

AI Index: AMR 41/078/2012

**AMNESTY
INTERNATIONAL**



Enrique Peña Nieto
President of the United Mexican States
Official Residence of Los Pinos
Col. San Miguel Chapultepec
11850 Mexico City, C.P. 11850
Mexico

18 December 2012

Dear Mr. President,

We sincerely hope that your six-year term in office will be exemplary in relation to the protection and promotion of human rights in Mexico. We trust, in this regard, that your government will take concrete and urgent steps to confront the serious and widespread violations of human rights that are taking place in the country, including, for example, torture, forced disappearances, extrajudicial executions and arbitrary detentions. These violations intensified under the previous administration and continue to be committed with the greatest impunity.

The violent disturbances of 1 December and the police response, which resulted in complaints of arbitrary detention, torture and other ill-treatment, demonstrated the challenges facing the federal and state governments in terms of guaranteeing respect for human rights. Good intentions and promises are insufficient to prevent and eradicate human rights violations.

As you will recall, Amnesty International wrote to all presidential candidates during the electoral campaign to request concrete commitments on human rights. We would like to thank you for your response, which contained a number of promises to tackle priority human rights issues. In this regard, the Pact for Mexico and the commitments made by yourself on 10 December, such as pushing ahead with the General Law on Victims and reforming the legal framework on enforced disappearances, are positive steps on the path of establishing a State policy that prioritises human rights protection. As an agreement reached between the two main political parties, the Pact for Mexico establishes a platform for making progress on several urgent human rights issues. The fact that you include a timetable for achieving a number of the agreed actions is also positive.

Despite these favourable aspects, however, Amnesty International considers it essential that participation be extended to other sectors of society in order to establish a substantial and effective human rights programme capable of achieving the necessary change. In the first place, the involvement of both the judiciary and the state and municipal authorities is essential if a truly national State policy is to be achieved rather than simply a policy of the federal administration – an error that has been committed by other administrations. Secondly, it is essential that civil society, and human rights NGOs in particular, have an opportunity to participate fully in the design, implementation and evaluation of actions to ensure that Mexico complies with its human rights obligations.

On 10 December, you awarded the national prize for human rights to Father Alejandro Solalinde. We are delighted at the State's recognition of this valiant and indefatigable defender of the rights of migrants that pass through Mexico. You did not, however, detail your government's policy towards either human rights defenders or these migrants with any clarity.

In your letter to Amnesty International prior to the elections, you stated that, “We will not tolerate impunity for murder, kidnappings, injury, threats or any attack on the exercise of freedom of expression or of the press, and nor will we accept that the work of human rights defenders should be threatened in this way.” It is therefore of some concern that you, as President of the Republic, failed to recognise the legitimacy of the work of **human rights defenders** in general during the presentation of this national human rights award. It is essential that you and your government express your full support for human rights defenders, avoiding the hesitancy that characterised the positions of some of the previous government’s representatives.

It is also important to correct the section of the Pact for Mexico that attempts to attribute sole responsibility for attacks on human rights defenders and journalists to organised crime. The cases documented by Amnesty International show that a significant proportion of the attacks and threats come from public officials, or that public officials are colluding with those responsible.¹ Until you recognise this reality, it will be impossible to implement an effective protection mechanism or to strengthen criminal investigations into the cases reported.

In terms of the protection mechanism for human rights defenders and journalists, which has the concrete support of human rights NGOs, it is essential that your government commits the necessary budgetary resources and supports this mechanism with the institutional measures established in the respective legislation. Commitment 29 of the Pact for Mexico seems to create some confusion in this regard, by indicating the creation of a new mechanism. The Under-Secretary for Legal Affairs and Human Rights of the Ministry of the Interior attempted to clarify this matter on 11 December during an event with human rights organisations but I invite you to confirm, from the Presidency, your commitment to ensure that the protection mechanism will operate in accordance with the agreements already reached with civil society.

The Pact for Mexico’s promise to implement “a migration policy that defends the decision to migrate as a human right” is laudable, as is your commitment in your letter to Amnesty International to ensure “the effective protection of migrants”. There is, however, little detail with regard to what these promises will mean in practice for irregular **migrants**, in particular the thousands of Central American migrants who pass through Mexico. The pattern of murders, disappearances, rapes, extortion and forced recruitment into organised crime continues despite the various commitments made by the previous government to reinforce migrant protection.² It is essential that your government shows full leadership in this regard in order to ensure that migrants are protected in Mexico and to guarantee access to justice through effective and coordinated action at all three levels of government, aimed at combating organised crime and punishing public officials who exploit the migrants’ vulnerability. Migration legislation and its regulatory framework must be one way of guaranteeing these rights.

