

Mexico’s National Human Rights Commission A Critical Assessment

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I - Summary and Recommendations

The National Human Rights Commission (Comision Nacional de los Derechos Humanos, CNDH), Mexico's official human rights organ, is failing to live up to its promise. The CNDH has made some valuable contributions to human rights promotion in Mexico over the years, providing detailed and authoritative information on specific human rights cases and usefully documenting some systemic obstacles to human rights progress. But when it comes to actually securing remedies and promoting reforms to improve Mexico's dismal human rights record, the CNDH's performance has been disappointing.

The CNDH's principal objective is to ensure that the Mexican state remedies human rights abuses and reforms the laws, policies, and practices that give rise to them. Given the pervasive and chronic failure of state institutions to do either, the CNDH is often the only meaningful recourse available to victims seeking redress for past abuses. It is also, potentially, the most important catalyst for the changes that are urgently needed in Mexico to prevent future human rights violations.

The CNDH's failure to carry out these functions effectively has not been due to a lack of resources. The CNDH's 2007 budget of approximately US\$73 million is by far the largest of any ombudsman's office in the Americas and one of the largest in the world. It has over 1,000 employees, including knowledgeable and experienced professionals who are genuinely committed to promoting human rights. Nor has the problem been the CNDH's mandate, which is broadly defined to include both "protecting" and "promoting" human rights, or its legal powers, which provide ample tools to pursue this broad mandate.

Rather, the reason for the CNDH's limited impact has been its own policies and practices. The CNDH has not made full use of its broad mandate and immense resources. It has routinely failed to press state institutions to remedy the abuses it has documented, to promote reforms needed to prevent those abuses, to challenge abusive laws, policies, and practices that contradict international human rights standards, to disclose and disseminate information it has collected on human rights

problems, and to engage constructively with some key actors who are seeking to promote human rights progress in Mexico.

The CNDH could play a far more active role in improving the human rights situation in Mexico. But for an institution of this kind to be a catalyst for change, rather than merely a chronicler of the status quo, it must be resourceful, creative, proactive, and persistent in promoting solutions to the country's human rights problems.

CNDH investigators have demonstrated such resourcefulness in their efforts to document abuses. For example, the Second Investigative Unit (*visitaduría*) conducted extensive research in the aftermath of police crackdowns in Guadalajara in 2004 and Atenco in 2006, providing an authoritative and detailed account of serious human rights violations in both instances. The Third Investigative Unit carried out a comprehensive evaluation of the country's prison system in 2006, using a carefully crafted system of indicators to evaluate conditions in 191 prisons. The Fifth Investigative Unit has sought to overcome the difficulties of documenting abuses against migrants by establishing offices in key locations throughout the country in recent years, thereby making it easier for these victims to denounce violations and for the unit to investigate the denunciations effectively.

CNDH officials have also, in some instances, been proactive in promoting reforms to address these problems. The Fifth Investigative Unit, for example, has carried out effective campaigns to expand press freedoms in Mexico. The unit's advocacy played an important role in bringing about the passage of legislation to protect journalists from having to reveal their sources in 2006 and to decriminalize defamation in 2007.

Unfortunately, as this report documents, this proactive approach to human rights promotion has not been replicated in many areas of the CNDH's work. This report's findings are based on extensive interviews with 38 CNDH officials, including its current president and high level officials in all substantive areas of work, as well as with various former CNDH employees, including all former CNDH presidents. The findings are also drawn from extensive interviews and consultation with representatives from local nongovernmental organizations, which have played an

essential role in monitoring the CNDH's work since its creation, and with representatives from state human rights commissions, lawyers, journalists, scholars, and leading members of Mexican civil society. Finally, the findings draw upon interviews with numerous victims and relatives of victims of human rights violations.

Human Rights Watch's goal in issuing this report is to provide a fact-based analysis of the reasons the CNDH has not fulfilled its promise, as well as concrete, realizable recommendations on how these deficiencies can be remedied. We hope the analyses and recommendations offered here are useful to CNDH officials, Mexican government officials, and Mexican civil society groups and individuals concerned about human rights and the performance of the CNDH.

Remedies

The CNDH routinely abandons the human rights cases it documents before they are resolved. After documenting violations and issuing recommendations for redressing them, CNDH officials choose not to monitor implementation of these recommendations to ensure the abuses are remedied.

CNDH officials offer a variety of explanations for their inaction. They claim, for instance, that the CNDH's mandate does not allow them to continue monitoring cases if government officials reject their recommendations.

They claim the mandate does not permit them to continue monitoring the abuse cases that they document in "special reports." They claim the mandate does not permit them to monitor the government's implementation of "general recommendations," which address systemic practices rather than specific abuses. And they claim that they are not permitted to monitor the work of public prosecutors, which means that they cannot monitor implementation of one of their most frequent types of recommendation: that abusers be brought to justice.

However, the CNDH mandate and Mexican law do in fact allow CNDH officials to continue their work—and actively promote implementation of their recommendations—in all these circumstances. Indeed, in some important instances, CNDH officials have in fact done so, with positive results. Yet, too often, by failing to follow up aggressively on its own recommendations, the CNDH, despite the

considerable work it does documenting abuses and recommending remedies, has little or no impact on human rights practices in Mexico.

Reform

In addition to recommending remedies for specific abuses, the CNDH has the power to promote the reforms that are needed to prevent future ones. Yet, here too, the CNDH has tended to abdicate its authority. Rather than challenging national laws that are inconsistent with international human rights standards, the CNDH too often does just the opposite, tolerating abusive practices by deferring to existing national laws, rather than advocating their reform.

The CNDH has also failed to support efforts by other state actors—including the executive and legislative branches—to bring Mexican law into compliance with international human rights standards.

CNDH officials justify the failure to promote reform with an unnecessarily limited interpretation of what their own role can and should be. Yet on several occasions the CNDH has in fact defied these self-limiting interpretations and played a far more active and constructive role in promoting reform. If it did so more often, the CNDH would have a far greater impact on curbing human rights abuses in Mexico than it does now.

Publicity

Negative publicity is the most effective tool the CNDH has for deterring future abuses and pressing authorities to reform problematic laws and policies. Since the CNDH cannot directly sanction authorities for violating human rights norms, often the best it can do is to “name and shame” them into remedying past abuses and preventing future ones.

Yet, for the vast majority of the cases it handles, the CNDH does not disclose or disseminate the information it collects. The CNDH resolves 90 percent of the abuse cases it documents by signing “conciliation” agreements with the government institutions responsible for the abuses. But the commission does not publicly

disclose the contents of these agreements, which include both the findings of its investigations and the remedies that the responsible state authorities have agreed to implement. Nor does it publicize at any time afterward the extent to which these authorities comply with the terms of the agreements.

The CNDH's practice of not publicizing its findings is not limited to conciliation agreements. In all its work, the CNDH uses overly broad confidentiality norms, a practice which has the effect of ensuring that abuse victims, as well as the general public, do not have access to the crucial information it holds.

By not publicizing information in its possession, the CNDH severely limits the impact that its work can have both in terms of deterring future abuses and pressing authorities to reform problematic laws and policies.

Collaboration

The CNDH has failed to engage with a diverse array of actors who can contribute to improving the human rights situation in Mexico. The commission excludes victims from the "conciliation" process, signing agreements directly with government institutions without involving the petitioners in the drafting of the terms, or even seeking their consent to close cases in this fashion.

The CNDH has also opposed initiatives by other bodies, including the United Nations High Commissioner for Human Rights, the Interior Ministry's human rights office, and state human rights commissions, aimed at strengthening mechanisms to protect human rights in the country.

By failing to create a constructive relationship with all relevant actors, the CNDH has helped generate an atmosphere of distrust that hinders human rights progress.

Accountability

The CNDH is not subject to any meaningful oversight. Independent accountability mechanisms, such as the Congress, the CNDH citizen advisory council, and the Federal Superior Auditor, do not provide adequate monitoring of the CNDH. Limited

transparency within the CNDH, moreover, makes it difficult for civil society groups, journalists, and other private individuals to monitor the work of the institution.

Recommendations

To the CNDH

Actively press state institutions to remedy human rights abuses

While the CNDH's recommendations are not binding on other state entities, the CNDH can and should take concrete steps to promote greater implementation of its recommendations.

First, the CNDH should end the practice of abandoning its work on cases after issuing recommendations for remedying them. Specifically, the CNDH should instruct its investigators to actively monitor the handling of abuse cases by government officials, even in the following situations:

- when government officials reject its recommendations;
- when the CNDH presents its findings in a “special report”;
- when the CNDH presents its findings in a “general recommendation”; and
- when the CNDH requests government officials to carry out criminal and/or administrative investigations.

Secondly, when the CNDH finds that state actors are failing to implement a recommendation, it should actively press these actors to fulfill their obligations to remedy abuses. Specifically, it should:

- advocate for administrative sanctions to be imposed on officials who fail to address the human rights violations it documents;
- document and publicly denounce government officials' failure to remedy abuses in accordance with its recommendations; and
- take cases to international human rights bodies when the government fails to respond to its recommendations.

Promote reforms to harmonize Mexican law with international human rights norms

The CNDH should take concrete steps to promote changes to those Mexican laws and policies that directly violate international human rights standards or indirectly serve to perpetuate abusive practices.

First, it should apply international human rights standards in a consistent and rigorous fashion when evaluating Mexican laws, regulations, policies, and practices.

Secondly, when it determines that such laws, regulations, policies, or practices contradict international human rights standards, the CNDH should press for their reform. Specifically, it should:

- draft legislation aimed at harmonizing Mexican law with international human rights standards;
- actively campaign to secure the passage of proposed reforms into law; and
- actively support reform initiatives advanced by other state institutions and non-state actors.

Increase public access to information regarding its work

The CNDH should increase public access to the information it collects on human rights abuses and abusive state practices, and increase transparency in all areas of work. Specifically, the CNDH should:

- apply the principle of “maximum disclosure” when interpreting all laws and policies and when analyzing all information requests;
- modify its implementing regulations of the federal transparency law to eliminate overly broad confidentiality exceptions and limit the period of time during which it can reserve information on concluded cases;
- grant petitioners access to information held in CNDH files regarding their own cases;
- publically disclose information in all cases of serious human rights violations;
- publically disclose information regarding the conciliation agreements it signs, including the human rights violations documented in the agreements, the reparations agreed upon, and the degree to which government institutions subsequently comply with the terms of the agreements; and

- adopt clear guidelines for producing public versions of documents that withhold only personal data and other privileged and confidential information regarding the identity of petitioners and victims in cases.

Ensure petitioners' participation in the conciliation process

The CNDH should ensure petitioners' participation in the conciliation of abuse cases. Specifically, it should:

- reach conciliation agreements only in those instances where it has first obtained the explicit consent of petitioners;
- consult with petitioners regarding the content of conciliation agreements prior to signing; and
- keep petitioners informed of the extent to which government officials comply with the agreements.

To the Senate Human Rights Commission

Conduct routine and rigorous evaluations of the CNDH's performance and impact

As the main external overseer of the CNDH's work, the Senate Human Rights Commission should thoroughly evaluate all areas of the commission's work on a regular basis.

First, the Senate Human Rights Commission should conduct public hearings throughout the year to discuss the CNDH's performance. Specifically, it should:

- ensure that these hearings entail a serious and thorough examination of the CNDH's policies, practices, and results;
- invite civil society organizations and victims of human rights abuses who have taken their cases to the CNDH to meetings in which they can provide insights on the CNDH's work;
- take advantage of the information provided by civil society groups and victims to identify issues that require sustained monitoring and attention throughout the year; and
- organize frequent meetings with the appropriate CNDH staff to discuss progress on identified institutional flaws.

Secondly, the Senate Human Rights Commission should promote civil society participation in the process of vetting candidates for the CNDH presidency and advisory council. Specifically, it should:

- select a short list of candidates from a list of proposals submitted by civil society organizations, and require the candidates to present their views in public hearings;
- open a consultation process with civil society organizations after the short list is drafted and the hearings take place so as to allow these groups to comment on the candidates and the content of their proposals; and
- include a detailed and substantive analysis of contestants' qualifications in its final decision, taking into account the input provided by civil society organizations.

Finally, the Senate Human Rights Commission should monitor the CNDH's budget to ensure that the manner in which the funds are spent contributes in the best possible way to its mission and purpose. To do so, it should:

- request that the Vigilance Commission of the Federal Superior Auditor in the House of Representatives solicit a comprehensive performance evaluation of the CNDH by the Federal Superior Auditor (Auditoria Superior de la Federacion, ASF) to assess whether the CNDH is using available human, material, financial, and technological resources efficiently to fulfill the purposes for which it was created; and
- use the information provided by a performance evaluation by the ASF to analyze the CNDH's work and to press the CNDH to improve its practices.

II - Background

The CNDH's Origins

Mexico's National Human Rights Commission (Comision Nacional de Derechos Humanos, CNDH) was created in 1990, through a presidential decree signed by then President Carlos Salinas de Gortari, to monitor the human rights practices of government institutions and promote increased respect for fundamental rights in Mexico.¹

The CNDH's creation followed many years of human rights advocacy by Mexican nongovernmental organizations, which had documented abuses committed by the government during the country's "dirty war" and in the years thereafter.² Various human rights advocates had received death threats at the beginning of 1990. One case that received extensive national and international attention was the murder, on May 21, 1990, of Norma Corona, an activist who had documented abuses committed by the judicial police. Her assassination was widely seen as an attempt to silence the human rights community in Mexico. (At the request of Salinas, this was one of the first cases addressed by the CNDH.)³

¹ Interior Ministry, "Decreto por el que se crea la Comision Nacional de Derechos Humanos como un organo desconcentrado de la Secretaria de Gobernacion" [Decree by which the National Commission on Human Rights is created as a de-concentrated agency of the Interior Ministry], June 5, 1990.

Jorge Carpizo MacGregor was the CNDH president between June 6, 1990 and January 4, 1993; Jorge Madrazo Cuellar between January 14, 1993 and November 16, 1996; Mireille Roccatti between January 8, 1997 and November 13, 1999; and Jose Luis Soberanes Fernandez has been the CNDH president since November 16, 1999.

The creation of the CNDH followed the establishment of a General Directorate on Human Rights [Direccion General de Derechos Humanos], which was created within the Interior Ministry on February 13, 1989. CNDH, "Antecedentes" [Organization History], undated, <http://www.cndh.org.mx/lacndh/anteced/antece.htm> (accessed May 9, 2007), para. 4. See also Jorge Luis Sierra Guzman et al., *La Comision Nacional de Derechos Humanos: Una vision no gubernamental* [The National Human Rights Commission: A nongovernmental vision] (Mexico City: Comision Mexicana de Defensa y Promocion de los Derechos Humanos, A.C., 1991), pp. 47-48; and John Ackerman, *Organismos Aut6nomos y Democracia: El Caso de M6xico* [Autonomous organizations and democracy: the case of Mexico] (Mexico City: Siglo XXI/IIJ-UNAM, 2007), chapter 3.

² Guzman, *La Comision Nacional de Derechos Humanos* [The National Human Rights Commission], pp. 48-49.

³ *Ibid.*, p. 51. See also Ana Puga, "Slaying of activist sparks Mexico furor / Federal lawmen point to drug dealers, but police themselves under suspicion," *Houston Chronicle*, June 17, 1990; Gregory Katz, "Mexican rights chief details panel's work," *The Dallas Morning News*, December 14, 1990.

Attention from the international community also increased the pressure on the government to deal with its human rights problems. In May 1990 the Inter-American Commission on Human Rights (IACHR) held that Mexico had violated political rights established in the American Convention on Human Rights during the 1985 election of deputies in the state of Chihuahua, the 1986 municipal elections in the capital of the state of Durango, and the 1986 elections for governor of the state of Chihuahua.⁴ International nongovernmental organizations also pushed the government to act.⁵

The CNDH, originally created as part of the Interior Ministry, was transformed into a “de-centralized agency” by a 1992 constitutional reform, which granted it legal standing independent of the executive branch. The “Law on the CNDH,” passed that same year, granted the institution exclusive authority to design its own internal rules and administer its resources.⁶ The CNDH’s budget still depended on the executive branch, however, and the president continued to appoint the CNDH president and its council members (though these appointments now required the Senate’s approval).

The CNDH became a fully autonomous agency in 1999, thanks to a constitutional reform that granted it complete independence from the executive branch.⁷ The CNDH president and council members are now appointed by the Senate, which must consult with civil society organizations prior to the appointments.

⁴ Inter-American Commission on Human Rights, Resolution 01/90 – Cases 9768, 9780 and 9828, May 17, 1990, <http://www.cidh.org/annualrep/89.9oeng/Mexico9768.htm> (accessed May 25, 2007).

⁵ The Mexican government was preparing for the release of a Human Rights Watch report, “Human Rights in Mexico: A Policy of Impunity,” when Salinas decided to create the CNDH. Americas Watch (now Human Rights Watch/Americas), *Human Rights in Mexico: A Policy of Impunity* (New York: Human Rights Watch, 1990). Human Rights Watch interview with Mariclaire Acosta, director of the Department for the Promotion of Governance at the Organization of American States, Washington, DC, October 11, 2006. According to a history of the CNDH, “Days before the presidential decree creating the CNDH was published, the Mexican government was preparing itself for the imminent publication of an Americas Watch report.” Guzman, *La Comisión Nacional de Derechos Humanos* [The National Human Rights Commission], p. 53.

⁶ Law on the National Human Rights Commission (Law on the CNDH) [Ley de la Comisión Nacional de los Derechos Humanos], 1998, <http://www.cndh.org.mx/normat/leycndh/leyCndh.pdf> (accessed May 25, 2007).

⁷ The reform also changed the name of the institution from “Comisión Nacional de Derechos Humanos” [National Commission of Human Rights] to “Comisión Nacional de los Derechos Humanos” [National Commission of the Human Rights]. CNDH, “Antecedentes” [Organization History], undated, <http://www.cndh.org.mx/lacndh/anteced/antece.htm> (accessed May 9, 2007), para. 5.

The CNDH now elaborates its own budget and sends it to the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público, SHCP), which incorporates it into the annual federal budget. The executive presents the federal government’s budget to the House of Representatives, which has the exclusive authority to approve it. After it is approved, the SHCP informs the CNDH of its budget for that particular year.

The CNDH's budget has steadily increased since it became an autonomous agency, reaching 801 million pesos (approximately US\$73 million) in 2007.⁸ It is, by far, the highest budget of any ombudsman's office in the Americas. And with a staff of more than 1,000 employees, it is one of the largest national human rights commissions in the world.⁹

The CNDH's Mandate, Structure, and Methods

The CNDH's formal mandate is to "protect, observe, promote, study, and disseminate the human rights protected by the Mexican legal system."¹⁰ While it is prohibited from analyzing electoral and labor issues, as well as decisions by actors within the judicial system, this mandate provides broad room for addressing a wide range of pressing human rights problems in Mexico.

The CNDH has five investigative areas, called *visitadurias*, which carry out most of the CNDH's substantive work, following guidelines established by the CNDH president and the institution's internal rules.¹¹

⁸ At time of writing, US\$1 was worth approximately 11 Mexican pesos.

In 1992, the CNDH budget was 73 million pesos (approximately US\$7 million), and between 1993 and 2000 it oscillated between 215.5 and 302.3 million pesos (approximately between US\$19 million and US\$27.5 million). CNDH document 28962 from file 2004/85-T, October 28, 2004.

In 2001, the CNDH's budget was 410 million pesos (approximately US\$37 million), in 2002 it was 456.3 million pesos (approximately US\$41.5 million), in 2003 it was 575 million pesos (approximately \$52 million), in 2004 it was 629.1 million pesos (approximately \$57 million), in 2005 it was 708.1 million pesos (approximately US\$64 million), in 2006 it was 742.5 million pesos (approximately US\$67.5 million), and in 2007 it is 801 million pesos (approximately US\$73 million). Centro de Estudios de las Finanzas Publicas [Center for Public Financial Studies], Mexican federal budget for 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, http://www3.diputados.gob.mx/camara/001_diputados/006_centros_de_estudio/02_centro_de_estudios_de_finanzas_publicas/02_publicaciones/01_documentos (accessed May 25, 2007).

In 2006, the Colombian ombudsman's office, which has the second largest budget in the Americas, received 84.802, 30 million Colombian pesos (approximately US\$37 million). Colombia ombudsman's office, "Apropiaciones presupuestales 2002-2006" [Budget expenditures 2002-2006], http://www.defensoria.org.co/?_s=contable (accessed May 21, 2007). Human Rights Watch email communication with Oscar Concha Jurado, staff member from the Colombian ombudsman's office, October 19, 2006. As of this writing, US\$1 was worth around 2300 Colombian pesos.

⁹ Human Rights Watch interview with Pablo Escudero, official mayor of the CNDH, Mexico City, March 21, 2007. The official mayor is the head of the Oficialia Mayor, an office whose functions are described below. Human Rights Watch telephone interview with a UN official from the National Human Rights Institutions Forum, Geneva, January 17, 2007.

¹⁰ Law on the CNDH, art. 2.

¹¹ The chief investigator in each investigative area is called a *visitador*. Other offices within the CNDH are the Executive Secretariat (in charge of promoting the CNDH's work internationally and international issues in Mexico, and of the CNDH's relationship with international actors); the Technical Secretariat (in charge of the CNDH's relationship with its advisory council,

The CNDH's *modus operandi* entails investigating and documenting human rights abuses and then employing a variety of instruments to resolve the cases. The most common instrument used in cases of serious human rights abuses is a public document that details the violations and identifies steps that state institutions should take to redress them.¹² This document is formally known as a *recomendacion*, or "recommendation." (A *recomendacion* often contains multiple specific recommendations directed at multiple state agencies.) When documenting generalized practices or systemic abuses, the CNDH may issue a "special report" or a "general recommendation," which also usually recommend ways in which the government should address the documented abuses.¹³

For cases involving abuses that do not rise to the level of "serious" human rights violations, the CNDH can also issue a public *recomendacion* but must first attempt to "conciliate" the case by means of a signed agreement with the government authority

nongovernmental organizations, state human rights commissions, and other branches of government; as well as of carrying out capacity-building courses on human rights); the Oficialia Mayor (in charge of planning and executing the economic, budgetary and administrative issues within the CNDH); the General Directorate of Social Communication (in charge of publicizing the activities, benchmarks, objectives, achievements, and presence of the CNDH); the General Directorate of Complaints and Orientation (in charge of receiving cases, and carrying out administrative activities related to processing cases, such as updating the database and managing correspondence); the General Directorate of Planning and Analysis (in charge of assisting the CNDH president in his or her activities); the General Directorate of Computerized Information (in charge of implementing computerized systems to improve the CNDH's work); the General Directorate of Legal Affairs (provides legal assistance to the CNDH president in cases in which the CNDH is a party, and reviews documents and contracts signed by the CNDH); the National Human Rights Center (carries out academic investigations related to human rights); and the Internal Control Organ (in charge of overseeing how the CNDH spends its budget and whether its staff complies with applicable norms). CNDH, "Estructura Organizacional" [Organizational Structure], undated, <http://www.cndh.org.mx/lacndh/estruct/estorg.htm> (accessed May 25, 2007).

¹² Law on the CNDH, arts. 44, 46, and 49. Internal rules of procedure of the National Commission of the Human Rights (CNDH, Rules of Procedure) [Reglamento Interno de la Comision Nacional de los Derechos Humanos], September 29, 2003, <http://www.cndh.org.mx/normat/reglaman/regInter.pdf> (accessed May 25, 2007), arts. 128 – 139.

¹³ According to its rules of procedure, the CNDH issues special reports on human rights problems "when the nature of the case requires it, given its importance or seriousness." CNDH, Rules of Procedure, art. 174.

General recommendations examine the laws, policies, and practices that lead to human rights violations. According to the CNDH's rules of procedure, "The National Commission will be able to issue general recommendations to different government authorities in the country, with the purpose of promoting changes to norms and administrative practices that lead to human rights violations. These recommendations will be elaborated similarly than those in specific cases and will be based on studies carried out by the National Commission's investigative units, after approval by the National Commission's president. Before they are issued, these recommendations will be analyzed and approved by the advisory council." CNDH, Rules of Procedure, art. 140.

responsible for the documented abuses.¹⁴ These written “conciliation” agreements contain analyses of the human rights violations and outline the steps that the government authorities have agreed to take to redress them. The CNDH uses this mechanism to resolve 90 percent of the abuses it documents.

The CNDH’s Contribution to Human Rights Promotion

The CNDH has played a valuable role in identifying human rights problems in Mexico and, in some cases, pressing the government to act in response to them.

In 1995, for example, the CNDH documented the Aguas Blancas massacre in which 17 people died and many others were injured after an intervention by police forces.¹⁵ Former president Zedillo used the *recomendacion* issued by the CNDH to request the Supreme Court to analyze the case, which led to the court’s first truth-commission style report.¹⁶ Both the CNDH *recomendacion* and the Supreme Court’s report were later used by the Inter-American Commission on Human Rights (IACHR) to establish the government’s responsibility for the massacre and to condemn its failure to follow up and ensure that justice was done.¹⁷

In 1996 the CNDH documented the illegal detention, torture, and extrajudicial execution of Reyes Penagos Martinez in Chiapas, which formed the basis for building a criminal case against those responsible.¹⁸ It was, as well, an important source used by the IACHR in reaching an amicable settlement between the government and

¹⁴ The CNDH’s rules of procedure state the CNDH must seek an amicable settlement with authorities implicated in abuses in every case it receives, unless it is analyzing the possible commission of serious human rights violations. If the government authority does not agree to conciliate the case, does not implement the conciliation agreement it signed, or if the CNDH considers the government committed a serious human rights violation, it will issue a public *recomendacion*. CNDH, Rules of Procedure, chapter V.

¹⁵ CNDH, *Recomendación* 104/95, August 14, 1995.

¹⁶ Mexican Supreme Court, Caso 3/96, Peticion del Presidente de los Estados Unidos Mexicanos para que la Suprema Corte de Justicia de la Nacion Ejerciera la Facultad Prevista en el Parrafo Segundo del Articulo 97 de la Constitucion Federal [The Petition of the President of the United States of Mexico Requesting the Mexican Supreme Court to Exercise Powers Provided to it under the Second Paragraph of Article 97 of the Federal Constitution], April 23, 1996, <http://200.38.86.53/NR/rdonlyres/04DCBD9F-55Fo-4590-B4CC-56383A9BF5D7/o/EjecReg200111.pdf> (accessed May 25, 2007).

¹⁷ Inter-American Commission on Human Rights, Case 49/97 – Case 11.520, Judgment of February 18, 1998, Inter-Am Ct. H.R., 11.520, <http://www.cidh.org/annualrep/97eng/Mexico11520.htm> (accessed May 25, 2007).

¹⁸ CNDH, *Recomendación* 061/1996, July 15, 1996.

the victim's representatives. As a consequence of this settlement, the state government publicly apologized for the abuses, the victims obtained monetary reparations, and there have been some positive developments in the investigations, including one indictment.¹⁹

More recently, in 2001, the CNDH elaborated a detailed report that documented "disappearances" during Mexico's "dirty war," which was the starting point for the creation of a special prosecutor's office to promote justice for these crimes.²⁰

In January 2005 the CNDH created an office to address human rights violations suffered by migrants, a critical step toward addressing this complex problem in a meaningful way after years of limited action. Since then, the CNDH has opened eight offices throughout the country; issued one "general recommendation," 19 *recomendaciones* in specific cases, and a "special report" on the situation in migrants' stations; and allowed specialized NGOs to conduct training of CNDH staff.²¹

In 2006 the CNDH published the National Diagnosis on Penitentiary Supervision, which evaluates 191 prisons (76 percent of all state prisons in the country) through a series of indicators that assign a numeric value to the level of these facilities' compliance with international standards. The purpose of this diagnosis is to assist state governments in deciding where and how to begin addressing the problems in the penitentiary systems in their own jurisdictions.²²

¹⁹ Inter-American Commission on Human Rights, "Working meeting minutes – Case 11.822 – Reyes Penagos," November 3, 2006; Isain Mandujano, "Gobierno de Chiapas pide perdon por la detencion, tortura y ejecucion extrajudicial de Reyes Penagos" [The government apologizes for the detention, torture and extrajudicial execution of Reyes Penagos], *Proceso*, February 21, 2007; and Human Rights Watch interview with Fabian Sanchez, director of the Comision Mexicana para la Defensa y Promocion de los Derechos Humanos, Mexico City, March 6, 2007.

²⁰ "El titular de la PGR recibe informe historico de la Femospp" [The Head of the Attorney General's Office receives historical report from the Special Prosecutor's Office], Attorney General's Office, press release 1474/06, November 17, 2006.

²¹ CNDH, "Estructura Organizacional" [Organizational Structure], undated, <http://www.cndh.org.mx/lacndh/estruct/estorg.htm> (accessed May 25, 2007). Human Rights Watch interview with Mauricio Farah Gebara, fifth visitador, and staff from the fifth visitaduria, Mexico City, March 20, 2007. Documentation provided to Human Rights Watch by Mauricio Farah Gebara, March 20, 2007. Human Rights Watch interview with Fabienne Vennet, executive director of Sin Fronteras, Mexico City, November 29, 2006.

²² Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007. CNDH, "Diagnostico Nacional de Supervision Penitenciaria" [National Diagnosis of Penitentiary Supervision], February 2006, <http://www.cndh.org.mx/informes/default.asp> (accessed May 25, 2007).

The CNDH has also adopted measures to raise public awareness about human rights norms in Mexico. For instance, in December 2002 the CNDH issued an interactive CD-ROM that includes information on the CNDH, human rights norms, and international law; a proposed capacity-building course; and music and games for children.²³ The CD-ROM has been widely distributed in the country and, in 2006 alone, the CNDH employed it in approximately 300 presentations in various states.²⁴

²³ “Nuestros Derechos. Segunda edicion” [Our Rights. Second Edition], CD-ROM by the CNDH, December 2004. As of this writing, the CNDH is producing the third edition of the CD-ROM.

²⁴ Human Rights Watch interview with Francisco Illanes Solis, general director of information technology of the CNDH, Mexico City, March 16, 2007.

III - Mexico's Obligations Under International Law

Obligation to Provide a Remedy

Mexico is party to several international treaties that impose an obligation to respect, protect, and fulfill the human rights listed in the treaties. Those same treaties also impose on the Mexican state the obligation to deter and prevent violations, and to investigate and remedy violations of those rights.²⁵

Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy—including justice, truth, and adequate reparations—after they suffer a violation. According to the International Covenant on Civil and Political Rights (ICCPR), governments have an obligation “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”²⁶ The ICCPR imposes on states the duty “[t]o ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”²⁷ The American Convention on Human Rights (ACHR) states that every individual has “the right to simple and prompt

²⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Mexico on March 23, 1981; American Convention on Human Rights (ACHR) (“Pact of San Jose, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), acceded to by Mexico on March 2, 1981; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Mexico on January 23, 1986, arts. 2(1),11, 16; Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force February 28, 1987, ratified by Mexico on , February 11, 1987, arts. 1, 6; Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994), entered into force March 28, 1996, ratified by Mexico on February 28, 2002, art. 1.

²⁶ ICCPR, art. 2(3)(a).

²⁷ ICCPR, art. 2 (3)(b). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d). “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below.”

recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights.”²⁸ With regard to the “obligation of the States Parties to ‘ensure’ the free and full exercise of the rights recognized by the convention,” the Inter-American Court of Human Rights has held:

This obligation implies the duty of states parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the states must prevent, investigate and punish any violation of the rights recognized by the convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.²⁹

Obligation to Inform

In addition to the obligation to investigate and prosecute, states have an obligation to provide victims with information about the investigation into the violations.

Victims have a right to know the truth about violations they suffered. The UN General Assembly has endorsed the principle that victims’ right to remedies includes having

²⁸ ACHR, art. 25.

²⁹ Inter-American Court of Human Rights, *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), paras. 166, 174, 176: “The state has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.” Para. 176: “The state is obligated to investigate every situation involving a violation of the rights protected by the convention. If the state apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the state has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the state allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the convention.”

See also Inter-American Court, *Loayza Tamayo Case*, Judgment of November 27, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 42 (1998), para. 169. “As this Court has held on repeated occasion, Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 ‘is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention’ (*Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83; *Suárez Rosero Case*, supra 162, para. 65; and *Paniagua Morales et al. Case*, supra 57, para. 164). That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.”

access to relevant information concerning human rights violations.³⁰ International principles adopted by the UN Commission on Human Rights state that “irrespective of any legal proceedings, victims, their families and relatives have the imprescriptible right to know the truth about the circumstances in which violations took place.”³¹

International human rights bodies have emphasized the state’s obligation to provide information to victims, particularly in cases of enforced disappearance. The UN Human Rights Committee has held that the extreme anguish inflicted upon relatives of the “disappeared” makes them direct victims of the violation as well.³² To the extent the state fails to inform relatives about the fate of the “disappeared,” it fails to fulfill its basic obligation to bring an end to the violation.³³ Similarly, the Inter-American Court has held that states’ obligation to provide reparation to victims of abuses translates into an obligation to provide family members with information about what has happened to people who have “disappeared.”³⁴

³⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, paras. 11 (c) and 24. Para. 11: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (c) Access to relevant information concerning violations and reparation mechanisms.” Para. 24: “States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.”

³¹ Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 3.

³² The U.N. Human Rights Committee articulated this principle in the case *Quinteros v. Uruguay*, concluding that the mother of a “disappeared” person was entitled to compensation as a victim for the suffering caused by the failure of the state to provide her with information. Case No. 107/1981. “The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.”

