



*“ Impunity and corruption appear to have continued unabated. Whatever the changes and reforms, they are not seen in reality. ”*



# Injustice and impunity:

## Mexico's flawed criminal justice system

February 2007

AI Index: AMR 41/001/2007

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## Methodology

This report is based on the report *Mexico: Laws without justice – Human rights violations and impunity in the public security and criminal justice system* (AI Index: AMR 41/002/2007). It is based on interviews carried out by Amnesty International representatives between 2004 and 2006 with representatives of federal and various state governments, prosecutors, defence lawyers, members of the judiciary, non-governmental human rights organizations and victims of human rights abuses and their families.

Cover image: Felipe Arreaga Sánchez in Zihuatanejo Prison.  
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## CASE STUDY



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**Martín Barrios Hernández**

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

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 Tehuacán's many textile factories. In November 2005, the Labour Commission supported 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 Martín Barrios had demanded money to call off the workers' protests. He also alleged Martín Barrios returned the following day, threatened him and 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 that he was at a public meeting at the time the alleged offence was committed. They also provided evidence that the demonstration outside the factory owner's house the next day had been peaceful. Despite this, on 4 January the judge remanded Martín Barrios in custody and committed him for trial.

Following a national and international outcry, the factory owner "forgave" Martín Barrios — a legal formula for ending the prosecution. Martín Barrios was released without charge.

Subsequently death threats were reportedly made against Martín Barrios and other members of the Labour Commission. As a result the Inter-American Commission on Human Rights requested that the Mexican government take precautionary measures to guarantee Martín Barrios' safety. At the time of writing Amnesty International was not aware of any steps taken to hold to account those responsible for bringing unfounded and unsubstantiated criminal charges against Martín Barrios.

# 1 Introduction

The Mexican government has recently shown considerable commitment to international human rights law. Mexico has now signed and ratified most international and regional human rights instruments, and the government has issued an open invitation to international and regional human rights bodies and non-governmental human rights organizations.

However, as the experiences of Martin Barrios and others highlighted in this report show, despite some improvements to the public security and criminal justice system over recent years, much remains to be done.

There is still a wide gap between legal principle and the everyday reality of those who come into contact with the law and need its protection either at state or federal level. The criminal justice system is sometimes misused to detain and prosecute social or political activists and human rights defenders. Some have the threat of arrest hanging over them for years because of warrants which are issued but not acted on. People are detained on the basis of obviously flawed evidence, sometimes well beyond the legal limits allowed for pre-trial detention. Others are denied access to adequate legal advice and representation at precisely the point when they are most at risk of torture or other ill-treatment to extract confessions. Reports of torture are routinely dismissed or ignored by judges, reinforcing impunity for these human rights violations. All too often it is the poorest and most vulnerable who are likely to be the victims of these abuses.

The administration of President Vicente Fox Quezada acknowledged some of the weaknesses in the system but, after more than two years of debate, proposed legislative reforms have yet to be agreed or approved by Congress. There is wide recognition that safeguards enshrined in law are all too often not being applied on the ground and that the people of Mexico are far from being adequately protected.

In 2004, in the wake of government proposals regarding reforms, Amnesty International wrote to members of Congress urging the approval of some important elements of the proposals. It also called for other elements of the proposals to be strengthened, particularly major improvements in the internal and external accountability mechanisms of the police, prosecutors and judges in order to end impunity for abuses.<sup>1</sup> More than two years have now passed and it is important that pressure continues to be applied on the Mexican authorities to ensure increased public confidence and equal protection before the law for all citizens.

<sup>1</sup> Amnesty International, *Memorandum to Mexican Federal Congress on reforms to the Constitution and criminal justice system* (AI Index: AMR 41/032/2004).

## 2 Human rights and the law

The welcome engagement by the Mexican government with international human rights bodies has produced a series of detailed recommendations, many focusing on the failure of the criminal justice system to guarantee the rights of criminal suspects and victims of crime.

A key obstacle to improving the protection of human rights has been the failure to ensure that international human rights commitments assumed by the government are applied in practice throughout the country. In 1999 the National Supreme Court ruled that international human rights treaties rank below the Constitution but above federal and state laws. However, this ruling is not binding for lower federal and state courts and so is not generally applied. As a result, while the government formally acknowledges Mexico's international human rights obligations, judicial rulings rarely take them into account.

Mexico's Constitution establishes a number of important individual guarantees, many of which reflect the human rights enshrined in international human rights treaties. The obligations on the authorities are elaborated in federal and state legislation and regulations and in the codes of law enforcement and judicial bodies. These laws 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 systems.

Reliable detailed official data relating to criminal justice practices is scarce. However, in recent years a number of organizations and academic institutions have begun to gather more reliable information, exposing the wide gap between constitutional guarantees and their application. This process is also being assisted by the 2002 Federal Access to Information Bill which compels traditionally secretive state institutions to release information. However, this legislation 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 recent years there has been some improvement in the reputation of federal institutions, but in general distrust of institutions responsible for public security and justice remains high.

*"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."*

UN Special Rapporteur on the independence of judges and lawyers, 2002

Representatives of the different public security law enforcement agencies, the prosecution services and the judiciary regularly assert 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 undermine their independence and impartiality.