The insecurity and violence being suffered by Mexico is a reflection of the complete failure of the previous government’s public security and justice policy. Violence and insecurity have become ever more widespread, and human rights violations on the part of the security forces have become routine and systematic. Despite this reality, the previous government repeatedly upheld the fiction that respect for human rights formed a part of its security policy. The clear gap between reality and government rhetoric resulted in victims being denied access to justice and abuses and impunity being tolerated. In your letter to Amnesty International during the electoral process, you made “a commitment not to permit human rights violations and to fulfil the constitutional mandate to investigate and prosecute such conduct within the current framework of the law”. Your decision to push ahead with the General Law on Victims, previously vetoed by former President Calderón’s government, is important but it is now time to implement a policy that will truly guarantee public security and justice and bring impunity to an end.

¹[See, for example, Amnesty International’s regional report *Transforming pain into hope: human rights defenders in the Americas*. AMR 01/006/2012, 7 December 2012](#)

²[Amnesty International. *Invisible Victims. Migrants on the move in Mexico*. Index: AMR 41/014/2010, 28 April 2010.](#)

The deployment of the **armed forces** in different parts of the country to perform police duties and combat crime has had a negative impact on human rights, as indicated by Amnesty International and other national human rights organisations.³ The armed forces are not trained to carry out such tasks, they are not structured transparently, are not receptive to the concerns of civil society and are not appropriately supervised to conduct such tasks. The lack of effective and impartial mechanisms of accountability has resulted in almost total impunity for the human rights violations. It is also worrying that dozens of members of the armed forces, either retired or in active service, hold civilian posts with responsibility for public security in many states and municipalities with no clear mechanisms of control or accountability to the civilian authorities.

The Supreme Court of Justice of the Nation's (SCJN) decisions to comply with the ruling of the Inter-American Court of Human Rights (IACHR Court) and exclude human rights violations committed by the armed forces from the **military jurisdiction** is an important step towards ensuring that these courts hear issues strictly related to military discipline. However, the SCJN's rulings do not amend the Military Justice Code. A reform of this code is urgently needed to give legislative expression to the obligation to transfer investigations into complaints of human rights violations, along with prosecution of those responsible, over to the civilian justice system. I would remind you of your commitment in your letter sent to Amnesty International to "fully respect the rulings of the Supreme Court of Justice of the Nation and promote the necessary legal reforms to bring the regulatory framework into line with this jurisprudential thesis, and the constitutional and conventional human rights framework." We would like to receive updates on the measures taken to implement these actions.

In addition to implementing these reforms, in order to comply fully with the decisions of the IACHR Court and the SCJN you must issue a presidential decree explicitly specifying the duty of the police and the civilian Attorney General's Office to instigate and duly complete investigations into all complaints of human rights violations allegedly committed by members of the armed forces. Moreover, you must emphasise the military's duty to cooperate fully with these investigations.

The Pact for Mexico announces a **police reform** and the creation of a national *gendarmerie*. The lack of clarity and detail in these plans makes it difficult to determine the implications for public security and human rights protection. It is, however, important to stress that a true reform of the police will only be achieved if both the institutional model and the mechanisms for accountability and control that will ensure respect for human rights are redefined. An important factor in the failure of the Federal Police under the previous government was the lack of independent and robust mechanisms of accountability through which to deal with complaints of human rights violations. This opened the path to the same patterns of abuse, committed by action or omission, which have characterised other attempted reforms. It is essential that broad consultations are held to ensure that the police reform process is based on respect for human rights in practice and not merely in theory, so that the observation you made in your letter to us that "security and respect for human rights are inseparable" can become a reality.

In November, Amnesty International presented the report, *Known abusers but victims ignored: Torture and ill-treatment in Mexico* to the UN Committee against Torture.⁴ The document highlights the systematic torture and ill-treatment that became widespread during the last administration. Despite banning the admissibility of confessions - or any information obtained through torture or ill-treatment - as evidence, this practice continues in some courts. The conclusions of the Committee against Torture recognised the gravity of the situation and it made a series of recommendations that your government needs to urgently implement, including the eradication of informal preventive detention ("*arraigo*"). The proposal to reform

³ Mexico: New reports of human rights violations by the military, AMR 41/058/2009, 8 December 2009, <http://www.amnesty.org/en/library/info/AMR41/058/2009>

⁴ <http://www.amnesty.org/en/library/info/AMR41/063/2012/en>

the legal framework governing torture at federal and state level is important but insufficient to overcome the current crisis. In your letter to Amnesty International, you made “a full commitment to implement policies and actions that will eradicate all acts of torture”. It is therefore essential that your government clarify the action it is going to take in order to comply with the recommendations of the Committee against Torture and Amnesty International’s report.

On 10 December, you announced that you were going to submit a bill of law aimed at reforming the legal framework for **forced disappearances**. This is a step in the right direction but it is essential that civil society and the Office of the UN High Commissioner for Human Rights are consulted regarding this draft bill in order to ensure that international human rights standards are met and that federal definition of offences are in line with these standards.