³³ See Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime”, *Yale Law Journal*, No. 100 (1990); Naomi Roht-Arriaza (comment): “State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law”, *California Law Review*, No. 78 (1990); and José Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints”, *State Crimes: Punishment or Pardon* (New York: Aspen Institute Justice and Society Program, 1989).

³⁴ The Court has held that parents have a right to obtain reparation for suffering inflicted upon them by the forced disappearance of a child. This obligation is not satisfied with the offer to pay monetary damages. It must also include ending the state of uncertainty and ignorance regarding the fate and whereabouts of the “disappeared” persons. Inter-American

Given this duty to inform, the duty to investigate violations must be understood as distinct from the duty to prosecute them. According to the Inter-American Court,

The duty to investigate . . . continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.³⁵

In addition to informing the victims and their families, the state has an obligation to inform society in general about human rights abuses, particularly when they are serious violations. This obligation derives partly from its duty to prevent future violations. According to the UN Commission on Human Rights:

Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through systematic, gross violations of human rights, to the perpetration of heinous crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of violations in the future.³⁶

Similarly, the Inter-American Commission on Human Rights has established that “Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future.”³⁷

Court, *Aloeboetoe Case, Reparations* (Article 63.1 American Convention on Human Rights), Judgment of September 10, 1993, para. 76. According to paragraph 76, “...it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child.”

³⁵ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), para. 181.

³⁶ *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 1.

³⁷ “Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights,” Annual Report of the Inter-American Commission on Human Rights 1985-86, OEA/Ser. L/V./ II.68, Doc. 8, rev. 1, September 26, 1986, ch. V, p. 205.

See also *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law*, March 21, 2006, adopted by the

The right to “seek, receive, and impart” information is recognized in the Universal Declaration of Human Rights, the ICCPR, and the ACHR.³⁸ Although to date this has primarily been invoked to prevent states' illegitimate interference or restriction on individuals or the media accessing information that is available, there is growing international recognition that the right also encompasses a positive obligation of states to provide access to official information. Both regional and international organizations have held that the right of access to official information is a fundamental right of every individual.³⁹ In the Americas, the Inter-American Court

60th session of the United Nations General Assembly, A/RES/60/147, para. 24. “States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access...”

³⁸ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 19; ICCPR, art. 19(2); ACHR, art. 13(1). UDHR, art. 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” ICCPR, art. 19 (2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” ACHR, art. 13 (1): “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.”

³⁹ Joint declaration by Ambeyi Ligabo, U.N. Special Rapporteur on Freedom of Opinion and Expression, Miklos Haraszti, OSCE Representative on Freedom of the Media, and Eduardo Bertoni, OAS Special Rapporteur for Freedom of Expression, December 6, 2004, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1> (accessed June 14, 2007). “The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”

Principle 4 of the Declaration of Principles on Freedom of Expression, approved by the IACHR at its 108th regular sessions in October 2000, <http://www.cidh.oas.org/declaration.htm> (accessed June 14, 2007). “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

See also United Nations Economic and Social Council, Commission on Human Rights, “Civil and Political Rights, Including the Question of Freedom of Expression: The Right to Freedom of Opinion and Expression. Report of the Special Rapporteur, Ambeyi Ligabo, submitted in accordance with Commission resolution 2003/42,” (New York: United Nations, 2003), <http://daccessdds.un.org/doc/UNDOC/GEN/G03/171/69/PDF/G0317169.pdf?OpenElement> (accessed June 15, 2007), paras. 38 and 39. Para. 38: “In his report E/CN.4/1995/43, the Special Rapporteur stated the basis for, and rationale of, the right to information as “The freedom to seek information is guaranteed in ICCPR Article 19 (2). It entails the right to seek information inasmuch as this information is generally accessible” (para. 34) and as “the right to seek or have access to information is one of the most essential elements of freedom of speech and expression. Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked” (para. 35).” Para. 39: “However, in a more extensive commentary in 1998 (E/CN.4/1998/40), the Special Rapporteur moved beyond understanding the right to information as an element of freedom of expression generally aiming at securing democracy, towards the understanding that: “the right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own”

has held that article 13 of the ACHR (on the right to freedom of expression) entails the right to receive information held by government offices, as well as these offices' obligation to provide it.⁴⁰ Moreover, it is internationally recognized that the right of access to official information is crucial to ensure democratic control of public entities and to promote accountability within the government.⁴¹

(para. 11); the right “imposes a positive obligation on States to ensure access to information”, in particular, by “freedom of information legislation, which establishes a legally enforceable right to official documents for inspection and copying” (para. 14); the right to “access to information held by the Government must be the rule rather than the exception” (para. 12).”.

⁴⁰ Inter-American Court of Human Rights, *Claude Reyes Case*, Judgment of September 19, 2006, Inter-Am.Ct.H.R., Series 151, paras. 76 and 77. Para: 76. “In this regard, the Court has established that, according to the protection granted by the American Convention, the right to freedom of thought and expression includes “not only the right and freedom to express one’s own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.” In the same way as the American Convention, other international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, establish a positive right to seek and receive information.” Para. 77: “In relation to the facts of the instant case, the Court finds that, by expressly stipulating the right to “seek” and “receive” “information,” Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State.”

See also Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OAS/Ser.L./V/II 116, Doc. 5 rev. 1 corr. 22, October 2002, para. 281. “As stated earlier, the right to freedom of expression includes both the right to disseminate and the right to seek and receive ideas and information. Based on this principle, access to information held by the State is a fundamental right of individuals and States have the obligation to guarantee it.⁴⁰[672] In terms of the specific objective of this right, it is understood that individuals have a right to request documentation and information held in public archives or processed by the State, in other words, information considered to be from a public source or official government documentation.”

Although a narrower interpretation of the right of access to information has prevailed in Europe, the European Court of Human Rights has interpreted that individuals had the right to obtain information held by the government if such information affected their private life, and therefore interfered with their right to privacy and family life. The European Court has also established that governments may not restrict a person from receiving information that others wish or may be willing to impart. *European Court of Human Rights, Leander v. Sweden*, Case 10/1985/96/144, February 1987, paras. 48 and 74 *European Court of Human Rights, Gaskin v. United Kingdom*, Case 2/1988/146/200, July 1989, para. 49. *European Court of Human Rights, Guerra and others v. Italy*, Case 116/1996/735/932, February 1998, para. 53.

⁴¹ In Europe it has been recognized since the early 1980s. See Toby Mendel, “Libertad de Información: Derecho Humano protegido internacionalmente” [Freedom of Expression: A Human Right Protected Internationally], *Derecho Comparado de la Información* [Comparative Law on Information], January-June 2003, pp. 13-19, <http://www.juridicas.unam.mx/publica/librev/rev/decoin/cont/1/cnt/cnt3.pdf> (accessed June 14, 2007). The Inter-American Court of Human Rights held in 1985 that effective citizen participation and democratic control, as well as a true debate in a democratic society, cannot be based on incomplete information. Understanding freedom of expression as

According to the “Principles on Freedom of Information Legislation,” endorsed by the UN and Inter-American human rights systems, the right of access to information is governed by the “principle of maximum disclosure.”⁴² In other words, the

both the right to express oneself, and the right to obtain information, the Inter-American Court of Human Rights held that “freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable in the formation of public opinion. (...) It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.” Inter-American Court of Human Rights, “Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights),” Advisory Opinion OC-5, November 13, 1985, para. 70.

The OAS General Assembly has held in since 2003 that access to official information is an indispensable requirement for a democracy to work properly, and that states have an obligation to ensure access to information. OAS General Assembly Resolution on Access to Official Information: Strengthening Democracy, AG/Res. 1932 (XXXIII-O/03), June 10, 2003, http://www.oas.org/juridico/english/gao3/agres_1932.htm (accessed June 14, 2007), paragraph 2. OAS General Assembly Resolution Access to Official Information: Strengthening Democracy, AG/Res. 2057 (XXXIV-O/04), June 8, 2004, http://www.oas.org/xxxivga/english/docs_approved/agres2057_04.asp (accessed June 14, 2007), paragraph 2. OAS General Assembly Resolution on Access to Official Information: Strengthening Democracy, AG/RES. 2121 (XXXV-O/05), May 26, 2005, <http://www.oas.org/XXXVGA/docs/ENG/2121.doc> (accessed June 14, 2007), paragraph 2. OAS General Assembly Resolution Access to Official Information: Strengthening Democracy, AG/RES. 2252 (XXXVI-O/06), June 6, 2006, http://scm.oas.org/doc_public/ENGLISH/HIST_06/AG03341E09.DOC (accessed July 9, 2007), paragraph 1. OAS General Assembly Resolution Access to Official Information: Strengthening Democracy, AG/RES. 2288 (XXXVII O/07), June 5, 2007, <http://www.oas.org/37AG/Docs/eng/2288.doc> (accessed July 9, 2007), paragraph 1.

The Chapultepec Declaration, signed by most heads of state in the hemisphere, and the Lima Principles, endorsed by the OAS and U.N. Special Rapporteurs on/for Freedom of Expression, also recognize this consensus. The Chapultepec Declaration determines in its second principle that every person has the right to seek and receive information, and in its third principle that “authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector.” It was adopted on March 11, 1994, by the Hemisphere Conference on Free Speech held in Mexico City. Experts and thirty-two government representatives, including former Mexican President Carlos Salinas de Gortari, endorsed it. See http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm (accessed June 14, 2007). Principle 1 of the Lima Principles establishes access to information as an individual right and as a necessary component for a democratic society, and principle 2 establishes that states must make information available in a timely and complete manner. Principle 1: “Every person has the right to be free to search for, receive, have access to and disseminate information without being subject to interference by public authorities prior censorship or to indirect restrictions due to the abuse of official control. There is no obligation on the individual to justify any request for information in order to exercise this right. Access to information is both an individual right and necessary for a democratic society. The right covers both those who actively seek information as well as those who expect to receive information through the media as well as official channels.” Principle 2: “Every person has the right to ensure accountability in the work of the public administration, the powers of the State in general and of public service companies.. In order to carry out this task effectively, people require access to information held by the authorities. Authorities must be legally required to make the information available to people in a timely and complete manner. It is the government's responsibility to create and maintain public records in a serious and professional manner so that the right to information can be effectively exercised. records should not be arbitrarily destroyed this, in turn, requires a public policy which preserves and develops a corporate memory within the institutions of government.” The Lima Principles were adopted in November 2000 by experts on freedom of expression and by the U.N. and OAS Special Rapporteurs on Freedom of Opinion and Expression. The Lima Principles, <http://www.cidh.org/Relatoria/showarticle.asp?artID=158&IID=1> (accessed June 14, 2007).

⁴² Principle 1 of The Public's Right to Know – Principles on Freedom of Information Legislation holds that “[t]he principle that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.” The Principles on Freedom of Information Legislation were adopted in June 1999 by Article XIX, an

government is presumed to be under an obligation to disclose information, a presumption that can be overridden only under circumstances clearly defined by law in which the release of information could undermine the rights of others or the protection of national security, public order, or public health or morals.⁴³

Victims' Right to Participate

Under international standards, states should ensure that victims can participate in proceedings designed to remedy human rights violations.

International treaties provide victims of human rights abuses with the right to a remedy, and such a remedy must respect and protect their rights and role in the

NGO working on freedom of expression and access to information, in consultation with organizations in different countries, <http://www.article19.org/pdfs/standards/righttoknow.pdf> (accessed June 14, 2007). It was later endorsed by the U.N. and Inter-American systems on human rights. See, for example, IACHR, Report on Terrorism and Human Rights, OAS/Ser.L./V/II 116, Doc. 5 rev. 1 corr. 22, October 2002, para. 284: "As a fundamental component of the right to freedom of expression, access to information must be governed by the "principle of maximum disclosure. In other words, the presumption should be that information will be disclosed by the government. Specifically, as noted in the chapter on the right to personal liberty and security, information regarding individuals arrested or detained should be available to family members, counsel and other persons with a legitimate interest in such information." See also IACHR Annual Report 1999, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, chapter II, OEA/Ser.L./V/II.111, Doc. 3 rev., Vol. III ; and United Nations Commission on Human Rights Resolution 1999/36, U.N. Commission on Human Rights, 56th Sess., E/CN.4/2000/63 (January 18, 2000), para. 43.

⁴³ ICCPR, art. 19(3): "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals." ACHR, art. 13(2): "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a). respect for the rights or reputations of others; or b). the protection of national security, public order, or public health or morals."

The Declaration of Principles on Freedom of Expression states that the right may only be limited exceptionally and such limitations must "be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Principle 4 of the Declaration of Principles on Freedom of Expression, approved by the IACHR at its 108th regular sessions in October 2000, <http://www.cidh.org/Relatoria/showarticle.asp?artID=26&IID=1> (accessed June 14, 2007).

According to The Johannesburg Principles, restrictions must be "necessary in a democratic society to protect a legitimate national security interest." Principles 1(d) and 11 of The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> (accessed June 14, 2007). The Johannesburg Principles were adopted on October 1995 by experts in international law, national security, and human rights; and were later recognized by the U.N. Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur for Freedom of Expression. See Report of the Special Rapporteur Mr. Abid Hussain, pursuant to U.N. Commission on Human Rights resolution 1993/45, U. N. Commission on Human Rights, 52nd Sess., E/CN.4/1996/39 (March 22, 1996), para. 154; and IACHR Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, chapter IV, OEA/Ser.L./V/II.118 Doc. 70 rev. 2.

process. Both the Inter-American Court and the European Court of Human Rights (ECHR) have held that victims and their families have a right to be involved in investigations into the events that resulted in a violation of their rights.⁴⁴ According to the ECHR, “the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.”⁴⁵ The International Criminal Court (ICC) held in 2006 that victims also have a right to participate in the investigative phase.⁴⁶

Article 8(1) of the ACHR states that “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, ... for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” And, according to article 14 of the ICCPR, “In the determination ... of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

⁴⁴ European Court of Human Rights, *Adali v. Turkey*, no. 38187/97, Judgement of March 31, 2005, available at www.echr.coe.int, para. 232. “Finally, the Court is also concerned about the lack of public scrutiny of the investigation carried out by the authorities and of the lack of information provided to the deceased's family. The Court emphasises in this connection the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information as well as enabling them to present other evidence ...”

Inter-American Court of Human Rights, *Blake*, Judgment of January 24, 1998, Inter-Am.Ct.H.R., Series C No. 36, para. 97. “Thus interpreted, the aforementioned Article 8(1) of the Convention also includes the rights of the victim's relatives to judicial guarantees, whereby “[a]ny act of forced disappearance places the victim outside the protection of the law and causes grave suffering to him and to his family” (no underlining in the original) (United Nations Declaration on the Protection of All Persons Against Enforced Disappearance, Article 1(2)). Consequently, Article 8(1) of the American Convention recognizes the right of Mr. Nicholas Blake's relatives to have his disappearance and death to effectively investigated by the Guatemalan authorities to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they sustained.”

⁴⁵ European Court of Human Rights, *Finucane v. The United Kingdom*, no. 29178/95, Judgement of July 1, 2003, available at www.echr.coe.int, para. 71. “For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests”

⁴⁶ Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS 4, VPRS5 and VPRS6, International Criminal Court, Case No. ICC-01/04, January 17, 2006, para. 45. “The Chamber observes that article 68 is entitled “Protection of the victims and witnesses and their participation in the proceedings”. The Chamber considers that paragraph 10 of article 68, which imposes on the Court a general obligation to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, refers in particular to the investigation stage. The Chamber also notes the absence of any explicit exclusion of the investigation stage from the scope of application of paragraph 3 of article 68 on the question of victims' participation.”

According to international principles adopted by the UN General Assembly:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; [and by] b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.⁴⁷

Applicability to the CNDH

While these obligations to provide a remedy, to inform and publicize, and to ensure victims' participation have generally been construed with specific reference to judicial and administrative procedures, they are also applicable to other institutional mechanisms established by states to ensure the protection and promotion of human rights, in particular to institutions charged with investigating or adjudicating on human rights violations.

The Inter-American Court has held that any process, “whatsoever [its] nature,” that leads to a decision regarding a person’s rights and obligations must be carried out respecting due process guarantees established in the American Convention.⁴⁸

According to the court, these guarantees do “not apply merely to judges and judicial

⁴⁷ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985, adopted by the 96th plenary meeting of the United Nations General Assembly, A/RES/40/34, para. 6.

⁴⁸ Article 8(1) of the ACHR states that “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

Inter-American Court of Human Rights, *Claude Reyes Case*, Judgment of September 19, 2006, Inter-Am.Ct.H.R., Series 151, paras. 116 and 117. Para. 116: “Article 8 of the American Convention applies to all the requirements that must be observed by procedural instances, whatsoever their nature, to ensure that the individual may defend himself adequately with regard to any act of the State that may affect his rights.” Para. 117: “According to the provisions of Article 8(1) of the Convention, when determining the rights and obligations of the individual of a criminal, civil, labor, fiscal or any other nature, “due guarantees” must be observed that ensure the right to due process in the corresponding procedure. Failure to comply with one of these guarantee results in a violation of this provision of the Convention.”

courts.” Rather, “[t]he guarantees established in this provision must be observed during the different procedures in which State entities adopt decisions that determine the rights of the individual, because the State also empowers administrative, collegiate, and individual authorities to adopt decisions that determine rights.”⁴⁹

The CNDH is bound by these obligations. This is true in part because a state’s obligations under international human rights law are shared by all the institutions and agencies that constitute that state. These principles are especially relevant to the work of the CNDH given its role as the state’s principal institution dedicated to the promotion and protection of human rights.

The CNDH’s goal should be to ensure that Mexico meets its international human rights obligations.⁵⁰ In order to do that the CNDH needs to ensure that other state institutions meet their obligations to provide remedies, to inform, and to promote victim participation.

Yet, the CNDH itself regularly makes decisions that have immediate and direct impact in determining the rights of the individual. The CNDH’s determinations in specific cases may be intended as merely a catalyst, prompting judicial and other state institutions to make their own final, authoritative, and enforceable determinations. Yet, as a practical matter, given that these other institutions routinely fail to act without the CNDH’s intervention, the CNDH’s determinations themselves are a decisive factor in the multifaceted process through which the Mexican state determines the rights of individuals. Indeed, the victims of abuse who take their cases to the CNDH may reasonably view the institution as the only viable guarantor of their rights.

⁴⁹ Ibid., para. 118.

⁵⁰ The CNDH was created to monitor the human rights practices of government institutions and promote increased respect for fundamental rights in Mexico. Interior Ministry, “Decreto por el que se crea la Comisión Nacional de Derechos Humanos como un órgano desconcentrado de la Secretaría de Gobernación” [Decree by which the National Commission on Human Rights is created as a de-concentrated agency of the Interior Ministry], June 5, 1990.

The applicability of some of these principles to the work of human rights institutions like the CNDH is reflected in the “UN Principles relating to the Status of National Institutions,” known as the Paris Principles, which set out the basic guidelines recommended by the UN for the establishment and functioning of national human rights institutions. These principles were endorsed by the UN Commission on Human Rights in 1992 and by the UN General Assembly in 1993.⁵¹

In recommending methods of operation, the Paris Principles establish that national human rights institutions should publicize their work by stating that they shall “address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.”⁵² The principles also state that human rights institutions shall “publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.”

Furthermore, the CNDH is subject to Mexico’s Federal Law on Transparency and Access to Official Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental), which incorporates into domestic law international standards regarding the state’s obligation to inform and publicize. The

⁵¹ UN Principles relating to the Status of National Institutions, annex to resolution 1992/54 on National Institutions for the Promotion and Protection of Human Rights, adopted by consensus by the U.N. Commission on Human Rights on March 3, 1992 and endorsed by the UN General Assembly in resolution 48/134, December 20, 1993, <http://www.ohchr.org/english/law/parisprinciples.htm> (accessed June 13, 2007).

The UN defines a national human rights institution as a government body established under the constitution or by law, whose functions are specifically designed to promote and protect human rights. The UN broadly groups national human rights institutions into three categories: human rights commissions, ombudsmen, and specialized national institutions designed to protect the rights of a particular vulnerable group (such as ethnic minorities, indigenous populations, refugees, women or children). UN Office of the High Commissioner for Human Rights, “National Institutions for the Promotion and Protection of Human Rights,” Fact Sheet No. 19, undated, <http://www.unhcr.ch/html/menu6/2/fs19.htm> (accessed June 13, 2007).

The CNDH considers the Paris Principles are applicable to its work. See CNDH, Press Release CGCP/116/05, October 5, 2005. Mexican Presidency, “Intervención del doctor Luis Soberanes Fernández, durante el Informe de Actividades de la Comisión Nacional de Derecho Humanos” [Intervention by Jose Luis Soberanes Fernandez during the CNDH Annual Report], February 23, 2007, <http://www.presidencia.gob.mx/prensa/?contenido=29143> (accessed July 9, 2007). In 2003, the CNDH organized a seminar on “Current challenges faced by National Human Rights Institutions 10 years after the endorsement of the Paris Principles.” UNHCHR, “Americas Region – National Institutions Regional Activities – Update September 2003,” December 9, 2003, <http://www.unhcr.ch/html/menu2/5/lacnatins-sep.doc> (accessed July 9, 2007).

⁵² Paris Principles, Methods of operation, principle (c).

law's purpose is to guarantee access to information held by all federal entities, including autonomous constitutional agencies such as the CNDH, and specifically states that when interpreting it, public entities must apply the "principle of maximum disclosure."⁵³

⁵³ Federal Law on Transparency and Access to Official Information, 2002, arts. 1 and 6. The "principle of maximum disclosure" (in international law) and "the principle of publicity" (in the English version of the transparency law) have the same meaning.

IV - Remedies

The CNDH cannot impose penalties or punish government officials who commit abuses. Instead, it must call on other institutions to do the sanctioning, either through criminal prosecution or administrative procedures, or both. If those institutions refuse to do so, the CNDH will have failed to achieve one of its most fundamental objectives: guaranteeing the abuse victim's right to a remedy.

The CNDH should therefore do everything it can to make sure those institutions fulfill their obligation to redress the human rights violations it documents. Yet the CNDH routinely fails to do so. After documenting abuses and issuing recommendations for remedies, CNDH officials effectively abandon many cases. When the corresponding state institutions fail to implement their recommendations, the CNDH often remains silent.

CNDH officials offer all sorts of explanations for their silence and inaction. They claim, for instance, that the CNDH's mandate does not allow it to continue monitoring cases in instances in which government officials reject its recommendations. They claim they cannot monitor implementation of "general recommendations" they made regarding systemic practices. They claim they cannot continue monitoring cases after they issue "special reports" that do not contain specific recommendations. And they claim that they cannot monitor the work of public prosecutors, which means that they cannot monitor implementation of one of their most frequent type of recommendation: that abusers be brought to justice.

However, an examination of the CNDH's mandate and Mexican law makes clear that CNDH officials are allowed to continue their work—and actively promote implementation of their recommendations—in all these circumstances. Indeed, in some important instances, CNDH officials have in fact done so, with positive results. Yet, too often, by failing to follow up aggressively on its own recommendations, the work that the CNDH does documenting abuses and recommending remedies may have little or no impact on human rights practices in Mexico.

Failing to Follow Up: Paradigmatic Cases

The CNDH's failure to effectively follow-up on its recommendations has been evident in high profile cases that have shaped public perception of human rights in Mexico in recent years.

The CNDH has made important contributions in documenting abuses and highlighting the state's obligation to address them by, among other things, providing remedies to the victims. Yet undermining these achievements is the consistent failure of the CNDH to take serious steps to ensure that the relevant state authorities implement its recommendations and that the victims are provided the remedies guaranteed to them by Mexican and international law.

Crimes of the "Dirty War"

One of the most important documents produced by the CNDH is its *recomendacion*, released in 2001 after ten years of investigation, documenting hundreds of enforced disappearances committed by state security forces during the "dirty war" in the 1960s and 1970s.⁵⁴ The CNDH examined 532 cases and concluded that there was sufficient evidence to establish that at least 275 individuals had been arrested, tortured, and "disappeared" by state forces. (It did not rule out the possibility that the other 257 individuals had also been "disappeared" during that time.) The CNDH called on President Vicente Fox to order the federal attorney general to appoint a special prosecutor to investigate and prosecute these crimes.⁵⁵

⁵⁴ CNDH, *Recomendacion 26/2001*, November 27, 2001. The CNDH also issued a "special report" documenting these abuses. CNDH, "Informe Especial Sobre las Quejas en Materia de Desapariciones Forzadas Ocurridas en la Decada de los 70 y Principios de los 80" [Special report on the Complaints Related to Forced Disappearances that took place in the '70s and early '80s], 2001.

Sergio Aguayo Quesada, "Oculto CNDH datos sobre desaparecidos" [The CNDH hides information on "disappearances"], *Reforma*, June 25, 2001.

Human Rights Watch interview with Humberto Zazueta, Mexico City, March 7, 2007. Zazueta filed a claim before the CNDH, stating that he had been detained and tortured in military installations between April 9, 1979 and December 15, 1979. Zazueta told Human Rights Watch that he provided information and his testimony to the CNDH soon after it was created, but "nothing happened" until the CNDH published its 2001 report.

⁵⁵ The CNDH also recommended that the president adopt an ethical and political commitment to promoting human rights during his presidency and use all legal means to ensure that events like those documented by the CNDH do not ever happen again; provide reparations to family members of those whose "disappearance" was proven by the CNDH; and adopt measures to ensure that the Investigations and National Security Center (Centro de Investigacion y Seguridad Nacional) that replaced

In November 2001, following the CNDH's intervention, the government created a special prosecutor's office to investigate and prosecute the abuses.⁵⁶ The executive order establishing this office specifically instructed the Defense Ministry to turn over to the prosecutor's office any information relevant to the cases to be investigated. And it instructed the Interior Ministry to release secret government archives with information on these abuses, so that they would be readily available to the special prosecutor, as well as to the public at large.

The creation of the Special Prosecutor's Office was an historic initiative for Mexico. It held the promise that, after many years of denial, Mexican authorities would finally investigate the crimes and "disappearances" committed during the "dirty war" years, something they had failed to do for over three decades.

Yet during its five year existence, the Special Prosecutor's Office produced very limited results.⁵⁷ It did not obtain a single criminal conviction. Of the 532 cases analyzed by the CNDH, the special prosecutor filed charges in only 16 cases, obtaining indictments in only nine of them.⁵⁸ And it was able to determine the whereabouts of only six "disappeared" individuals. (It found that four of these were sent to psychiatric institutions, and two were killed while in detention.)⁵⁹

the Federal Security Directorate (Dirección Federal de Seguridad) carry out its work respecting human rights. CNDH, *Recomendación 26/2001*, November 27, 2001.

⁵⁶ Order of the President of the Republic, "Acuerdo por el que se disponen diversas medidas para la procuración de justicia por delitos cometidos contra personas vinculadas con movimientos sociales y políticos del pasado" [Agreement by which various measures to promote justice for crimes committed against people related to social and political movements of the past], November 27, 2001. The official name of the office was Special Prosecutor's Office for social and political movements of the past (Fiscalía Especial para movimientos sociales y políticos del pasado, FEMOSPP).

⁵⁷ The federal attorney general closed the special prosecutor's office in November 2006. President Felipe Calderon officially closed it in March 2007 when he published the federal attorney general's decision in the Official Gazette. Attorney General Office, "Acuerdo 317/2006 Por el que se disponen diversas medidas para la procuración de justicia por delitos cometidos contra personas vinculadas con movimientos sociales y políticos del pasado [Agreement 317/2006 by which various measures are adopted to provide justice for crimes committed against people related to social and political movements of the past]," November 30, 2006.

⁵⁸ Human Rights Watch telephone interview with Juan Carlos Sanchez Ponton, prosecutor in charge of forced disappearance cases in the Special Prosecutor's Office, Mexico City, October 5, 2006.

⁵⁹ Human Rights Watch interview with Mario Ramirez Salas, director of attention and liaison with citizens of the Special Prosecutor's Office, Mexico City, January 18, 2006.

The failure of the initiative was entirely foreseeable. Within the first year of its existence it became clear that the Special Prosecutor's Office was not receiving the active support it needed from other state institutions. The Fox administration failed to ensure that it possessed the resources, credibility, and powers it needed to succeed. The Mexican military stonewalled investigators and interfered with prosecutions by pressing charges in military courts against military officers for the same crimes the special prosecutor was handling (once the defendants were acquitted in military courts, they would be immune from prosecution in civilian courts).⁶⁰ And the Federal Investigation Agency (Agencia Federal de Investigacion, AFI) was unable or unwilling to execute a majority of the arrest warrants obtained by the special prosecutor.⁶¹

After playing such an instrumental role in bringing about this historic initiative, the CNDH did virtually nothing to help the Special Prosecutor's Office overcome these obstacles. Instead, the commission remained largely silent and inactive as the office confronted one setback after another and only spoke up clearly about the office's failures when it was finally closed in 2007 and it was too late to make a difference.⁶²

⁶⁰ Moreover, while the Defense Ministry has declassified important documents from the "dirty war" era, it has done virtually nothing to help investigators understand or locate evidence within the released files, or obtain information that appears to be absent from those files.

⁶¹ See Human Rights Watch, *Lost in Transition* (New York: Human Rights Watch, 2006), <http://hrw.org/reports/2006/mexico0506/mexico0506web.pdf>, p. 71.

⁶² CNDH staff told Human Rights Watch that after issuing the *recomendacion*, their follow up was limited to requesting information from government authorities, and contrasting it with information obtained from the victims. Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007. Prior to the office's closing, the CNDH published the exact same three paragraphs in each year's annual report, which basically said that the government had partially implemented the CNDH's recommendations because it was investigating but had not provided evidence that it had provided reparations to family members and had not reported on human rights measures adopted. In its 2002 annual report, the CNDH noted that *recomendacion* 26/01 was "partially fulfilled" because the Special Prosecutor's Office was still conducting preliminary investigations (*averiguaciones previas*). In the 2003, 2004, 2005, and 2006 reports, the CNDH includes verbatim the exact same three paragraphs that appear in the 2002 report. CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2002" [Report of Activities between January 1 and December 31, 2002], 2003, <http://www.cndh.org.mx/lacndh/informes/anuales/02activ.pdf> (accessed December 6, 2007), pp. 735 – 736. CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anuales/03activ.pdf> (accessed December 6, 2007), annex, pp. 679 – 680. CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), pp. 772-73; CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2005" [Report of Activities between January 1 to December 31, 2005], 2006, <http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed

The reason for this silence, according to the investigator in charge of the case, was that the CNDH does not comment publicly while government authorities are attempting to implement its recommendations. It is a highly questionable policy, but even if it were justifiable, there are plenty of other ways the CNDH could have helped to salvage this initiative. It could have investigated and denounced the military for stonewalling and interfering with investigators. It could have protested strongly when the “dirty war” cases were turned over to military courts in flagrant violation of the Mexican Constitution. It could have denounced the failure of both the Ministry of Defense (Secretaria de la Defensa Nacional, SEDENA) and the Interior Ministry (Secretaria de Gobernacion, SEGOB) to ensure that key archives turned over by the latter were adequately equipped with indices and catalogues. It could have investigated and denounced the repeated failure of authorities to execute arrest warrants that the special prosecutor had obtained from judges.

Rather than performing any of these critical functions, the CNDH chose instead to watch passively from the sidelines as the enormous potential impact of its 2001 report was squandered.

Crackdown in Guadalajara

Given that the recommendations made by the commission are not binding, government authorities may reject them. It is hardly surprising that they frequently choose to do so. What *is* surprising is that the CNDH responds to these rejections by closing the cases in question rather than pressing for implementation.

On May 28, 2004, in Guadalajara, after participants in an anti-globalization demonstration clashed with security forces, Jalisco state police and Guadalajara city

December 6, 2007), pp. annex 6.1; CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2006” [Report of Activities between January 1 to December 31, 2006], 2007, http://www.cndh.org.mx/CDINFORME2006iMAGEN/INFORME_DE_ACTIVIDADES_2006_1.htm (accessed December 6, 2007), annex 6.1.

The CNDH had only issued a few isolated press releases that talked about the special prosecutor’s work, and made occasional comments in the Mexican press regarding impunity of these crimes. CNDH, Press Release 131/03, October 9, 2003; CNDH, Press Release 100/04, July 5, 2004; CNDH, Press Release 104/04, July 12, 2004. For example, Redaccion, “Persiste la tortura en Mexico” [Torture persists in Mexico], *Reforma*, June 14, 2004; Claudia Guerrero, Sonia del Valle and Benito Jimenez, “Miscelanea” [Miscellaneous], *Reforma*, July 14, 2004; Fernando Paniagua, “Ve CNDH riesgo de reves judicial” [CNDH sees risk of judicial setback], *Reforma*, July 16, 2004; Liliana Alcantara, “Informe de la CNDH: El foxismo ‘descuido’ los derechos humanos” [CNDH report: The Fox administration left human rights aside], *El Universal*, November 6, 2006.

police rounded up 118 people, some as they sat in public parks or strolled down the street, and some even as they were being treated in a Red Cross clinic. During this time, more than 70 people were arbitrarily detained. The majority of the detainees were then illegally held incommunicado; and 55 were subject to cruel and inhumane treatment, including 19 who were tortured with the aim of coercing them into signing self-incriminating statements and providing information.⁶³

The CNDH issued a report that documented the torture and other abuses committed by the police and called on the then governor of Jalisco, Francisco Ramírez Acuña, to seek administrative and criminal investigations into the abuses.⁶⁴ But Ramírez Acuña rejected the CNDH's work, declaring that he had "no obligation whatsoever to respond."⁶⁵ Rather than disciplining the police responsible for the abuses, he held a public ceremony honoring them for their participation in the crackdown.⁶⁶

The CNDH's report also called on the municipal president of Guadalajara to seek administrative and criminal investigations of municipal police involved in the crackdown.⁶⁷ Unlike the state government, the city government did conduct an

⁶³ CNDH, "Informe Especial de la Comisión Nacional de los Derechos Humanos Relativo a los Hechos de Violencia Suscitados en la Ciudad de Guadalajara, Jalisco, el 28 de Mayo del 2004, con Motivo de la Celebración de la III Cumbre de América Latina, el Caribe y la Unión Europea [Special Report by the National Human Rights Commission Regarding the Violence that occurred in the city of Guadalajara, Jalisco, on May 28, 2004, during the celebration of the 3rd Summit for Latin America, the Caribbean, and the European Union]," 2004, <http://www.cndh.org.mx/lacndh/informes/informes.htm> (accessed March 10, 2007), section VI.