The federal police have developed a professional code of conduct to strengthen the principles of legality and respect for human rights. However, this in itself is not enough to overcome many of the ingrained abusive practices 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 certain states and at municipal level, where law enforcement agencies are frequently perceived as working directly on

### UN Code of Conduct for Law Enforcement Officials

Law enforcement officials shall at all times fulfil the duties imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. (Article 1)

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. (Article 2)

## CASE STUDY

Lydia Cacho, a women's rights defender and journalist, was arrested on 16 December 2005 at the women's refuge which she runs in Cancún, Quintana Roo State. Judicial police from the Public Prosecutor's Office in Puebla State had travelled to Cancún to arrest her on charges of defamation. The basis of the charges were a complaint lodged by a powerful businessman against Lydia Cacho for allegedly defaming his reputation in her book, *Los Demonios del Edén*, published earlier in the year.

Lydia Cacho was driven to Puebla City by her arresting officers. She alleged that during the 20-hour journey police told her she was at risk of sexual assault and enforced disappearance. She was subsequently released on bail.

On 14 February 2006, audiotapes were leaked to the media. They reportedly contained a telephone conversation in which the Governor of Puebla State agreed to organize the detention of Lydia Cacho on behalf of the businessman. The tape caused a major public outcry. At the time of writing, federal deputies were pursuing measures to try the Governor for misuse of public office and the results of an investigation by the National Supreme Court were pending.

## 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. (Principle 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. (Principle 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. (Principle 6)

behalf of the interests of local officials in the selective enforcement of laws against political opponents, human rights defenders or community representatives.

Interference in public prosecutors' offices has long been a feature of Mexico's criminal justice system. This has led to politically motivated prosecutions against critics or opponents and to the obstruction of investigations into suspected human rights abuses. Amnesty International has documented many cases of such abuses over the last 40 years and adopted several prisoners of conscience imprisoned as a result of such practices.<sup>2</sup>

Attorney generals at federal and state level are also members of the national and local public security system which is responsible for co-ordinating measures to combat crime. This has further weakened the independence of public prosecutors as political decisions about public security priorities can sometimes be in conflict with the impartial application of criminal law. This is particularly evident when public and media concern about high crime rates and impunity translates into pressure on police, prosecutors and judges to secure visible results, such as the rapid detention and charging of suspects.

Since the reform of the federal judiciary in 1994 there has been welcome progress in strengthening its impartiality and capacity. There has been much less progress in strengthening capacity, effectiveness and impartiality in the judiciaries of the 31 states and the Federal District 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 ensure effective and impartial scrutiny and adjudication of judicial proceedings.

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.

*"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."*

Office of the UN High Commissioner for Human Rights, Diagnostic of the human rights situation, 2003

Federal and state codes of criminal procedure establish the judge's obligation to consider the evidence put forward in the preliminary investigation and during the trial on its merits. 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. 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.

<sup>2</sup> See <http://web.amnesty.org/library/esl-mex/index> for previous Amnesty International reports, for example, *Prisoners of conscience – indigenous environmental activists Isidro Baldenegro Lopez and Hermenegildo Rivas Carrillo* (AI Index: AMR 41/051/2003), *Silencing dissent: An update on the case of General Gallardo* (AI Index: AMR 41/037/2001), *Prisoners of conscience – environmentalists Rodolfo Montiel and Teodoro Cabrera* (AI Index: AMR 41/013/2000).

Despite important guarantees in law, many victims of crime feel a profound lack of confidence in the police and prosecution service. There can be little doubt that this lack of confidence in the criminal justice system plays a significant role in discouraging reporting of crimes and so further entrenches impunity for abuses.

### 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.

(Guideline 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. (Guideline 13)

## CASE STUDY



**Agustín Sosa's family, lawyer and supporters**

Agustín Sosa was detained on 10 December 2004 at his home in Huautla de Jiménez, Oaxaca State. He is a grassroots political activist of the United Front of Huautla (Frente Unión Huautleco) which is linked to the Party of the Democratic Revolution (Partido de la Revolución Democrática, PRD). Unfounded criminal charges were filed against him, apparently in reprisal for his role in opposing the Revolutionary Institutional Party (Partido Revolucionario Institucional, PRI) candidate in the July 2004 elections.

On 27 July 2004, Serafín García Contreras, a retired teacher and PRD supporter, was beaten to death by a number of PRI activists during a clash between party activists in Huautla de Jiménez. His murder was caught on camera and several PRI activists were arrested. However, prosecutors also opened a preliminary investigation against Agustín Sosa, arguing that he was responsible for the murder because he "somehow instigated" the PRD to set up a roadblock which sparked the clash. Despite the absence of evidence linking him to the murder or the crime scene, the judge accepted the prosecutor's arguments and ordered Agustín Sosa's detention and then his committal for trial for murder.

In February a federal court ordered Agustín Sosa's release on grounds of lack of evidence. However, as he was about to leave prison, further charges of aggravated assault and robbery with violence were filed against him and once again the judge accepted the charges and he was placed in custody pending trial. On 10 June 2005 Agustín Sosa was finally released from custody without charge.

