

HUMAN RIGHTS WATCH

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Washington, D.C., October 26, 2012

Luis David Ortíz Salinas, President of Congress of Nuevo León

Juan Carlos Ruiz García, Coordinator of the PAN

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José Juan Guajardo Martínez, President of the Social Development and Human Rights Commission

Celina del Carmen Hernández Garza, Vice President of the Social Development and Human Rights Commission

Representatives Ortíz Salinas, Ruiz García, Romo García, Cienfuegos Martínez, Guajardo Martínez, and Hernández Garza:

On behalf of Human Rights Watch, I am writing to offer recommendations regarding the potential reform of Nuevo León's criminal code to include the crime of enforced disappearance. We understand that the newly inaugurated state congress intends to undertake this reform before the end of the year, and we support efforts to address this serious problem.

The efforts of the legislature are timely given the current state of security and human rights in Nuevo León. Human Rights Watch has documented dozens of cases of disappearances in Nuevo León—several of which were included in our November 2011 report *Neither Rights Nor Security*—in which strong evidence points to the participation of security forces, including state and municipal police. The state prosecutor's office, local human rights groups, and the UN Working Group on Enforced Disappearances have all documented an increase in enforced disappearances in the state since 2008.

Ensuring that the crime of enforced disappearances is properly codified in domestic criminal law is essential to secure successful prosecutions of those responsible for the crime, to determine the fate of victims, and to help prevent disappearances from being committed in the future.

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In order to be effective, it is crucial to ensure that the proposed legislation is fully consistent with international human rights standards. As you know, Mexico was one of the first countries to ratify the UN International Convention for the Protection of All Persons from Enforced Disappearance, and is party to the Inter-American Convention on Forced Disappearances of Persons. These treaties provide a comprehensive model for drafting legislation on enforced disappearance—from the definition of the crime to remuneration to victims—and should be adhered to fully in any reform.

We wish to highlight several principles that are critical to an effective reform and mandated by international law:

1. The crime of enforced disappearance is continuous by nature, so long as the fate of the victim remains unknown. As a result, any statute of limitations placed on the prosecution of cases of enforced disappearances may only start from the moment when the offence of enforced disappearance ceases (i.e. the fate of the disappeared person is resolved), and then should be of a lengthy duration proportionate to the extreme seriousness of the crime.
2. The definition of the enforced disappearance should be taken directly from international human rights treaties. Those who may be held responsible for participation in the crime of enforced disappearance should include not only those state actors responsible for carrying out a disappearance themselves, but also those who authorize or contribute to the crime through complicity or acquiescence.
3. The victims of enforced disappearances have a right to comprehensive reparation, which reflects both material and moral injuries.
4. There should be measures, including sanctions, to prevent and punish refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information. The law may also provide that if a person involved in an enforced disappearance provides information that helps to clarify cases of enforced disappearance, this may be taken into account as a mitigating factor.

Finally, it is important that the current state congress, like the one before it, seek the input of civil society groups and international experts such as the Office of the UN High Commissioner for Human Rights in Mexico when drafting the legislation, which will not only improve the quality of the proposed reform, but also foster local and international support for its passage. Of particular relevance are the UN Working Group's "Best Practices on Enforced Disappearances in Domestic Criminal Legislation."

We sincerely hope that you will take these recommendations into account as you undertake this necessary effort to criminalize enforced disappearances.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Vivanco', with a horizontal line extending to the left.

José Miguel Vivanco
Human Rights Watch

CC: Rodrigo Medina de la Cruz, Governor of Nuevo León

CC: Adrián Emilio de la Garza Santos, Attorney General of Nuevo León