⁶⁴ The CNDH report also asks the governor of Jalisco to order that guidelines be adopted and appropriate capacity-building courses be carried out to improve respect for human rights by state law enforcement agents. It also requested the governor to order members of his government to ensure that state and national human rights organizations can carry out their work. *Ibid.*, section VII.

⁶⁵ Ulises Zamarróni, "Ramírez Acuña refuta informe de la CNDH" [Ramírez Acuña rejects the CNDH report], *El Universal*, August 18, 2004. See also CNDH, Press Release 128/04, August 25, 2004; CNDH, Press Release 144/04, September 23, 2004; CNDH, Press Release 147/04, September 29, 2004.

⁶⁶ "Anuncian incentivo económico para elementos policíacos" [Economic incentives for police officers are announced], *El Informador*, June 2, 2004. Francisco de Anda, Erika Haro and Jessica Perez, "Premian el aguante" [Prizes for the strong ones], *Mural.com*, June 2, 2004.

⁶⁷ The CNDH report also asks the municipal president to order that guidelines were adopted, and the appropriate capacity-building courses were carried out, to improve the respect of human rights by municipal law enforcement agents. CNDH, "Informe Especial de la Comisión Nacional de los Derechos Humanos Relativo a los Hechos de Violencia Suscitados en la Ciudad de Guadalajara, Jalisco, el 28 de Mayo del 2004, con Motivo de la Celebración de la III Cumbre de América Latina, el Caribe y la Unión Europea," 2004, <http://www.cndh.org.mx/lacndh/informes/informes.htm> (accessed March 10, 2007), section VII.

investigation, but concluded that the human rights violations documented by the CNDH had been committed by state police and should therefore be investigated by state authorities.⁶⁸

After the governor's rejection of its findings, the CNDH did virtually nothing to ensure that justice was served in the cases it had documented.⁶⁹ It issued statements regretting the governor's position, as well as another endorsing an initiative by federal legislators to investigate the state's handling of the case.⁷⁰ But it could have done much more. For instance, it could have launched a far more vigorous and sustained campaign to denounce the governor's refusal to provide victims with a remedy. It could have raised questions about the governor's appointment as interior minister by President Felipe Calderon in 2006 (as the Citizens Council of the Jalisco State Human Rights Commission did).⁷¹ It could have issued a new report focusing on the problem of impunity in the cases it had already documented. It could have issued recommendations directly to the state prosecutors, rather than rely on the governor to initiate the investigations.

For three years, the CNDH did none of these things. Instead, it deferred to the governor and dropped the case. As recently as August 2007, the CNDH refused petitions by the victims to take up the cases again, arguing that its norms did not allow it to follow up after issuing a "special report."⁷²

⁶⁸ A second administrative investigation analyzed whether two municipal police officers, Andres Rios Nunez and Felix Hernandez Chalas, had lied when they declared before prosecutors that they had detained five men in flagrati delicto. The investigation concluded that the two officers had not incurred in any administrative fault. Decision by Asuntos Internos / Coordinacion de Investigacion y Seguimiento [Internal Affairs / Coordination of Investigation and Follow-up] on Case 50/2005-E. (The decision is dated May 30, 2004 but talks about facts and documents of 2005).

⁶⁹ CNDH staff told Human Rights Watch that the follow up to the "special report" was limited to receiving information from government authorities and civil society organizations. Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007. CNDH document 11985 from file 2007/17-T, April 18, 2007.

⁷⁰ CNDH, Press Release 128/04, August 25, 2004; CNDH, Press Release 144/04, September 23, 2004; CNDH, Press Release 147/04, September 29, 2004.

⁷¹ In February 2007 the Citizen Council of Jalisco state human rights commission objected to Ramirez Acuña's appointment. According to the council, the systematic violation of human rights, torture, arbitrary detentions and police brutality were permanent features of his governorship. Jalisco State Human Rights Commission, "Balance Estadístico de la Administración Estatal 2001-2006" [Statistical Balance of the State Administration 2001-2006], Boletín 17/07, February 22, 2007, <http://www.cedhj.org.mx/difus.html> (accessed March 8, 2007).

⁷² CNDH document V2/28160 from file 2004/1673, August 29, 2007.

Only after this refusal was published in local and national newspapers did the CNDH finally change course, telling the victims' representative that it would request the new governor of Jalisco to investigate the abuses.⁷³ Thanks, in part, to this long overdue intervention, the new governor of Jalisco announced in December 2007 that he would conduct investigations into the abuses documented by the CNDH.⁷⁴ It remains to be seen how serious this commitment to accountability will be. At this writing, no one has been brought to justice for the egregious abuses that took place in Guadalajara in 2004.

Crackdown in Atenco

In May 2006, a clash between police and residents of San Salvador de Atenco left dozens of police officers and rioters injured, and two residents dead from gunshot wounds. After the police attempted to evict flower vendors from the streets, residents attacked them with Molotov cocktails and machetes, and held several officers hostage overnight, until thousands of officers moved in to free the hostages and take control of the town.

Responding to widespread reports of police brutality, the CNDH investigated what had taken place and issued a report the following November, which documented egregious abuses. According to the CNDH, the federal and state police had illegally arrested 145 individuals inside their homes, and subjected 207 detainees to inhuman, cruel, and unusual punishments. At least 11 women and 15 men were

According to abuse victims, the new governor of Jalisco had told them that he would push for investigations of these abuses if the state human rights commission requested him to do so. Given that the CNDH had analyzed the case, petitioners requested the CNDH to intervene. Human Rights Watch telephone interview and email communication with Jaime Hernandez, Centro de Derechos Humanos Coordinadora 28 de Mayo, A.C., Guadalajara, December 17, 2007.

⁷³ Letter sent by Jaime Hernandez to the CNDH advisory council, November 15, 2007. Human Rights Watch mail communication with Jaime Hernandez, December 17, 2007. Juan Carlos G. Partida, "Pedira Soberanes a EGM que investigue caso 28 de mayo; niega que se le haya dado carpetazo" [Soberanes will request the governor of Jalisco to investigate the May 28 case; he denies that the case has been filed], *La Jornada Jalisco*, September 28, 2007.

Juan Carlos G. Partida, "La CNDH da carpetazo al caso 28 de mayo; No esta obligada a dar seguimiento, afirma" [The CNDH files the May 28 case; it is not obliged to follow up], *La Jornada Jalisco*, September 26, 2007. Juan Carlos G. Partida, "Rechaza la CNDH seguir caso de altermundistas" [The CNDH rejects following up on the case of the antiglobalization protestors], *La Jornada*, September 26, 2007.

⁷⁴ Juan Carlos G. Partida, "Acepta el gobierno estatal abrir investigacion sobre la represion del 28 de mayo de 2004" [The state government accepts opening investigations into the repression of May 28, 2004], *La Jornada Jalisco*, December 19, 2007.

tortured, and 26 detained women were victims of sexual abuse. It also found that the federal government, after conducting illegal and irregular proceedings, had expelled five foreigners who reportedly participated in the demonstrations.⁷⁵

The CNDH called on the federal Ministry of Public Security (Secretaria de Seguridad Publica, SSP) and the governor of the state of Mexico to provide information to competent authorities so they could investigate federal and state police officers accused of having committed abuses. It also recommended that both institutions conduct training of law enforcement agents on what constitutes appropriate use of force, and provide monetary compensation to those whose physical integrity was violated during the events. Finally, the CNDH requested that the National Institute of Migration (Instituto Nacional de Migracion, INM) carry out administrative investigations of the public officials involved in expelling the five foreigners.⁷⁶

The CNDH investigators handling the case told Human Right Watch that the CNDH has closely monitored the state government's response, examining its compliance with its obligation to investigate the role of the 1815 members of the State Security Agency (Agencia de Seguridad Estatal) who participated in the confrontation. According to the investigators, the CNDH has requested information on investigations by state authorities every 15 days, and analyzed how they were carried out.⁷⁷ In its 2006 annual report, it provided a detailed account of the information it had received on what activities the state government had carried out, what the results were, and what remained pending. According to this report, a series of criminal investigations were initiated at the state level, and nine state officers

⁷⁵ CNDH, *Recomendacion 38/2006*, October 16, 2006, section IV.B.

⁷⁶ The CNDH also requested the SSP to initiate administrative proceedings against members of the SSP who had impeded the CNDH's work and to provide training to its security forces to avoid torture and cruel and inhuman treatment. Additionally, it asked the governor of the state of Mexico, among other things, to pay monetary damages to the families of the two individuals who died during the events, to verify the physical and health conditions of detainees, to continue with criminal investigations into the deaths of the two people mentioned in the report, and to instruct the general director of prevention and social readaptation of the state of Mexico to investigate the director and other personnel in the "Santiaguito" prison in that state. Finally, it asked the INM that, based on the administrative investigation it had to carry out, it provide reparations to the expelled foreigners. *Ibid.*, section V.

⁷⁷ CNDH staff told Human Rights Watch that they also monitored the activities carried out by the INM to implement the CNDH *recomendacion*, given that the INM had accepted its recommendations. Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

received administrative sanctions (four officials were removed from their posts and five were suspended for 90 days).⁷⁸

But the CNDH has not followed up on its recommendations to the federal government. The CNDH investigators in charge of this case claim they can do very little follow-up on recommendations that are rejected by government authorities. After the federal minister of public security rejected their recommendations, they say, the CNDH could only make public the fact that its recommendations were rejected.⁷⁹ And they did so through strongly worded press releases and several statements in the media.⁸⁰

The CNDH did not, however, publicly challenge the reasons provided by the minister of public security in rejecting the CNDH's recommendations. In a 57-page document, the minister responded to the CNDH's findings and recommendations, arguing that the CNDH did not adequately document the facts, and that there was no evidence that federal police officers had committed abuses.⁸¹ Instead of just criticizing the minister of public security for not accepting the recommendations, the CNDH could have responded to those arguments, explaining clearly why its findings were accurate, thus pushing the ministry to deal with the documented abuses. It also could have used the opportunity of the minister's appointment as federal attorney general, the official in charge of carrying out investigations, to reiterate its concerns more prominently.

The CNDH did not make the effort to publicly refute the minister of public security's case for non-implementation. More than a year after the events, only nine police

⁷⁸ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2006" [Report of Activities between January 1 to December 31, 2006], 2007, http://www.cndh.org.mx/CDINFORME2006iMAGEN/INFORME_DE_ACTIVIDADES_2006_1.htm (accessed December 6, 2007), section II.2.B.

⁷⁹ Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

⁸⁰ Ibid. CNDH, Press Release 154/06, November 12, 2006; CNDH, Press Release 156/06, November 13, 2006; CNDH, Press Release 19/07, January 24, 2007. Erika Hernandez and Armando Estrop, "Contradice CNDH a Medina Mora" [The CNDH contradicts Medina Mora], *Reforma*, January 25, 2007. Paloma Alcantara, "Lamenta la CNDH respuestas negativas" [The CNDH laments negative responses], *El Economista*, March 21, 2007. Victor Ballinas, "Teme CNDH que los ilicitos queden en la impunidad" [The CNDH fears that crimes will end in impunity], *La Jornada*, May 4, 2007.

⁸¹ Ministry of Public Security, Oficio No SSP/ /2006 (sic), October 31, 2006.

officers have received limited administrative sanctions and victims of torture have yet to receive compensation.

Murders of Women in Ciudad Juarez

The case of Ciudad Juarez offers one of the most dramatic examples of the CNDH's mixed record in promoting human rights. Unlike the cases described above, Ciudad Juarez represents an instance in which the CNDH has played an active role in following up on its recommendations to state authorities. Unfortunately, it waited five years to do so.

In 1998, the CNDH produced a comprehensive report that examined the murders and "disappearances" of women in Ciudad Juarez, in the state of Chihuahua. The report documented the serious mismanagement of the cases by local law enforcement authorities. The report found, for example, that authorities had failed to conduct autopsies and interrogate witnesses in some cases. In others, in which there was evidence of sexual abuse, they had failed to examine the possible presence of semen in victims' bodies. Authorities had sometimes waited days or even weeks to investigate reported "disappearances" and murders. In one case, authorities had failed to question a person whose I.D. card was found in the victim's shoes.⁸²

The CNDH called on the governor of Chihuahua to see to it that administrative and criminal investigations were opened against specific high-level state officials who had failed to investigate the cases. It also called on the governor to take steps to ensure that the crimes against women were investigated in a more serious fashion and to improve the quality of public security and administration of justice generally within the state. The governor accepted the latter recommendations but rejected the call to investigate the authorities responsible for the state's mishandling of the cases.⁸³

⁸² CNDH, *Recomendacion 44/98*, May 15, 1998, section I.H.

⁸³ It also recommended that the municipality of Ciudad Juarez initiate administrative procedures against those who failed to provide security to women who were murdered and/or raped in that city. *Ibid*, section IV.

For the next five years, the CNDH did only minimal follow-up on these recommendations, and only on the ones that had been accepted. The follow-up consisted of periodically requesting information from state and municipal government officials and briefly mentioning in annual reports that the authorities had failed to provide it.⁸⁴ The CNDH also communicated with relatives of the victims to assess state implementation, but it did not use the information it gathered from them to make official public statements that would push state authorities to act.⁸⁵ Most significantly, the CNDH did not monitor the state government's actions to see whether it was holding high level state officials, including the state prosecutor, accountable for failing to address these cases seriously.⁸⁶

Given the lack of follow-up, it is hardly surprising that the CNDH's 1998 report had little or no impact on the problem of violence against women. Over the next five

⁸⁴ Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007. According to the CNDH annual reports of 2000, 2001, and 2003, the *recomendacion* was "partially fulfilled" since the governor of Chihuahua still needed to provide information on measures adopted to obtain results in the criminal investigations, as well as information on agreements it had signed with other prosecutors' offices to create interdisciplinary teams to investigate the murder cases. The municipal president still had not provided information on the results of administrative investigations that were being carried forward. CNDH, "Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000" [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anales/00anx.pdf> (accessed December 6, 2007), p. 152, CNDH, "Informe de Actividades del 16 de noviembre de 2000 al 31 de diciembre de 2001" [Report of Activities between November 16, 2000 and December 31, 2001], 2002, <http://www.cndh.org.mx/lacndh/informes/anales/01activ.pdf> (accessed December 6, 2007), pp. 469-70; CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2002" [Report of Activities between January 1 and December 31, 2002], 2003, <http://www.cndh.org.mx/lacndh/informes/anales/02activ.pdf> (accessed December 6, 2007), p. 670.

⁸⁵ A press release of November 2002 talks about a request by members of the political party Mexico Posible to the CNDH for it to commemorate the International Day of No Violence Against Women by flying its flag at half mast. Only then did the CNDH say that the state and municipal governments had not yet complied with its recommendations and that its new office in Ciudad Juarez would address cases of violence against women. CNDH, Press Release 175/2002, November 2002.

⁸⁶ The state government of Chihuahua rejected three of the recommendations issued by the CNDH, which asked it to investigate the administrative responsibility of Mr. Luis Raul Valenzuela, liaison chief of the state prosecutors' office; to order the administrative investigation of the deputy state prosecutor of the North Zone in Ciudad Juarez, as well as of other staff from his office (the regional coordinator, the chief of preliminary investigations, the coordinator of the Specialized Unit on Sexual Crimes against the Family and "Disappeared" People); and to investigate the role played by prosecutors, expert personnel, and judicial police who participated in the investigations. The CNDH recommended that if the administrative investigations provided information on the possible commission of a crime, these individuals should be criminally prosecuted. The CNDH also recommended the state government to investigate the probable responsibility of Arturo Chavez Chavez, the state prosecutor. CNDH, "Evaluacion Integral de las Acciones Realizadas por los Tres Ambitos de Gobierno en Relación a los Femicidios en el Municipio de Juarez, Chihuahua" [Integral Evaluation of the Actions Undertaken by the Three levels of Government with respect to the Femicides in the Municipality of Juarez, Chihuahua], undated, <http://www.cndh.org.mx/lacndh/informes/espec/infjr205/index.htm> (accessed November 6, 2007).

years, the murders and “disappearances” continued unabated. An additional 187 women were murdered⁸⁷ and 28 “disappeared.”⁸⁸

Beginning in 2001, the ongoing violence and impunity began to draw international attention, thanks in large part to the efforts of local NGOs. A wide range of international monitors visited Chihuahua and issued reports on the situation. These included the UN Special Rapporteur on the Independence of Judges and Lawyers, the United Nations Committee Against Torture, the Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights, two experts from the Committee Against the Elimination of Discrimination Against Women, and the United Nations Office on Drugs and Crime. Several international nongovernmental organizations, including the Washington Office on Latin America and Amnesty International, also conducted research and advocacy that reinforced the efforts of local NGOs to end impunity for these crimes.

It was only after years of mounting pressure at the national and international level that the CNDH decided to take action. In 2003, it issued another report on the situation in Ciudad Juarez in which it concluded that the state had failed to implement some of its key recommendations from five years earlier.⁸⁹ During this time, it found, the irregularities and abuses by police and prosecutors had not only continued, but in fact had worsened. In many cases, the authorities had not conducted investigations of individuals notwithstanding the existence of strong

⁸⁷ CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2004” [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 305.

⁸⁸ Attorney General’s Office, “Informe Final de la Fiscalía para la Atención de Delitos Relacionados con los Homicidios de Mujeres en el Municipio de Juárez, Chihuahua,” [Final Report by the Prosecutor’s Office for the Attention of Crimes related to Women’s Murders in the Municipality of Juarez, Chihuahua], January 30, 2006, p. 152.

⁸⁹ According to the CNDH, in 65 cases someone was convicted for these crimes, four cases ended with “special sentencing,” nine with a non-guilty verdict, 50 were pending before the courts, 60 were being investigated by prosecutors, three were “in reserve,” there were 17 arrest warrants that had not been executed, four arrest warrants had been rejected; two allegedly responsible people were freed due to lack of evidence; nine cases were filed; one was sent to the federal Attorney General’s Office; and 12 were sent to the juvenile justice system.

CNDH, “Informe Especial de la Comisión Nacional de los Derechos Humanos sobre los Casos de Homicidios y Desapariciones de Mujeres en el Municipio de Juárez, Chihuahua” [Special Report of the National Human Rights Commission on the Cases of Homicides and Disappearances of Women in the Municipality of Juarez, Chihuahua], 2003, <http://www.cndh.org.mx/lacndh/informes/espec/juarez2003/index.htm> (accessed March 6, 2007), section VI.

evidence against them. Prosecutors mistakenly closed cases before completing even the most basic tasks, such as identifying the victim.

Most disturbingly, law enforcement officials had turned to coerced confessions. The CNDH found eighty-nine instances in which the suspects in these crimes had “spontaneously confessed” before the public prosecutor, only to recant the confession before a judge, claiming that they had been subjected to torture. The CNDH concluded that the use of physical or psychological violence to obtain confessions appeared to be a regular practice within the state prosecutor’s office.⁹⁰

The 2003 report was an example of precisely the sort of follow-up that the CNDH should have been doing all along. It clearly and thoroughly documented the state’s failure to act on its previous recommendations, and put forward recommendations on ways to improve implementation. For example, the new report called on the federal government to appoint a special prosecutor who could work with state authorities in advancing the criminal investigations of the murders and “disappearances.” It called on the state’s Special Prosecutor’s Office for the Investigation of Homicides of Women in Juarez (Fiscalia Especial para la Investigacion de Homicidios de Mujeres en el Municipio de Juarez, Chihuahua) to, among other things, investigate these cases correctly. And it reiterated its recommendation that state officials who had grossly mishandled these cases be disciplined and even criminally prosecuted.⁹¹

Unlike what took place in the aftermath of its 1998 report, following the release of its 2003 report the CNDH engaged in serious and aggressive follow-up. The CNDH’s 2003 annual report held that neither the state government nor the municipality of

⁹⁰ Ibid., section VI.E.

⁹¹ The report also recommends that all levels of government contribute funds to implement a comprehensive public security plan for the municipality of Juarez, and include professional staff that can carry out activities to prevent crimes related to violence against women. Other measures to be implemented by all levels of government are, for example, measures to coordinate training programs to prevent crimes, provide reparations to the victims and their families in cases in which investigations were not carried out properly, provide results and other information on developments in investigations of homicides and “disappearances” of women, as well as information on the level of implementation of recommendations by international organizations.

Juarez had adequately implemented its 1998 recommendations.⁹² The CNDH established an office in Ciudad Juarez charged with monitoring implementation (as well as addressing human rights issues related to migrants at the border.) It issued over 40 press releases about the situation in Ciudad Juarez and raised its concerns with representatives from the United Nations, the Inter-American Court of Human Rights, the European Parliament, and the European Union.⁹³ In 2004, it published a follow-up report on the government's implementation of its recommendations, followed by another report, released in 2005 at the behest of the Mexican Congress, assessing the situation.⁹⁴

The CNDH's interventions played an important role, along with the also critically important efforts of the National Commission to Prevent and Eradicate Violence Against Women in Ciudad Juarez (Comision para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juarez) and local NGOs, in generating political pressure at the state level to address the ongoing problems. In October 2004, the new governor of Chihuahua appointed a new attorney general, Patricia Gonzalez, who set about changing how the state handled these cases, increasing the emphasis on investigative techniques and strengthening the internal offices that take action against officers who commit abuses.⁹⁵ In 2006 the Chihuahua legislature passed a comprehensive justice reform that provided Gonzalez with tools to carry out her work.⁹⁶ Since then, more than 170 cases of violence against women have been

⁹² CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anuales/03activ.pdf> (accessed December 6, 2007), annex, p. 653.

⁹³ For example, CNDH, Press Release 42/05, April 12, 2005; CNDH, Press Release 078/05, July 15, 2005; CNDH, Press Release 105/05, September 4, 2005; CNDH, Press Release 24/6, February 14, 2006.

⁹⁴ CNDH Gaceta [CNDH Gazette], No 172, Nov. 2004, 39-52. CNDH, "Evaluacion Integral de las Acciones Realizadas por los Tres Ambitos de Gobierno en Relación a los Femicidios en el Municipio de Juarez, Chihuahua [Integral Evaluation of the Actions Undertaken by the Three levels of Government with respect to the Femicides in the Municipality of Juarez, Chihuahua]", undated, <http://www.cndh.org.mx/lacndh/informes/espec/infjr205/index.htm> (accessed November 6, 2007).

⁹⁵ New officials increased the resources and personnel of the prosecutor's office, moved their offices so that they were closer to the centers for the attention of victims, created a new system for forensic science, and reactivated old investigations. They identified as a major flaw in past investigations that the judicial police were unable to investigate and coordinate activities with other agencies, and therefore decided to increase coordination among prosecutors, police, and experts. Human Rights Watch interview with Patricia Gonzalez, Chihuahua state prosecutor, and with Cony Velarde, deputy prosecutor for the north zone of Chihuahua State, Ciudad Juarez, November 14, 2005.

⁹⁶ Among other things, it creates an oral and adversarial system, installs an office to instrument public policies to promote human rights within the state prosecutors' office and give proper attention to victims, includes the murder of women in the

successfully prosecuted. An additional 66 cases are pending before the courts, while 16 have been sent to the juvenile justice system. More than 130 other cases are under investigation.⁹⁷

The National Commission to Prevent and Eradicate Violence Against Women in Ciudad Juarez also made very important contributions to this progress by, among other things, supporting the work carried out by the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, EAAF).⁹⁸ The EAAF, which has been working under the auspices of the state prosecutor's office in Ciudad Juarez to obtain samples from bodies and family members in order to match their DNA results, has obtained DNA samples from at least 80 bodies and 193 family members, and has succeeded in identifying 27 bodies.⁹⁹

The case of Juarez illustrates the enormously constructive role that the CNDH can play after it documents abusive practices. Unfortunately, it took the institution five years to assume this constructive role. For the victims and their families, the cost of that delay is incalculable.

new criminal code, implements a system of alternative justice, and provides mechanisms to ensure the assistance and protection of victims of crime. The state justice reform modified the state Constitution and included 10 new laws. These laws are a new Code of Criminal Procedures (Nuevo Código de Procedimientos Penales), a new Criminal Code (Nuevo Código Penal), a Law to Protect Victims of Crime (Ley de Protección a Víctimas del Delito), an Organic Law of the Prosecutors' Office (Ley Orgánica del Ministerio Público), an Organic Law of the Judicial Branch (Ley Orgánica del Poder Judicial), an General Law of Justice and Access to Information (Ley General de Justicia y Acceso a la Información), a Law on Alternative Criminal Justice (Ley de Justicia Penal Alternativa), a Public Defenders Law (Ley de la Defensoría Pública), a Law on Women's Right to a Life Free of Violence (Ley de Derecho a las Mujeres a una Vida libre de Violencia), and a General Law on Penitentiary and Execution of Criminal Sanctions and Security Measures (Ley General Penitenciaria y de Ejecución de Penas y Medidas de Seguridad). Information provided to Human Rights Watch by Sergio Facio Guzman, private secretary of Patricia Gonzalez, Chihuahua state prosecutor, June 8, 2007. See also Mexican Ministry of Foreign Affairs, "Boletín Informativo Número 9. Derechos Humanos: Agenda Internacional de México" [Informative Bulletin Number 9. Human Rights: Mexico's International Agenda], June 1, 2006.

⁹⁷ Mexican Ministry of Foreign Affairs, "Boletín Informativo Número 9. Derechos Humanos: Agenda Internacional de México" [Informative Bulletin Number 9. Human Rights: Mexico's International Agenda], June 1, 2007.

⁹⁸ The EAAF was recruited initially by Mexican and international NGOs. The National Commission to Prevent and Eradicate Violence Against Women in Ciudad Juarez supported this initiative. It later on played an important role in 2004 to ensure that the EAAF had access to files it needed to conduct its preliminary assessment of the situation in Juarez, and contributed to convincing the current state prosecutor to allow the EAAF to continue with its tasks. Human Rights Watch email communication with Mercedes Doretti, EAAF, New York, January 18, 2007.

⁹⁹ Ibid. Human Rights Watch telephone interview with Mercedes Doretti, EAAF, Ciudad Juarez, July 10, 2007.

How the CNDH Limits Its Own Mandate

The four cases above are not isolated examples. Rather, they reflect broader CNDH failure to push for implementation of its recommendations. CNDH officials justify this failure by citing supposed limitations on the institution's mandate. However, a close examination of the governing legal and regulatory framework and actual practices of the CNDH reveals that the limitations that these officials cite are often self-imposed.

Rejected Recommendations

The law governing the CNDH explicitly states that the “CNDH’s role is to follow up and to ensure that the *recomendacion* is totally complied with” and that this follow-up function includes cases in which the “*recomendacion* [is] not accepted.”¹⁰⁰ The CNDH can “close” cases only after the follow-up ends.¹⁰¹ CNDH officials, however, insist that they can only follow up to ensure implementation of their recommendations if the government authorities accept them.¹⁰² Consequently, when recommendations are rejected, the CNDH often stops working on them,

¹⁰⁰ The most common instrument the CNDH issues after documenting serious human rights abuses is a public document that is formally known as a *recomendacion*, or “recommendation.” The *recomendacion* details the abuses and often contains multiple specific recommendations directed to different state institutions describing the steps that relevant government authorities should take to redress the violations. For more information on the CNDH’s mandate, structure, and methods, see chapter II of this report.

¹⁰¹ According to the CNDH’s rules of procedure, the CNDH “will follow-up after it issues *recomendaciones*” and “once a *recomendacion* is issued, the CNDH’s role is to follow-up and to ensure that it is totally complied with.” CNDH rules of procedure, arts. 138 and 139. Article 138 of the CNDH rules of procedure establishes that CNDH staff “will follow-up after it issues *recomendaciones* and will report to the president of the National Commission the status of *recomendaciones*, in accordance with the following categories: I. *Recomendaciones* not accepted, II. Accepted *recomendaciones*, with evidence of total compliance, III. Accepted *recomendaciones*, with evidence of partial compliance, IV. Accepted *recomendaciones*, without evidence of compliance, V. Accepted *recomendaciones*, with unsatisfactory compliance, VI. Accepted *recomendaciones*, in time to present evidence of compliance, VII. *Recomendaciones* awaiting response, VIII. Accepted *recomendaciones*, where compliance has certain specific characteristics. Once the real possibilities to comply with a *recomendacion* have concluded, the follow-up may end with an official document by the chief investigator, which will establish under what category the case will be closed.”

¹⁰² Human Rights interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007. When referring to a specific case of torture, the CNDH president told Human Rights Watch that “the process to follow up after a *recomendacion* [begins] if it has been accepted. Since they have accepted it, we initiated the mechanism to follow up after a *recomendacion*.” Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007. Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007.

thereby abandoning the cases and leaving the victims without access to remedies to which they are entitled.

In the case of the Ciudad Juarez murders, for example, the CNDH chose not to monitor the state's handling of charges of serious negligence on the part of high-level officials after the state government rejected the relevant recommendations in 1998.¹⁰³ Similarly, in the case of police brutality in Atenco, the CNDH did not continue to monitor the federal government's handling of the abuse allegations after the federal minister rejected its recommendations.¹⁰⁴

The CNDH's passivity in the Ciudad Juarez and Atenco cases has been repeated in many other instances. Of the 354 *recomendaciones* that the CNDH issued on specific cases between 2000 and 2006, 70 (or 20 percent) were rejected by the government authorities who received them.¹⁰⁵ According to its own self-limiting interpretation of its mandate, the CNDH had no choice but to abandon its work on these cases, and it appears to have done so in many such cases.

In July 2004, for example, M.A.C.C., a minor, was allegedly detained, beaten, and raped by police officers in Ciudad del Carmen, state of Campeche. The CNDH

¹⁰³ Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007.

¹⁰⁴ Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

¹⁰⁵ There were four rejected *recomendaciones* in 2000, seven in 2001, three in 2002, 14 in 2003, 25 in 2004, 6 in 2006, and 11 in 2006. CNDH, "Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000" [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anales/ooactiv.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 16 de noviembre de 2000 al 31 de diciembre de 2001" [Report of Activities between November 16, 2000 and December 31, 2001], 2002, <http://www.cndh.org.mx/lacndh/informes/anales/o1activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2002" [Report of Activities between January 1 and December 31, 2002], 2003, <http://www.cndh.org.mx/lacndh/informes/anales/o2activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anales/o3activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anales/o4activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2005" [Report of Activities between January 1 to December 31, 2005], 2006, <http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2006" [Report of Activities between January 1 to December 31, 2006], 2007, http://www.cndh.org.mx/CDINFORME2006iMAGEN/INFORME_DE_ACTIVIDADES_2006_1.htm (accessed December 6, 2007).

concluded that M.A.C.C. had been beaten and that the rape allegation warranted further investigation.¹⁰⁶ The CNDH recommended criminal and administrative investigations. On December 1, 2005, the president of the municipality of Carmen notified the CNDH that it had rejected the recommendations.¹⁰⁷ The CNDH closed the case on December 21, 2005.¹⁰⁸

In 2003 the CNDH found that officers from the Military Prosecutors' Office (Procuraduría General de Justicia Militar, PGJM) and from the Military Judicial Police had arbitrarily detained hundreds of soldiers from the army's 65th Infantry Battalion (based in Guamuchil, Sinaloa), holding them incommunicado for four or five days and subjecting them to physical and psychological abuse, including torture. The CNDH recommended that the PGJM conduct both criminal and administrative investigations into the officers responsible for these abuses, establish instruction in human rights law, and protect the confidentiality of military personnel who had collaborated with its investigation.¹⁰⁹ The PGJM rejected the recommendations on May 15, 2003.¹¹⁰ The CNDH closed the case on May 20, 2003.¹¹¹

In 2004 the CNDH documented the case of Daniel Torres, who had reported being beaten and tortured by police officers who subjected him to electric shocks in an effort to get him to confess to a murder. The CNDH concluded that the police had arbitrarily detained Torres and that there was extensive evidence to support the claim of torture.¹¹² The CNDH recommended that the state government initiate criminal and administrative investigations of the police officers involved in the

¹⁰⁶ CNDH, *Recomendación 37/05*, November 10, 2005.

¹⁰⁷ In its 2005 annual report, the CNDH did not report whether any rationale was given by the municipal president for its rejection.

¹⁰⁸ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2005" [Report of Activities between January 1 to December 31, 2005], 2006, <http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed December 6, 2007), section II.2.B.