### 3 Arrests and committal proceedings

Article 16 of the Mexican Constitution states that no one can be detained without a judicial arrest warrant. A warrant should only be issued if a preliminary investigation has demonstrated that a crime has been committed and that the suspect is probably responsible. This process should ensure that the evidence is carefully scrutinized and that any charges laid are based on sound evidence. However, arrests and prosecutions are sometimes authorized on the basis of insufficient or fabricated evidence. This is particularly the case when judges do not have the 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.

Sometimes suspects are detained several years after the arrest warrant was issued. The enforcement rate for arrest warrants varies greatly between states, but in 2000 in Oaxaca and Guerrero States only 15 per cent of warrants were acted on.<sup>3</sup> These delays mean that warrants are often left on file and then enforced at the discretion of the judicial police or prosecutors. They are therefore open to political manipulation, particularly as judges often do not scrutinize the reasons for delays. Many local social or political activists in Mexico face ongoing preliminary investigations or live under the threat of unenforced arrest warrants, sometimes for years. These threats are often used to deter legitimate protest and induce individuals and organizations to withdraw demands or complaints.

A suspect can be held for up to 48 hours in the custody of the public prosecutor's office before being either released or charged. This is the point at which the suspect is interrogated by judicial or investigative police and makes an initial statement. According to the Federal Code of Criminal Procedure, 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. However, an independent survey of judicial practices in the Federal District in 2002 found that 50 per cent of suspects were detained for longer than the 48-hour limit.<sup>4</sup>

Once a suspect has been charged the judge then has a maximum of 72 hours to determine if there are sufficient grounds to proceed to trial or to order the suspect's release. However, a 2003 survey found that time limits at this stage of the process were broken 50 per cent of the time.<sup>5</sup>

<sup>3</sup> Guillermo Zepeda Lecuona, *Crimen Sin Castigo, Procuración de Justicia penal y Ministerio Público en México*, CIDAC, Fondo de Cultura Económica, 2004, p208.

<sup>4</sup> 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.

<sup>5</sup> Documentos de Investigación, CIDE, 2003 (as footnote 4).

## CASE STUDY



Felipe Arreaga Sánchez celebrates his release from prison with his granddaughter.

*“We helped block the roads to stop illegal logging, then we had to flee the area because the army went after Felipe. He was in hiding for about a year in the mountains, in a cave. He hadn’t committed an offence, his only ‘crime’ was to be involved in the protests against logging, and because of that they persecuted him.”*

**Celsa Valdovinos, wife of Felipe Arreaga**

Felipe Arreaga Sánchez was arrested at his home in Petatlán municipality, Guerrero State, by state judicial police in November 2004. He was accused of the 1998 murder of Abel Bautista, the son of a local political leader (*cacique*).

A well-known local peasant farmer, human rights defender and environmental activist, Felipe Arreaga has campaigned for an end to excessive logging of the forests in the municipality. He was a founder member of the Peasant Environmentalist Organization of the Petatlán Mountains (Organización Campesina Ecologista de la Sierra de Petatlán) and in recent years has worked with the Environmentalist Women's Organization (Organización de Mujeres Ecologistas) set up by Celsa Valdovinos, his wife.

Felipe Arreaga was committed for trial and placed in preventive detention on the basis of the evidence gathered during the preliminary investigation which contained serious irregularities. For example, delays in the investigation and filing of charges were not explained. Witnesses were not questioned and the crime scene was not inspected until two years after the killing.

In January 2005 human rights lawyers representing Felipe Arreaga presented witnesses and video footage demonstrating that he had been elsewhere at the time of the murder. When the only material witness – apart from another son of the *cacique* who allegedly witnessed the murder but who repeatedly failed to testify during the trial – was questioned in court, he admitted that he had been forced to fabricate his statement on the orders of the local *cacique* and a judicial police investigator. Nevertheless, the Attorney General of Guerrero refused to halt the prosecution.

Felipe Arreaga was acquitted in September 2005 after the judge visited the crime scene and ordered the eyewitness and the *cacique* to appear in court.

Amnesty International is not aware of any measures taken to review the case. Furthermore, during the trial the *cacique* reportedly made threats against Felipe Arreaga and his family, raising concerns for their safety.



## Pre-trial detention

The use of preventive detention while a suspect is awaiting or on trial is widespread in Mexico. The federal and state criminal codes contain a long list of crimes categorized as serious and judges are compelled to order pre-trial detention in these cases. 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. In 2004, 88,000 suspects were in pre-trial detention, 42.7 per cent of the prison population.<sup>6</sup> In some states suspects can spend years on remand and have no right to compensation if charges are dropped or if they are found innocent.

### CASE STUDY

Víctor Ramírez de Santiago is a lawyer who often advises indigenous communities in the Huasteca region of San Luis Potosí State. Since 2003 he has been subjected to repeated judicial investigation and threatened with criminal charges.

On 9 February 2005 police arrested him in his offices in Ciudad Valles and accused him of encouraging a group of indigenous peasant farmers from Huasteca to occupy a disputed plot of land illegally. A local judge issued the arrest warrant on the basis of statements made to the public prosecutor by several of the peasant farmers naming Víctor Ramírez as their leader. According to reports, the detained indigenous farmers were not provided with legal assistance or interpreters when they made their initial statements. When the farmers were brought before a judge, they retracted the statements. Despite this, the judge reportedly accepted the initial statements as evidence and on 15 February 2005 committed Víctor Ramírez for trial on charges of criminal association and theft. Criminal association is categorized as a serious criminal offence for which bail cannot be granted.

