure that families of the disappeared do not lose access to social services and consider the establishment of new initiatives to protect

families' access to housing, health, and education while their relatives' whereabouts remain unknown.

- The national database of the disappeared should include genetic information from victims' relatives and all relevant information from physical evidence, eyewitness testimony, and other evidence. The collection and recording of data should follow a standard protocol.
- In line with international best practice, guarantee reliable and timely exhumation and identification processes of unidentified bodies.
- Establish a national database of unidentified human remains that includes genetic information and other identifying characteristics.

Criminal justice system

The criminal justice system remains the nexus of many of Mexico's human rights problems. Arbitrary detentions, fabricated criminal charges, denial of due process and fair trial remain routine and all too rarely exposed and remedied. *Arraigo* detentions, which allow prosecutors to detain suspects for long periods in order to conduct investigations, continue to encourage abuses and undermine judicial supervision. The repeated recommendations of international human rights mechanisms to abolish *arraigo* detentions have been ignored. It is assumed that judicial reform - started in 2008 but introduced in only a handful of states ahead of the 2016 deadline - will improve the rights of victims and defendants and will produce better judicial decisions. However, in states that have introduced such reforms, like Chihuahua, statements obtained under torture have been ruled admissible, subverting human rights protections the new procedural system is supposed to safeguard. The unified procedural code recently approved by Congress for federal and state criminal jurisdictions must avoid this and ensure that illegally obtained evidence, such as statements extracted under torture, are not admitted as evidence and other due process guarantees are respected. It must also ensure the end of impunity for public officials implicated in human rights violations.

- Ensure effective and impartial investigation and prosecution of all allegations of torture and other ill-treatment. Acts of torture and other ill-treatment must be prosecuted as such rather than under lesser charges, such as "abuse of authority."
- Ensure that any official who fails to record evidence of torture or ill-treatment is held to account.
- Review medical examination procedures to ensure that anyone reporting torture or ill-treatment is immediately examined in line with the UN Istanbul Protocol and ensure that independent medical evaluations in line with this standard are accepted as evidence in judicial proceedings.
- Strictly enforce the rule that evidence obtained as the result of torture is inadmissible in court.
- The government must take steps to abolish "*arraigo*" and ensure that all detentions are lawful and are accurately recorded on an accessible national database

Military justice

Members of the army and navy continue to be implicated in grave human rights violations such as torture, extrajudicial killings and enforced disappearance. The National Supreme Court compliance with Inter American Court of Human Rights judgements requiring Mexico to exclude human rights crimes from military jurisdiction is a crucial step in making justice accessible to the victims and their relatives. Amnesty International welcomes the Senate's recent decision to remove the reservation to the article of the Inter-American Convention on the Forced Disappearance of Persons which prohibits the application of military jurisdiction in cases of enforced disappearance. It is also welcome that military authorities are declining judicial competence in some cases in favour of the civilian justice system. Yet the government and the legislature have so far failed to comply with the same IACHR sentences requiring the reform of the Code of Military Justice. As a result there is legal uncertainty regarding jurisdiction, particularly during initial investigations of alleged human rights crimes committed by military personnel.

- Reform the code of military justice to ensure that all allegations of human rights violations committed by military personnel are investigated, prosecuted and tried in the civilian justice system.

Irregular migrants

In 2013, 82,269 migrants were detained by migration authorities in Mexico and 75,704 were deported, the vast majority to Guatemala, Honduras and El Salvador. Far more Central American migrants tried to make the journey to the USA. In Mexico many migrants continue to suffer abuses at the hands of police and others are the victims of targeted kidnapping, trafficking, rape and killing by criminal gangs which often operate in collusion with local authorities. Migration legislation reforms which strengthened some rights of migrants, particularly the right to protection and access to justice, have not been implemented adequately. The National strategy to combat kidnapping of migrants continues to fail to hold to account criminal gangs and public officials preying on migrants. State level authorities largely ignore the plight of irregular migrants, while federal authorities increasingly regard migrant flows as a threat to national security, rather than ensuring respect for the human rights of migrants in transit. Recently, mothers of Central America migrants toured the country again searching for their loved ones and demanding investigations. The National Human Rights Commission issued an unsatisfactory report in relation to the killing of 72 migrants in San Fernando, Tamaulipas state, in August 2010. The failure of the authorities to protect the right to life of the migrants or establish full responsibility for the massacre was not included in the report, which focused solely on limited aspects of the case around the gravely flawed forensic procedures for identifying the remains. The bodies of other victims of mass killings, many believed to be migrants, remain to be established. Amnesty International welcomes the involvement of international experts and local human rights groups in measures to reliably identify remains.

Migrants' rights defenders working at the network of shelters around the country continue to face threats and intimidation for their work. Several were forced to temporarily leave their states as the authorities were unable to ensure their protection or hold to account those responsible for the threats.

- State and federal officials should take immediate measures to protect migrants from violence, including by providing effective policing in and around areas where migrants are known to be subjected to extortion and physical abuse. Such measures should increase migrants' access to protection and justice; they should not target migrants for criminalisation.
- The government must ensure federal and state coordination to investigate and prosecute criminal gangs and public officials responsible for abuses against migrants.
- Migrants who are arrested and detained on criminal charges must be accorded due process and other rights, including the right to be informed of the charges against them, the right to legal assistance, the right to consular protection if they wish, and the right to the assistance of an interpreter.
- The authorities should develop initiatives to address the specific protection needs of migrant women, including migrant women in the labour force and migrant women who are the victims of trafficking.
- The authorities responsible for child protection should develop policies, protocols, and programmes to address the specific protection needs of unaccompanied migrant children.
- The authorities should review standards and practices relating to applications for asylum, for temporary visas for witnesses to crimes, and for humanitarian visas to ensure that they are adjudicated in conformity with international standards and comply with due process protections established by law.