¹⁰⁹ CNDH, *Recomendación 16/03*, April 22, 2003.

¹¹⁰ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anales/03activ.pdf> (accessed December 6, 2007), pp. 87 - 90.

¹¹¹ *Ibid.*

¹¹² Torres appealed before the CNDH after local authorities rejected a *recomendación* issued by the Chihuahua state commission on February 6, 2004. CNDH, *Recomendación 56/04*, August 31, 2004.

detention. But when the governor failed to respond to the *recomendacion* within 15 days, the CNDH concluded that he had rejected it.¹¹³ According to the CNDH's interpretation of its mandate, there would be no follow-up on the case. Indeed, there is no mention of it in the follow-up section of the CNDH annual reports of 2005 and 2006.

In 2004 the CNDH documented the case of Juan Antonio Ortiz Rivera, who had been arbitrarily detained and beaten by the Municipal Police of Chihuahua City.¹¹⁴ The CNDH recommended that administrative proceedings be initiated against the police.¹¹⁵ But when the municipal government did not respond to the *recomendacion*, the CNDH concluded that it had been rejected.¹¹⁶ The CNDH did not mention whether or not it would follow-up on its recommendations, but since the case is not mentioned in the follow-up sections of the CNDH reports of 2005 and 2006, it is reasonable to conclude that it did not.

In 2004 the CNDH documented the case of Jaime Arias Sealauder, concluding that he had been subject to physical abuse by judicial police in Tijuana. The CNDH analyzed a medical report by the Attorney General's Office (Procuraduria General de la Republica, PGR), which documented hemorrhagic spots in his stomach area, side and back, as well as a cut on his upper lip, and determined that the injuries were inflicted, probably with the intention of harming him, while he was in detention.¹¹⁷ The CNDH recommended that the governor of Baja California give instructions to initiate criminal and administrative investigations. On September 22, 2004, the

¹¹³CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 196.

¹¹⁴ CNDH, *Recomendacion 69/04*, September 24, 2004.

¹¹⁵ The CNDH issued the same recommendation to the Ayuntamiento Constitucional de Chihuahua that the State Commission on Human Rights had issued in January 2004.

¹¹⁶ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 232.

¹¹⁷ CNDH, *Recomendacion 59/04*, August 31, 2004.

state rejected its recommendations.¹¹⁸ On November 12, 2004, the CNDH closed the case.¹¹⁹

In January 2004, 15-year old Julio Cesar Vazquez Meza fell from the roof of his home in Tlaxcala State. During the course of the next 18 hours, Julio was transferred to different hospitals six times, and died on his way to the last one.¹²⁰ The CNDH concluded that the Health Ministry of Tlaxcala, the governor of Tlaxcala, one of the doctors who refused to treat Julio, and the Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS) violated Julio's rights to health and to appropriate medical care.¹²¹ The CNDH recommended that the IMSS conduct an administrative investigation into the case and provide monetary reparations to Julio's parents. It also recommended that the governor of Tlaxcala adopt measures to improve health services in the state. The general director of the IMSS rejected the recommendations on August 18, 2004. The governor accepted only some of the recommendations. The CNDH closed the case entirely, considering that a partial acceptance was not sufficient to follow up after it issued a *recomendacion*.¹²²

¹¹⁸ In its response to the recommendations, the State Prosecutor's Office said that it did not believe there was solid evidence to open a criminal or administrative investigation of members of the judicial police allegedly involved in this case.

¹¹⁹ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 204.

¹²⁰ At the Centro de Salud de Huamantla (Health Center of Huamantla) in Tlaxcala, Julio was diagnosed with a bump on the head. When he began vomiting, he was transferred to the Centro de Salud de Tlaxcala (Health Center of Tlaxcala), arriving there at 10:00 p.m. Julio was not examined at this hospital because it did not have photographic plates for x-rays and they could not find a pediatrician who could see him. He was then sent in an ambulance to the General Hospital from Zone 1. At this location the receptionist/medical assistant asked him and the person that was with him for their documents that proved that they were beneficiaries of Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS). Since they did not have the documents with them, they were asked to leave a deposit of \$25,000 pesos, which they did not have. They then spoke with a doctor, who said that he could not admit Julio because the social security laws had changed and the hospital could only admit beneficiaries of the IMSS. They were sent in an IMSS ambulance to the Regional Hospital of Apizaco, where Julio had x-rays taken, but the doctors informed his parents that he needed a CAT scan, which cost \$1,100 pesos. After they obtained the money the following morning, the doctor transferred them to the city of Tlaxcala for the procedure. They then returned to the Regional Hospital, where the doctor reviewed the results and told them Julio had a skull fracture and needed surgery. However, there was no neurosurgeon at this hospital, so Julio was again transferred, this time to a hospital in Puebla. Julio died during the transit to this hospital.

¹²¹ CNDH, *Recomendacion 44/04*, August 3, 2004.

¹²² CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 161.

Accepted Recommendations

Even when its recommendations are accepted, the CNDH often fails to ensure that they are actually implemented. This practice is particularly pronounced in the case of recommendations involving criminal or administrative investigations.

(Approximately half of the *recomendaciones* the CNDH issued between 2000 and 2006 called for criminal or administrative investigations, or both).

In the case of criminal investigations, CNDH officials argue that they do not have the legal authority to scrutinize the work of public prosecutors. They cannot monitor the progress of criminal investigations,¹²³ nor evaluate their quality.¹²⁴ The reason, they claim, is that Mexican law only allows them to request that investigations be carried out, but it is entirely up to the prosecutors themselves to determine how this is done.

The law and regulations governing the CNDH do not limit follow-up on cases in this way. On the contrary, they explicitly grant the CNDH the authority to monitor criminal and administrative investigations of the human rights abuses it has documented.¹²⁵ Moreover, successive CNDH presidents have recognized that the institution has this

¹²³ Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007.

¹²⁴ Human Rights interview with Susana Thalia Pedroza, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007; Human Rights Watch interview with staff from the fourth visitaduria, Mexico City, March 22, 2007; Human Rights Watch interview with Mauricio Farah Gebara, fifth visitador, and staff from the fifth visitaduria, Mexico City, March 20, 2007.

¹²⁵ According to Article 63 of the CNDH rules of procedure, “The CNDH president can delegate to the chief investigators the power to request a criminal investigation, and, if so, to carry out and follow up on the actions undertaken during the investigations, and criminal and administrative proceedings.”

The CNDH may also request the government to initiate administrative or criminal investigations when government officials do not collaborate with the CNDH during its investigations. According to Article 73 of the Law of the CNDH, “The National Commission will be able to monitor the actions and activities carried out in criminal investigations, and criminal and administrative proceedings that are integrated or ordered based on its intervention, as provided for in this law and in article 102, section B of the Mexican Constitution, through its chief investigators and the deputy investigators.”

power.¹²⁶ And in fact, the CNDH has monitored and publicly criticized the work of prosecutors on multiple occasions.¹²⁷

The negative impact of the CNDH's misreading of its mandate was evident in its handling of the "dirty war" cases. While its report on the "dirty war" crimes led to the creation of a special prosecutor's office, the CNDH did virtually nothing to address the shortcomings of the office and the obstacles put in its way by other government institutions.

The CNDH's passivity was also evident in another high-profile case, involving Rodolfo Montiel and Teodoro Cabrera, two peasant leaders involved in environmental activism in the mountains of Guerrero state. Montiel and Cabrera were detained by soldiers in 1999 and held illegally for two days before being turned over to civilian authorities. The two men reported that they had been tortured during their detention. The CNDH issued a *recomendacion* in which it concluded that the two had been subjected to arbitrary detention and tortured.¹²⁸ It called on military prosecutors to initiate a criminal investigation.¹²⁹ The military prosecutor's office examined the case and decided not to press charges, arguing that there was no evidence of torture.¹³⁰ Yet even if there was insufficient evidence to prove torture,

¹²⁶ The first CNDH president, Jorge Carpizo, made this clear in 1992 when he wrote that, to implement a CNDH recommendation, a government official needed to issue an arrest warrant and execute it. Otherwise, according to Carpizo, the case should remain open. CNDH, "Cuarto Informe Semestral de Actividades, Dic. 91-Jun. 92" [Fourth Semi Annual Report of Activities, December 1991 to June 1992], p. 68. More recently, the current CNDH president acknowledged that the institution has the authority to evaluate the seriousness of criminal and administration investigations into abuse cases. Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

¹²⁷ For instance, when the CNDH analyzed the case of Atenco, it stated that "it would be following the investigations until their final resolution." (CNDH, Press Release 073/06, May 16, 2007.) And when investigating the murder of American journalist Brad Will during the conflict in Oaxaca in 2006, the CNDH "insistently requested state authorities to have access to the corresponding criminal investigation" and criticized them for denying such access. (CNDH, Press Release 148/06, November 2, 2006.) Similarly, after journalist and writer Lydia Cacho received death threats, the CNDH requested the federal attorney general to implement precautionary measures to protect her. In this case, the CNDH "permanently followed up" on the work of prosecutors investigating this case. And when analyzing Cacho's allegations of arbitrary detention, the CNDH went to the Attorney General's Offices to analyze information in their files regarding ongoing investigations. CNDH memos on files 2005/737/QROO/5/5Q and 2005/5290/5/Q, provided to Human Rights Watch by Lydia Cacho on March 19, 2007.

¹²⁸ Since military prosecutors did not provide the CNDH information included in their investigations of the alleged torture, the CNDH concluded that the military had not refuted Montiel and Cabrera's allegations and thus concluded they had been tortured. CNDH, *Recomendacion 8/2000*, July 14, 2000, section IV.

¹²⁹ *Ibid.*, section V.

¹³⁰ Human Rights Watch telephone interview with Luisa Perez, Centro Prodh, Mexico City, May 4, 2007.

there was very clear evidence of arbitrary detention.¹³¹ The CNDH did not denounce the military prosecutors' mishandling of the allegations, choosing, rather, to end its follow up and close the case.¹³²

Another way the CNDH limits its follow-up function is by issuing recommendations that only call for investigations to be *initiated*.¹³³ The commission considers that its involvement in these cases should cease if an investigation is initiated, irrespective of whether the investigation is carried out in a satisfactory manner and completed, and regardless of whether or not the victims ever obtain a remedy.

In 2000, for example, the CNDH documented that PGR officials had used excessive force to detain Guadalupe Carrasco Licea, causing bruises and cuts on her neck, arms, and chest. The CNDH recommended the federal attorney general order an investigation to find out who had carried out this detention, initiate administrative investigations against those responsible, and inform the competent prosecutors so they would carry out the corresponding criminal investigation.¹³⁴ The CNDH concluded that the PGR had “totally complied” with the CNDH recommendations after it informed, two months later, that it had “adopted measures” to implement them and that its internal control office had initiated an investigation of the officials.¹³⁵

In 2002 the CNDH documented that a nurse from the Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS) placed an intra-uterine

¹³¹ The military held Montiel and Cabrera for two-and-a-half days, thus violating Article 16 of the Mexican Constitution (which states that individuals who are detained in flagrante delicto shall be brought before competent authorities without delay) and Article 20 of the Constitution, which enshrines the right to defense. CNDH, *Recomendacion 8/2000*, section IV.B.i.3. Also, the military searched Cabrera's home without judicial authorization. *Ibid.*, section IV.B.iii.3.

¹³² CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2003” [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anuales/03activ.pdf> (accessed December 6, 2007), annex, p. 669.

¹³³ The CNDH uses different formulations for this. It requests government authorities to inform (*dar vista*), provide instructions (*gire instrucciones, se sirva instruir*) or instruct (*instruya*) competent authorities to initiate investigations.

¹³⁴ CNDH, *Recomendacion 6/2000*, July 14, 2000.

¹³⁵ CNDH, “Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000” [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anuales/00activ.pdf> (accessed December 6, 2007), pp. 40-41.

contraceptive in Hermelinda del Valle Ojeda, an indigenous woman from Oaxaca, without her consent. Ojeda carried this device in her body unknowingly for two years, causing risks to her health.¹³⁶ The CNDH held the IMSS had violated her sexual and reproductive rights and her right to health. It recommended that the IMSS provide information to its internal control office so it could initiate an administrative investigation and, if the results of that investigation justified it, inform the public prosecutor's office so that it could open a criminal investigation.¹³⁷ The CNDH decided that the IMSS had "totally complied" with its recommendations when it initiated the administrative proceedings.¹³⁸

In 2003 the CNDH documented that Laura Guzman Soria, who was pregnant, died due to medical malpractice in a public hospital in Baja California. The CNDH concluded that the doctors who treated her violated her rights to life and health, and recommended that the IMSS inform the internal control office that it should initiate and carry out an administrative investigation of the doctors and hospital directors, and provide monetary reparations to the victims' family.¹³⁹ The CNDH determined that the IMSS had "totally complied" with its recommendations when the IMSS sent information on the case to its internal control office to initiate an administrative investigation.¹⁴⁰ (On the monetary reparations question, the CNDH held it considered its recommendation had been implemented, since the technical council of the IMSS had signed an agreement saying it would pay reparations.)

In 2000 the CNDH found that municipal police in Veracruz had used excessive force when arresting Jose Leonardo Rosas Hernandez. It recommended that the municipality of Cordoba propose that the *Cabildo* (local legislature) sign an

¹³⁶ CNDH, *Recomendacion 46/2002*, December 6, 2002.

¹³⁷ The CNDH also requested the IMSS to train its personnel that carry out family planning programs so that they comply with their obligation to obtain informed consent and respect individuals' right to decide on the number and spacing of children that they will have, as well as on the family planning methods they will use. *Ibid.*

¹³⁸ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anuales/03activ.pdf> (accessed December 6, 2007), Annex, p. 703.

¹³⁹ CNDH, *Recomendacion 1/2003*, January 16, 2003. (In this case there already was a criminal investigation underway).

¹⁴⁰ CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (accessed December 6, 2007), p. 788.

agreement to initiate an administrative investigation. It also stated that, independently of the previous recommendation, the municipal government could inform the relevant prosecutors so that they could, in turn, carry out criminal investigations.¹⁴¹ The following year, the CNDH stated that the municipality had “totally complied” with its recommendations simply based on the fact that the local legislature had agreed to request its internal control office to carry out an administrative investigation, as well as to inform prosecutors of the case so they could initiate a criminal investigation.¹⁴²

“Special Reports” and “General Recommendations”

The CNDH regularly issues two other types of reports that also warrant follow-up: “special reports” (*informes especiales*) and “general recommendations” (*recomendaciones generales*.) According to its rules of procedure, the CNDH issues special reports on human rights problems “when the nature of the case requires it, given its importance or seriousness.”¹⁴³ General recommendations examine the laws, policies, and practices that lead to human rights violations.¹⁴⁴ In both cases, CNDH officials maintain they can abandon their work after publishing their findings.

¹⁴¹ CNDH, *Recomendacion 2/2000*, April 26, 2000.

¹⁴² CNDH, “Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000” [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anales/ooactiv.pdf> (accessed December 6, 2007), pp. 33-34.

¹⁴³ CNDH, Rules of Procedure, art. 174.

¹⁴⁴ According to the CNDH’s rules of procedure, “The National Commission will be able to issue general recommendations to different government authorities in the country, with the purpose of promoting changes to norms and administrative practices that lead to human rights violations. These recommendations will be elaborated similarly than those in specific cases and will be based on studies carried out by the National Commission’s investigative units, after approval by the National Commission’s president. Before they are issued, these recommendations will be analyzed and approved by the advisory council.” CNDH, Rules of Procedure, art. 140.

The CNDH began issuing general recommendations in 2000. “Acuerdo del Consejo Consultivo de la Comisión Nacional de los Derechos Humanos, por el que se adiciona el artículo 129 bis al Reglamento Interno de la Comisión Nacional de Derechos Humanos” [Agreement of the CNDH advisory council by which it adds article 129 bis to the internal rules of procedure of the CNDH], Federal Official Gazette, November 17, 2000.

As of December 2007, the CNDH had issued 14 general recommendations on a range of pressing human rights issues, such as searches in prisons; arbitrary detentions; the rights of female prisoners; violations to sexual and reproductive rights against indigenous peoples; religious freedom in public schools; and illegal practices against immigrants, among others.

In the case of special reports, some CNDH officials claim that the institution does not have legal authority to conduct follow-up on its findings and must therefore limit itself to receiving information from government authorities.¹⁴⁵ Yet the law regulating the CNDH contemplates such follow up. Its rules of procedure state that “the CNDH shall not be obliged to follow up” on special reports,¹⁴⁶ strongly implying that the CNDH has discretion and may do so when it wishes (if the drafters of the law had wanted to prohibit such follow up, they can and would have stated the prohibition directly, rather than using the discretionary language quoted above). Moreover, some CNDH officials do consider follow-up appropriate for special reports and have done so in some cases.¹⁴⁷ The CNDH, for example, actively followed up on its 2003 “special report” on Ciudad Juarez, and its “special report” on Guadalajara (albeit after several years of neglecting to do so).

In the case of general recommendations, one CNDH official told Human Rights Watch that the CNDH has no legal obligation to conduct follow-up.¹⁴⁸ Consequently, CNDH officials reason, there is no need to do anything more than receive information on these cases.¹⁴⁹ Indeed, all the general recommendations that the CNDH has issued to date have ended with a paragraph informing the government authority that it has no obligation to accept the recommendation and requesting that it send evidence of having implemented the recommendation within a 30-day period. Yet the law governing the CNDH envisions a far more active role, which is not merely to wait for the government to send information. Instead, the CNDH rules of procedure specifically provide for the “verification of compliance” with general recommendations.¹⁵⁰

¹⁴⁵ Human Rights interview with Susana Thalia Pedroza, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

¹⁴⁶ CNDH, Rules of Procedure, art. 175.

¹⁴⁷ Human Rights Watch interview with staff members of the fourth visitaduria of the CNDH, Mexico City, March 22, 2007.

¹⁴⁸ According to the current director of the CNDH’s National Human Rights Center (Centro Nacional de Derechos Humanos, NHRC), there is no legal obligation to follow-up because general recommendations are not based on a concrete act that the CNDH could ask government authorities to perform. Human Rights Watch interview with Victor Manuel Bulle Goyri, director of the NHRC, Mexico City, March 16, 2007.

¹⁴⁹ Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007.

¹⁵⁰ CNDH, Rules of Procedure, art. 140.

A Peculiar Interpretation of the “Legality Principle”

When pressed on why they did not more actively follow up on their reports and *recomendaciones*, CNDH officials cited a principle of Mexican administrative law, known as the “legality principle,” which holds that public officials can only do what the law expressly authorizes them to do.¹⁵¹ These officials maintain that, according to this principle, any advocacy work they might carry out that exceeds the explicit mandate of the CNDH would constitute an abuse of authority and expose them to administrative sanction.¹⁵²

Yet, as we discussed above, the CNDH mandate allows these officials to perform the very functions they claim exceed the institution’s mandate, including monitoring criminal investigations and following up on rejected *recomendaciones*, “special reports,” and “general recommendations.” As also noted above, in some cases CNDH officials have performed these functions, and have done so with positive results.

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.¹⁵³ 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.

¹⁵¹ In many criminal legal systems, the “legality principle” is understood as the general prohibition to impose criminal sanctions to individuals for acts that were not offenses included in criminal codes at the time they were committed (nulleum crimen sine lege).

¹⁵² According to one chief investigator, “When the law does not allow it, we have our hands tied. (...) In Mexico public officials can only do what the law authorizes us to do. [Instead,] individuals (...) can do whatever the law does not forbid them to do. Here another legal principle applies. We can only do what the law allows us to do. (...) Otherwise we incur in responsibility.” Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

According to another chief investigator, “As public officials, we are subject to some principles. One of them is that we cannot do more than what the law says. In this context, our chances to combat impunity are somewhat reduced.” Human Rights Watch interview with Mauricio Farah Gebara, fifth visitador, and staff from the fifth visitaduria, Mexico City, March 20, 2007.

¹⁵³ The CNDH’s citizen advisory council has the power to elaborate the CNDH internal guidelines and to modify its rules of procedure. Law on the CNDH, art. 19. Moreover, the CNDH can propose reforms for other government institutions to adopt. See chapter V of this report on promoting changes to legal norms.

The purpose of the legality principle is to protect individuals from arbitrary government acts. The principle derives from a clause of the Mexican Constitution establishing that “[n]o one can be bothered in [his or her] person, family, home, papers or possessions, except as a consequence of a written decision by a competent authority, which must be based on and justified by the legal cause of the proceedings.”¹⁵⁴ According to Mexican courts, it is intended to apply to “all government acts that are directed at adversely affecting an individual.”¹⁵⁵ Its main practical significance is that it grants individuals the right to know in detail all the circumstances that lead to a government decision, so that he or she has the opportunity to challenge its merits and adequately defend him or herself.¹⁵⁶

By invoking this principle to avoid following up on its own recommendations, the CNDH turns the principle on its head, employing it to protect state officials who abuse their authority rather than to protect individuals.

¹⁵⁴ Mexican Constitution, art. 16. To satisfy the requirements established in the Constitution, the Supreme Court has held that decisions by government institutions must be based on specific legal norms, and must explain how these are applicable to the facts of the case. Mexican Supreme Court, Second Sala, Thesis 2a. CXCVI/2001, *Semanario Judicial de la Federación y su Gaceta*, October 2001, p. 429. According to binding case law issued by a lower tribunal, “The due basis and legal motivation must be understood, first, as [the need to] cite the applicable legal norm, and, second, the reasons, motives or special circumstances that led the authority to conclude that the legal norm invoked as the justification can be applied to the particular case.” *Tribunales Colegiados de Circuito*, Thesis Vi.20. J/43, *Semanario Judicial de la Federación y su Gaceta*, March 1996, p. 769. Another binding decision by the Supreme Court states that, “The principle limits acts of authority, which means that everything that is not expressly allowed is prohibited and that they can only carry out acts that the legal system provides for.” Mexican Supreme Court, Thesis P./J. 9/2006, *Semanario Judicial de la Federación y su Gaceta*, February 2006, p. 1533.

¹⁵⁵ *Tribunales Colegiados de Circuito*, Thesis I.40.T.19 K, *Semanario Judicial de la Federación y su Gaceta*, May 1998, p. 1021.

¹⁵⁶ “The formal content of the guarantee of legality provided for in article 16 of the Constitution related to the basis and justification [of government acts] has as its main purpose that the individual know ‘why’ the government authority acted in such a way, which translates into informing [him or her] in detail and completely the essence of all the circumstances and conditions that led to the act, so that it is evident and very clear for the affected [individual] so [he or she] can question and challenge the merits of the decision, allowing [him or her] a real and authentic defense.” *Tribunales Colegiados de Circuito*, Thesis I.40.A. J/43, *Semanario Judicial de la Federación y su Gaceta*, May 2006, p. 1531.

“The guarantee of motivation is violated only when the reasoning is so imprecise that it does not provide elements to the citizen to defend [his or her] rights or challenge [the reasons].” *Tribunales Colegiados de Circuito*, Thesis XIV.20.45 K, *Semanario Judicial de la Federación y su Gaceta*, February 2004, p. 1061.

According to the Mexican Supreme Court, for example, legislative authorities comply with this principle when they “generate certitude in those it governs with respect to the legal consequences of their behavior and, on the other hand, when norms that provide a certain power to a government authority, limit the attribution to the extent necessary and reasonable, so that the respective government authority does not act capriciously or arbitrarily.” Mexican Supreme Court, Second Sala, Thesis 2a. CLXXIX/2001, *Semanario Judicial de la Federación y su Gaceta*, September 2001, p. 714.

V - Reform

In addition to pressing the state to remedy specific abuses, the CNDH has the power to promote the reforms that are needed to prevent future ones. Here too, however, the CNDH has tended to abdicate its authority, too often allowing abusive policies to continue unchecked.

One of the CNDH's most important functions is to challenge national laws that are inconsistent with international human rights standards. Yet, on a range of important issues, the CNDH has done just the opposite, tolerating abusive practices by deferring to existing national laws. In these cases, the CNDH has displayed a fundamental disregard for the very international human rights standards that it is supposed to be promoting.

The CNDH has also failed to support efforts by other state organs—including the executive and legislative branches—to bring Mexican law into compliance with international human rights standards. In at least one case involving Mexico City's abortion law, it has actively opposed such efforts.

As with the CNDH's failure to actively monitor implementation of its recommendations, CNDH officials justify their failure to promote reform with an unnecessarily limited interpretation of what their own role can and should be. Perhaps the clearest evidence of the speciousness of these arguments is the fact that on several occasions the CNDH has in fact played a far more active and constructive role in promoting reform. If the CNDH did so more often, it would have a far greater impact on curbing human rights abuses in Mexico than it does now.

How the CNDH Limits Its Own Mandate

Mexican law grants the CNDH ample authority to promote reforms aimed at improving human rights practices. It may propose changes to laws, regulations, and

governing practices to increase the respect of human rights.¹⁵⁷ Since November 2000, the CNDH has had the power to issue “general recommendations” that address general practices and legal norms that undermine human rights protections.¹⁵⁸ And since April 2006, it 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.¹⁵⁹

Yet CNDH officials interpret this mandate in a very limited fashion. They argue that, since the Mexican Constitution and the law on the CNDH only empower them to address violations of human rights “protected by the Mexican legal system,” they cannot advocate for rights that are not explicitly established in Mexican constitutional or statutory law.¹⁶⁰ Yet, one of the most important principles that the CNDH should be championing is that “the Mexican legal system” *includes* the state’s obligations under international law.

The Mexican Supreme Court, the highest authority on the Mexican legal system, has itself upheld this principle, ruling on two occasions that Mexico is bound by its

¹⁵⁷ According to Article 6 of the Law on the CNDH, “The CNDH has the following attributes: (...)VIII. Propose to the different government authorities in the country that they promote, within their jurisdictions, the changes and modifications to laws and implementing regulations, as well as to administrative practices, that, according to the National Commission, will lead to a better protection of human rights.” Article 53 of the Law on the CNDH establishes that the CNDH’s annual report may contain legislative proposals.

When it proposes legislation, the CNDH also acts in accordance with the Paris Principles. The Paris Principles state that these types of institutions “shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.” Paris Principles, Composition and guarantee of independence and pluralism, principle 3 (a) (i).

¹⁵⁸ “Acuerdo del Consejo Consultivo de la Comisión Nacional de los Derechos Humanos, por el que se adiciona el artículo 129 bis al Reglamento Interno de la Comisión Nacional de Derechos Humanos” [Agreement of the CNDH advisory council by which it adds Article 129 bis to the internal rules of procedure of the CNDH], Federal Official Gazette, November 17, 2000.

¹⁵⁹ House of Representatives, Boletín [Document] 2931, April 20, 2006, http://www3.diputados.gob.mx/camara/005_comunicacion/a_boletines/2006_2006/004_abril/20_20/2931_tendra_faculta_des_la_cndh_para_promover_inconstitucionalidad_contra_leyes_que_violen_derechos_humanos (accessed May 25, 2007).

¹⁶⁰ Mexican Constitution, art. 102 B; Law on the CNDH, art. 2.

For instance, when defining torture, the CNDH has held that “Given the public nature of the National Human Rights Commission and that it can only do what the laws of our country allow, we [define torture using] the elements of the crime, as established in the Federal Law to Prevent and Sanction Torture.” Ricardo Hernández Forcada y María Elena Lugo Garfías, “Algunas notas sobre la tortura en México” [Some Notes About Torture], (Mexico, CNDH: 2004), p. 14.

international obligations and that the provisions of treaties ratified by Mexico take precedence over federal and state statutory law (but not over provisions of the Constitution).¹⁶¹ While these rulings do not yet constitute binding jurisprudence for Mexico's lower courts (under Mexican law, the Supreme Court generates binding jurisprudence when it issues five consecutive decisions that reach the same conclusion), they do provide an authoritative interpretation of Mexican law that should be the guiding principle of the CNDH.

This limited interpretation of its mandate has seriously hindered the CNDH's ability to contribute to human rights progress in Mexico.

Military Jurisdiction over Human Rights Cases

Some of the most egregious human rights violations documented by the CNDH have been military abuses against civilians. These abuses are rarely punished, however, in large part because the military justice system routinely exercises jurisdiction over military abuses, and military authorities have proven unable to properly investigate and prosecute human rights cases. Rather than challenging military jurisdiction over human rights cases, the CNDH has routinely turned military abuse cases over to military prosecutors, virtually ensuring there would be no effective remedy for the victims or their families.

The CNDH president argued as recently as October 2007 that, according to Mexican law, military officers should be tried by civilian courts only when they commit crimes while off duty. Accordingly, the CNDH has no choice but to request military prosecutors to investigate military abuse cases.¹⁶²

¹⁶¹ Mexican Supreme Court, Pleno, Tesis LXXVII/99, Novena Época, *Semanario Judicial de la Federación y su Gaceta*, tomo X, November 1999, p. 46; Mexican Supreme Court, Pleno, Tesis P. IX/2007, Novena Época, *Semanario Judicial de la Federación y su Gaceta* XXV, April 2007, p. 6.

¹⁶² Jose Luis Soberanes, "Por que el fuero de guerra" [Why Military Jurisdiction], *Reforma*, October 18, 2007. Jose Luis Soberanes, the CNDH president, told Human Rights Watch that the mechanism to promote a change in the use of military jurisdiction to investigate and try human rights cases was a general recommendation, but that they have not used it to address this problem. Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

But it does have a choice. It could take advantage of a recent Supreme Court ruling that points towards a different interpretation of applicable law. While the Mexican Constitution establishes military jurisdiction only for “offenses against military discipline,”¹⁶³ the Code of Military Justice establishes a very expansive notion of such offenses that includes “offenses under common or federal law...when committed by military personnel on active service or in connection with active service.”¹⁶⁴ In 2005 the Mexican Supreme Court limited the scope of the clause by defining “service” as “performing the inherent activities of the position that [he or she] is carrying out.” Although at the time the court was not deciding a human rights case, the decision suggests that human rights violations cannot be considered inherent to activities carried out by military officials.¹⁶⁵ The CNDH could also take into account constitutional interpretations by Mexican legal scholars, who argue that military courts may not exercise jurisdiction over civilian victims, since the Constitution provides for victims’ rights.¹⁶⁶

In any case, even if Mexican law suffered from some ambiguity regarding military jurisdiction, the CNDH could apply international law, which is quite clear. Mexico has an obligation to provide victims of human rights abuses with effective remedies. And authoritative international human rights bodies have repeatedly found that military tribunals cannot be relied upon to provide such remedies. For that reason, they have called on states to transfer jurisdiction over these cases from military to civilian authorities.¹⁶⁷ In the case of Mexico, the U.N. Special Rapporteur on Torture

¹⁶³ Mexican Constitution, art. 13.

¹⁶⁴ Code of Military Justice of Mexico, art. 57.

¹⁶⁵ According to the Supreme Court, “service” is the “realizacion de las funciones propias e inherentes al cargo que desempeña.” Mexican Supreme Court, Contradiccion de Tesis 105/2005-PS, September 28, 2005.

¹⁶⁶ Human Rights Watch email communication with Migue Sarre, ITAM, Mexico City, November 18 and 26, 2007.

¹⁶⁷ The U.N. Human Rights Committee (HRC), which monitors states’ compliance with the ICCPR, has repeatedly called on states parties to subject military personnel alleged to have committed human rights violations to civilian jurisdiction. For example, in 1997 it urged the Colombian government to take “all necessary steps . . . to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts,” specifically recommending “that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts.” Concluding observations of the Human Rights Committee: Colombia, U.N. Doc. CCPR/C/79/Add. 76, May 3, 1997, para. 34. The Committee has made similar recommendations to the governments of Chile and Peru, on the grounds that the “wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel . . . contribute[s] to the impunity which such personnel enjoy against punishment for serious human rights violations.” Concluding observations of the Human Rights Committee: Chile, U.N. Doc. CCPR/C/79/Add. 104, March 30, 1999, para. 9. See also U.N. Doc.

found that Mexican military personnel who committed abuses were “generally protected by military justice” and concluded that “[c]ases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice.”¹⁶⁸

Rather than challenge the misuse of military justice, the CNDH has routinely turned military abuse cases over to military prosecutors, including:

- when soldiers arbitrarily detained and tortured Rodolfo Montiel and Teodoro Cabrera, two peasant leaders involved in environmental activism in the mountains of Guerrero, in 1999;¹⁶⁹
- when soldiers stationed in Oaxaca shot and killed Gildardo Avila Rojas as he was running away from them in 2000;¹⁷⁰
- when soldiers in Guerrero shot and killed Esteban Martinez Navario, a minor, as he was running away from them in 2001;¹⁷¹
- when soldiers in Colima attacked a meeting of recovering alcoholics, killing Rodrigo Torres Silva and injuring a minor named Yuliana Mercado Vargas;¹⁷²
- when soldiers opened fire on a vehicle transporting 23 migrants in 2002;¹⁷³

CCPR/C/79/Add. 67, July 25, 1996, para. 23. Similarly, the Inter-American Court has held that “[i]n a democratic State governed by the rule of law, the scope of authority of criminal military courts must apply on a limited and exceptional basis,” and that “[m]ilitary officers must be prosecuted for the commission of only those offenses and infractions that, because of their nature, have an adverse effect on the assets of the military.” Inter-American Court, Durand and Ugarte Case, Judgment of August 16, 2000, para. 117.