In March 2005 the lawyer won a federal injunction against the state judge's decision to commit Víctor Ramírez for trial. However, the state prosecutor filed an appeal against this decision. Only when this appeal was rejected in July 2005 were the charges dropped. Víctor Ramírez was released after spending six months in custody. Amnesty International is not aware of any action taken by the state authorities to investigate the filing of unfounded charges against Víctor Ramírez, except a commitment by the President of the State Human Rights Commission to "remain alert in following up on this case".<sup>7</sup>

<sup>6</sup> *Open society Justice Initiative, Myths of Pretrial detention*, Open Society Institute 2005, p6.

<sup>7</sup> Letter to Amnesty International from the Minister of the Interior, September 2005.

## 4 Torture and ill-treatment

Reports of torture have decreased in recent years, particularly at federal level. However, Amnesty International continues to document cases of torture in many different states in Mexico.<sup>8</sup>

The UN Committee against Torture concluded in 2003 that “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.”<sup>9</sup>

A suspect is most at risk of torture while in pre-trial detention. It is at this point, while they are in the custody of judicial police of the public prosecutor's office, that they make their first official statement to the prosecutor. Criminal suspects are frequently denied the opportunity to consult a lawyer before they sign their first statement.

A 2003 survey of convicted prisoners found that 34 per cent of inmates surveyed stated they had made confessions while in the custody of the public prosecutor's office, and of these, 35 per cent said the confessions had been made under duress.<sup>10</sup>

In November 2005 the National Human Rights Commission reported that torture remained widespread in Mexico. The methods documented by the Commission between 1990 and 2004 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; the placing of 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 gunshot 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.”<sup>11</sup>

Torture and ill-treatment most commonly occur when suspects are detained under *in flagrante* provisions which allow a suspect to be detained without a judicial arrest warrant. These measures are intended to apply where someone is caught red handed or shortly after committing a criminal offence. However, the scope of this provision has been extended in federal and state legislation so that for serious offences arrests can take place up to 48 hours after the offence – 72 hours in the case of the Federal District. Sixty per cent of arrests are carried out using *in flagrante* provisions.

The 2003 report of the Office of the UN High Commissioner for Human Rights called on the authorities to: “restrict the concept of flagrancy in line with its constitutional meaning,

<sup>8</sup> 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); *Intolerable killings: 10 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 41/008/2001).

<sup>9</sup> 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.

<sup>10</sup> Documentos de Investigación, CIDE, 2003 (as footnote 4).

<sup>11</sup> National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) press release to General Recommendation 10, CGCP/135/05, México, D. F., 22 November 2005.

## CASE STUDY

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Dagoberto Rivera Servín

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. Police detained more than 100 people during and after the disturbances. Police later recorded that all arrests had been made of suspects caught *in flagrante* (in the act of 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 while he was receiving medical attention at a Red Cross station for head wounds caused by a flying bottle. On 29 May he was taken to the State Public Prosecutor's Office and reportedly threatened and punched by the judicial police during interrogation. On 30 May he was coerced into signing a confession admitting to criminal offences and implicating other suspects. When he was 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 for trial for a number of offences including wounding, riot, gang activity and offences against public officials. Despite the allegations of torture, the judge ruled that his first statement to the prosecutor was admissible. Dagoberto Rivera Servín spent several months in prison before being released on bail pending the outcome of his trial, which was continuing at the time of writing.

Nineteen-year-old Aarón Alejandro García García told Amnesty International that he was beaten and kicked by municipal police officers during the disturbances. He was arrested and placed in the custody of the State Public Prosecutor's Office, 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 was charged. When he was brought before a judge he stated that his confession had been extracted under torture. However, no investigation was undertaken and his confession secured his subsequent conviction for offences against public officials and wounding. 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.<sup>12</sup> Amnesty International has also raised the case with the state authorities who replied 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 for these abuses.

<sup>12</sup> 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.

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".<sup>13</sup> However, neither the government nor legislators have taken such steps nor has the judiciary tightened the criteria by which judges scrutinize these detentions and determine their legality.

Despite clear evidence of the widespread use of torture or ill-treatment to extract initial statements, judges continue to give greater weight to this first statement taken by the public prosecutor than to subsequent statements made before a judge or court.

Judges are encouraged to dismiss the retraction of a confession or allegations of torture by detainees on the grounds that this is the inevitable reaction of a criminal suspect. Judges are also allowed to accept confessions gained through violence and to dismiss allegations of ill-treatment, even when injuries are documented during medical examinations, unless a suspect can prove a particular official caused a particular wound.

International human rights organizations have repeatedly criticized both the greater weight given to initial statements (the rule of procedural immediacy) and the excessive burden placed on defendants to prove they have been tortured into making a confession.

*"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, 14 January 1998

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 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."<sup>14</sup> International standards explicitly state that no confession obtained with the use of torture should be accepted as evidence and that those responsible should be punished.<sup>15</sup> While the 1991 Federal Law for the Prevention and Punishment of Torture codifies some of the key elements of international standards for federal offences, most legislation enacted at state level in Mexico to criminalize torture fails to meet international standards.