Human rights defenders and journalists

Human rights defenders and journalists face attacks, threats, intimidation and abduction and killing in reprisal for their legitimate and vital work. Those behind the attacks are almost never brought to justice. Amnesty International has welcomed the establishment of the Mechanism for the Protection of Human Rights Defenders and Journalists. Nevertheless, many of the more than 100 defenders and journalists at risk who have sought protection have not received a timely or effective response, creating frustration, insecurity and disillusion. Despite the government's assertions that the mechanism is working effectively, it is far from being fully operational as it lacks trained staff, resources and the high level political support necessary to ensure that its protection measures are implemented by authorities at all levels. The impunity enjoyed by those responsible for attacks due to ineffective investigations, often conducted by state authorities who are suspected of involvement in threats, continues to foster tolerance of attacks. The Mechanism should be just one part of a comprehensive strategy to address violence against those defending human rights and journalists. The federal government has so far failed to respond convincingly to this prevailing climate of hostility to defenders and

journalists in several states.

- Take every opportunity to publicly acknowledge the positive role played by journalists and human rights defenders and their right to engage in their work. Such recognition is an essential first step to reduce the risks under which journalists and human rights defenders operate.
- Adopt a comprehensive approach to the protection of human rights defenders and journalists, taking into account the gender, ethnic, and other dimensions in which they operate.
- Provide full human, financial and political support to the protection mechanism for human rights defenders and journalists and take effective measures to implement the mechanism in practice so that it can respond in a timely and effective manner to the security needs of those at risk to ensure their safety.
- Ensure those responsible for threats and attacks on journalists and human rights defenders are held to account.

Women's Human Rights

Despite government measures to support women's rights, gender equality remains a far-off goal. Violence and discrimination against women and girls violate their human rights and severely compromises their sexual and reproductive health and rights.

Gender based violence continues to blight the lives of women and girls across Mexico. Impunity for such violence, including rape and femicide remains widespread. Federal and local laws enacted since 2007 to improve investigation and prevention of violence have been largely ineffective or not enforced, leaving women and girls at continued risk. There has been a failure to evaluate or modify legislation or effectively address deficiencies in the handling of cases. Executive authorities at federal and state level have consistently blocked efforts by human rights organizations to trigger the gender violence alert mechanism established in legislation to ensure federal intervention and coordination of measures to address widespread gender violence in specific regions. Recent reforms to procedures do not address the underlying difficulties in getting authorities to acknowledge levels of gender-based violence and take decisive steps.

Recent reform of many state level constitutions recognising the “right to life of the foetus from conception” is undermining the enjoyment of women’s sexual and reproductive rights. It has created legal ambiguity around women’s right to access legal and safe abortions in cases of rape or where the women’s health is at risk and contributed to an increased number of criminal prosecutions of women in relation to illegal abortions. The government has failed to take a clear stand on this issue or demonstrate its commitment to protect women’s sexual and reproductive rights.

- Ensure that the state’s approach to public security does not have a negative impact on women and girls.

- Comply with its due diligence obligations to prevent violence against women and girls, including domestic violence, forced disappearances, torture and murders, especially femicide; investigate, prosecute and punish state and non-state perpetrators; and provide redress to women who have been victims of violence.
- Implement the decision of the Inter-American Court of Human Rights in the Cotton Fields case, in particular by conducting a full investigation, which should incorporate a gender perspective, and by providing full reparation for the families, as well as by instituting changes in policies and practices to avoid repetition of these violations in future cases.
- Reform the General Law on Women's Access to a Life Free from Violence and implementing legislation to ensure that public officials are held to account for failures in due diligence to protect women at risk or investigate those responsible violence against women.
- Reject measures undermining women's sexual and reproductive rights by ending criminalization of abortion and ensuring women and girl's access to safe abortion services in cases of rape, incest and where the woman or girl's health is at risk.

Indigenous People's Rights

Twenty years after the emergence of the Ejército Zapatista de Liberación Nacional (EZLN) in Chiapas, many Indigenous communities across the country continue to face discrimination, including limited access to justice, health, education, housing and land. The measures taken by the government so far do not adequately address many of the major structural obstacles to the enjoyment of these rights. The increasing number of resource extraction and economic development projects which directly impact Indigenous peoples' lands pose a serious challenge to the government's obligation to provide adequate impartial information and conduct transparent consultation processes to obtain the full, prior and informed consent of affected communities.

- Ensure that Indigenous communities are fully consulted during the development and delivery of policies to strengthen their access to housing, healthcare, education, water and other essential services;
- Guarantee that Indigenous communities are fully consulted on the development of resource exploitation projects and other matters affecting their use of their lands, territory, or resources in order to obtain their free, prior and informed consent.
- Ensure that resource extraction and economic development projects are in compliance with Mexico's obligations under ILO Convention No. 169, the Indigenous and Tribal People's Convention, and in accord with the principles set forth in the UN Declaration on the Rights of Indigenous Peoples.