¹⁶⁸ United Nations, Question of the human rights of all persons subjected to any form of detention or prison and, in particular, torture and other cruel, inhuman, or degrading treatment or punishment. Report of Special Rapporteur Nigel Rodley, submitted pursuant to Resolution 1997/38 of the Commission on Human Rights, E/CN.4/1998/38/Add.2, January 14, 1998, paras. 86, 88[j].

¹⁶⁹ CNDH, *Recomendacion 8/2000*, July 14, 2000.

¹⁷⁰ CNDH, *Recomendacion 17/2001*, July 31, 2001.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.* The CNDH recommended to the military prosecutor that he ask the Unit of Inspection and Control of the Army and Air Force (Unidad del Ejercito y Fuerza Aerea Mexicana) to begin an administrative investigation into the military officers involved in the acts alleged in the three cases. The CNDH also recommended that the military prosecutor initiate proceedings so that Yuliana Mercado Vargas and the families of Rodrigo Torres Silva and Esteban Martínez Nazario be paid damages. In addition, the CNDH recommended that the military prosecutor ensure that military officers were taught how to comply with human rights law when they carry out their work. Finally, the CNDH recommended that the military prosecutor include another suspect in its existing criminal investigation involving the murder of Gildardo Avila Rojas.

¹⁷³ CNDH, *Recomendacion 23/2004*, April 5, 2004.

- when soldiers beat and kicked another 13 migrants to extract information on who was transporting them in 2003;¹⁷⁴ and
- when soldiers shot and killed an unarmed civilian, Aquileo Márquez Adame, in Guerrero in 2004.¹⁷⁵

More recently, the CNDH has requested military prosecutors to investigate human rights abuses committed by the military while engaged in law enforcement activities.

These cases include:

- when soldiers in the state of Coahuila beat seven municipal policemen and sexually abused 14 women in July 2006,¹⁷⁶
- when soldiers arbitrarily detained 65 people in Michoacan state in May 2007, holding some incommunicado at a military base, beating many of the detainees, and raping four children,¹⁷⁷
- when soldiers in Michoacan arbitrarily detained eight people in May 2007, keeping them incommunicado at a military base, where they beat and covered the heads of four of them with plastic bags,¹⁷⁸ and
- when soldiers opened fire against a truck in Sinaloa in June 2007, killing five people, including three children, and injuring three others.¹⁷⁹

¹⁷⁴ Ibid. A week later, the CNDH issued a press release highlighting that the PGJM had accepted its *recomendacion* and would initiate two formal investigations into these cases. CNDH, Press Release DGCS/053/04, April 13, 2004.

¹⁷⁵ The CNDH recommended that the military prosecutor initiate an administrative investigation of the charges alleged and initiate the procedure to pay damages to Marquez's family. The CNDH also recommended that the military prosecutor give the appropriate orders so that the military will be trained in human rights law and the appropriate use of force. CNDH, *Recomendacion* 49/2005, December 21, 2005.

¹⁷⁶ CNDH, *Recomendacion* 37/2007, September 21, 2007. In this case, the CNDH does not specify if the investigation must be carried out by civilian or military prosecutors, but it directs its *recomendacion* at the Minister of National Defense, requesting him to issue orders so that criminal investigations are "initiated, integrated, and concluded." According to one press account, a civilian judge convicted three soldiers for the rapes. Hilda Fernandez Valverde, "Juez Penal condena a tres militares por violacion [Criminal judge convicts three military officers of rape]," *El Universal*, October 2, 2007. The CNDH president stated that the judge's decision did not address all the human rights violations they had documented. CNDH, Press Release CGCP/141/07, October 3, 2007.

¹⁷⁷ CNDH, *Recomendacion* 38/2007, September 21, 2007.

¹⁷⁸ CNDH, *Recomendacion* 39/2007, September 21, 2007.

¹⁷⁹ CNDH, *Recomendacion* 40/2007, September 21, 2007.

The CNDH has even requested that the Military Prosecutor's Office (Procuraduria General de Justicia Militar, PGJM) handle cases even after finding irregularities in the investigations the military had already conducted. In 2005 the CNDH documented a 2003 shooting at a military checkpoint in Guerrero, in which soldiers injured Rogaciano Miranda Gomez, a minor, and killed Prisciliano Miranda Lopez. The CNDH concluded that soldiers had shot Miranda in the back and then failed to bring him to a hospital for another 12 hours. It also determined that a military prosecutor had engaged in irregularities when investigating the case, including failing to assess contradictions in the statements made by military personnel, and then closing the case. Yet the CNDH then sent the case back to the PGJM with the expectation they would do a better job investigating it the second time around.¹⁸⁰

The CNDH has also failed to challenge military jurisdiction in cases where its use violated the Mexican Constitution. According to the Constitution, "military tribunals shall in no case and for no reason exercise jurisdiction over persons who do not belong to the army," and "[w]henever a civilian is implicated in a military crime or violation, the respective civilian authority shall deal with the case."¹⁸¹ Accordingly, when both military and civilians are suspected of committing a particular crime, the case must go to civilian courts.¹⁸²

Yet military prosecutors and courts have openly ignored this provision of the Constitution, most notably in the "dirty war" cases involving three military officers

¹⁸⁰ The CNDH also asked the military prosecutor for an update on an administrative investigation that had already begun against the military officers involved in the acts. The CNDH asked the prosecutor to request the Office of Inspection and Control of the Army and Air Force to investigate the prosecutor who had previously closed the criminal case. The CNDH stated that, if this office found that the prosecutor had engaged in inappropriate conduct when investigating and closing this case, criminal investigations should be initiated against this prosecutor. In addition, the CNDH recommended the military prosecutor that he issue the appropriate orders so that Rogaciano Miranda Gomez and the family of Prisciliano Miranda Lopez were paid damages. Finally, the CNDH recommended that the military prosecutor give the appropriate orders so that the military was trained in human rights law and the appropriate use of force. CNDH, *Recomendacion 14/2005*, June 16, 2005.

¹⁸¹ Mexican Constitution, art. 13.

¹⁸² The Mexican Supreme Court has ruled out the possibility that the same case can be tried simultaneously under military and civilian jurisdictions: "...neither the historical background of Article 13 of the Constitution, nor the social conditions prevailing when the article was created, nor the ideas expounded by the legislators at its drafting, nor the literal meaning of the words in its text can sanction the interpretation that when in a military crime a civilian is implicated, the military authorities will judge the members of the army and the civilian authorities will judge the civilian person; and therefore, the civilian authorities are the ones who shall exercise jurisdiction in a military process where there are civilians involved." Mexican Supreme Court, Pleno, Quinta Epoca, *Semanario Judicial de la Federacion*, Tomo XL, p. 1393.

implicated in enforced disappearances in Guerrero in the 1970s. The PGJM recognized the participation of civilians in the commission of the crimes, yet it persisted with the prosecutions, and ultimately acquitted the defendants.¹⁸³ The CNDH did not adequately question this flagrant misuse of military jurisdiction.¹⁸⁴

Discrimination against Military Officers Living with HIV

The CNDH has for years failed to challenge the military's flagrant discrimination against people living with HIV, citing Mexican law to legitimate a policy that violates both the Mexican Constitution and international human rights standards.

The Ministry of Defense (Secretaria de la Defensa Nacional, SEDENA) has routinely fired military personnel who are living with HIV based on their HIV status. Prior to 2003, SEDENA justified this discriminatory practice by citing the Law on the Social Security Institute for the Mexican Armed Forces (Ley del Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas), even though it did not explicitly include HIV infection as a basis for expulsion from the military. More recently, SEDENA has referred to legislation passed by the Mexican Congress in 2003 that explicitly authorizes such discrimination.¹⁸⁵

In September 2001, for example, the CNDH found that SEDENA had not violated the rights of Eliazar L., who had been fired after the military considered him “useless to work” because he lived with HIV. The CNDH argued that the law allowed the military to dismiss him, “since it was medically certified that [the victim] had become

¹⁸³ In a document submitted to the Special Prosecutor's Office, the PGJM wrote that it had detected “the participation in the criminal activities analyzed in the present document of other persons who did not have military status but did have the status of government agents...”

¹⁸⁴ See chapter IV of this report for an evaluation of the CNDH's work after documenting hundreds of “disappearances” committed during Mexico's “dirty war.”

¹⁸⁵ According to the law, “Para la determinacion de las categorias y grados de accidentes o enfermedades que den origen a retiro por inutilidad se aplicaran las siguientes tablas: Primera Categoria: (...) 83. La seropositividad a los anticuerpos contra los virus de la inmunodeficiencia humana, confirmada con pruebas suplementarias mas infecciones por germen oportunistas y/o neoplasias malignas” [To determine the categories and levels of accident or disease that give rise to retirement due to inutility, the following tables will apply: First category (...) 83. Being seropositive with respect to antibodies against the human immunodeficiency virus, confirmed with supplementary tests plus infections with opportunist germs and malignant neoplasia.] Ley del Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas [Law of the Social Security Institute for the Mexican Armed Forces], July 2003, <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/84.pdf> (accessed May 2007), art. 226, section 83.

infected while off duty.”¹⁸⁶ Similarly, in January 2002, the CNDH held that SEDENA had not violated the rights of Vicente J., who was fired for the same reason, arguing this time that it did not have jurisdiction to analyze the case because the petitioner had already challenged the decision through the relevant administrative channels.¹⁸⁷

In August 2005, after finding out that he was HIV positive, Omar P. went to the CNDH to “protect his work” because he knew that others had been fired from the military for living with HIV.¹⁸⁸ The CNDH told Omar P. that it did not have jurisdiction to analyze his case and referred him to the military ombudsman.¹⁸⁹ According to Omar P., when he went back to work the commander in charge of his unit asked him, in front of the entire battalion, “You have a deadly disease, why did you go to ‘human rights?’” A few days later, the commander reportedly ordered every person in the battalion to go to the hospital for an HIV test.¹⁹⁰ And a few months later, Omar P. was discharged from the military “due to inutility.”¹⁹¹ Omar P.’s lawyer told Human Rights

¹⁸⁶ Additionally, the CNDH said that the petitioners had presented administrative complaints against such decision, that they had received an appropriate compensation, and that the CNDH could not review a final decision related to the petitioners’ labor situation. CNDH document 017828 from file 2001/1763, signed by Raul Plascencia Villanueva, second visitador, September 28, 2001.

¹⁸⁷ CNDH document V2/002155 from file 2001/2790, signed by Raul Plascencia Villanueva, second visitador, January 31, 2002.

¹⁸⁸ Human Rights Watch interview with Omar P., Mexico City, December 1, 2006. (Real name is withheld to protect his privacy).

¹⁸⁹ Letter signed by Concepcion Gonzalez Araujo, CNDH director of attention to the public, August 12, 2005 (additional information withheld).

¹⁹⁰ Human Rights Watch interview with Omar P., Mexico City, December 1, 2006.

Omar P. told Human Rights Watch he did not know if the military ombudsman or the CNDH informed the commander in charge of his unit that he was living with HIV. In any case, preserving the confidentiality of medical information is protected by international law. The Economic, Social and Cultural Committee in its general comment 14 on the right to health, recognized “the right to have personal health data treated with confidentiality.” Para. 12. More broadly, the committee noted that the “right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the right to ... privacy.” *Ibid.*, Para. 3. In citing to the right to privacy under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the Committee stated that it gave “particular emphasis to access to information because of the special importance of this issue in relation to health.” Para. 12 fn. 8. According to Manfred Nowak in his treatise on the ICCPR, the right to privacy includes a right of intimacy, that is, “to secrecy from the public of private characteristics, actions or data.” This intimacy is ensured by institutional protections, but also includes generally recognized obligations of confidentiality, such as that of physicians or priests. Moreover, “protection of intimacy goes beyond publication. Every invasion or even mere exploration of the intimacy sphere against the will of the person concerned may constitute unjustified interference.” Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rein: N.P. Engel, 1993), p. 296. The right to respect for a person’s private life is also recognized in the American Convention on Human Rights, art. 11.

¹⁹¹ SEDENA document signed by Gerardo Clemente Ricardo Vega García, minister of national defense, August 26, 2005 (additional information withheld). On July 4, 2006, the military issued a provisional decision confirming his retirement due to

Watch that he presented another formal complaint before the CNDH, which the CNDH did not respond to until he won an injunction before the courts ordering the CNDH to analyze the case. According to his lawyer, when it finally did deal with the case, the CNDH sent Omar P. a conciliation proposal that stated he had consented to conciliation of the case, which he argues is not true.¹⁹²

Omar P. told Human Rights Watch that he went to the CNDH expecting that they would protect him. But “there was no help from the CNDH,” he said. “On the contrary, if I hadn’t gone to the CNDH I would be o.k. (...) and not in the situation that I find myself in [now].”¹⁹³

Not only has the CNDH failed to protect such HIV-positive individuals from discrimination, it has also refused to challenge the legal basis for this abusive practice. The CNDH president told Human Rights Watch that, since there were cases pending before the courts, the CNDH could not address this issue. According to the CNDH president, if the CNDH had been given legal standing to challenge the constitutionality of laws prior to 2006, it would have challenged the constitutionality of this law.¹⁹⁴

But the CNDH could have openly criticized the Mexican Congress when it voted, in 2003, to explicitly authorize this sort of discrimination. Moreover, despite a ruling by Mexico’s Supreme Court holding that the 2003 law is unconstitutional, the CNDH staff continues to insist that it cannot denounce this discriminatory practice.¹⁹⁵ In

inutility, given that he had tested positive for HIV. SEDENA document signed by Jose Luis Chavez Garcia, July 17, 2006 (additional information withheld).

¹⁹² Human Rights Watch interview with Pedro Morales, Omar P.’s attorney, Mexico City, December 1, 2006; and Human Rights Watch email exchange with Pedro Morales, October 31, 2007.

The CNDH received the case on August 7, 2006. That same day, Omar P. filed another case with the CNDH’s internal control organ, arguing that the CNDH had failed to protect him. On September 20, 2006, the CNDH concluded there was no evidence that the CNDH had leaked information on Omar P.’s case because they could not find any reference to his “disease” in the CNDH files. Yet, they also informed that the CNDH staff involved in the “anomalies” was removed from their posts. CNDH letter signed by Raul Ernesto Violante Lopez, September 20, 2006.

¹⁹³ Human Rights Watch interview with Omar P., Mexico City, December 1, 2006.

¹⁹⁴ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

¹⁹⁵ Mexican Supreme Court, Amparo en Revision 2146/2005, Febrero 27, 2007; Mexican Supreme Court, Amparo en Revision 810/2006, February 27, 2007. Mexican Supreme Court, Tesis 2a/J. 197/2007, Semanario Judicial de la Federacion y su GacetaXXVI, October 2007, p. 241.

conversations with Human Rights Watch, the director of the CNDH's program on HIV and human rights acknowledged that the law is discriminatory. Yet he insists that the CNDH cannot challenge the practice since its mandate is to "defend the human rights established in the Mexican legal system" and "the law states that they can dismiss a military official with HIV."¹⁹⁶

The CNDH official dismissed the relevance of the Supreme Court ruling on the law on the dubious grounds that it did not constitute binding jurisprudence, since Mexican law requires five consecutive Supreme Court rulings to establish binding jurisprudence. (After our interview, the Supreme Court did issue a fifth ruling and established binding jurisprudence.)¹⁹⁷ Yet the fact that the ruling was not binding for lower court judges at that time does not mean that it was not an authoritative opinion that should inform the CNDH's evaluation of the law. There is no compelling reason why the CNDH must wait for the Supreme Court to issue five decisions before it challenges a blatantly discriminatory law, especially when that law contradicts international human rights standards.

The CNDH official also dismissed the relevance of international human rights standards, arguing that "there is no international treaty that states that a military official cannot be dismissed for having HIV." This argument reflects a remarkably limited understanding of the applicability of international law. While there is no specific treaty language on this particular issue, there is a clear prohibition in several treaties against discrimination that is applicable here.¹⁹⁸ The ICCPR, for example,

While the CNDH failed to recognize that these acts violated human rights, Mexican courts have held since 2003 that the old law should not be applied by the SEDENA to dismiss military officials living with HIV and that, when it did, the SEDENA violated the officials' right not to be discriminated against, recognized in Mexican and international law. Case 338/2002, Decimo Tribunal Colegiado en Materia Administrativa en el Distrito Federal, August 29, 2003; Case 769/2003, Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito, April 21, 2004.

¹⁹⁶ Human Rights Watch interview with Ricardo Hernandez Forcada, director of the HIV and human rights program at the CNDH, Mexico City, March 21, 2007. The CNDH did issue a *recomendacion* against the Navy, arguing that it had violated the human rights of one military official who was forced to have an HIV test, which was later used to dismiss him. It did not, however, address the fact that the law that allows the Armed Forces to dismiss military officials with HIV is discriminatory. CNDH, *Recomendacion 49/2004*, August 27, 2004.

¹⁹⁷ Mexican Supreme Court, Tesis 2a/J. 197/2007, *Semanario Judicial de la Federacion y su GacetaXXVI*, October 2007, p. 241.

¹⁹⁸ All persons have the right to equality before the law and equal protection of the laws. The guarantees of equality before the law and equal protection of the laws prevent a government from arbitrarily making distinctions among classes of persons

prohibits discrimination based on HIV/AIDS, according to the U.N. Commission on Human Rights, the main political body within the U.N. system charged with human rights matters.¹⁹⁹

Access to the Airwaves (The “Televisa Law”)

In 2006 the CNDH did not publicly object when the Mexican Congress passed a decree granting major telecommunications companies control of the country’s airwaves, thereby undermining efforts to promote freedom of expression in Mexico.²⁰⁰ Although problematic provisions of the decree ultimately were struck down by the Supreme Court, the case again illustrates the CNDH’s timidity.

The decree—commonly referred to as the “Televisa Law”—modified the Federal Law on Radio and Television (Ley Federal de Radio y Televisión) and the Federal Law on Telecommunications (Ley Federal de Telecomunicaciones), allowing a few telecommunications companies to keep control of new channels created on the radioelectric spectrum through improvements in digital technology.²⁰¹ The new rules established economic criteria to determine access to radioelectric frequencies and

in promulgating and enforcing its laws. The right to non discrimination is established in various international human rights treaties. ICCPR, art. 26; ACHR, art. 24; ICESCR, art. 2 (2).

The UN Human Rights Committee has found that prohibitions on discrimination place a broad mandate on states to remedy unequal treatment in all areas of life, finding that Article 26 of the ICCPR “prohibits discrimination in law or in fact in any field regulated or protected by the public authorities.” (Human Rights Committee, General Comment 18: Nondiscrimination, 37th Session, 1989, U.N. Doc. HRI/GEN/1/Rev.1, p. 26.) The non-binding U.N. International Guidelines on HIV/AIDS and Human Rights enjoin states to “enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities in the public and private sectors.” (U.N., HIV/AIDS and Human Rights International Guidelines, Guideline 5.) The guidelines note, as well, that states should ensure that “their laws, policies, programmes and practices do not exclude, stigmatize or discriminate against people living with HIV/AIDS or their families, either on the basis of their HIV status or on other grounds contrary to international or domestic human rights norms.” (Recommendations for Implementation of Guideline 6.)

¹⁹⁹ ICCPR, art. 26; Commission on Human Rights, “The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS),” Resolution 1995/44, adopted without a vote, March 3, 1995. The right to non discrimination is also provided for in Article 2 of the International Covenant on Economic, Social and Cultural Rights.

²⁰⁰ Ministry of Communications and Transportation, “Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y de la Ley Federal de Radio y Televisión” [Decree by which various provisions from the Federal Law on Telecommunications and the Federal Law on Radio and Television are reformed, added, and derogated], April 11, 2006.

²⁰¹ The law is commonly referred to as “Ley Televisa” [Televisa Law], after one of the two main telecommunication companies in Mexico.

made it harder for non-commercial radio stations to obtain such access.²⁰² It also created a mechanism by which the Ministry of Communications and Transportation would automatically authorize—on demand and without opening a public bidding process—those who already have a concession over a portion of the radioelectric spectrum for commercial exploitation to use their spectrum to provide other telecommunication services, such as Internet or telephone services.

Before the decree, ownership of media in Mexico was concentrated in two major private telecommunication companies. The new measures would have increased their power over the airwaves even further and dealt a new blow to efforts to expand and diversify commercial and non-commercial radio and TV offerings in Mexico.

The decree ran counter to Mexico's obligation to promote freedom of expression by making it virtually impossible for certain social sectors to express themselves through the broadcast media.²⁰³ According to authoritative international human rights bodies, when states administer the airwaves, they must ensure that there is fair and non-discriminatory access. In doing so, states must bear in mind that monopolies or oligopolies in the ownership of communication media limit the plurality and diversity that are necessary to ensure the full exercise of people's right

²⁰² The decree also allowed government authorities to discretionarily demand extra information from applicants for non-commercial stations, and to request information from any government authority when investigating the background of non-commercial applicants.

²⁰³ They also contradict a United Nations' recommendation included in the National Diagnosis on the Human Rights Situation in Mexico. "Crear un organo publico y autonomo que dictamine la procedencia de las concesiones y permisos para operar estaciones de radio y television, mediante un procedimiento transparente; establecer condiciones de equidad para que las radios comunitarias y ciudadanas accedan a las frecuencias para cumplir con su funcion social; desarrollar un sistema autonomo de radio y television publicas; y establecer dentro de las leyes federales de Competencia Economica y de Telecomunicaciones, un capitulo especifico sobre radiodifusoras y señales de television. [Create an independent public organization that will dictate the conditions and licenses for operating radio and television stations, employing a procedure that is transparent; to establish equal requirements for community radio and citizens that use the radio for social purposes; to develop an autonomous system for public radio and television; and to establish, within the federal laws on Economic Competency and Telecommunication, a chapter that deals with the specific considerations regarding radio waves and television signals]." UN High Commission on Human Rights, General Recommendation, "Diagnostico Sobre la Situacion de los Derechos Humanos en Mexico" [Diagnosis on the human rights situation in Mexico], 2003, ISBN-968-7462-36-1, http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/oprologoyrecomendaciones.pdf (accessed May 18, 2007), para. 14.

to information.²⁰⁴ According to the OAS Special Rapporteurship on Freedom of Expression:

Radio stations that style themselves as community, educational, participatory, rural, insurgent, interactive, alternative, and citizen-led are, in many instances and when they act within the law, the ones that fill the gaps left by the mass media; they serve as outlets for expression that generally offer the poor better opportunities for access and participation than they would find in the traditional media... Given the potential importance of these community channels for freedom of expression, the establishment of discriminatory legal frameworks that hinder the allocation of frequencies to community radio stations is unacceptable.²⁰⁵

One sector of Mexican society that would have been particularly adversely affected by the decree is the country's indigenous communities, which, as linguistic and cultural minorities, have a special interest in establishing local radio and TV stations in their own language. Indeed, the Mexican Constitution explicitly requires the state to provide indigenous communities with access to ownership and operation of electronic media.²⁰⁶

²⁰⁴ Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights at its 108th regular session in October 2000, <http://www.cidh.oas.org/declaration.htm> (accessed June 13, 2007), principle 12. See also "International Mechanisms for Promoting Freedom of Expression Joint Declaration," Joint Communiqué by the Office of the Special Rapporteur on the Freedom of Expression of Organization of American States, United Nations Special Rapporteur on Freedom of Opinion and Expression, and the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, 2001, <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=48&IID=1> (accessed May 18, 2007). According to the Inter-American Commission on Human Rights, "One basic concern is that the only criteria the Government uses to grant frequencies are economic ones that effectively deny access to minority groups such as indigenous peoples, youth and women. The procedures for the granting and renewal of broadcast licenses should be clear, fair and objective, and the importance of the media in fostering informed participation in democratic processes should be given due consideration." Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-o/79), O.A.S. Off. Rec. OEA/Ser.P/IX.o.2/80, Vol. 1 at 88, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L.V/II.111 doc.21 rev., Chap. IX, "The Right to Freedom of Thought and Expression" (2001).

²⁰⁵ See Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-o/79), O.A.S. Res. 447 (IX-o/79), O.A.S. Off. Rec. OEA/Ser.P/IX.o.2/80, Vol. 1 at 88, Annual Report of the Inter-American Commission on Human Rights 2002, OEA/Ser.L.V/II.117 doc. 5 rev.1, Vol. III, chapter IV.E, paras. 39 and 43 (2003).

²⁰⁶ According to the Mexican Constitution, the government must "expand the communications network to allow for the integration of the communities through the construction and widening of communication and telecommunication means. Create conditions so indigenous peoples and communities may acquire, operate, and administer media, as determined by specific laws on the issue." "La federacion, los estados y los municipios, para promover la igualdad de oportunidades de los indigenas y eliminar cualquier practica discriminatoria, estableceran las instituciones y determinaran las politicas necesarias para garantizar la vigencia de los derechos de los indigenas y el desarrollo integral de sus pueblos y comunidades, las cuales

The decree was widely repudiated by international, governmental, and nongovernmental actors for its potential impact on freedom of expression in Mexico. The representative in Mexico of the U.N. High Commissioner for Human Rights stated that the decree placed undue limitations on the right to freedom of expression.²⁰⁷ The National Commission for the Development of Indigenous Peoples (Comision Nacional para el Desarrollo de los Pueblos Indigenas) criticized it for failing to guarantee equal access to radio spectrum for indigenous communities.²⁰⁸ And the World Association of Community Radio Broadcasters (Asociacion Mundial de Radios Comunitarias, AMARC) stated that the reforms “violate the right to freedom of expression as they practically eliminate the possibility of access to radio and television frequencies for citizen groups and indigenous communities.”²⁰⁹

A legislative minority challenged the constitutionality of this decree before the Supreme Court.²¹⁰ In June 2007, the Supreme Court struck down crucial provisions of

deberan ser diseñadas y operadas conjuntamente con ellos. Para abatir las carencias y rezagos que afectan a los pueblos y comunidades indigenas, dichas autoridades tienen la obligacion de: (...) extender la red de comunicaciones que permita la integracion de las comunidades, mediante la construccion y ampliacion de vias de comunicacion y telecomunicacion. establecer condiciones para que los pueblos y las comunidades indigenas puedan adquirir, operar y administrar medios de comunicacion, en los terminos que las leyes de la materia determinen.” Mexican Constitution, art. 2, B, VI.

²⁰⁷ Public statement by the office in Mexico of the United Nations High Commissioner for Human Rights, “Palabras del señor Americo Incalcaterra, Representante en Mexico de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, con motivo de la celebracion del dia Mundial de la Libertad de Prensa” [Speech by Mr. Americo Incalcaterra, Representative in Mexico of the UNHCHR, during the celebration of Press Freedom Day], May 2, 2006.

²⁰⁸ Violations of the right to freedom of expression are implicit in the Commission’s claim that the decree denies indigenous communities equal access to important means of communication. Letter from Xochitl Galvez Ruiz, general director of the Commission for the Development of Indigenous Peoples to Rodrigo Labardini Flores, general director of human rights and democracy at the Foreign Affairs Ministry, April 7, 2006. Other governmental agencies that have criticized the law for various reasons include: Federal Telecommunications Commission, “Opinion de la Cofetel respecto a la Minuta de Decreto que reforma y adiciona a las LFTel y LFRyTV” [Opinion of the Federal Telecommunications Commission regarding the decree that reforms and adds sections to the Federal Law on Telecommunications and the Federal Law on Radio and Television], March 15, 2006; Communications and Transportation Ministry, “Dictamen Tecnico. Iniciativa por la cual se reforma, adiciona y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y de la Ley Federal de Radio y Televisión” [Technical analysis. Initiative that reforms, adds, and derogates various sections of the Federal Law on Telecommunications and the Federal Law on Radio and Television], April 4, 2005. Letter from Eduardo Perez Motta, president of the Federal Competition Commission, to Senador Hector Osuna Jaime, president of the Senate’s Communications and Transportations Commission, December 8, 2005.

²⁰⁹ The World Association of Community Radio Broadcasters (AMARC), “Observaciones a las Reformas a la Ley Federal de Radio y Television y a la Ley Federal de Telecomunicaciones [Observations on the Reforms of the Federal Law on Radio and Television and the Federal Law on Telecommunications]”, p. 4. AMARC representatives told Human Rights Watch they repeatedly requested the CNDH to publicly comment on the reforms. Human Rights Watch interview with Aleida Calleja and Laura Salas, AMARC, Mexico City, November 28, 2006.

²¹⁰ They argued, among other things, that the decree violated freedom of expression and the right of access to information, and undermined democratic plurality. Alejandro Madrazo and Jose Luis Zambrano, “La Ley de Televisa ante la Suprema

the law, arguing, among other things, that the law violated freedom of expression and the right of access to information, limited the social function of the radioelectric spectrum, and favored the creation of monopolies.²¹¹

By remaining silent on this controversial legislation, the CNDH missed an important opportunity to advance the protection of freedom of expression in Mexico.

Reproductive Rights in Mexico City

A principal function of the CNDH is to ensure that Mexican laws and policies are consistent with human rights standards. Yet, CNDH did just the opposite in 2007 when it challenged the constitutionality of a law passed by the Mexico City legislature legalizing abortion for all women in the first 12 weeks of pregnancy.

In May 2007 the CNDH requested the Supreme Court to declare that the Mexico City law was unconstitutional.²¹² The CNDH argued, among other things, that the Mexican Constitution protects the right to life of the unborn from the moment of conception, and that such a right is supported by international human rights treaties that protect the right to life.²¹³

Most international human rights instruments are in fact silent concerning the starting point for the right to life.²¹⁴ Yet the negotiating history of many treaties and

Corte” [The Televisa Law before the Supreme Court], *Isonomia. Revista de Teoría y Filosofía del Derecho* [Isonomia. Magazine on Legal Theory and Philosophy], Vol. 26 (April 2007), p. 71. Madrazo and Zambrano were part of the legal team that challenged the constitutionality of the decree before the Supreme Court.

²¹¹ Mexican Supreme Court, *Acción de Inconstitucionalidad 26/2006*, June 7, 2007, pp. 447-459, 497-501, 551-568.

²¹² “Demanda de acción de inconstitucionalidad [Brief to initiate lawsuit to declare the unconstitutionality of a norm],” signed by Jose Luis Soberanes, representing the CNDH, May 24, 2007.

²¹³ The CNDH brief only mentions three international human rights treaties – the Convention on the Rights of the Child (CRC), the ICCPR, and the American Convention on Human Rights (ACHR) – because it argues that only treaties in accordance with the Mexican Constitution are applicable. Yet, according to international law, “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Vienna Convention on the Law of Treaties, art. 27.

The Mexican Supreme Court has interpreted that international treaties take precedence over federal and state statutory law (but not over provisions of the Constitution). These rulings have not yet risen to the level of binding jurisprudence. Mexican Supreme Court, *Tesis LXXVII/99*, November 1999, and Mexican Supreme Court, *Tesis P. IX/2007*, April 2007.

²¹⁴ The silence of certain legal instruments concerning the starting point for the right to life has been understood by bodies charged with interpreting them to imply that the right to life does not apply before the birth of a human being. In the 1980 *Paton v. United Kingdom* case, the European Commission ruled that for purposes of limitations on the right to life, the term

declarations, international and regional jurisprudence, and most legal analysis suggest that the right to life as spelled out in international human rights instruments is not intended to apply before the birth of a human being.²¹⁵

The American Convention on Human Rights (ACHR) is the only international human rights instrument that contemplates the application of the right to life from the moment of conception, though not in an unqualified manner.²¹⁶ In 1981, the Inter-American Commission on Human Rights established that the right-to-life provisions in this Convention and in the American Declaration on the Rights and Duties of Man are compatible with a woman's right to access safe and legal abortions.²¹⁷ Moreover, when Mexico ratified the ACHR, it added an "interpretative declaration" that said that the wording of the article on the right to life "does not constitute an obligation to adopt, or keep in force, legislation to protect life 'from the moment of conception,' since this matter falls within the domain reserved to the States."²¹⁸

The CNDH recognizes that the right to life of the unborn (which it purports exists in international law) is not absolute and must be balanced with the right to life of the pregnant woman.²¹⁹ Yet there are other fundamental rights at stake that the CNDH ignores. Authoritative interpretations of international law recognize that abortion is

"everyone" in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which protects "everyone's right to life") did not include the unborn. It further held that even if a fetus were entitled to some protection, Article 2 could not prevent a woman from obtaining an abortion at an early stage of pregnancy to protect her physical and mental health. *Paton v. United Kingdom* (1981), 3 E.H.R.R. 408 (European Commission on Human Rights), para. 17 and 23. See also European Court of Human Rights, *Vo v. France*, no. 53924/00, Judgment of July 8, 2004, available at www.echr.coe.int (accessed June 6, 2007).

²¹⁵ See Human Rights Watch, *International Human Rights Law and Abortion in Latin America*, July 2005, <http://hrw.org/backgrounder/wrd/wrdo106/> .

²¹⁶ Article 4 (1) of the ACHR states that, "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception."

²¹⁷ The commission found that the wording of the right to life in Article 4 was very deliberate and that the convention's founders specifically intended the "in general" clause to allow for non-restrictive domestic abortion legislation. Inter-American Commission of Human Rights, White and Potter ("Baby Boy Case"), Resolution No. 23/81, Case 2141, United States, March 6, 1981, OAS/Ser.L/V/II.54, Doc. 9 Rev. 1, 16 October 1981.

²¹⁸ IACHR, Signatures and status of ratifications of the ACHR, undated, <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (accessed June 5, 2007).