When allegations of torture are filed with police, public prosecutors' offices or human rights commissions, these are routinely reclassified as lesser offences such as abuse of authority or wounding. (See Chapter 5, Texcoco and San Salvador Atenco case study).

## Medical evidence

In recent years the Federal Public Prosecutor's Office has developed procedures for documenting medical evidence of torture which are based on the Manual on the 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 that the new procedures be applied by all officials of the Federal Public Prosecutor's Office in cases of alleged torture or ill-treatment. A number of state public prosecutor's offices are also developing such procedures. These procedures would seem to be an improvement. However, there has not so far been an independent assessment of their effectiveness in investigating allegations of torture.

<sup>13</sup> Analysis of the Human Rights Situation in Mexico, Office of the UN High Commissioner for Human Rights, 2003, 2.2.2.14, p.14. [www.cinu.org.mx/prensa/especiales/2003/dh\\_2003/index.htm](http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/index.htm).

<sup>14</sup> Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43. Visit to Brazil, 30 March 2001, para169, E/CN.4/2001/66/Add.2.

<sup>15</sup> These include the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Mexico in 1986) and the Inter-American Convention to Prevent and Punish Torture (ratified by Mexico in 1987).

A key problem that has repeatedly undermined official medical examination of evidence of ill-treatment and torture is that 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 the officials implicated belong to the public prosecutor's office, often do not meet the standard of an independent and impartial inquiry. In many states the equipment, trained staff and procedures to ensure the standard, integrity and reliability of official forensic evidence are lacking.

At federal level, there are proposals to make forensic services an autonomous agency separate from the Federal Public Prosecutor's Office. However, in states that have introduced similar reforms, such as Jalisco State, governors retain the power to appoint and dismiss the directors of forensic institutes, so that considerable political influence can still be exerted over forensic services.

## Impunity

The use of torture or ill-treatment to extract confessions or testimony remains a crucial part of many criminal investigations, particularly at state level. Despite compelling evidence presented by defendants, lawyers and independent medical experts that statements have been gained through coercion, prosecutors and judges routinely fail to institute a separate and impartial inquiry into the defendant's allegations. 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 complaint of torture has been officially filed, a defendant must overcome enormous obstacles to demonstrate the substance of their allegations, and even this may not be enough to ensure that evidence gained through torture is ruled inadmissible in court. The failure of legislators and courts to end reliance on the first statement made to the public prosecutors as the primary evidence continues to encourage the widespread use of torture as an investigative technique.

The federal government has highlighted judicial reforms aimed at ensuring that only those statements made before a judge in the presence of a lawyer can be used as evidence.<sup>16</sup> However, as this proposed reform has yet to be approved, the fact remains that courts continue to accept unreliable evidence extracted under torture.

<sup>16</sup> Periodic report provided by the Mexican government to the UN Committee against Torture, 28 February 2005, paras 271-279, CAT/C/55/Add.12.

## CASE STUDY

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 argument, which is often put forward, ignores the possibility that police or prosecutors might have supplied this information to enhance the credibility of the confession. In his ruling the judge cited precedents and academic literature stressing that allegations of torture by criminal suspects are inevitable and should be dismissed.

Víctor Javier García was released in July 2005 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.

A special team of international prosecutors from the UN Office on Drugs and Crime reviewed the cases of men reportedly tortured into confessing to involvement in the abduction and murder of women in Ciudad Juárez. The team concluded that presiding judges often used their discretion rather than objective evaluation in weighing up evidence. They found that such practices often resulted in apparently unsound convictions reliant on deeply flawed preliminary investigations where allegations of torture were simply ignored.<sup>17</sup>

<sup>17</sup> Report of the commission of international experts of the United Nations Office on Drugs and Crime on the mission to Ciudad Juárez, Chihuahua, Mexico, November 2003, p25.

## 5 The right to effective defence

### CASE STUDY

Two members of a Mazateco indigenous community in Oaxaca State – 17-year-old Felipe García Mejía and his older brother, Eduardo García Mejía – were detained in Mexico City on 2 January 2004 in connection with a robbery. They were taken to the Federal District Public Prosecutor's Office. At no time were they given an interpreter. According to the investigations subsequently undertaken by the Federal District Human Rights Commission, the brothers spoke hardly any Spanish and could not read.

Felipe and Eduardo García Mejía were charged and committed for trial. The judge 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 he was in the custody of the public prosecutor he was pressured to sign a statement that he could not read and when he was brought before the court, the judge failed to take into account the absence of an interpreter. 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."<sup>18</sup> The public prosecutor had failed to make any reference to the ethnicity, race or language spoken by the defendants when they were making their initial statements. The Federal District Human Rights Commission 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.

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.<sup>19</sup>

<sup>18</sup> Comisión de Derechos Humanos del Distrito Federal; <http://www.cdhd.org.mx/index.php?id=bol6004>

<sup>19</sup> Amnesty International, *Fair Trials Manual*, Chapter 3 (AI Index: POL 30/002/1998).

<sup>20</sup> Mexican Constitution, Article 20, A, III; Federal Criminal Procedural Code, Article 287.

