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Human Rights Watch's Response to the CNDH

Mexico's National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) issued a written response last month to a Human Rights Watch (HRW) report that evaluates whether the CNDH is adequately fulfilling its mandate to promote human rights in Mexico. Top CNDH officials had already publicly denounced the HRW report when it was released in February, claiming that it contained "45 lies" or "more than 45 errors." The CNDH's written response, which was approved by its advisory council, purported to substantiate these preliminary claims by detailing "48 errors" in the report.

After a thorough review of the CNDH response, we conclude that all the findings in our report still stand.ⁱ Instead of addressing the core constructive criticisms included in the HRW report, the Commission employs a variety of tactics to create its list of "48 errors." However, the CNDH critique is marred by five basic flaws: repetition, misrepresentation, misinterpretation, illogical responses, and treating inconsequential omissions as errors.

Basic Flaws in the CNDH Critique

1) Repetition. At least 21 of the alleged "48 errors" are repetitious. The CNDH identifies a single alleged "error" and counts as a different "error" each time the HRW report mentions the same issue throughout the report. Some examples of these recycled "errors" include:

- The (inaccurate) allegation that HRW does not acknowledge any CNDH efforts to promote reform is recycled five times in "Error 2," "Error 5," "Error 23," "Error 24," and "Error 41."
- The (inaccurate) allegation that HRW errs when claiming the CNDH could be more effective in promoting remedies is

recycled five times in “Error 4,” “Error 10,” “Error 21,” “Error 22,” and “Error 28.”

- The (inaccurate) allegation that HRW errs when claiming the CNDH’s “conciliation” practice lacks meaningful victim participation is recycled three times in “Error 15,” “Error 26,” and “Error 46.”

2) Misrepresentation. The CNDH alleges that HRW has failed to consider key documents, despite the fact that those documents are cited and analyzed in the HRW report. Some examples of these “errors” include:

- The CNDH alleges that HRW “*did not take into account information [regarding recomendaciones] that is permanently available to the public in its website*” (“Error 4”). Yet the HRW report includes more than 40 citations of *recomendaciones* issued by the CNDH.ⁱⁱ
- The CNDH alleges that HRW “*soslaya*” [*avoids reference to*] a 2006 reform to the Constitution that gave the CNDH the authority to “*file constitutional challenges, which has already occurred*” (“Error 6”). Yet the HRW report expressly states that the CNDH acquired this power in 2006 and devotes several pages to a critical assessment of the one and only time the CNDH has exercised this function.ⁱⁱⁱ
- The CNDH alleges that HRW fails to consult the CNDH’s annual reports and disregards the laws governing the CNDH, including in particular articles 140 and 175 of the CNDH’s internal rules of procedure (“Error 11”). Yet the HRW report contains 45 references to the CNDH’s annual reports^{iv} and 17 references to its internal regulations,^v including specific references to articles 140 and 175.^{vi}

3) Misinterpretation. The CNDH misinterprets the HRW report and then, based on these misinterpretations, alleges HRW has made inaccurate claims that it has not in fact made. Some examples of these “errors” include:

- The CNDH claims the HRW report errs by stating that the CNDH “is failing to live up to its promise” (“Error 1”). The CNDH backs this allegation by arguing that, since its creation, it has “concluded” 104,685 (98.5%) of the 106,227 complaints it has reviewed. However, the HRW report never claims that the CNDH does not conclude its cases. Rather, the report shows how the CNDH routinely closes them prematurely, failing to take the steps that are necessary to ensure that the abuses it has documented are remedied.

- The CNDH claims that the HRW report errs by “*stat[ing] that the national ombudsman has not promoted effective measures that lead to structural reforms in favor of victims*” (“Error 2”). The CNDH backs this allegation by offering, as a counterexample, a “general recommendation” it issued that did propose reforms. However, the HRW report does not claim that the CNDH *never* advocates for reform. HRW recognizes in its report that the CNDH has promoted legislative reforms in crucial areas, such as decriminalizing defamation. The report’s argument is, instead, that having the possibility to push for concrete legislative reforms in key issues and to actively follow up to ensure that these proposals are adopted, the CNDH has too often failed to do so.