²¹⁹ "Demanda de accion de inconstitucionalidad [Brief to initiate lawsuit to declare the unconstitutionality of a norm]," signed by Jose Luis Soberanes, representing the CNDH, May 24, 2007, p. 36.

vitaly important to women’s exercise of their human rights, which are not limited to their right to life. They include, among others, the rights to health and health care, the right to non discrimination, and the right to decide the number and spacing of children.²²⁰ These rights are also provided for in the Mexican Constitution.²²¹

Unsafe abortions are a grave threat to women’s health.²²² Where there is a lack of legal and safe abortion services and pervasive barriers to contraceptives and other reproductive health services, there will be unwanted pregnancies and unsafe abortions. Between 10 and 50 percent of women worldwide who undergo unsafe abortions require post-abortion medical attention for complications such as incomplete abortion, infection, uterine perforation, pelvic inflammatory disease, hemorrhage, or other injury to internal organs.²²³ According to information from six Latin American countries, five to 10 of every 1,000 women are hospitalized annually for treatment of complications from an induced abortion.²²⁴ These may result in permanent injury, infertility, or death.

²²⁰ Other rights affected by the denial of a pregnant woman’s right to make an independent decision regarding abortion are the right to security of person, the right to liberty, the right to privacy, the right to information, the right to be free from cruel, inhuman or degrading treatment, the right to enjoy the benefits of scientific progress, and the right to freedom of thought and religion. See Human Rights Watch, *International Human Rights Law and Abortion in Latin America*, <http://hrw.org/backgrounder/wrd/wrdo106/>.

²²¹ Mexican Constitution, arts. 1 and 4.

²²² The rights to health and health care are recognized in a number of international instruments. For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides in Article 12(1) that states must recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also provides in Article 12(1) that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning” and in Article 14(2)(b) that states must ensure that women in rural areas “have access to adequate health care facilities, including information, counselling and services in family planning.” Article 24(d) of the Convention on the Rights of the Child (CRC) also provides that states must take measures to “ensure appropriate pre- and post-natal health care for expectant mothers” as part of the obligation to recognize children’s right to the highest attainable standard of health. Finally, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) provides in Article 10: “Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.”

²²³ World Health Organization, *Abortion: A Tabulation of Available Information, 3rd edition* (Geneva: World Health Organization, 1997).

²²⁴ Lucia Rayas, Diane Catotti and Ana Cortes, *Achieving ICPD commitments for abortion care in Latin America: The unfinished agenda* (Chapel Hill, NC: Ipas, 2005), p. 6.

Access to safe and legal abortion services is also essential to the protection of women's rights to nondiscrimination and substantive equality.²²⁵ In practice, women are more likely than men to experience personal hardship as well as social disadvantage as a result of economic, career, and other life changes when they have children. Where women are compelled to continue having unwanted pregnancies, barriers to safe and legal abortion services forcibly put women at a further disadvantage.

Moreover, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), which interprets the Convention on the Elimination of All Forms of Discrimination Against Women, has held that restrictive abortion laws are contrary to the right to nondiscrimination in access to health care.²²⁶ The CEDAW Committee has stressed states' obligation to respect women's access to reproductive health services and to "refrain from obstructing action taken by women in pursuit of their health goals."²²⁷ According to the Committee, "barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."²²⁸ It therefore recommends that "[w]hen possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."²²⁹ In the case of Mexico, the CEDAW Committee recommended in 1998

²²⁵ The rights to nondiscrimination and equality are set forth in a number of international human rights instruments. In addition to the basic provisions in Articles 2(1) and 3 of the ICCPR, Articles 2(2) and 3 of the ICESCR, and Article 1 of the ACHR, CEDAW comprehensively addresses discrimination against women. CEDAW defines discrimination against women in Article 1 as: "[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

²²⁶ "The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. ... The Committee believes that legal provisions on abortion constitute a violation of the rights of women to health and life and of Article 12 of the Convention [the right to health care without discrimination]." CEDAW Committee, concluding comments on Colombia, U.N. Doc. A/54/38/Rev.1, Part I (1999), para. 393.

²²⁷ CEDAW Committee, General Recommendation 24, Women and Health (Article 12), U.N. Doc. No. A/54/38/Rev.1 (1999) (hereinafter General Recommendation 24), para. 14.

²²⁸ *Ibid.*, para. 14.

²²⁹ *Ibid.*, para. 31(c).

“that all states of Mexico should review their legislation so that, where necessary, women are granted access to rapid and easy abortion.”²³⁰

The right of women to decide on the number and spacing of their children without discrimination can only be fully implemented where women have the right to make decisions about when or if to carry a pregnancy to term without interference from the state.²³¹ For this right to be fulfilled, women must also have access to all safe and effective means of controlling their family size, including abortion, as part of a full range of reproductive health care services.²³²

The CNDH’s challenge to the Mexico City abortion law relied on a highly selective interpretation of relevant international law. Worse, it demonstrated a disturbing disregard for the internationally-protected human rights of women in Mexico City.

Torture

The CNDH issued a comprehensive general recommendation on torture in 2005 that documented what a serious and widespread problem it is throughout Mexico.²³³ However, despite the fact that Mexico is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)²³⁴ and is obliged to take measures to eliminate and prevent torture, the CNDH did not provide concrete proposals to end the practice or advocate on behalf of existing initiatives to address it at the federal and state level. The CNDH’s general recommendation on torture made proposals to dozens of government officials at the state and federal levels, but the proposals were broad

²³⁰ CEDAW Committee, concluding comments on Mexico, U.N. Doc. A/53/38/Rev.1, section I (1998), para. 426.

²³¹ Article 16(1) of CEDAW provides, “States Parties shall ... ensure, on a basis of equality of men and women . . . (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

²³² CEDAW Committee, General Recommendation 21, Equality in Marriage and Family Relations (1992), para. 21.

²³³ CNDH, General Recommendation 10, November 17, 2005.

²³⁴ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Mexico on January 23, 1986.

and unspecific.²³⁵ For example, it recommended that they “define a strategy” to prevent torture,²³⁶ but did not propose concrete changes or measures to deal with the factors that perpetuate the use of torture throughout Mexico.

A principal reason torture continues in Mexico is that law enforcement agents find they can use it to extract “confessions,” which can then be used to prosecute criminal suspects.²³⁷ Indeed, according to a 2004 study by the CNDH, in over 90 percent of the cases documented by the federal and state human rights commissions, torture had been used to force a “confession” from the victim.²³⁸ As a party to the Convention Against Torture Mexico is obliged to ensure that any statement made as a result of torture cannot be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.²³⁹ An obvious legal reform that would further this goal would be legislation making it impossible, in practice, to use confessions obtained through torture in trial. The CNDH’s general recommendation did not suggest such a reform.

In contrast to the CNDH, some policymakers have recognized the importance of such reform. The Fox administration included concrete measures to address it in the comprehensive justice reform package it sent to Congress in 2004 (which was never

²³⁵ The CNDH general recommendation was addressed at “heads of federal government offices, the federal attorney general, the military prosecutor, heads of autonomous institutions, governors, the Mexico City mayor, state attorney generals, ministers, vice ministers, and general directors of public security at the federal and state levels.” CNDH, General Recommendation 10, November 17, 2005.

²³⁶ Other recommendations include adopt “measures” to modify the articles in each provision of the criminal code that discusses torture, to “issue orders” to public officials “to avoid any detention... that could propitiate torture;” to establish “the necessary conditions” to investigate torture cases; to “issue instructions” to ensure that victims obtain reparations; to “adopt adequate measures” to protect alleged victims of torture; to provide medical experts with video cameras to tape their analysis of alleged torture victims; and to “strengthen the respective sections” of human rights courses, periodic evaluations and selection processes of public security officers, related to physical and psychological torture. CNDH, General Recommendation 10, November 17, 2005.

²³⁷ See Human Rights Watch, *Lost In Transition: Bold Ambitions, Limited Results Under Fox*, May 2006, <http://hrw.org/reports/2006/mexico0506/index.htm>, chapter V.

²³⁸ Ricardo Hernández Forcada y María Elena Lugo Garfias, *Algunas notas sobre la tortura en México [Some Notes About Torture]* (Mexico: CNDH, 2004), p. 139.

²³⁹ CAT, art. 15.

approved).²⁴⁰ In 2006 the National Network in Favor of Oral Trials—composed of individuals and civil society organizations advocating for an oral and adversarial judicial system in Mexico—drafted a comprehensive constitutional reform proposal that also addressed this problem, which was endorsed by a congresswoman and presented before Congress.²⁴¹ The state of Chihuahua also included such measures as part of systemic reforms aimed at creating an oral and adversarial justice system, which was passed at the state level in 2006.²⁴²

The CNDH could have played an important role in securing the passage of these reforms. However, it failed to be a forceful advocate for the Fox proposal, which languished for several years in Congress and eventually died. It did not support the proposal by the National Network in Favor of Oral Trials.²⁴³ And, while the CNDH did provide some minimal assistance to the Chihuahua government, it did so only after the state prosecutor actively solicited it.²⁴⁴

²⁴⁰ The Fox package established that confessions would only have evidentiary value if given before a judge, and that a criminal defendant had to have access to defense counsel from the moment he or she was brought before the prosecutor, and that it should be an “adequate” and “certified” lawyer. The measures proposed to address the problem of torture are part of a much broader reform package aimed at establishing an adversarial system of justice in Mexico. Not all the measures included in the package were positive from a human rights perspective. In fact, some were quite dangerous, such as a proposed reform of the Constitution that would have effectively suspended basic due process guarantees in cases involving “organized crime.” See the proposed reform to the Federal Code of Criminal Procedure, http://www.presidencia.gob.mx/docs/reformalegal_ssp.pdf, and the proposed reform to the Constitution, http://www.presidencia.gob.mx/docs/reformas_ssp.pdf (accessed April 2006).

²⁴¹ National Network in Favor of Oral Trials, “Anteproyecto de Reforma Constitucional en materia de juicios orales” [Constitutional Reform Proposal related to Oral Trials and Due Process], undated.

²⁴² Information provided to Human Rights Watch by Sergio Facio Guzman, private secretary of Patricia Gonzalez, Chihuahua state prosecutor, June 8, 2007. See also Mexican Ministry of Foreign Affairs, “Boletín Informativo Número 9. Derechos Humanos: Agenda Internacional de México” [Informative Bulletin Number 9. Human Rights: Mexico’s International Agenda], June 1, 2006.

²⁴³ Human Rights Watch email communications with Edgar Cortez and Michel Maza, Red Nacional Todos los Derechos Para Todos y Todas, November 19 and 20, 2007. The Red Nacional Todos los Derechos para Todos y Todas is a member of the National Network in Favor of Oral Trials.

²⁴⁴ The Chihuahua state prosecutor, Patricia Gonzalez, told Human Rights Watch that the CNDH’s support was limited to reviewing a draft of a law on special attention provided to victims of crime, and collaborating with her office on human rights training for her staff. Human Rights Watch telephone interview with Patricia Gonzalez, Chihuahua’s Attorney General, Chihuahua City, June 8, 2007.

Juvenile Detention Centers

After documenting the mistreatment and abuse of children in juvenile detention centers throughout Mexico, the CNDH failed to make concrete proposals that would have enabled government authorities to address the problem seriously.

In 2003 the CNDH documented a wide range of human rights abuses of detained children, including violations of the right to receive dignified treatment, the right to development, the right to health, and the right to non-discrimination.²⁴⁵ According to the CNDH, in a juvenile detention center in Tijuana, children were woken up at 4:00 a.m. every day to cook 3,300 pounds of tortillas for adult inmates at a nearby prison.²⁴⁶ In a detention center in Veracruz, children had not been separated by age or severity of crime and two seven-year-old boys were found living with 18-year-old adolescents. In a center in Sonora the children were forced to sleep on cement slabs because there were no mattresses.²⁴⁷ In Chiapas, the staff reported that the detention center often experienced water shortages.²⁴⁸ In Nuevo Leon, the facility was severely understaffed with only one social worker for 188 children.²⁴⁹

The report outlines a list of principles on the rights of juvenile detainees but it fails to provide any recommendations on the steps that should be taken—nor who should take them—to implement these principles. Instead, it simply lists general principles on the treatment of juvenile detainees, which include that children should be given proper medical and psychological treatment, imprisonment should always be the

²⁴⁵ CNDH, “Informe Especial Sobre La Situación de los Derechos Humanos de los Internos en los Centros de Menores de la República Mexicana” [Special Report on the Human Rights Situation of Prisoners in Facilities for Children in the Republic of Mexico], July 8, 2003, <http://www.cndh.org.mx/lacndh/informes/espec/menores.htm> (accessed on November 19, 2007). In 2002 the CNDH visited Mexico’s 54 juvenile detention centers to evaluate the centers’ adherence to national and international human rights standards on juvenile detention. In addition to visiting the prisons, the CNDH undertook a detailed investigation of the juvenile detention system, including interviewing prison staff and surveying the inmates. Through the investigation and on site visits, the CNDH uncovered grave human rights abuses in many of Mexico’s juvenile prisons which are documented in the 2003 report.

²⁴⁶ *Ibid.*, p. 5.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*, p.7.

²⁴⁹ *Ibid.*, p.6.

last option for juveniles, and all inmates should be treated equally without discrimination.²⁵⁰

Since the report's publication in 2003, the mistreatment of children in prisons has continued. The United Nations Committee on the Rights of the Child recently expressed concern about the continuing mistreatment of juveniles in detention centers in Mexico. In 2006, in its analysis of Mexico's adherence to the Convention on the Rights of the Child, the committee stated that it was "concerned at the very poor living conditions of juveniles detained in police stations and other institutions."²⁵¹ More specifically, the committee noted that many juvenile detainees do not have access to educational programs.²⁵² The report also expressed concern over the fact that corporal punishment is not explicitly prohibited in penal institutions.²⁵³

Recent cases also reveal that the abuse and mistreatment of children continues to be a serious problem within the Mexican prison system. On March 23, 2005, Jose Luis Blanco Ramirez, who was imprisoned in a federal juvenile detention facility, was assaulted by another prisoner. He died from severe respiratory infections and encephalitis after two doctors failed to correctly diagnose and treat his illness.²⁵⁴

²⁵⁰ Other principles listed in the CNDH report include: any child younger than 12 years old that breaks a law should be given social assistance rather than detention; the state must provide sufficient resources for the maintenance and operation of juvenile delinquent centers; detention centers should be located close to towns and cities to ensure the continued involvement of the child's family; juvenile centers should not be similar to adult prisons; people who work in juvenile centers should specialize in treating children; education, sports, and other activities should be made available to juvenile detainees; all facilities should have prevention and treatment centers for substance abuse.

²⁵¹ United Nations Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Conclusions observations: Mexico" CRC/C/MEX/CO/3, June 8, 2006, para. 70.

²⁵² *Ibid.*, para. 56.

²⁵³ *Ibid.*, para. 35. In its recommendations, the Committee called on the government of Mexico to "conduct a thorough study of the conditions of deprivation of liberty and take the necessary measures to significantly improve the living conditions of juveniles deprived of liberty." *Ibid.* para. 71.

²⁵⁴ On two separate occasions in the week before his death Blanco Ramirez had visited the prison doctor, and on both occasions the doctor failed to correctly diagnose and treat his illness. A day after his second doctor's visit, Blanco Ramirez was rushed to the hospital. Doctors reported that when he arrived at the hospital he was in a coma and had severe brain damage. Blanco Ramirez died in the hospital later that day. In its investigation of the case, the CNDH found that the prison's inadequate treatment of Blanco Ramirez's illness violated his right to health and his right to dignified treatment. The day before his death, Blanco Ramirez was assaulted by another prisoner at the detention center. According to witnesses, the other minor hit Blanco Ramirez three times in the head. The director of the prison explained to the CNDH that these types of

Another example involves the case of 15-year-old Felipe Garcia Mejia, who was arrested in January 2004 in Mexico City. Garcia Mejia was charged with allegedly stealing a woman's bag on the street and was incarcerated with adult inmates.²⁵⁵ While in detention awaiting trial, he was harshly beaten by another inmate. Due to his injuries, he died a few days after his arrest.²⁵⁶

When the CNDH Pushes for Change

Perhaps the clearest evidence that the CNDH can play a more active role in promoting human rights reform in Mexico are cases in which it has in fact chosen to do so. In several cases, the CNDH has succeeded in promoting serious debate and spearheading important changes in the Mexican legal system.

In 1994, for example, the CNDH carried out a study of the state's responsibility to provide monetary compensations after it violates human rights, which led to a presidential reform proposal that was passed by the federal Congress.²⁵⁷ In 1998 the commission produced a comparative study of Mexican and international laws related to women's and children's rights that served as the basis for substantial reforms passed by the state of Oaxaca and Mexico City.²⁵⁸

More recently, the CNDH contributed to promoting freedom of the press in Mexico. To protect journalists and communicators from having to reveal their sources, the CNDH sent a proposal to the Senate Human Rights Commission on how to redraft the Federal Criminal Procedures Code (Codigo Federal de Procedimientos Penales).²⁵⁹ The CNDH then issued a general recommendation explaining why the existing norms

attacks occurred regularly and that prison staff tolerated them. The CNDH found that by allowing such acts of violence, the prison authorities were not adequately protecting the inmates' mental and physical integrity and, thus, were violating their rights to dignified treatment. After Blanco Ramirez's death the director of the detention center filed a complaint with the prosecutor's office claiming that the other inmate was responsible for his death. However, the coroner's report attributes the boy's death to his illness rather than the physical injuries from the assault. CNDH, *Recomendacion 4/2006*, March 17, 2006.

²⁵⁵ The prosecutors considered he had committed a "serious crime" and he was therefore put in pretrial detention pending his trial.

²⁵⁶ Human Rights Commission of Mexico City, *Recomendacion 5/2004*, June 24, 2004.

²⁵⁷ CNDH Gaceta [CNDH Gazette], 47, June 1994, p.16.

²⁵⁸ CNDH Gaceta [CNDH Gazette], 95, June 1998, p.14.

²⁵⁹ Letter from Jose Luis Soberanes to the members of the Senate Human Rights Commission, April 13, 2003.

violated the right to freedom of expression.²⁶⁰ Congress passed the reform in 2006.²⁶¹ The CNDH has also actively campaigned in support of legislation decriminalizing defamation, which was adopted by the Mexican Congress in March, and signed by President Calderon in April 2007.²⁶²

The CNDH has also actively promoted reforms to strengthen the protection of immigrants in Mexico. In 2005 it published a “special report” and in 2006 it issued a “general recommendation” that documented abuses committed against illegally detained migrants.²⁶³ It subsequently sent letters to the Mexican Congress calling for the elimination of article 123 of the General Law on Population (Ley General de Poblacion), which makes it a crime to enter Mexico illegally. The CNDH argued that, by criminalizing immigration, this article increased the vulnerability of foreign migrants, making it easier for military and law enforcement personnel to “commit all types of abuses against undocumented migrants, who are mistreated, beaten, robbed, and even victims of sexual abuse.”²⁶⁴ As of this writing, the proposed reform is still being debated.

²⁶⁰ In August 2004, the CNDH documented how government officials at the federal, state, and municipal levels, violated journalists’ and communicators’ right to freedom of expression by using court summons to force them to reveal their sources with the purpose of inhibiting them and forcing them not to publish the information they had. CNDH, General Recommendation 7, August 9, 2004.

²⁶¹ The decree that establishes the new article was published in the Federal Official Gazette on July 6, 2006. Since only six states had similar laws, on June 8, 2006, the CNDH president sent a letter to the governors of all the other Mexican states, urging them to promote similar legislations in their own jurisdictions. For example, letter from Jose Luis Soberanes Fernandez to Patricio Jose Patron Laviada, governor of Yucatan, June 8, 2006. This information was provided to Human Rights Watch by CNDH staff, March 22, 2007.

²⁶² The CNDH supported a proposal by the Working Group on Follow up to Aggressions Against Journalists and Media of the House of Representatives, which proposed eliminating the section of “crimes against the honor” from the Federal Criminal Code (Codigo Penal Federal), as well as modifying the Federal Civil Code (Codigo Civil Federal) to permit civil claims in these cases. Letters from Jose Luis Soberanes to Senator Manlio Fabio Beltrones Rivera, president of the Senate, November 28, 2006 and February 7, 2007. President Felipe Calderon signed the law and published it in the Federal Official Gazette on April 13, 2007. Human Rights Watch interview with Mauricio Farah Gebara, fifth visitador, and staff from the fifth visitaduria, Mexico City, March 20, 2007.

²⁶³ CNDH, “Informe Especial De La Comision Nacional de los Derechos Humanos sobre la Situacion de los Derechos Humanos en las Estaciones Migratorias y Lugares Habilitados del Instituto Nacional de Migracion en la Republica Mexicana” [Special Report of the National Human Rights Commission Regarding the Human Rights Situation in Migrants’ Stations and Offices of the National Institute of Migration in the Republic of Mexico], 2005, <http://www.cndh.org.mx/lacndh/informes/espec/estmigrat.htm> (accessed December 10, 2007). CNDH, General Recommendation 13, November 17, 2006.

²⁶⁴ Letter from Jose Luis Soberanes to Representative Omeheira Lopez Reyna, December 14, 2006; Letter from Jose Luis Soberanes to Senator Maria Teresa Ortuna Gurza, December 21, 2006.

The CNDH has also opposed the death penalty, which was abolished in Mexico in 2005 when Congress removed all references to it in the Constitution.²⁶⁵ The CNDH has consistently held this view in various press releases, and in its annual reports since 2000.²⁶⁶ CNDH officials told Human Rights Watch that they also actively supported legislative initiatives aimed at eliminating the death penalty from the Mexican system.²⁶⁷

²⁶⁵ CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2005” [Report of Activities between January 1 to December 31, 2005], 2006, <http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed December 6, 2007), section II.B.b.

²⁶⁶ CNDH, Press Release DGCS/126/00, November 7, 2000; CNDH, Press Release DGCS/066/01, June 20, 2001; CNDH, Press Release DGCS/118/02, August 15, 2002; CNDH, Press Release DGCS/015/03, February 5, 2003; CNDH Press Release DGCS/020/03, February 13, 2003. CNDH, “Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000” [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anauales/00activ.pdf> (accessed December 6, 2007), p. 155. CNDH, “Informe de Actividades del 16 de noviembre de 2000 al 31 de diciembre de 2001” [Report of Activities between November 16, 2000 and December 31, 2001], 2002, <http://www.cndh.org.mx/lacndh/informes/anauales/01activ.pdf> (accessed December 6, 2007), p. 274. CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2002” [Report of Activities between January 1 and December 31, 2002], 2003, <http://www.cndh.org.mx/lacndh/informes/anauales/02activ.pdf> (accessed December 6, 2007), p. 482. CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2003” [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anauales/03activ.pdf> (accessed December 6, 2007), p. 485. CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2004” [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anauales/04activ.pdf> (accessed December 6, 2007), p. 551.

²⁶⁷ Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007.

VI - Publicity

Public disclosure and dissemination of the information the CNDH collects on human rights cases is one of the institution's most important functions. To date, it has not played this role consistently or effectively.

Public disclosure of information on human rights cases is important for several reasons. First and foremost, negative publicity is the most effective tool the CNDH has for deterring future abuses and pressing authorities to reform problematic laws and policies. Since the CNDH cannot directly take punitive action against authorities for violating human rights, the best it can do is to “name and shame” them into remedying past abuses and preventing future ones.

Public disclosure is also crucial for promoting public awareness of the country's human rights problems and the role that state actors play in perpetuating or curbing them. Publicizing information on human rights abuses allows the general public to better monitor and evaluate the practices of their elected officials. It helps policy analysts, commentators, and ordinary voters assess public policies from a human rights standpoint. Finally, public access to the CNDH's information allows political leaders and the broader public to monitor the work of the CNDH itself.

While the CNDH does publish important information on some specific abuse cases and related policy issues, it does not do so for the vast majority of cases it handles.

A main reason for this failure is the CNDH's heavy reliance on “conciliation agreements” to resolve the abuse cases it documents. The CNDH uses these agreements to secure a commitment from state authorities to remedy abuses it has documented. In exchange for this commitment, the CNDH agrees not to publicly disclose its findings. While this “friendly settlement” mechanism undoubtedly can be useful for obtaining remedies for abuse victims, it does so at a significant cost. By not publicizing these cases, the CNDH fails to inform the public about human rights problems and limits whatever deterrence value its findings might provide.

The conciliation process therefore must be handled carefully to ensure that the advantages outweigh the disadvantages. The CNDH has used conciliation agreements effectively to obtain results in some cases. But it inexplicably chooses to withhold far more information than is actually needed to secure these agreements. And, given that the CNDH does not actively report on compliance with the agreements, it is unclear how much is actually gained by entering into these pacts of silence.

The CNDH's failure to publicize is not limited to conciliation agreements. It also uses overly broad confidentiality norms, approved by its own advisory council, to deny abuse victims and the general public access to crucial information it holds on human rights abuses.

Concealing Information on Abuses through “Conciliation”

Before issuing a public *recomendacion* on an abuse it has documented, the CNDH usually provides government authorities with the option of “conciliating” the case. In the conciliation agreement, the authority or institution accepts responsibility for the documented violation and agrees to implement remedies proposed by the CNDH.²⁶⁸ In return, the CNDH does not issue a public *recomendacion* and does not publicize the case.

The CNDH resolves the vast majority of cases in which it documents abuses in this way. Of the 1,277 cases the institution documented between 2000 and 2006, the CNDH resolved 1,121 through conciliation agreements, issuing only 156 public *recomendaciones*.²⁶⁹ (In January and February 2007 it issued two *recomendaciones* and signed 31 conciliation agreements.)²⁷⁰

²⁶⁸ The CNDH's rules of procedure state the CNDH must seek an amicable settlement with authorities implicated in abuses in every case it receives, unless it is analyzing the possible commission of serious human rights violations. Internal rules of procedure of the National Commission of the Human Rights [CNDH, Rules of Procedure] (Reglamento Interno de la Comisión Nacional de los Derechos Humanos), September 29, 2003, <http://www.cndh.org.mx/normat/reglaman/regInter.pdf> (accessed May 25, 2007), chapter V. These norms are in accordance with the Paris Principles. Paris Principles, Additional principles concerning the status of commissions with quasi-judicial competence, principle (a).

²⁶⁹ Between 2000 and 2006, the CNDH received 58,663 written requests, out of which 23,696 were considered “petitions” – of these, 156 ended in *recomendaciones*; 206 were sent to a state commission; 307 ended due to the CNDH's lack of jurisdiction; 341 were closed because the petitioner desisted of the case; 605 ended because there was no case; 692 cases were closed because they were accumulated to another case; 1,073 concluded due to lack of interest of the petitioner; 1,121

The CNDH disseminates very little information on the conciliation agreements. Since 2000, its annual reports have indicated the number of conciliation agreements obtained and with which government institutions they have been signed.²⁷¹ But the CNDH does not disclose the actual content of the agreements themselves. Consequently, the public rarely learns anything about the abuses the CNDH has documented or the remedies that offending institutions have agreed to pursue.

The CNDH does provide the victims with a copy of the agreement, which includes a summary of its findings on the case and the remedies agreed upon. The victims are free to disclose this information to the public.²⁷² However, unlike the CNDH, they very often do not have the resources or wherewithal to publicize this information. In theory, victims could turn this information over to the media or nongovernmental

ended with conciliation agreements; 6,313 were resolved during the procedure; and 11,914 were remitted to other institutions or government agencies. CNDH, “Balance del 2000 al 2006 en materia de derechos humanos en Mexico” [A balance of the human rights situation in Mexico from 2000 to 2006], undated, <http://www.cndh.org.mx/> (accessed May 18, 2007), p.4.

²⁷⁰ Out of 914 petitions received, the CNDH closed 831 cases. It issued 2 *recomendaciones*, decided it had no jurisdiction in 6, held the petitioner had desisted in 12, signed 31 conciliation agreements, closed 36 due to lack of interest of the petitioner, accumulated 47 cases, closed 77 because there was no human rights violation, 193 were solved during the procedure, and 427 were remitted to other institutions or government agencies. This information was provided to Human Rights Watch by Maximo Carvajal, CNDH general director of complaints and orientation, March 16, 2007.

²⁷¹ There is no systematic information on the CNDH website on the number of cases that ended in this way prior to 2000. Available information, however, indicates that since the institution was created, many cases concluded with a conciliation agreement. In June 1991 the CNDH informed that 306 cases had concluded via conciliation during the previous semester. In December 1991 the CNDH informed it had solved 30 percent more cases between June and December 1991 than in the previous semester. In July 1993 the CNDH informed that in the previous year it had signed 1,081 conciliation agreements. In June 1994, the CNDH informed it had concluded 1,044 cases through conciliation agreements. CNDH Gaceta [CNDH Gazette], 91/11, June 15, 1991, p. 16; CNDH Gaceta [CNDH Gazette], 91/17, December 1991, p. 16; CNDH Gaceta [CNDH Gazette], 93/36, July 1993, p. 11; and CNDH Gaceta [CNDH Gazette], 47, June 1994, p. 13. CNDH, “Informe de Actividades del 16 de noviembre de 1999 al 15 de noviembre de 2000” [Report of Activities between November 16, 1999 and November 15, 2000], 2001, <http://www.cndh.org.mx/lacndh/informes/anauales/00activ.pdf> (accessed December 6, 2007); CNDH, “Informe de Actividades del 16 de noviembre de 2000 al 31 de diciembre de 2001” [Report of Activities between November 16, 2000 and December 31, 2001], 2002, <http://www.cndh.org.mx/lacndh/informes/anauales/01activ.pdf> (accessed December 6, 2007); CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2002” [Report of Activities between January 1 and December 31, 2002], 2003, <http://www.cndh.org.mx/lacndh/informes/anauales/02activ.pdf> (accessed December 6, 2007); CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2003” [Report of Activities between January 1 and December 31, 2003], 2004, <http://www.cndh.org.mx/lacndh/informes/anauales/03activ.pdf> (accessed December 6, 2007); CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2004” [Report of Activities between January 1 to December 31, 2004], 2005, <http://www.cndh.org.mx/lacndh/informes/anauales/04activ.pdf> (accessed December 6, 2007); CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2005” [Report of Activities between January 1 to December 31, 2005], 2006, <http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed December 6, 2007); CNDH, “Informe de Actividades del 1 de enero al 31 de diciembre de 2006” [Report of Activities between January 1 to December 31, 2006], 2007, http://www.cndh.org.mx/CDINFORME2006iMAGEN/INFORME_DE_ACTIVIDADES_2006_1.htm (accessed December 6, 2007).

²⁷² Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

organizations to publicize their cases, but in practice this is not a viable option for the majority of victims, who have no contact with either.

Uncertain Benefits of Non-Disclosure

Conciliation agreements can be a useful tool for obtaining remedies for victims. Some government authorities may be willing to sign agreements, committing themselves to remedying abuses, as a way of avoiding the public shaming that published *recomendaciones* can entail.

The CNDH has used this tool effectively in diverse cases. For example, in one case the CNDH used the conciliation process to help an inmate in a high-security federal prison obtain a type of surgical operation that is usually not available in those prisons.²⁷³ In another case, the CNDH obtained a conciliation agreement with the Ministry of Defense on behalf of an officer facing criminal prosecution for alleged “desertion.”²⁷⁴ The military agreed to reevaluate the case and, upon doing so, concluded that there were no grounds for prosecution.²⁷⁵

But the effectiveness of conciliation agreements depends entirely on the degree of compliance by the state authorities that sign them. As with published *recomendaciones*, the CNDH can only ensure compliance by conducting follow-up on the cases.²⁷⁶ And as with *recomendaciones*, the CNDH does not always do so.²⁷⁷

²⁷³ Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007.

²⁷⁴ CNDH document V2/30704 from file 2004/3201/GRO/2/SQ, October 21, 2005.

²⁷⁵ Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

²⁷⁶ According to Article 122 of the CNDH rules of procedure, “There must be follow up to all files concluded through a conciliation process during 90 days, with the exception of those cases in which the authority requested an extension of the deadline to comply with the agreement. The National Commission will establish the extension of that deadline through an agreement signed by [the chief investigator].” According to Article 36 of the Law on the CNDH, “If a satisfactory solution is reached or if those responsible accept their responsibility, the National Commission will take note and close the file, which could be reopened if the victims express to the National Commission that the agreement has not been fulfilled in 90 days.” According to Article 121 of the CNDH rules of procedure, “If during the 90 days after the acceptance of the proposal, the authority did not fully comply with it, the victim may inform the National Commission so that it decides whether to reopen the file and determine the corresponding actions. In case of unjustified lack of fulfillment of a conciliation agreement, [the chief investigator] may agree to reopen the file, which [he or she] will inform the victim and the authority identified as responsible.”

²⁷⁷ In some cases, the CNDH has issued a *recomendacion* because the government authority did not accept or implement the conciliation proposal. For example, when the Mexico City attorney general’s office did not accept the CNDH’s conciliation

For example, the CNDH closed the case of Carlos T., an undocumented immigrant who was harshly beaten by an immigration official, before the National Institute of Migration (Instituto Nacional de Migración, INM) had complied with the terms of the conciliation agreement. After signing an agreement that requested the INM to provide, among other things, reparations to the victim, the CNDH deemed the INM to have complied with the agreement when the INM said it would pay the victim.²⁷⁸ According to the victim's legal representative, however, the INM never complied with this part of the conciliation agreement.²⁷⁹ This left the victim with no reparations, and the public with no information on the case or the institution that had violated his rights.

