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COUNTRY SUMMARY

Mexico

Mexico's criminal justice system continues to be plagued by human rights problems. Persons under arrest or imprisonment face torture and ill-treatment. Law enforcement officials often neglect to investigate and prosecute those responsible for human rights violations, including abuses perpetrated during law enforcement operations, those committed during Mexico's "dirty war," and sexual and domestic violence against women and girls.

The human rights requirements included in the Merida Initiative, an aid package that the United States government signed into law in June 2008 to help Mexico address the increasing violence and corruption of heavily armed drug cartels, provide a unique opportunity to increase international scrutiny of Mexican security forces' poor human rights records. Other developments in 2008 include a constitutional reform to overhaul the criminal justice system and a Supreme Court ruling upholding a Mexico City law that legalized abortion in the first 12 weeks of pregnancy.

Criminal Justice System

The criminal justice system routinely fails to provide justice to victims of violent crime and human rights violations. The causes of this failure are varied and include corruption, inadequate training and resources, and abusive policing practices without accountability.

Torture remains a widespread problem within the Mexican criminal justice system. One perpetuating factor is the acceptance by some judges of evidence obtained through torture and other mistreatment. Another is the failure to investigate and prosecute most cases of torture.

Over 40 percent of prisoners in Mexico have never been convicted of a crime. Rather, they are held in pretrial detention, often waiting years for trial. The excessive use of

pretrial detention contributes to prison overcrowding. Prison inmates are also subject to abuses including extortion by guards and the imposition of solitary confinement for indefinite periods. Children are often detained in poor conditions in police stations and other institutions, and many juvenile detainees do not have access to educational programs.

In June 2008 Mexico passed a constitutional reform that is, in some respects, an historic step forward. It creates the basis for an adversarial criminal justice system with oral trials and contains measures that are critical for promoting greater respect for fundamental rights, such as including presumption of innocence in the constitution. However, two new provisions violate Mexico's obligations under international law. The first allows prosecutors, with judicial authorization, to detain individuals suspected of participating in organized crime for up to 80 days before they are charged with a crime. The second denies judges the power to decide, in cases involving offenses on a prescribed list, whether a defendant should be provisionally released pending and during trial.

Impunity for Military Abuses

Mexican soldiers continue to commit egregious abuses while engaged in law enforcement activities. For instance, in February 2008 soldiers in Tamaulipas used excessive force when they opened fire at a car, killing one man and injuring another. In April soldiers in Chihuahua allegedly arbitrarily detained four policewomen, two of whom were blindfolded and held naked in front of soldiers.

With army abuses routinely charged to military authorities to investigate and prosecute, impunity ensues. The military justice system lacks the independence necessary to carry out reliable investigations and its operations suffer from a general absence of transparency. The ability of military prosecutors to investigate army abuses is further undermined by a fear of the army, which is widespread in rural communities and inhibits civilian victims and witnesses from providing information to military authorities.

Impunity for “Dirty War” Crimes

During its five-year existence, the Special Prosecutor’s Office that former President Vicente Fox established in 2001 to address abuses committed during the country’s “dirty war” in the 1960s, 1970s, and 1980s made very limited progress in investigating and prosecuting these crimes. It did not obtain a single criminal conviction. Of the more than 600 “disappearance” cases, it filed charges in 16 cases and obtained indictments in nine. The office determined the whereabouts of only six “disappeared” individuals, finding that four were sent to psychiatric institutions and two were killed while in detention.

After President Felipe Calderon officially closed the Special Prosecutor’s Office, the cases were transferred to another, non-specialized office within the federal Attorney General’s Office, which has not made significant advances in the investigations.