4) Illogical Responses. The CNDH cites excerpts of the HRW report and provides commentary on those excerpts without explaining what the alleged “error” is. Some examples of these “errors” include:

- The CNDH document cites a passage from the HRW report that explains the procedure by which the CNDH “conciliates” cases (“Error 45”). The document then cites the articles of its internal regulations that establish this procedure, confirming the accuracy of the passage in question.
- The CNDH document cites HRW’s recommendation that the CNDH increase public access to information regarding human rights abuses and promote transparency in all areas of its work (“Error 25”). The CNDH responds by claiming (with no explanation) that HRW confuses the public’s right of access to information with the CNDH’s role in “promot[ing] and spread[ing] a culture of human rights.” It does not explain what is “erroneous” about HRW’s recommendation.
- The CNDH document cites a passage in which HRW says that if the CNDH’s ability to follow up on cases were actually limited by its Internal Rules of Procedure, it should seek to have the regulations modified (“Error 40”). The document responds by pointing out that its Advisory Council, which is led by the CNDH president, must approve any changes to these rules. It does not explain what is “erroneous” about saying that the CNDH should seek to have them changed.

5) Inconsequential omissions. The CNDH identifies facts that are not mentioned in the HRW report and argues, incorrectly, that these facts undermine HRW’s findings. Some examples of these “errors” include:

- The HRW report states that the CNDH “did not **challenge** military jurisdiction” over human rights cases. The CNDH claims this finding is “erroneous” in light

of the fact, not mentioned by HRW, that the CNDH president made public statements in 2007 to the effect that “*a debate should be opened on this issue.*” However, these statements do not undermine HRW’s argument, since **calling for a debate** about a serious and abusive practice is not the same as **challenging** it within the formal procedures to do so.

- The HRW report states that “for years the CNDH did not question the military’s flagrant discrimination against people living with HIV, citing Mexican law to legitimate [this] policy.” The CNDH claims that this finding is “erroneous” in light of the fact, not mentioned by HRW, that the CNDH president made public statements in 2004 in which he “*expressed inconformity*” with this policy. However, these statements do not undermine HRW’s finding that the CNDH has not seriously addressed cases of individuals that went to the Commission after being fired by the Army for living with HIV.

Inaccuracies in the HRW Report

Human Rights Watch has found only four instances in which the CNDH identifies phrases or passages in the HRW report that are, in fact, imprecise. However, none of these minor inaccuracies affect the findings of the HRW report. Labeling them “errors” or “lies” is at best an extreme overstatement of the nature of the inaccuracies. The four instances are:

- The HRW report refers to the CNDH as an “**agencia**” in a paragraph that recounts the CNDH’s institutional development during the 1990s. The precise term used in Mexico to refer to the CNDH during those years was “**órgano.**”
- The HRW report states that the CNDH was **planning to end** its policy of charging prohibitive fees for copies of documents sought by the general public. The report should say instead that the CNDH had **already ended** this policy in September 2007.
- The HRW report states that a 2003 CNDH special report on juvenile detention centers “did not make **concrete proposals.**” Several of them could be fairly considered to be “**concrete.**”^{vii}
- The HRW report states that the Auditoría Superior de la Federación (ASF) only audited the CNDH in **two** years between 1999 and 2005. The CNDH responded that during this period the ASF has “reviewed” the CNDH every year. The ASF has in fact audited the CNDH in **four** of these seven years, but not in all of them.^{viii}

The “Legality Principle”

The underlying problem with the CNDH’s response to the HRW report and, more broadly, its approach to its work is perhaps most clearly illustrated by its discussion of the “legality principle.” The CNDH claims that HRW “*desestima [downplays] the legality principle,*” which establishes that “*government officials do not have more powers than those expressly established in the law*” (“Error 9”). However, the HRW report provides an extensive analysis of this principle’s applicability to the CNDH’s work, showing how the existing legal framework enables CNDH officials to be more active in promoting human rights progress.