Something similar occurred when the CNDH reached an agreement in May 2006 with the Mexican Commission for Aid to Refugees (Comisión Mexicana de Ayuda a Refugiados, COMAR) in the case of seven foreigners who had requested refuge in Mexico. The conciliation proposal stated that COMAR had to adopt new internal rules, as well as measures to prevent human rights violations of those applying for refugee status in Mexico.²⁸⁰ The petitioners' legal representative told Human Rights

proposal in the case of the prolonged detention of two children who were accused of stealing two chocolate bars, the CNDH issued its *recomendación* 41/2006. CNDH, *Recomendación* 41/2006, November 14, 2006. Human Rights Watch interview with Andrés Aguilar Calero, third visitador, Mexico City, March 16, 2007.

Another example is the case of Fernando Javier Huicab González, who had boats that were confiscated by the Federal Prosecutor's Office to Protect the Environment (Procuraduría Federal de Protección al Ambiente, PROFEPA). The PROFEPA never returned him the boats because they were stolen. Given that the PROFEPA did not comply with a conciliation agreement they had signed, the CNDH issued a *recomendación*. CNDH, *Recomendación* 2/2004, January 15, 2004.

²⁷⁸ Conciliation agreement proposed by the CNDH, May 15, 2002. (Real name of the petitioner, document and file numbers are withheld to protect the petitioners' privacy.) CNDH, document number TVG/231/2003, December 11, 2003. CNDH, document TVG/230/2003, December 10, 2003.

²⁷⁹ The petitioners also disagreed with the terms of the agreement because they consider that reparations should include compensation for the injuries suffered by the victim, as well as compensation for the work that Carlos T. was unable to carry out while he was injured. The CNDH, on the other hand, considered that the INM's interpretation that it only had to pay monetary reparations to compensate for the injuries suffered by the victim was correct. Human Rights Watch telephone interview with Elba Coria, deputy coordinator of legal defense of Sin Fronteras, Mexico City, June 18, 2007. Human Rights Watch email communication with Elba Coria, July 3, 2007.

²⁸⁰ The petitions were presented before the CNDH on January 25 and 27, February 2, 20, and 15, April 11, and November 28, 2005. The CNDH found that COMAR had exceeded the term it had to respond to these requests, keeping the petitioners confined to migrants' stations for periods of up to 122 days; had issued decisions without appropriate motivation; and had not properly integrated the files that were presented to the body that would make the final decision on each case. CNDH document that contains the conciliation proposal (document and file number withheld to protect the privacy of the petitioners), May 19, 2006.

Watch that they had repeatedly requested information on what the CNDH had done to follow-up after the agreement was signed—both by phone and through letters—and did not receive a response for approximately one year.²⁸¹ When it did respond, the CNDH considered COMAR had complied with the terms of the agreement after it informed the CNDH that it had requested its staff to carry out the measures proposed in the agreement.²⁸² Yet according to the petitioners’ legal representative, COMAR had not implemented the terms of the agreement.²⁸³

Without information regarding the degree of compliance with remedies, it is impossible to gauge the overall effectiveness of conciliation agreements.

An Unnecessary Price for Conciliation

Even if there are benefits to the heavy reliance on conciliation agreements, the CNDH concedes far more than it needs to—in terms of non-disclosure of information—in order to obtain them.

The CNDH could easily limit the disclosure of key details—such as the identity of specific officials, units, or offices implicated—in order to obtain agreements, while still publicizing general information about the conciliated cases. It could, for example, publish information on the cases in its annual reports, grouping them by types of violation committed by each state institution, with a basic account of the facts of the case and the types of reparations agreed upon. It could also publicly disclose government authorities’ degree of compliance with the terms of conciliation agreements.

There is no good reason for the CNDH not to disclose more information on these cases to the general public. The CNDH president told Human Rights Watch that conciliation agreements are not publicized because the law does not establish that

²⁸¹ Human Rights Watch telephone interviews with Marta Villareal, ITAM, Mexico City, June 18, 2007, and January 18, 2007.

²⁸² CNDH document 41008 from file 2005/472/DF/5/SQ, December 7, 2007.

²⁸³ Human Rights Watch telephone interview with Marta Villareal, ITAM, Mexico City, January 18, 2007.

they should be.²⁸⁴ But the law does not stipulate that these agreements should *not* be made public. And the “principle of maximum disclosure,” included in the federal transparency law to which the CNDH is subject, states that government entities are always presumed to be under an obligation to disclose information.²⁸⁵

Conciliating Serious Human Rights Abuses

The price paid for obtaining conciliation agreements is all the more problematic when it comes to more egregious abuses. According to its own rules, the CNDH is never supposed to use conciliation agreements to resolve cases involving “serious” violations.²⁸⁶ But in fact it does, thereby ensuring that its findings in these cases are also kept from the public. (Human Rights Watch was able to obtain copies of some conciliation agreements through nongovernmental organizations that represent victims of abuses and from individuals who requested information from government offices that conciliated cases.²⁸⁷)

Prior to 2003, this prohibition extended to all cases involving “violations of the right to life, physical or psychological integrity, or others that are considered especially serious due to the number of victims or its possible consequences.”²⁸⁸ Yet the CNDH nonetheless conciliated cases involving such violations. For example, it reached agreements with the Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS) in cases of medical malpractice that led to the death of a patient. In two cases documented by Human Rights Watch, the CNDH’s conciliation proposal

²⁸⁴ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007. Other CNDH staff gave Human Rights Watch the same reason for not publicizing information on these cases. Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007; Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

²⁸⁵ See chapter III on Mexico’s obligations under international law and their applicability to the CNDH.

²⁸⁶ The CNDH rules of procedure prohibit conciliation agreements if there is a “serious infraction to a person’s fundamental rights.” According to Article 119, there will be no amicable settlement in those cases mentioned in Article 88, which states that, “when [the case] is about a serious infraction to a person’s fundamental rights, such as attempts to affect the person’s life, torture, forced disappearance and all other crimes against humanity, or when the previously mentioned infractions were carried out against one community or social group.”

²⁸⁷ During our interviews with CNDH staff, CNDH officials consistently claimed that they could not conciliate cases of serious human rights abuses. Human Rights Watch did not request an explanation from these officials regarding why the CNDH had conciliated the specific cases mentioned in this section of the report.

²⁸⁸ Article 117 of old CNDH Rules of Procedure.

was limited to asking the IMSS to initiate an administrative investigation of the allegedly responsible doctors, and to provide the petitioners with monetary reparations.²⁸⁹

In another case, the CNDH proposed a conciliation agreement even after its own staff directly saw that Juda Enrique Contreras, a migrant from Central America, had injuries to his back and head.²⁹⁰ Contreras filed a complaint with the CNDH, claiming that municipal police had beat him “excessively, causing injuries in [his] back, head and left leg,” and that INM officials had threatened to beat him again after he said he filed a complaint before “human rights.” After sending a telegram to Contreras informing him that his case would be subject to the conciliation process, in September 2003 the CNDH sent the INM a conciliation agreement.²⁹¹

In the case of Carlos T., the CNDH actually included on the first page of a conciliation agreement a transcription of language from its internal rules barring the use of conciliation agreements for cases involving “violations to the right to life or physical integrity.” The agreement then proceeded to detail how government officials had used excessive force against the petitioner, violating his right to physical integrity.²⁹² The CNDH documented that an immigration official harshly beat Carlos T. until he fell to the floor, causing bruises, the loss of one tooth, and head injuries that required stitches. Carlos T. did not receive medical assistance until the following day, after he vomited blood.²⁹³

²⁸⁹ CNDH document 007929, April 10, 2003; and CNDH document 015038, July 29, 2003. (The file numbers and names of the victims are crossed out from the original document to protect the victim’s identity).

²⁹⁰ CNDH document labeled “page 018” from file 2003/874-1, signed by Hector Perez Garcia, director of the South Frontier Office, and David Sanchez Reyes, deputy official, March 7, 2003.

²⁹¹ The CNDH proposed that the INM initiate an administrative procedure against those presumably responsible and that it adopt measures to ensure that private security companies do not participate in the detention of foreigners, which they found had occurred in this case. CNDH document 019170 from file 2003/874-1, September 12, 2003. At the end of the month, the CNDH informed Contreras that since INM had accepted the proposal four days before, his case had concluded. CNDH document 196 from file 2003/874-1, September 30, 2003.

²⁹² Conciliation agreement proposed by the CNDH, May 15, 2002. (Real name of the petitioner, document and file numbers are withheld to protect the petitioners’ privacy).

²⁹³ In May 2002 the CNDH submitted a conciliation proposal to the INM and the Ministry of Public Security of Mexico City (Secretaria de Seguridad Publica del Distrito Federal, SSP-DF). The CNDH requested the INM and the SSP-DF, among other things, to provide information to prosecutors in order for them to carry out a criminal investigation of the case, and to inform the internal offices in charge of carrying out administrative procedures. The proposal requested the INM to inform the federal

Even after it adopted a more limited definition of “serious” violation in 2003, the CNDH continued to conciliate such cases.²⁹⁴ In December 2003, for example, it proposed that the IMSS conciliate a case of medical malpractice that resulted in the death of a patient. In this case, the proposal did not even mention the IMSS’s obligation to provide the victim with monetary reparations.²⁹⁵

Applying Broad Confidentiality Norms

The problem of non-disclosure is not limited to cases resolved through conciliation agreements. Rather, as a result of the CNDH’s overly broad application of confidentiality norms, it extends to other areas of the CNDH’s work.²⁹⁶

The CNDH considers all cases it has under review to be strictly confidential. According to CNDH rules, the investigations it carries out, as well as information and documentation in pending case files, are privileged. The CNDH, therefore, is not required to provide such information to third parties. And it only provides victims

attorney general’s office about the case for it to initiate a criminal investigation, to provide information to substantiate an administrative investigation, to instruct its staff in Mexico City to carry out capacity building courses and provide medical assistance to detained individuals, and to pay monetary reparations. The proposal asks the SSP-DF to initiate an administrative investigation, and to inform the Mexico City attorney general’s office about the case so it initiates a criminal investigation. *Ibid.*; Letter from Sin Fronteras to Jose Luis Soberanes, January 3, 2002; CNDH, “Acta circunstanciada” [Official Record], January 8, 2002; CNDH, “Acta circunstanciada” [Official Record], May 10, 2002.

²⁹⁴ The CNDH modified its rules of procedure on September 29, 2003. The new norms prohibit conciliation agreements if there is a “serious infraction to a person’s fundamental rights.” According to Article 119 of the new CNDH’s rules of procedure, there will be no amicable settlement in those cases mentioned in Article 88, which states that, “when [the case] is about a serious infraction to a person’s fundamental rights, such as attempts to affect the person’s life, torture, forced disappearance and all other crimes against humanity, or when the previously mentioned infractions were carried out against one community or social group.”

²⁹⁵ CNDH document 025879, December 5, 2003. (The file number and name of the victim are crossed out from the original document to protect the victim’s identity).

²⁹⁶ The CNDH is subject to the Federal Law on Transparency and Access to Official Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental), or “transparency law” that was signed into law in June 2002. The transparency law provided detailed rules and mechanisms to obtain information held by the executive branch, but other major government entities—including the judiciary, Congress, the CNDH, and the Federal Electoral Institute (Instituto Federal Electoral)—had to develop its own. The CNDH adopted its implementing regulations in April 2003 and they entered into force on June 12, 2003. Rules of the National Human Rights Commission on Transparency and Access to Information (Reglamento de Transparencia y Acceso a la Información de la Comisión Nacional de Derechos Humanos), April 29, 2003, <http://www.cndh.org.mx/normat/transp/transp.asp> (accessed February 2007). Parts of this section were previously published in Human Rights Watch, *Lost In Transition: Bold Ambitions, Limited Results Under Fox*, May 2006, <http://hrw.org/reports/2006/mexico0506/mexico0506web.pdf>, pp. 54 - 56.

with information about their cases when those cases are already closed and the content of the files is no longer considered confidential.²⁹⁷

There is an obvious need to protect the confidentiality of petitioners and victims in cases in which release of information could jeopardize their lives, physical integrity, or well-being. The presumption that derives from the “principle of maximum disclosure” can certainly be overridden if the release of information could undermine the rights of others. But, in these cases, the CNDH could produce public versions of documents, blacking out personal data and other privileged and confidential information that could identify the petitioners and thus endanger their lives or physical integrity.²⁹⁸

Similarly, while it makes sense to limit public access to sensitive information regarding ongoing investigations, the CNDH goes so far as to deny all access to files for pending cases even to the victims themselves. For example, in a case involving the forced sterilization of 14 members of a Mepa indigenous community in Guerrero, the CNDH argued that “information in files under study by the CNDH is privileged

²⁹⁷ According to Article 9 of the CNDH implementing regulations on transparency: “According to Article 4 of the Law on the CNDH, and in accordance with its Article 14(l), information or documentation in files (...) pending before the CNDH is considered privileged information.”

According to Article 4 of the Law on the CNDH: “The CNDH staff shall handle confidentially information and documentation related to the issues it may evaluate.”

According to Article 48 of the Law on the CNDH: “The CNDH is not obliged to provide any evidence it used to any government agency or official to which it issued a *recomendacion*, nor to any individual. If these evidences were requested, [the CNDH] will have discretion to decide whether to provide them.”

According to Article 78 of the internal rules of the CNDH: “Investigations carried forward by the CNDH staff, the procedural steps carried forward after each complaint, and the documentation received from the authorities and the individuals will be handled with the most absolute privilege, in the parameters set forth by Article 4 of the Law. In any case, authorities will abide by [the transparency law and the CNDH’s implementing regulations]. The aforementioned provisions do not apply to considerations the CNDH takes into account when issuing *recomendaciones*, declarations, or preparing annual or special reports. When someone requests copies of, or access to, information held in a file pending before the CNDH related to his or her own case, [he or she may receive the information only if] the case was concluded and the content of the file may not be considered privileged or confidential information.”

²⁹⁸ To do so, the CNDH could follow the guidelines prepared by the Federal Institute on Access to Official Information (Instituto Federal de Acceso a la Informacion, IFAI) on how to elaborate public versions of documents. IFAI, “Lineamientos para la Elaboracion de versionas publicas, por parte de las dependencias y entidades de la Administracion Publica Federal” [Guidelines for the elaboration of public versions by government offices of the executive branch], April 13, 2006, arts. 4 and 5.

information” and denied these men and their legal representative access to their own files.²⁹⁹

The same occurred in 2006 to Omar P., a military official dismissed from the military because he was living with HIV, who requested access to an internal investigation relating to the behavior of CNDH officials who handled his case. Omar P. had asked that the CNDH carry out an internal investigation to evaluate if CNDH staff had failed to seriously address his case.³⁰⁰ The CNDH did not provide him any access to this file.³⁰¹

Another problem with the CNDH rules is that they limit disclosure of information on investigations of serious human rights cases. The Federal Law on Transparency and Access to Official Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, “transparency law”) would seem to require that information found in investigations of serious human rights abuses may not be deemed privileged.³⁰² However, under its rules, the CNDH may limit access to information on these cases until it concludes its investigation. The CNDH’s implementing rules on the transparency law merely state that in these cases “the information will be public once the respective *recomendacion* or report is issued.”³⁰³

²⁹⁹ Their requests, which aimed at obtaining information that was necessary for a civil claim to obtain reparations for the human rights violations they had suffered, were denied on August 4, 2005. Letter from the petitioners to Andres Calero Aguilar, head of the Liaison Unit of the CNDH, received by the CNDH on July 6, 2005. CNDH, document CI/ST/116/05 from file 2005/82-T; August 4, 2005. Letter from Claudia Ordoñez Viquez to Andres Calero Aguilar, head of the Liaison Unit of the CNDH, received by the CNDH on July 6, 2005. CNDH, document CI/ST/117/05 from file 2005/83-T; August 4, 2005. After an appeal, on November 4, 2005, the CNDH held it would only provide copies of the information that had been sent to it from the Guerrero state human rights commission because they considered that this case was about serious human rights violations. However, it confirmed that they could not provide copies of the CNDH investigation because it was confidential. Letter from Claudia Ordoñez Viquez to the head of the first visitaduría, August 30, 2005 (names withheld from the original document); CNDH, document 32999 from file 2005/9-RT, November 4, 2005.

³⁰⁰ See chapter V of this report for a description of Omar P.’s case.

³⁰¹ CNDH documents signed by Raul Ernesto Violante Lopez, CNDH director of norms and responsibilities, October 13, 2006 and November 9, 2006 (additional information withheld).

After Omar P. insisted, the CNDH sent a third letter saying that they would not be able to provide copies of such file because the CNDH had never opened one related to that investigation. CNDH document signed by Raul Ernesto Violante Lopez, CNDH director of norms and responsibilities, November 29, 2006 (additional information withheld).

³⁰² The transparency law provides that “in case of severe violation of fundamental rights or crimes against humanity the information in the investigations may not be deemed privileged.” Transparency law, art. 14.

³⁰³ CNDH implementing regulations on the transparency law, art. 10.

This approach is particularly problematic given that, as we saw above, the CNDH has used conciliation agreements to close cases involving serious abuses, without ever issuing a public report.

Obtaining information on concluded cases can also be difficult. The CNDH's implementing regulations on the transparency law allow its staff to withhold information on concluded cases for 12 years.³⁰⁴ Complete information is available on cases that end with a *recomendación* or a report. But such cases are the exception, not the rule: between 2003 and 2006, for example, *recomendaciones* constituted less than 1 percent of all concluded cases.³⁰⁵

In 2003, when the Atalaya Program of the Technological Autonomous Institute of Mexico (Instituto Tecnológico Autónomo de México, ITAM) requested access to the files of all cases that the CNDH concluded in January 2003, the CNDH denied it, arguing that the law governing the CNDH and CNDH implementing regulations on the transparency law allowed it to consider such information privileged.³⁰⁶ The Atalaya Program then presented an injunction, challenging the applicable regulations. A few weeks before the Supreme Court was going to decide the appeal, and two years after the initial request, the CNDH allowed the Atalaya Program to see the files that were mentioned in the injunction. In February 2006 the Supreme Court decided the case

³⁰⁴ CNDH implementing regulations on the transparency law, art. 10.

The CNDH has recently held that this norm "is being revised." Pablo Escudero Morales and Jose Galindo Rodriguez, *Transparencia y Rendición de Cuentas en la CNDH, así como su función transversal de control en la administración pública [Transparency and Accountability in the CNDH, as well as its transversal role controlling the public administration]* (Mexico City: CNDH, 2007), p. 89.

³⁰⁵ According to the CNDH annual reports, in 2003 it concluded 3,342 cases and only 22 were *recomendaciones* (0.65 percent); in 2004 it concluded 3,800 cases and only 39 were *recomendaciones* (1.02 percent); and in 2005 it concluded 4,717 cases and only 28 were *recomendaciones* (0.59 percent). CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2003" [Report of Activities between January 1 and December 31, 2003], 2004,

<http://www.cndh.org.mx/lacndh/informes/anales/03activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2004" [Report of Activities between January 1 to December 31, 2004], 2005,

<http://www.cndh.org.mx/lacndh/informes/anales/04activ.pdf> (accessed December 6, 2007); CNDH, "Informe de Actividades del 1 de enero al 31 de diciembre de 2005" [Report of Activities between January 1 to December 31, 2005], 2006,

<http://www.cndh.org.mx/lacndh/informes/espec/cdinf2005/ifact2005.htm> (accessed December 6, 2007).

According to the CNDH's annual evaluation of its strategic indicators, 0.6 percent of the cases concluded in 2006 ended in *recomendaciones*. CNDH, "Evaluación de los Indicadores estratégicos 2006" [Evaluation of the Strategic Indicators for 2006], undated, <http://www.cndh.org.mx/normat/transp/transp.htm> (accessed May 25, 2007).

³⁰⁶ Letter signed by Graciela Sandoval Vargas of the technical secretariat of the CNDH's information committee with reference to file 2003/3-T, July 28, 2003.

was moot, and did not address whether the challenged laws were constitutional.³⁰⁷ But when the Atalaya Program actually went to the CNDH to obtain copies of the requested information, the CNDH denied access to it, arguing that a 30-day deadline had expired (a deadline that, according to the Atalaya Program staff, neither they nor the Supreme Court had been made aware of.)³⁰⁸ As of this writing, the case is pending before the Inter-American Commission on Human Rights.³⁰⁹

The Federal Institute for Access to Official Information (Instituto Federal de Acceso a la Informacion Publica, IFAI)—the mechanism created to interpret the transparency law and promote and regulate access to information within the executive branch—has held that entities subject to the law must provide access to information held in their files after they reach a final decision in a case. The transparency law explicitly says that judicial files or administrative procedures will be considered privileged information “as long as they have not concluded.”³¹⁰ The IFAI has argued that once a resolution is public, individuals should have access to the entire file because the administrative investigation that led to the resolution has already concluded.³¹¹

Other federal entities have sought to use the CNDH’s restrictive rules, which, unlike the transparency law, allow the CNDH to limit access to information regarding concluded cases that do not end in public *recomendaciones* or reports.

In two cases in which this happened, the IFAI granted access to the requested information, thereby allowing petitioners to obtain information on cases decided by the CNDH through a back door.³¹² In the first case, the Atalaya Program asked the Ministry of Agrarian Reform (Secretaria de la Reforma Agraria, SRA) for copies of the

³⁰⁷ Mexican Supreme Court, Amparo en Revision 345/2004, February 10, 2006.

³⁰⁸ Human Rights Watch telephone interview with Miguel Sarre and Sandra Serrano, Programa Atalaya, June 20, 2006.

³⁰⁹ Petition presented by Miguel Sarre before the Inter-American Commission on Human Rights, August 2, 2006.

³¹⁰ Transparency law, art. 14, IV.

³¹¹ See, for example: IFAI, Decision on case 661/06, May 17, 2006; IFAI, Decision 2405/06, November 22, 2006; IFAI, Decision on case 786/06, June 21, 2006.

And the implementing regulations of the transparency law issued by the Mexican Supreme Court state that files of concluded judicial cases may be consulted by any person during business hours in the places where they are located, and limits what can be considered privileged information. Mexican Supreme Court’s implementing regulations of the transparency law, art. 6.

³¹² IFAI, Decision on case 2532/06, December 6, 2006. IFAI, Decision on case 2542/06, December 6, 2006.

cases against them, which had been analyzed by the CNDH and had concluded between July 2005 and June 2006. The SRA responded that since the CNDH's rules of procedure and its implementing rules on the transparency law considered that information privileged, the petitioner should request that information from the commission. After the Atalaya Program staff made a similar request to the INM, the INM argued that it could not provide access to the information since the law on the CNDH stated that government offices had to communicate to the CNDH when an individual was requesting information that it considered privileged.

The IFAI has also granted access to other CNDH files possessed by government agencies. After the Atalaya Program asked the Ministry of Public Security (Secretaria de Seguridad Publica, SSP) for copies of cases concluded by the CNDH between June 2005 and July 2006 regarding abuses committed in one federal detention center, the SSP responded that the information was confidential because it could "compromise public security, or even national security." In February 2007, the IFAI ruled that the SSP should provide the requested information, arguing it would enable citizens to analyze the government's performance on human rights.³¹³

³¹³ IFAI, Decision on case 2570/06, February 21, 2007.

VII - Collaboration

For Mexico to make real progress in strengthening human rights protections, it is critical to promote active collaboration among the diverse array of actors who can contribute to the process. In addition to the CNDH, these actors include local NGOs, state human rights commissions, and international organizations, as well as victims of abuse themselves. Rather than promoting collaboration with all these actors, the CNDH too often has resisted it, thereby helping to generate a corrosive atmosphere of distrust and antagonism that is counterproductive for human rights advocacy in Mexico.

Perhaps the most problematic practice in this regard has been the commission's failure to engage with some victims that turn to it for help. This failure is particularly evident when the CNDH resolves petitions through conciliation agreements, as it does in almost 90 percent of the cases in which it documents abuses. As the last chapter made clear, the CNDH routinely signs these agreements directly with government authorities, committing itself to a pact of silence. It does so without consulting with or seeking the consent of the petitioners. In other words, abuse victims often have no say in their so-called "conciliation."

The CNDH has also failed to engage constructively with other key human rights advocates in Mexico, actively opposing important collaborative projects aimed at strengthening human rights protections.

Human Rights Victims

Under international human rights law, victims of human rights violations have a right to participate in the proceedings designed to remedy those violations. Yet the CNDH has a policy of not involving human rights victims in the conciliation of their own cases.

While the CNDH's old rules of procedure required that the victim be "heard" and "informed of the progress of the conciliation process until it concludes," since 2003 the CNDH rules only require that the CNDH inform the victim of the existence of a

conciliation proposal and then “*try* to keep the victim informed of how the procedure advances until its final conclusion” [italics added].³¹⁴ CNDH officials insist that, under these new rules, they have no obligation to consult with petitioners prior to signing conciliation agreements or to seek their consent before signing them.³¹⁵

In 2003, for example, the CNDH conciliated the case of Jaime Alves de Paula, who had filed a complaint with the CNDH claiming that immigration officials in the Cancun airport had psychologically abused him, denied him access to a lawyer and translator, and coerced him into signing a document that was later used against him. The CNDH concluded that the National Institute of Migration (Instituto Nacional de Migracion, INM) had violated Alves’ due process rights and sent the INM a conciliation proposal on September 26, 2003. The agreement stipulated that the INM would initiate an administrative investigation and order all its employees to inform foreigners about their right to consular assistance.³¹⁶ On that same date, the CNDH sent a copy of the proposal to Alves. The CNDH received notice from the INM that it was accepting the proposal on October 7, 2003, and only informed the petitioner two weeks later that his case had concluded through conciliation.³¹⁷

The CNDH also sought a conciliation agreement with the INM in the case of Ines O., a woman who alleged an immigration official had told her he would allow her to go if she had sexual intercourse with him. Before sending the conciliation agreement proposal to the INM on November 25, 2003, the CNDH informed Ines O. via telegram that her case would be subject to conciliation. The proposal stipulated that the INM would initiate an administrative investigation and instruct “whomever is concerned”

³¹⁴ CNDH, Rules of Procedure, art. 122. CNDH old rules of procedure, arts. 117 and 120.

³¹⁵ Human Rights Watch interview with Andres Aguilar Calero, third visitador, Mexico City, March 16, 2007; Human Rights Watch interview with Mauricio Farah Gebara, fifth visitador, and staff from the fifth visitaduria, Mexico City, March 20, 2007; Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007; Human Rights Watch interview with staff from the fourth visitaduria, Mexico City, March 22, 2007; Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visidatora and staff from the second visitaduria, Mexico City, March 22, 2007.

³¹⁶ The CNDH received the complaint on March 31, 2003 and opened the file 2003/1231-1. Documentation on file with Human Rights Watch. CNDH document 020212 from file 2003/1231-1, September 26, 2003.

³¹⁷ CNDH document 022350 from file 2003/1231-1, October 22, 2003.

that at least two INM officials should be present when transporting detained individuals.³¹⁸

An example of the CNDH not including the petitioners' specific claims in the agreement involves the case of two Chilean tourists who were arbitrarily deported from Mexico in December 2005.³¹⁹ The CNDH proposed that the INM reimburse the deported tourists their travel expenses, send the case to an administrative review, and issue and apply clear and objective criteria to accept or reject a tourist's entrance to Mexico. On November 10, 2006, the CNDH sent the conciliation agreement to Sin Fronteras, the NGO representing the two deported Chileans, as well as to the INM, giving the latter 15 days to respond.³²⁰ Two days later, Sin Fronteras requested that the CNDH include in the conciliation agreement that the government authority must recognize that it had also violated other rights, such as the right to have access to consular assistance.³²¹ These considerations were never included in the text, and on November 30, 2006, the CNDH informed Sin Fronteras that the case had concluded through conciliation.³²²

The CNDH has even insisted on signing conciliation agreements after petitioners explicitly say they do not want to conciliate because the problem is recurrent in Mexico, and they want the CNDH to address the broader issue.³²³ Abel M. contacted

³¹⁸ CNDH document 024710 from file 2003/2028-1, November 25, 2003.

³¹⁹ They filed a claim with the CNDH, arguing that they were denied entrance to Mexico on arbitrary grounds, were detained for approximately six hours without being able to call their families or Consulate, and that they were mistreated during that time.

³²⁰ Human Rights Watch interview with Sin Fronteras staff, Mexico City, January 30, 2007. CNDH conciliation agreement proposal, November 10, 2006. (Names of the petitioners, as well as the document and file numbers are withheld to protect the petitioners' privacy).

³²¹ Letter from Sin Fronteras to the fifth visitador, received by the CNDH on November 22, 2006. (Additional information, such as names and file number, is crossed out in original documents).

³²² Letter from the fifth visitador to Sin Fronteras, November 30, 2006. (Additional information, such as names and file number, is crossed out in original documents).

³²³ The case is about the lack of provision of medicines for people living with HIV/AIDS. In 2003 the CNDH issued a *recomendacion* recognizing that the lack of provision of medicines by public institutions is a recurrent problem in the Mexican Institute for Social Security (Instituto Mexicano del Seguro Social, IMSS). CNDH, *Recomendacion 4/2003*, February 10, 2003. In 2007, it issued another *recomendacion* in the case of EGZ, arguing that the lack of provision of medicines to a person living with HIV violated his right to health. CNDH, *Recomendacion 10/2007*, May 10, 2007. CNDH staff have recognized that this is a recurrent problem in Mexico. Human Rights Watch interview with Raul Plascencia Villanueva, first visitador, and staff from the first visitaduria, Mexico City, March 21, 2007.

the CNDH on March 30, 2006, arguing that as a consequence of lack of medicines in public hospitals,³²⁴ he had to interrupt his HIV treatment, making it more likely he would become resistant to the life-saving medication. The CNDH closed the case on April 28, 2006, after the hospital told Abel M. that the specific drug he needed was then available for him.³²⁵ In August 2006, a community-based organization submitted 41 new cases to the CNDH—including one from Abel M.—showing that the same hospital was not providing 10 types of medicines.³²⁶ The petitioners' representative told Human Rights Watch that he informed the CNDH that the petitioners did not want to sign a conciliation agreement, but a CNDH official told him "I'm not asking for your opinion; I'm calling to let you know how it will be."³²⁷ Even though the hospital continued to limit the provision of medicines, the CNDH waited over a year to issue a public *recomendacion* on the case.³²⁸

A Policy of Exclusion

The policy of excluding victims from the conciliation process reflects the CNDH's current position that that conciliations are "an act of authority" carried out by the CNDH. The CNDH president told Human Rights Watch that victims are informed of the agreements and usually agree with them but, should they disagree, they can

³²⁴ The case is about the General Hospital of Zone 53 (Hospital General de Zona 53) of the IMSS, located at Los Reyes la Paz, State of Mexico. Letter from Abel M. to Jose Luis Soberanes, March 30, 2006. (Real name is withheld to protect the petitioners' privacy).

³²⁵ The CNDH told Abel M. that if the IMSS did not provide him his medicines in the future, he should file another case with the CNDH. CNDH document 13716 from file 2006/1558/1/Q, April 28, 2006.

³²⁶ Between August 24 and September 18, 2006, the Support Group of People United Against AIDS (Grupo de Apoyo de Personas Enlazadas contra el SIDA, GAPES), submitted all the cases. The CNDH grouped all of the cases in one same file number. CNDH document 28689 from file 2006/4141, September 5, 2006.

³²⁷ Human Rights Watch interview with Miguel A. Garcia Murcia, coordinator, GAPES, Mexico City, March 12, 2007.

³²⁸ Given that the hospital did not provide five patients with five types of medicines—two of which were mentioned in the previous 41 cases—the petitioners' representative presented new cases before the CNDH, which grouped them under yet another file number. CNDH document 039256 from file 2006/5358, December 15, 2006. Human Rights Watch interview with Miguel A. Garcia Murcia, coordinator, GAPES, Mexico City, March 12, 2007.

In September 2007, the CNDH issued a *recomendacion* to the IMSS, requesting it to provide medicines to the petitioners, to adopt measures to avoid not having such medicines in stock, to carry out training of its staff, and to instruct its internal control office to carry out administrative investigations. CNDH, *Recomendacion 41/2007*, September 26, 2007. Human Rights Watch telephone interview with Miguel A. Garcia Murcia, coordinator, GAPES, Mexico City, November 21, 2007.

always use the courts.³²⁹ According to press accounts, his view is that the institution should serve as a “mediator.”³³⁰

This view represents a departure from past CNDH policy. One former CNDH president told Human Rights Watch that the ombudsman’s role “is not that of a mediator because violations [in Mexico] are so extraordinarily serious that the first function of an ombudsman is to protect human rights.”³³¹ Another insisted that the CNDH was intended to represent the victim, not mediate with the victimizer.³³² A third similarly said that the ombudsman’s principal role was to protect the interests of the victim.³³³

Indeed, in one of its first publications, the CNDH stated that conciliation agreements could only be used to close cases when, “in an absolutely voluntary fashion, the petitioner and the government authority express their will to resolve the problem through the proposed manner.”³³⁴ The CNDH’s old rules of procedure required that the victim be “heard” and “informed of the progress of the conciliation process until it concludes.”³³⁵

The CNDH’s current policy may be consistent with its modified rules, but it directly contradicts the international principle that victims of abuse should participate in the proceedings designed to remedy the violations they have suffered. As we saw in chapter III, this principle is applicable to non-judicial proceedings, such as those

³²⁹ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

³³⁰ “Soberanes acknowledged the passions raised would probably be one of the greatest challenges to the CNDH, as it tries to navigate between the extreme views and establish itself as a ‘mediator’ between the opposing parties.” Michael Christie, “Mexico rights ombudsman walks tightrope,” Reuters News, November 24, 1999. “La Comision tiene el papel fundamental de servir de intermediaria, de buscar la conciliacion, mas que de emitir muchas *recomendaciones*, dijo Soberanes Fernandez. [The Commission has the fundamental role of serving as an intermediary, of looking for conciliations, rather than issuing many *recomendaciones*, said Soberanes Fernandez.]” “CNDH Presidente” [CNDH President], Servicio Universal de Noticias, November 12, 1999.