Kidnappings and disappearances reached staggering proportions during the last administration – as recently confirmed by a document leaked from the Attorney General’s Office, which apparently indicate 25,000 victims.⁵ In its report this year, the UN Working Group on Enforced or Involuntary Disappearances documented how the lack of an effective investigation into the vast majority of these cases had prevented the basic facts, and the possible involvement of public officials, from emerging. The Committee, however, stressed the State’s responsibility for guaranteeing impartial and exhaustive investigations into all cases in order to establish the facts and ensure that family members have access to justice, truth and reparations. It is essential that your government comply with the Working Group’s recommendations, in particular by establishing a national database of all disappearances and unidentified remains, and creating rapid search mechanisms and specialist investigation units.

The federal civilian **justice system** is often incapable of guaranteeing access to justice for the victims of crime or of ensuring due process and a fair trial for the accused, in particular those from vulnerable groups. This results in impunity of up to 98%, unfair sentences and a society that has no faith in its justice system. The procedural reform underway is a necessary instrument for strengthening respect for the rights of the victims and the accused but, in itself, will not guarantee these results. This can be seen in states such as Chihuahua where criminal justice reforms have already been introduced but where confessions obtained by torture are, nonetheless, still being used as evidence in court proceedings. The Pact’s commitment to “administer more rapid, effective and transparent justice” is therefore welcome but there is a need to ensure that the procedural reforms will guarantee due process and effective investigation. If the new justice system is to be free from bad practices and impunity then legislators must not dilute the safeguards in the criminal justice reform and must ensure there are mechanisms of accountability that are capable of duly punishing officials who fail to comply with or break the rules. Measures to guarantee this need to be urgently adopted.

Violence against women is a serious problem throughout the whole country and impunity continues to be the norm. The legislative progress of recent years has not resulted in a decline in violence or impunity. There is a continuing lack of accountability on the part of public officials who fail in their obligation to protect and to ensure access to justice. States such as Chihuahua, Mexico, Nuevo León and Chiapas continue to experience intolerable levels of violence. In your letter to Amnesty International, you undertook to “make the work of the National System for Preventing, Addressing, Punishing and Eradicating Violence against Women more effective, and to guarantee the human rights recognised in the Political Constitution, International Treaties and current laws, as well as to strive to improve the general and regulatory framework in this regard, including compliance with the Official Mexican Standards on sexual and reproductive health”. The Pact for Mexico does not, however, include a commitment to enhance efforts to fight violence against women and discrimination. Amnesty International is concerned at this omission and requests that your government set out the actions you intend to take to reinforce measures aimed at guaranteeing women’s rights,

⁵ Mexico’s crime wave has left about 25,000 missing, government documents show, The Washington Post, 29 November 2012, http://articles.washingtonpost.com/2012-11-29/world/35584943_1_mexico-city-mexican-government-human-rights

including protecting women and girls in situations of risk and ensuring the effective investigation, from a gender perspective, of acts of violence against women.

The Pact for Mexico notes the historic debt owed to the **indigenous peoples** of Mexico, many of whom continue to suffer discrimination and marginalisation. The practical commitment to implement “the right to non-discrimination, to land, housing, health, water and education, along with their members’ participation in decisions affecting their peoples” is positive. It is, however, essential to avoid the use of paternalism or “caciquism” when implementing these policies, as has so often been the case in the past. The indigenous peoples must play a central role in their own development. The indigenous communities are, for example, coming under increasing pressure from infrastructure and natural resource extraction projects which are affecting their community lands. Existing legal mechanisms, such as the communities’ agrarian laws and decision-making practices, are often ignored and participatory consultation processes are not conducted in good faith with all members of the affected communities, in contravention of the rules on consultation and free, prior and informed consent specified in the UN Declaration on the Rights of Indigenous Peoples. It is essential that you and your government clearly define how you are going to ensure respect for this declaration and for ILO Convention 169 on indigenous and tribal peoples.

Mexico has played a key role in developing **human rights mechanisms** both within the United Nations and the Organisation of American States. The new government must continue to play an important role in multilateral mechanisms and fora in order to continue the progress that has been made in international human rights protection. In addition, your government must promote greater consistency between international performance and domestic action on human rights. It is therefore important to ensure that the last five judgments issued against Mexico by the IACHR Court are implemented, along with the recommendations of the UN’s thematic human rights mechanisms and the Inter-American Commission on Human Rights. Moreover, it is important to ensure that the Mexico Office of the UN High Commissioner for Human Rights is strengthened so that it can play an active role in transforming the human rights situation in Mexico.

The Pact for Mexico promises “to defend human rights as a State policy” and undertakes to implement a National Human Rights Programme based “on the recent constitutional reform, on the international treaties that Mexico has signed and on the pressing needs of the population”. Amnesty International welcomes this commitment but has heard similar commitments in the past that have not resulted in action. It is therefore essential that your government move ahead with this from the very start and clearly define the measures to be taken.

I await with interest your response to the questions and concerns set out in this letter.

Yours faithfully,

Salil Shetty
Secretary General