Moreover, even if the CNDH mandate were in fact limited, as the officials claim, these limitations would be largely self-imposed, since the CNDH is responsible for writing its own internal regulations and has the power to request Congress to modify its legal mandate.^{ix} In other words, the CNDH says it cannot do its job because its hands are tied, yet it makes no effort to have them untied.

ⁱ Human Rights Watch’s report “Mexico’s National Human Rights Commission: A Critical Assessment” is available online at <http://hrw.org/reports/2008/mexico0208/>.

ⁱⁱ See footnotes 15, 18, 54, 55, 62, 75, 76, 82, 83, 106, 109, 112, 114, 117, 121, 128, 129, 131, 134, 136, 137, 139, 141, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 196, 254, 256, 277, 323, and 328.

ⁱⁱⁱ HRW’s report describes on p. 60 that since April 2006 the CNDH has had the power to challenge before the Supreme Court the constitutionality of federal or state laws that violate human rights standards established in the Mexican Constitution. On pages 74 to 78, the report criticizes the CNDH’s challenge to Mexico City’s abortion law.

^{iv} The HRW report analyzes the CNDH’s annual reports, for example, when it discusses:

- a. Paradigmatic cases (Dirty War crimes in footnote 62, Atenco in footnote 78, and murders of women in Ciudad Juarez in footnotes 84, 87, and 92)
- b. Cases in which the government rejected the CNDH’s *recomendaciones* (footnotes 105, 108, 110, 113, 116, 119, and 122)
- c. Cases that the CNDH closed without monitoring investigations that it recommended be carried out (footnotes 132, 135, 138, 140, and 142)
- d. The CNDH’s work regarding the death penalty (footnotes 265 and 266)
- e. Lack of information available in the CNDH annual reports regarding the conciliation process (footnote 271)
- f. Percentage of cases that end with a *recomendacion* (footnote 305)

^v The report mentions the CNDH’s Internal Rules of Procedure 13 times in the text and 17 times in the footnotes. For instance, it does so when it describes:

- a. The CNDH’s work methods (p. 12 and 13, footnotes 12, 13, and 14)
- b. Applicable rules when the government rejects a *recomendacion* (p. 46, footnotes 100 and 101), and its follow up (p. 51, footnote 125)
- c. Special reports (p. 55, footnote 144), and its follow up (p. 56, footnote 146)
- d. General recommendations and its follow up (p. 57, footnote 152)
- e. Conciliations (p. 87, footnote 268) and its follow up (p. 89, footnote 276)
- f. The prohibition to conciliate serious human rights cases (p. 92, footnote 286)
- g. Broad confidentiality norms (p. 95, footnote 297)
- h. The obligation to consult with victims prior to signing conciliation agreements (p. 101, footnote 314)
- i. The CNDH’s obligation to cooperate with international organizations (p. 106, footnote 340)

^{vi} The HRW report mentions article 175 when it describes the CNDH’s obligation to follow up after it issues special reports (p. 56), and article 140 when it describes the CNDH’s obligation to follow up after it issues general recommendations (p. 56).

^{vii} For example, the CNDH report states that “the age to be subject to a criminal procedure must be set, always, at the moment a person turns 18 years old” and that “the minimum age since which a minor may be considered responsible for violating criminal law is 12 years old.”

^{viii} According to the HRW report, the ASF audited the CNDH in 2000 and 2002. According to information provided by the ASF, the ASF has also audited the CNDH in 1999 and 2005, but not in 2001, 2003 nor 2004. Human Rights Watch email correspondence with Roberto Salcedo Aquino, ASF, April 11, 2008.

^{ix} The “legality principle” is analyzed in pages 56 to 58 of the HRW report.