However, Amnesty International's research shows that in many parts of Mexico access to legal counsel is routinely denied or seriously deficient.

According to the Mexican Constitution, a statement made by a defendant before a public prosecutor or judge is only admissible as evidence if the suspect had the assistance of defence counsel or a "person of his or her confidence";<sup>20</sup> Courts usually rely on a signature as proof that the accused made the statement with the appropriate advice and

representation. However, defendants in several cases have informed Amnesty International that when making their first statement in a busy public prosecutor's office there was no opportunity to consult with the public defender, who merely signed their statement.

## Public defenders and defence lawyers

The majority of criminal suspects cannot afford to pay for a private lawyer and are therefore dependent on lawyers appointed by the state. The authorities are responsible for ensuring that state-appointed lawyers have the necessary experience and competence and that the accused is effectively represented. However, according to the UN, deficiencies in state-appointed legal assistance in Mexico leave the poorest and most disadvantaged people with least protection.

In recent years, there have been welcome improvements in the quality and capacity of federal public defenders. The Federal Public Defence Institute has received increased resources for recruitment and training, and for improved conditions of employment and supervision for public defenders, in an attempt to raise their status nearer to that of prosecutors. A few state governments have initiated similar reforms, but in the majority of states there has not been comparable investment or improvement in the service provided. Legislators have not established sufficiently high standards to ensure that suspects enjoy the right to adequate defence guaranteed in international law.

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

## CASE STUDY

Ricardo Ucán Seca, a member of 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 declared 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. Ricardo Ucán 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 against the sentence were subsequently rejected on the grounds that Ricardo Ucán did not inform the prosecutor or judge that he required a translator, that there was insufficient evidence to prove his limited knowledge of Spanish, and that the judge and prosecutor spoke some Maya.

Ricardo Ucán remains in prison at the time of writing. The case has been filed with the Inter-American Commission on Human Rights by the local human rights organization Grupo Indignación and the Yucatán State Human Rights Commission.

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

provided is extremely variable with virtually no means of holding lawyers to account for misconduct. In 2002 the UN Special Rapporteur on the independence of judges 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".<sup>21</sup> There has been no substantial progress in implementing this recommendation.

## Indigenous peoples

International minimum fair trial standards require that all suspects who do not understand or speak the language of the court be provided with the free assistance of an interpreter or translator. Widespread violations of this right led the UN Committee on the Elimination of Racial Discrimination to recommend that the Mexican government "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."<sup>22</sup>

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

Members of marginalized groups that suffer discrimination, such as indigenous peoples, are at particular risk of abuses of the right to an 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."<sup>23</sup>

<sup>21</sup> Special Rapporteur on the independence of judges and lawyers, 24 January 2002, para181, E/CN.4/2002/72/Add.1.

<sup>22</sup> Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, March 2006, para13, CERD/C/MEX/CO/15 (2006).

<sup>23</sup> Report submitted by the Mexican Government to the UN Committee on the Elimination of Racial Discrimination, May 2005, para167, CERD/C/473/Add.1.

*"The treatment of indigenous peoples in the criminal justice system is routinely unfair, leaving many serving unfounded or disproportionate prison sentences."*

Report of the Mexican government to the UN Committee on the Elimination of Racial Discrimination, May 2005

*"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."*

UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, 2003

Amnesty International's research shows that if defendants fail to stipulate at the outset that they wish to have an interpreter, judges may take this to indicate that the defendant understood the proceedings and did not require an interpreter.

In recent years the National Commission for the Development of Indigenous Peoples, a governmental body, has sought to foster better provision at federal and state level of interpreters and lawyers who speak and understand local indigenous languages and cultures and some states have established specialist state-appointed indigenous public defenders' offices. However, the provision is insufficient to meet the needs of indigenous defendants.

## CASE STUDY

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. They were reportedly tortured by members of the state judicial police but nevertheless in their statements to the public prosecutor and judge they denied being involved in the crimes. Vicente López Pérez was released without charge, but Vicente and Mariano López Rodríguez 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 and sentenced to five years in prison.

In 2002 Vicente López Rodríguez won an appeal on the grounds that when he made his initial statement the interpreter had not signed the document. A retrial was ordered. In 2003 the human rights organization Centro de Derechos Humanos Fray Bartolomé de las Casas took over the defence of Vicente and Mariano López after concluding that they had not been effectively defended. The new lawyers presented witnesses who testified to Vicente Lopez' presence in another location at the time of the crimes. They demonstrated that police and prosecutors continued to press charges of robbery even after the complainants informed them that money had not in fact been stolen. They also revealed that the only eyewitnesses had not in fact identified the brothers (the eyewitnesses had not 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 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 these cases by the authorities.

## CASE STUDY

On 3 and 4 May 2006, police operations in the town of Texcoco and San Salvador Atenco, Mexico State, resulted in the detention of 211 people, the deaths of two civilians and scores of injuries. On 4 May, more than 2,000 state police entered San Salvador Atenco in response to disturbances to release at least four 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).

Amnesty International's research suggests that police carried out many detentions using excessive force, ill-treatment and torture.