Reproductive Rights, Domestic Violence, and Sexual Abuse

Mexican laws do not adequately protect women and girls against domestic violence and sexual abuse. Some laws on violence against women run directly counter to international standards, including provisions of Mexican law that define sanctions for some sexual offenses with reference to the “chastity” of the victim, and penalize domestic violence only when the victim has been battered repeatedly. Legal protections that do exist are often not enforced vigorously. Girls and women who report rape or violence to the authorities are generally met with suspicion, apathy, and disrespect. As a result, victims are often reluctant to report crimes and such underreporting in turn undercuts pressure for necessary legal reforms. The net effect is that sexual and domestic violence against women and girls continues to be rampant and shrouded in impunity.

In a landmark decision, the Mexican Supreme Court affirmed in August 2008 the constitutionality of a Mexico City law of April 2007, which legalized abortion in the first 12 weeks of pregnancy and established the responsibility of public healthcare providers to offer first trimester abortions without restriction and with no residency requirements. However, abortion continues to be criminalized in the rest of Mexico, though every federal state in the country allows abortion in certain specific circumstances, including after rape. Yet pregnant rape victims who seek to terminate

their imposed pregnancy are often thwarted from doing so by the dismissive and even hostile treatment they receive from authorities.

Freedom of Expression and Information

Journalists, particularly those who have investigated drug trafficking or have been critical of state governments, have faced harassment and attacks. In June 2008, for example, two days after the severed head of a man was found in front of a newspaper in Tabasco, a note saying “you’re next, director” was left nearby. Seven Mexican journalists have gone missing since 2005, including five who had investigated links between local officials and organized crime. Such cases have generated a climate of self-censorship in parts of the country.

Since 2007, defamation, libel, and slander are no longer federal criminal offenses. However, at the state level, criminal defamation laws continue to be excessively restrictive and tend to undermine freedom of expression.

A 2002 federal law on transparency and access to information and a 2007 constitutional reform increased avenues for public scrutiny of the Mexican government. However, progress made in promoting transparency within the federal executive branch has not yet been entirely matched in other branches of government, in autonomous institutions, or at the state level.

Labor Rights

Legitimate labor-organizing activity continues to be obstructed by collective bargaining agreements negotiated between management and pro-management unions. These agreements often fail to provide worker benefits beyond the minimums mandated by Mexican legislation. Workers who seek to form independent unions risk losing their jobs, as inadequate laws and poor enforcement generally fail to protect them from retaliatory dismissals.

The National Human Rights Commission

The National Human Rights Commission, Mexico’s official human rights organ, has had limited impact. The Commission has provided detailed and authoritative information on specific human rights cases and usefully documented some systemic

obstacles to human rights progress. But, by falling short of making full use of its broad mandate and immense resources, it has routinely failed to press government institutions to remedy the abuses it has documented and to promote reforms needed to prevent them.

Key International Actors

The Merida Initiative, an aid package that US President George Bush signed into law in June 2008, includes US\$400 million for Mexico as part of a multi-year regional partnership to address the increasing violence and corruption of heavily armed drug cartels. The package also provides that most of the aid for Mexican police and military forces can be made available immediately. However, 15 percent will only be available after the US secretary of state reports to Congress that the Mexican government has met four human rights requirements. These include ensuring that civilian prosecutors and judicial authorities investigate and prosecute federal police and military officials who violate basic rights; consulting regularly with Mexican civil society organizations regarding the implementation of the Merida Initiative; enforcing the prohibition on the use of testimony obtained through torture or other ill-treatment; and improving the transparency and accountability of police forces.

The United Nations High Commissioner for Human Rights (OHCHR) maintains an in-country office that provides valuable documentation of human rights problems and recommendations for addressing them. In May 2008 the OHCHR removed the head of its Mexico office amidst credible reports that the Calderon administration had requested this due to the UN representative's "high profile."

In August the Inter-American Court of Human Rights ruled that Mexico had violated former Foreign Relations Minister Jorge Castañeda's right to judicial review in a case challenging electoral laws in Mexico. Castañeda had questioned the laws that establish that presidential candidates must be nominated by political parties, arguing that he should be allowed to run as an independent candidate. The Court also ruled, however, that Mexico had not violated the articles of the American Convention that guarantee political rights and the right to equality before the law.