José Gregorio Arnulfo Pacheco, his wife and their son were beaten and arrested in their home by police early on 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. Police repeatedly beat and kicked José Gregorio Arnulfo as he was dragged to waiting 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.

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 nor made aware of the charges against him, on 10 May the presiding judge remanded José Gregorio Arnulfo in custody, along with 28 other detainees, on charges of attacking public roads and kidnapping. He spent a further month in prison without receiving adequate medical attention. 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 a statement made by a police officer to a prosecutor. The officer alleged that José Gregorio Arnulfo was the person who had bound and gagged her. However, the officer did not appear in court to substantiate the statement or identify him. On 21 June, José Gregorio Arnulfo was brought before the judge. 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 appealed against his release. Amnesty International is not aware of any investigations arising from the arbitrary detention, ill-treatment and unfounded prosecution of José Gregorio Arnulfo.

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 at least 20 officers for the minor offence of abuse of authority. Despite concerns about the fairness of judicial procedures, more than 150 of those arrested were being prosecuted for attacking public roads, at least 28 of whom were in detention facing further charges of kidnapping.

## 6 Impunity and accountability

The failure to consistently hold to account officials responsible for committing abuses remains a key obstacle to the effective protection of human rights in Mexico.

Although there have been advances over the last decade in developing mechanisms to expose abuses and enable victims to bring complaints against officials, these have not proved sufficient to overcome impunity. The continuing lack of public confidence, particularly in law enforcement agencies and the judicial police, is a sign of the limited advances in this area.

Victims of abuses have four basic avenues for seeking redress at the domestic level: the courts; internal disciplinary procedures; criminal investigations by the public prosecutors' offices; and complaints to the National Human Rights Commission or one of the 32 local human rights commissions.

### Using the courts

Federal injunctions (*amparo*) for violations of constitutional guarantees are often regarded as the most effective form of securing redress. However, they are slow and costly and do not address the criminal responsibility of officials who have violated human rights. For several years there have been discussions about the reform of the *amparo* legislation. However, this has yet to produce results and it remains unclear what impact, if any, the proposed reforms would have in extending access to justice.

### Disciplinary or administrative investigations

Complaints are usually investigated by full-time officers and the evidence is then heard by committees made up of senior institutional officials. Efforts have been made at federal level in recent years to improve the impartiality and credibility of internal oversight mechanisms. However, internal proceedings are not open to public scrutiny and do not generally involve representatives of civil society or other independent monitors.

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

## CASE STUDY



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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 the Iztacalco District of Mexico City. According to her testimony, she and the two men were approached and detained by Federal District Law Enforcement Police. Officers reportedly tried to force her to undress in the street and threatened and insulted her. One officer then reportedly sexually assaulted her while others shouted encouragement.

When the police finally presented the detainees to representatives of the Federal Public Prosecutor's Office, they stated that the three suspects were reportedly carrying illegal drugs. The two men were released without charge. While in custody, Nadia Zepeda was reportedly not allowed to make a phone call or to read the document she was forced to sign. She was then charged and placed in judicial custody.

During the first few days of detention, forensic doctors of the Federal Public Prosecutor's Office 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 July 2003 Nadia Zepeda filed a complaint with the Federal District Human Rights Commission 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. The Commission proposed that the three implicated officers be investigated. Nevertheless, in 2006 the criminal investigation against the three was closed by the Federal District Public Prosecutor's Office. At the time of writing Nadia Zepeda's lawyers were seeking to appeal against this decision.

In May 2004 she was sentenced to five years in prison. In August 2005 Nadia Zepeda was released early from prison after completing two thirds of her five-year sentence.



In many cases disciplinary procedures appear to be used as an alternative to criminal investigations. As a result, internal investigations are often perceived to be a means of protecting the interests of the institution, rather than of ensuring justice for the complainant and appropriate punishment for the official.

## Criminal investigation by public prosecutors' offices

When an alleged criminal offence is brought to the attention of one of the public prosecutors' offices a preliminary investigation must be opened. However, the process for holding officials to account is extremely slow and inadequate.

If the official alleged to have committed an abuse is a representative of the public prosecutor's office, and the alleged perpetrator therefore belongs to the institution that is solely responsible for conducting the criminal investigation, there are concerns that the investigations may fall short of minimum standards of impartiality and independence. At the federal level there have been efforts to strengthen the credibility of these investigative units. However, progress in developing independent and credible mechanisms at state level to carry out criminal investigations against colleagues from the same institution has been limited.

## Human rights commissions

Anyone can present a report of an abuse by a public authority to a human rights commission. The commissions are legally bound to register a complaint and open an inquiry, unless it is manifestly unfounded or not within its competence.

All information and documentation on cases is kept confidential, unless a recommendation is issued, in which case the commission may make public the failure or refusal of an authority to implement a recommendation. However, this often only amounts to a reference to the case in the commission's annual report.

Pedro Raúl López Hernández, President of the Chiapas State Human Rights Commission, reportedly received death threats and was subject to a smear campaign by the state authorities during 2003 and 2004. The attacks on him appeared to be linked to strongly critical recommendations issued by the Commission. The threats against him were never effectively investigated and in August 2004 he was forced out of office. In his place, the local Congress appointed a former public prosecutor, who reportedly had a record of failing to investigate allegations of human rights violations. Many local non-governmental human rights organizations have concluded that the manner in which the former president was removed has left the Commission without legitimacy or credibility.

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 those of Guerrero State and the Federal District, have played important roles in highlighting abuses and seeking to hold relevant officials to account. However, the performance of many other commissions is inconsistent and some lack

## CASE STUDY

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**Rosa Elba Avendaño, sister of José Reyes Avendaño**

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 reportedly overtaken by a police van. Shortly afterwards, police 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 Fera, 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 González' vehicle crashed and police then opened fire on the car, killing him.

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 people involved in organized crime. The report alleged that guns had been discovered in the two vehicles. However, witnesses claimed the attack had been unprovoked. On 30 June 2005 an administrative investigation carried out by the internal oversight body of the Federal Preventive Police concluded there was no evidence of police misconduct and the case was closed.

Following an official complaint presented by the families of the victims, the Federal Public Prosecutor's Office opened a preliminary investigation into the killings.

A local human rights organization, the Centre for Border Studies and the Promotion of Human Rights (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, which undertook an investigation and published a report in December 2005. The Commission concluded that the use of lethal force by the police was disproportionate, that the victims had not used firearms and that the guns allegedly found inside the vehicles were probably placed there afterwards. Despite the seriousness of the evidence exposed by the report, the Commission's recommendation focused on human rights training for police and compensation for the victims' families. The Federal Public Prosecutor's Office and the Federal Public Security Secretariat both refused to implement even these limited recommendations.

The Commission did not make this information public and only informed the families and their representatives in June 2006, advising them that the only public reference to the case would be made in the Commission's next annual report. In June 2006 Amnesty International published a report on the case. At the time of writing no response had been received from the Federal Public Prosecutor's Office or the Federal Preventive Police.<sup>24</sup>



<sup>24</sup> Amnesty International, "How can a life be worth so little?", *Unlawful killings and impunity in the city of Reynosa* (AI Index: AMR 41/027/2006).

sufficient independence to operate effectively. In those states where commissions are weakest, this acts as a deterrent to the reporting of human rights abuses. As a result, the information gathered on abuses in some state jurisdictions is at best incomplete.

Efforts by civil society to evaluate the performance of the National Human Rights Commission using freedom of information legislation have been hampered by the Commission's interpretation of its legal statute which effectively prevents access to virtually all substantive case information. Much criticism has focused on the very few cases that result in recommendations. Without an impartial and transparent audit of cases it is impossible to determine the standard of performance of the national or state commissions.

Non-governmental human rights organizations and academics in Mexico have also criticized the failure of the commissions to follow up vigorously on recommendations or conciliation agreements.

Amnesty International's research shows that victims of serious human rights violations and their families continue to face considerable obstacles when filing complaints and seeking justice. Despite some improvements in accountability mechanisms in recent years, it remains difficult 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 those 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.

## 7 Conclusions and recommendations

This report highlights some of the failings and flaws in the public security and criminal justice systems in Mexico. These continue to result in human rights abuses including arbitrary detention, torture, ill-treatment, denial of due process and unfair trials. The poorest and most vulnerable are often victims of these abuses, which arise in large part from an inadequate legal recognition of international human rights standards, a persistent failure to enforce existing legislation, continuing political interference in the administration of justice, and widespread impunity for those responsible for human rights abuses.

The frequent failure of Mexico's 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. Real change depends on 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 levels to guarantee equal access to justice and respect for human rights.





## Recommendations to the Mexican government

- ▶▶ Amend the Constitution and secondary legislation to ensure that Mexico's international human rights treaty obligations are fully enshrined in 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 of detention.
- ▶▶ 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 the 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:
  - a) ensure that judges proactively and impartially assess the circumstances under which suspects are held in order to guarantee that 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.
  - b) amend legislation on *in flagrante* arrests to bring it into line with international human rights standards.
  - c) 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.
  - d) ensure in practice the right to effective defence, and an interpreter when appropriate, from the moment of detention.
- ▶▶ Ensure that international human rights standards, including guidelines, are integrated into public security and investigative police operations and procedures.
- ▶▶ Strengthen judicial independence and impartiality, particularly at state level, to ensure judges actively guarantee the equality of arms between defence and

prosecution at all stages of the judicial process and uphold the presumption of innocence and all other due process rights.

- ▶▶ Establish the autonomy of the public prosecutor's office from executive authority at federal and state level. Public prosecutors offices should be subject to effective judicial oversight and should be required to provide a transparent account of their activities to civil society.
- ▶▶ Ensure the autonomy of public defenders' offices in all states. Guarantee sufficient investment in training, pay and conditions of state-appointed lawyers and ensure their work is regularly scrutinized in order to uphold the right to effective defence of all criminal suspects.
- ▶▶ Gather reliable data on discrimination in the criminal justice system against members of disadvantaged groups.
- ▶▶ 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.
- ▶▶ 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.
- ▶▶ Ensure that human rights defenders, community representatives and political activists are not subjected to unsubstantiated or fabricated criminal charges for their legitimate activities.
- ▶▶ 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 have the right to receive independent legal advice; and that victims are adequately protected from reprisals.

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# Injustice and impunity:

Mexico's flawed criminal justice system

**February 2007**

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