³³¹ Human Rights Watch interview with Jorge Carpizo, CNDH president between June 1990 and January 1993, Mexico City, January 29, 2007.

³³² Human Rights Watch telephone interview with Jorge Madrazo, CNDH president between January 1993 and November 1996, Seattle, February 16, 2007.

³³³ Human Rights Watch interview with Mireille Roccatti, CNDH president between January 1997 and November 1999, Mexico City, January 25, 2007.

³³⁴ CNDH Gaceta [CNDH Gazette], 91/11, June 15, 1991, p.16.

³³⁵ CNDH old Rules of Procedure, arts. 117 and 120.

carried out by the CNDH. It is also reflected in the practices of other international and national human rights mechanisms. For example, the Inter American Court of Human Rights, the European Court of Human Rights, and the International Criminal Court allow victims to participate in their proceedings.³³⁶ Similarly the national human rights commissions of Canada, Costa Rica, and South Africa all guarantee that petitioners have an opportunity to participate in the proceedings for resolving their cases.³³⁷

Even if the current rules do not mandate consultation with the victims, neither do they preclude it. Indeed, in one of the five main investigative units, consultation with victims is considered part of the conciliation process.³³⁸ Officials in the Second Investigative Unit told Human Rights Watch that in the cases they handle, the petitioner has access to the conciliation agreement prior to its signature because “it is the petitioner who has to be satisfied,” and that as long as his or her position is legally viable, the petitioner has the last word. Unlike officials in other units, these officials said that, when pursuing a conciliation agreement, they consider themselves acting as “representatives of the victims.”³³⁹

³³⁶ Rules of Procedure of the Inter-American Court of Human Rights, art. 23. Rules of the European Court of Human Rights, rules 35 and 36. Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 68.

³³⁷ In Canada, by instituting a formal response process, both the petitioner and the government authority are able to actively participate in the investigation and keep apprised of developments in the investigation. Canadian Human Rights Commission, “Overview, Complaints,” undated, <http://www.chrc-ccdp.ca/complaints/default-en.asp> (accessed November 19, 2007). The South African system ensures that parties are active in the investigation by providing updates as to the status of the case; there is formal appeals process that guarantees that complaints are not summarily dismissed; and there is a public hearing process that provides a public record of the investigation. See generally, South African Human Rights Commission Complaint Handling Manual, May 5, 2006, http://www.sahrc.org.za/sahrc_cms/downloads/Complaints%20Handling%20Manual.doc (accessed November 19, 2007).

In Costa Rica, attorneys are constantly in contact with the petitioners, interview them if further information is necessary, provide information to petitioners when they ask for an update regarding their cases, and send copies to petitioners of requests formulated to the government authority that is accused of committing a human rights violation. Human Rights Watch telephone interview with Ingrid Berrocal, admissibility staff member of the Defensoria de los Habitantes de la Republica de Costa Rica (Ombudsman’s Office of the Republic of Costa Rica), San Jose, June 13, 2007.

³³⁸ As explained in chapter II of this report, each investigative unit is called a “visitaduria.”

³³⁹ Human Rights Watch interview with Susana Thalia Pedroza de la Llave, second visitadora, and staff from the second visitaduria, Mexico City, March 22, 2007.

Other Human Rights Bodies

UNHCHR

An important function of the CNDH, as mandated by its rules of procedure, is to promote cooperation on human rights with international organizations.³⁴⁰ Yet, the CNDH refused to participate in one of the most important and ambitious collaborative efforts of the past decade, the elaboration of a comprehensive prognosis of Mexico's human rights problems in conjunction with the Fox administration, members of civil society, and the United Nations' High Commissioner for Human Rights (UNHCHR).³⁴¹

CNDH officials justified the refusal to join this collaborative effort on the grounds that the government had "excluded the CNDH" when it negotiated the project with the UNHCHR in 2002, and again when the government and UNHCHR selected experts to perform the diagnosis.³⁴² As a result, according to the CNDH president, the collaboration "had a problem of democratic legitimacy."³⁴³ According to two of the four principal experts, however, the CNDH was involved in their appointment, and delayed it for approximately two months, decreasing the amount of time they had to prepare the report.³⁴⁴

³⁴⁰ According to Article 72 of the CNDH rules of procedure, "(...) The Executive Secretariat (...) will follow-up, promote the cooperation and collaborate with multinational and regional international organizations dedicated to the promotion and protection of human rights (...)." And according to the Paris Principles national human rights institutions must "cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights." Paris Principles, Composition and guarantee of independence and pluralism, principle 3 (e).

³⁴¹ Former President Vicente Fox signed the first cooperation agreement with the UNHCHR on the day after he took office. As a consequence of this agreement, the UNHCHR established an office in Mexico City, with the purpose of assessing the structural deficiencies that impeded the full realization of human rights in Mexico, and determining what reforms were necessary to promote change. During the first phase of this project, the UNHCHR focused on capacity building of public officials and civil society members on the issue of how to combat torture. In April 2002, the Fox administration signed a second agreement with the UNHCHR so that its office in Mexico would work with a team of Mexican experts to produce the national diagnosis.

³⁴² Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007. Human Rights Watch interview with Javier Moctezuma, executive secretary of the CNDH, Mexico City, March 16, 2007.

³⁴³ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

³⁴⁴ Human Rights Watch interview with an expert who requested anonymity, Mexico City, September 21, 2006. Human Rights Watch email communication with another expert who requested anonymity, December 12, 2007.

The Executive's Human Rights Office

The CNDH also decided not to participate in the National Human Rights Program (Programa Nacional de Derechos Humanos, PNDH) that derived from the national diagnosis carried out by the UNHCHR.³⁴⁵

The CNDH participated in the meetings that led to the creation of the PNDH, but it did not do so actively.³⁴⁶ Later on, the CNDH openly opposed the PNDH. The CNDH president told Human Rights Watch that the PNDH “had no legal basis because [in Mexico] there is a law that establishes how national plans must be carried out, and it was not followed in this case.”³⁴⁷ Another CNDH official explained that the CNDH eventually decided not to participate in the PNDH because this program was not included in the National Development Plan (Plan Nacional de Desarrollo), which each administration must present at the beginning of its six-year term (the PNDH was announced one-and-a-half years before the end of the Fox administration’s time in office).³⁴⁸

The CNDH’s justification implies that if an administration does not decide, within six months of entering office, that it will carry out a specific program, the proposal must wait five-and-a-half years, until the next president takes office. This is an insupportable position. While the Mexican Constitution and the Federal Planning Law establish parameters for each administration to present its government plan within six months of taking office,³⁴⁹ this obviously does not mean that the government cannot present new proposals or implement new public policies after those initial six months.

³⁴⁵ The diagnosis, which was concluded in 2003, provided a comprehensive assessment of the human rights situation in Mexico and a detailed series of recommendations that would serve as the basis for a national human rights program, which was published in December 2004. The purpose of the PNDH was to “establish the basis of a government public policy on human rights.” As a result of the PNDH, each federal government agency created its own liaison office to implement the PNDH. National Human Rights Program [Programa Nacional de Derechos Humanos], p. 22; Human Rights Watch interview with Darío Ramírez and Alexandra Haas, Interior Ministry, Mexico City, November 18, 2005.

³⁴⁶ Human Rights Watch telephone interview with Ricardo Sepulveda, Mexico City, October 16, 2006. Sepulveda was the director of the Unit for the Promotion and Defense of Human Rights within the Interior Ministry when the PNDH was carried out.

³⁴⁷ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

³⁴⁸ Human Rights Watch interview with Javier Moctezuma, executive secretary of the CNDH, Mexico City, March 16, 2007.

³⁴⁹ Mexican Constitution, art. 26; Federal Planning Law, art. 21.

State Commissions

The CNDH collaborates with some state commissions to assist them, for example, in building their own websites and creating computerized systems to enter information about their cases. The CNDH has also carried out joint capacity building activities with some state commissions.³⁵⁰

However, in 2003, the commission opposed an international cooperation agreement aimed at strengthening the ombudsman system in Mexico. The Mexican Federation of Ombudsmen (Federación Mexicana de Organismos Públicos de Derechos Humanos), an organization that includes the CNDH and all 32 state commissions in the country, negotiated an agreement whereby the European Union (EU) would provide € 640,000 and the MacArthur Foundation would provide US\$ 260,000 for strengthening the national system of human rights commissions. The federation's president signed the cooperation agreement with the EU in April 2003, after 16 state commissions and the CNDH approved its signature.³⁵¹ The following month, members of the federation agreed to organize an extraordinary meeting to begin

³⁵⁰ Human Rights Watch interview with Francisco Illanes Solis, general director of information technology of the CNDH, Mexico City, March 16, 2007; Human Rights Watch interview with Jesus Naime, Technical Secretary of the CNDH, Mexico City, March 20, 2007.

³⁵¹ After the federation's leadership submitted a preliminary proposal to the EU, which was pre-selected by the EU's selection committee in October 2002, every member of the federation received via email all documents related to the project. Comisión de Derechos Humanos del Distrito Federal [Mexico City Human Rights Commission], "Historia del Proyecto 'Fortalecimiento Institucional de los Organismos Públicos de Derechos Humanos en México'" [History of the Project 'Institutional Strengthening of Public Human Rights Institutions in Mexico'], January 2007.

In the federation's meeting in Manzanillo, which took place in November 2002, seventeen members, including the CNDH, agreed that the cooperation agreement had to be signed. No one voted against the project and only two state commissions abstained from voting. Mexican Federation of Ombudsmen, "Acuerdos tomados en la asamblea ordinaria celebrada dentro del XIX Congreso de la Federación de organismos públicos de derechos humanos. Manzanillo, Colima, 7 y 8 de noviembre de 2002" [Decisions adopted in the ordinary meeting of the XIX Congreso of the Federation of Public Human Rights Institutions, Manzanillo, Colima, November 7 and 8, 2002], undated, section 8; Mexican Federation of Ombudsmen, "Asamblea ordinaria celebrada dentro del XIX Congreso de la Federación de Organismos Públicos de Derechos Humanos. Manzanillo, Colima, 7 y 8 de noviembre de 2002" [Ordinary meeting held during the XIX Congress of the Federation of Public Human Rights Institutions. Manzanillo, Colima, November 7 and 8, 2002], November 8, 2002.

Given that under the federation's statutes its president may sign such agreements, Juan Alarcon Hernandez signed the cooperation agreement with the EU. "Contrato de subvención – Ayudas exteriores. B7-701/2002/3023" [Subvention contract - Foreign Assistance. B7-701/2002/3023], signed by Juan Alarcon Hernandez from the Mexican Federation of Ombudsmen, and Richard Granville from the European Union. See also "Estatutos aprobados en la tercera asamblea plenaria extraordinaria de la Federación Mexicana de Organismos Públicos de Protección y Defensa de los Derechos Humanos celebrada en la ciudad de Pachuca, Hgo, el 22 de febrero de 2002" [Statutes approved during the third extraordinary plenary meeting of the Mexican Federation of Public Institutions for the Protection and Defense of Human Rights, conducted in the City of Pachuca, Hidalgo, February 22, 2002], undated, art. 11, VIII.

planning specific activities related to the project, and to approve signing a cooperation agreement with the MacArthur Foundation.³⁵²

But then in July 2003, the CNDH and 18 state commissions decided to cancel the agreement.³⁵³ The rationale they provided for rescinding the contract was that they had not known the “content and scope” of the agreement at the time the federation’s president signed it, and they believed it contradicted the law and regulations governing the CNDH, state commissions, and the federation.³⁵⁴ But 11 of them had already authorized the president to sign the agreement in a previous meeting of the federation, nine had attended the official ceremony to sign the agreement in May 2003, and Human Rights Watch obtained documentation showing that the CNDH participated in email discussions and meetings about the project prior to its signature.³⁵⁵

The CNDH president told Human Rights Watch that in supporting withdrawal from the cooperation agreement, the commission was following the lead of a majority of state

³⁵² Mexican Federation of Ombudsmen, “Acuerdos tomados en la asamblea ordinaria celebrada dentro del XX Congreso de la Federación de Organismos Públicos de Derechos Humanos. Cozumel, Quintana Roo, 22 y 23 de mayo del 2003” [Decisions adopted in the ordinary meeting celebrated within the XX Congress of the Federation of Public Human Rights Institutions. Cozumel, Quintana Roo, May 22 and 23, 2003], undated, section 4.

³⁵³ Letter from representatives of the state human rights commissions of Aguascalientes, Baja California Sur, Campeche, Coahuila, Chihuahua, Durango, Hidalgo, Jalisco, Mexico state, Nayarit, Nuevo Leon, Oaxaca, Puebla, Quintana Roo, Tabasco, Tlaxcala, Veracruz, Yucatan, and the CNDH to the General Assembly and Directive Committee of the Mexican Federation of Ombudsmen, July 1, 2003.

³⁵⁴ Ibid.

³⁵⁵ The state commissions that signed the letter and had previously authorized the signature of the agreement are Aguascalientes, Durango, Hidalgo, Jalisco, Mexico state, Nayarit, Oaxaca, Quintana Roo, Tlaxcala, Yucatan and the CNDH. Mexican Federation of Ombudsmen, “Acuerdos tomados en la asamblea ordinaria celebrada dentro del XIX Congreso de la Federación de organismos públicos de derechos humanos. Manzanillo, Colima, 7 y 8 de noviembre de 2002” [Decisions adopted in the ordinary meeting of the XIX Congreso of the Federation of Public Human Rights Institutions, Manzanillo, Colima, November 7 and 8, 2002], undated.

The state commissions that participated in the ceremony are Aguascalientes, Campeche, Mexico state, Hidalgo, Jalisco, Oaxaca, Tabasco, Tlaxcala, and Yucatan. Mexican Federation of Ombudsmen, “Ceremonia de firma del convenio entre la FMOPDH y la Comisión Europea para el proyecto ‘Fortalecimiento de Organismos Públicos de Derechos Humanos’” [Ceremony for the signature of the agreement between the Mexican Federation of Ombudsmen and the European Commission for the project ‘Strengthening Public Human Rights Institutions’], undated.

Email correspondence between Mauricio Ibarra, general director of the presidency of the CNDH at that time, and Gabriela Aspuru, coordinator of investigation and institutional development of the Mexico City human rights commission, September 25, 2002. Mexican Federation of Ombudsman, “Minuta de la Reunion del Comité Directivo de la FMOPDH celebrada en la Ciudad de Mexico, 10 de abril 2003” [Minutes from the Directors Meeting of the Mexican Federation of Ombudsmen celebrated in Mexico City, April 10, 2003], April 10, 2003.

commissions.³⁵⁶ There is some evidence, however, that the CNDH played a more active role, providing elements for the discussion that led to the rejection of the agreement. During the extraordinary meeting in which the project was supposed to be initiated, the CNDH presented a document prepared by a private accounting firm, which was then used as the basis for a discussion of whether the project should continue.³⁵⁷ A former ombudsman told Human Rights Watch that CNDH staff told him it was better for the CNDH—rather than the federation—to be in charge of a project like this one, and that it would find the resources to do so.³⁵⁸

According to the CNDH executive secretary, the CNDH and other state commissions opposed the fact that the secretariat created to administer the project, headed by the Mexico City Human Rights Commission, was going to receive far more funds than the state commissions would.³⁵⁹ But the leadership of the Mexican Federation of Ombudsmen claims it had designated an operational team—composed of six full-time, independent professionals selected through an open process—to use the funds to carry out activities planned in the cooperation agreement, which would benefit all state commissions.³⁶⁰

The cancellation of the project deprived the ombudsman system with funding that could have helped to strengthen its work. While the CNDH's 2007 budget was approximately US\$73 million, many state commissions still struggle to obtain the funds to cover their everyday operations.³⁶¹ This cooperation agreement would have

³⁵⁶ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

³⁵⁷ Letter from Horacio Rocha Salas, from Rocha, Perez San Martin, S.C, to the CNDH, June 27, 2003.

³⁵⁸ Human Rights Watch interview with Pedro Raul Lopez, Mexico City, March 14, 2007. See also: Blanche Petrich, “La CNDH revento plan para fortalecer comisiones estatales” [The CNDH destroyed plan to strengthen state commissions], *La Jornada*, September 1, 2003.

³⁵⁹ Human Rights Watch interview with Javier Moctezuma, executive secretary of the CNDH, Mexico City, March 16, 2007.

³⁶⁰ Mexican Federation of Ombudsmen, “Minuta de la Reunion del Comité Directivo de la FMOPDH celebrada en la Ciudad de Mexico, DF, 10 de abril de 2003” [Minutes of the Meeting by the Directors Committee of the Mexican Federation of Ombudsmen, held in Mexico City on April 10, 2003], April 10, 2003. Mexican Federation of Ombudsmen, “Reunion del Comité Directivo de la FMOPDH” [Meeting of the Directors Committee of the Mexican Federation of Ombudsmen], June 13, 2003. Human Rights Watch interview with Emilio Alvarez Icaza, Mexico City, president of the Mexico City Human Rights Commission, March 22, 2007.

³⁶¹ The executive secretary of the Jalisco state human rights commission, for example, told Human Rights Watch that the Commission has an annual budget of 50 million pesos (approximately US\$4.5 million), but needs 10 million more pesos

helped commissions with activities they usually are unable to fund, such as capacity building for their own personnel, expert seminars, and more frequent meetings to discuss strategies to improve their work.³⁶²

(approximately US\$900,000) to do its work. Human Rights Watch interview with Eduardo Sosa, executive secretary of the Jalisco State Human Rights Commission, Guadalajara, February 1, 2007.

³⁶² Two years later, seven state commissions decided they would try to secure this much needed support on their own.

Without going through the federation, these commissions implemented a similar project for €500,000—also financed by the EU—that allowed them to carry out precisely those types of activities.

The seven commissions that signed the agreement were Mexico City, Chiapas, Guerrero, San Luis Potosi, Sinaloa, Guanajuato and Queretaro (Chiapas did not participate during the entire project). During two years, the commissions carried out nine seminars or workshops, and one training course for 150 people from state commissions, government offices, and civil society; visited each others' offices; conducted one strategizing meeting; created a website; and published books and capacity building materials. Program of Institutional Strengthening of Ombudsmen, "Informe descriptivo final B7-701/2003/3066 (CRIS No. 76-984), enero 2004-marzo2006" [Final descriptive report], March 2006.

VIII - Accountability

Promoting accountability is one of the CNDH's principal functions. Yet the CNDH is not subject to meaningful accountability. This lack of adequate accountability undermines the institution's credibility and effectiveness as Mexico's most important advocate for human rights.

Part of the reason for the CNDH's limited accountability is the fact that Mexican law grants it autonomous status in order to protect it from undue political interference. But safeguarding the CNDH's autonomy does not require making it unaccountable. In addition to granting the CNDH autonomous status, Mexican law also establishes accountability mechanisms to monitor its operations, the most important of which are the oversight functions granted to the Senate, which include the selection of the CNDH president. Another is the CNDH's advisory council, made up of distinguished citizens, also selected by the Senate. A third is the work carried out by the Federal Superior Auditor, an office which audits the spending of all federal entities in Mexico.

None of these oversight mechanisms are currently functioning adequately. The reasons vary, but the end result is the same: the CNDH's work is not subject to meaningful independent oversight.

As a result, the task of monitoring the CNDH's work falls on private actors and members of civil society. Yet unfortunately, the CNDH's limited transparency makes it difficult for outsiders to gather the information necessary to evaluate its work.

The Need for Accountability

There are several reasons to be concerned about the CNDH's current lack of accountability. The first is generic: effective accountability mechanisms are, as a rule, important for ensuring that any state institution fulfills its functions as efficiently and effectively as possible.

A second reason is specific to the substance of the CNDH's work. As the preceding chapters have documented, the CNDH is currently not fulfilling its mandate in a

variety of crucial ways. While it undoubtedly makes important contributions on some specific human rights cases and issues, it routinely fails to press for remedies for human rights victims and systemic reforms to curb abusive policies and practices. It also fails to publicize information it has on abuses and abusive practices, and fails to collaborate effectively with key human rights advocates in the government, civil society, and international community.

Independent Accountability Mechanisms

The National Congress

Mexican law grants the national Congress significant power to monitor and shape the work of the CNDH. The Senate appoints the CNDH president, selects the members of the CNDH advisory council, and holds a yearly public hearing during which it receives the CNDH's annual report and questions the CNDH president about its findings and activities. Yet the Senate has not executed these functions in a meaningful manner and has thereby neglected its responsibility for providing oversight of the commission's work.

Public Hearings

The Senate Human Rights Commission has an opportunity to scrutinize the CNDH's work every year at a public hearing, when the CNDH president, in accordance with the Constitution, submits the commission's annual report to Congress.³⁶³

Yet the Senate commission has not used this opportunity to scrutinize and evaluate the CNDH's work. For years, it has not subjected the CNDH to any serious questioning. It has not allowed other human rights advocates to participate in the hearings. It has engaged in no meaningful debate on the reports' contents.³⁶⁴

³⁶³ Mexican Constitution, art. 102 B, para. 7.

³⁶⁴ Leticia Burgos, a former senator who served on the commission from 2000 to 2006 told Human Rights Watch, "there was no debate" after the CNDH president presented the institution's annual report. Human Rights Watch interview with Leticia Burgos, former PRD senator, Mexico City, March 7, 2007. Human Rights Watch interview with Eliana Garcia, former PRD member in the House of Representatives, Mexico City, January 25, 2007.

Appointment of the CNDH President

Mexican law grants the Senate the power to select the CNDH president,³⁶⁵ but requires that it carry out a broad consultation with civil society organizations before doing so.³⁶⁶ When exercising its selection power, it is questionable as to whether the Senate fulfilled this consultation requirement.

In the most recent election, in 2004, the Senate voted to reelect the incumbent CNDH president to a second term. Prior to the election, the Senate's Human Rights Commission solicited written proposals for candidates but there was no serious public debate regarding the proposals themselves.³⁶⁷ Instead it simply made a list of civil society groups supporting each candidate, and concluded that a "representative number" had endorsed the incumbent.³⁶⁸

A group of individuals and human rights organizations that opposed the CNDH president's candidacy has challenged the Senate's decision, and the case is now pending before the Inter-American Commission on Human Rights.³⁶⁹

³⁶⁵ Mexican Constitution, art. 102 B, paras. 5 and 6.

³⁶⁶ According to art. 10 of the Law on the CNDH, "(...) For these purposes, the corresponding commission within the Senate will carry out a broad consultation amongst civil society organizations that represent different sectors of society, as well as amongst public and private organizations that promote and defend human rights. Based on this consultation, the corresponding Senate commission will propose to the Senate three candidates out of which the person to occupy the position will be elected or, if it is the case, the current president will be ratified."

According to the Paris Principles, to guarantee independence and pluralism "the appointment of [a national institution's] members, (...) should be established according to a procedure with all the guarantees needed to ensure the pluralist representation of the social forces (of the civil society) concerned by the promotion and protection of Human Rights." Paris Principles, Composition and guarantee of independence and pluralism, principle 1.

³⁶⁷ Human Rights Watch interview with Leticia Burgos, former PRD senator, Mexico City, March 7, 2007.

³⁶⁸ Senate Human Rights Commission, "Dictamen con relación a la reelección del Presidente de la Comisión Nacional de los Derechos Humanos" [Decision with respect to the reelection of the CNDH president], undated. Technical secretariat of the Senate's Human Rights Comisión, "Registro de Candidatos a la Presidencia de la Comisión Nacional de Derechos Humanos" [Registry of Candidates to the Presidency of the CNDH], undated. Senate's Human Rights Commission, "Relacion de propuestas registradas en la Comisión de Derechos Humanos de Senado de la Republica" [List of proposals registered in the Human Rights Commission of the Senate of the Republic], undated.

³⁶⁹ 300 individuals and organizations had opposed the incumbent's candidacy. Among other things, they argued that the CNDH reports and *recomendaciones* do not use international law arguments; that the CNDH special reports on Ciudad Juarez and Guadalajara impeded human rights victims to obtain reparation and full access to justice because they do not clearly establish any government official's responsibility; that the CNDH has not collaborated actively with the UNHRCH office in Mexico; and that their internal regulations on transparency are more limited than the federal law that they should implement. "No a la Ratificación de Soberanes" [No to Soberanes' Ratification], paid ad published in *La Jornada*, October 12, 2004, <http://www.amdh.com.mx/ombudsweb/> (accessed on February 15, 2007). See also Centro Prodh, "Postura del Centro Prodh

Appointment of Advisory Council Members

Mexican law also grants the Senate responsibility for selecting members of the CNDH's advisory council. And, as with the election of the CNDH president, the law requires the Senate to consult with civil society members before making its decision.³⁷⁰ Again, it is questionable how seriously the Senate has taken this requirement.

When it selected CNDH advisory council members in 2006, the Senate Human Rights Commission carried out the process behind closed doors, limiting citizen participation. While it did publicly request civil society organizations to propose candidates for the positions, the selection process was carried out secretly.³⁷¹

The Senate commission only released information about the selection process, including the names of the candidates and their nominators, three months later,

ante la renovación en la Comisión Nacional de los Derechos Humanos" [Centro Prodh's position regarding the renovation of the CNDH], October 6, 2004, http://200.38.62.10/~academia/ombudsweb/docs/Postura_AgustinPro_y%20Gestion%20de%20la%20CNDH.pdf, (accessed on February 15, 2007).

A group of nongovernmental organizations (including Fundar, Centro de Analisis e Investigacion, A.C., Centro de Derechos Humanos Fray Jacobo Daciano A. C., and the Bar Association of the state of Guanajuato A. C.) and two individuals (Bernardo Romero Vázquez and Raymundo Gil Rendón) filed injunctions against the Senate decision. They argued that the Senate Human Rights Commission did not provide a space for candidates to give their points of view before making their decision, that they proposed the ratification of Mr. Soberanes without any justification, and that they did not comply with article 10 of the Law on the CNDH because they merely proposed the ratification of the current president (instead of suggesting three candidates for the position). The Mexican Supreme Court decided that it was not possible to legally challenge the Senate's decision because the legislative branch had the constitutional power to elect the president of the CNDH, and the way it is carried out cannot be evaluated by the courts. Mexican Supreme Court, Amparo en Revision 614/2006, June 2, 2006; Mexican Supreme Court, Amparo en Revision 471/2006, June 2, 2006; Mexican Supreme Court, Amparo en Revision 1523/2006, November 10, 2006.

This case is now pending before the Inter-American Commission on Human Rights. Letter from Santiago Canton, executive secretary of the IACHR, to Bernardo Romero Vazquez, January 8, 2007. The case number before the IACHR is P-1352-06.

³⁷⁰ Law on the CNDH, art. 18.

³⁷¹ The Senate's Human Rights Commission issued a public announcement on November 16, 2006. On December 5, 2006, the Senate Human Rights Commission proposed Miriam Cardenas Cantu and Miguel Carbonell as council members, arguing that they fulfill the requirements of Article 17 of the Law on the CNDH. The Senate approved their proposal on December 20, 2006. Senate Human Rights Commission, "Dictámenes a discusión de la Comisión de Derechos Humanos, el que contiene punto de acuerdo por el que se nombra a los CC. Miriam Cardenas Cantu y Miguel Carbonell Sanchez, como consejeros integrantes del Consejo Consultivo de la Comisión Nacional de los Derechos Humanos" [Decisions by the Human Rights Commission that contains an agreement by which it names Miriam Cardenas Cantu and Miguel Carbonell Sanchez as members of the CNDH advisory council], December 5, 2006. Mexican Senate, "Nombramiento de Consejeros Integrantes del Consejo Consultivo de la Comisión Nacional de los Derechos Humanos" [Appointment of members of the CNDH advisory council], December 20, 2006.

after a Mexican NGO publicly challenged the selection process.³⁷² The information it released revealed that the Senate commission had completed only a cursory evaluation of the candidates, analyzing their resumes, but failing to interview any of them.³⁷³

In 2007 the Senate Human Rights Commission began the selection process for two new members of the advisory council. At this writing, it had conducted open interviews with the candidates, but it was unclear whether and how it would take civil society organizations' points of view into account in making its decision.³⁷⁴

The Advisory Council

The CNDH's advisory council could play a key role in monitoring the quality of the CNDH's work. It is virtually impossible to know to what extent it does so, however, because the advisory council itself is an opaque institution. The limited information that is publicly available strongly suggests that it is not playing a meaningful oversight role.

The advisory council is composed of ten individuals who must be "of recognized prestige in society," at least seven of whom must not be public officials. There are no specific requirements as to how many members should represent minorities, such as indigenous peoples.³⁷⁵ Its mandate, according to the CNDH's governing law, is to "determin[e] the general guidelines for the CNDH, approve the CNDH's internal

³⁷² Fundar, "Falta de Transparencia de la Comision de Derechos Humanos del Senado que preside Rosario Ibarra de Piedra" [Lack of transparency of the Senate Human Rights Commission presided by Rosario Ibarra de Piedra], Press release number 28, February 15, 2007. Information request by Luis Miguel Cano Lopez to the Mexican Senate, February 13, 2007. Mexican Senate, "Nombramiento de Consejeros Integrantes del Consejo Consultivo de la Comision Nacional de los Derechos Humanos" [Appointment of members of the CNDH advisory council], December 20, 2006. Mexican Senate, document CDH/S-0273/07, March 2, 2007.

³⁷³ Mexican Senate, "Nombramiento de Consejeros Integrantes del Consejo Consultivo de la Comision Nacional de los Derechos Humanos" [Appointment of members of the CNDH advisory council], December 20, 2006. Mexican Senate, document CDH/S-0273/07, March 2, 2007.

³⁷⁴ Senate Human Rights Commission, "Convocatoria" [Call for nominations], November 7, 2007. Human Rights Watch telephone interview with Graciela Rodriguez, Fundar, Mexico City, November 26, 2007. "Comparecen en el Senado 10 aspirantes a Consejeros de la CNDH" [Ten candidates to the CNDH advisory council are called before the Senate], *La Jornada*, November 22, 2007.

³⁷⁵ Law on the CNDH, art. 17.

rules, issue an opinion regarding the annual report proposed by the CNDH president, request the CNDH president [to provide] additional information on the issues that the CNDH is analyzing or has resolved, and receive information on how the budget is spent.”³⁷⁶

The advisory council meetings are closed to the public. Human Rights Watch specifically requested permission to be present at one of them but never received a response to our request (in contrast, we were able to meet with all other CNDH staff members with whom we requested meetings).³⁷⁷ The CNDH official in charge of providing support to the work of the council told Human Rights Watch that the CNDH’s governing law does not say that meetings should be public, and that, according to the “principle of legality,” as public officials, the members of the CNDH staff cannot do more than what the law states.³⁷⁸

Other available sources of information are not helpful either. For some time, it was difficult to obtain copies of the minutes of the council’s meetings.³⁷⁹ Although the CNDH began recently to post advisory council minutes on its website, it only includes minutes from meetings carried out after 2005.³⁸⁰

Moreover, the limited available information indicates that there is usually little serious debate about the issues the CNDH addresses. For example, in 26 of 37 meetings carried out in 2003, 2005, 2006, and 2007, no council members had any comments, questions, or observations regarding the monthly reports; in nine meetings, members asked questions and in two meetings one comment was made. In these meetings, advisory council members receive a detailed description of *recomendaciones* issued on specific cases—which have already been published by

³⁷⁶ Law on the CNDH, art. 19.

³⁷⁷ Email communication from Human Rights Watch to Javier Moctezuma, executive secretary of the CNDH, February 13, 2007.

³⁷⁸ Human Rights Watch interview with Jesus Naime, technical secretary of the CNDH, Mexico City, March 20, 2007. See chapter IV of this report for a detailed analysis of the applicability of this principle to the CNDH’s work.

³⁷⁹ See the following chapter on transparency for a discussion on how the CNDH applies confidentiality norms broadly.

³⁸⁰ CNDH, “Acuerdos del Consejo Consultivo” [Decisions by the Advisory Council], undated <http://www.cndh.org.mx/normat/acucons/acucons.asp> (accessed November 26, 2007).

the CNDH—and they usually have no comments.³⁸¹ Moreover, in the meeting minutes, there were no references to any of the cases that conclude through other means, which constitute approximately 99 percent of all the concluded cases.

When the council was presented drafts of the CNDH's 2004 and 2005 annual reports, it approved them without any substantive discussion in meetings that lasted half an hour or less.³⁸² The advisory council meeting to approve the 2006 annual report lasted over two hours, during which a CNDH official explained the report, but there is no mention in the minutes of council members having made any comments.³⁸³

This lack of serious discussion is particularly problematic given that the advisory council approves the CNDH's internal rules, which have a direct impact on how the institution carries out its work. Recent rule changes, such as new rules limiting victims' participation in the conciliation process and new implementing rules on the federal transparency law, are problematic from a human rights standpoint.³⁸⁴

In one of the few instances in which there was a substantive discussion and council members disagreed with an action by the CNDH president, it had no impact, given that council members were informed of the decision after it was carried out. When, in July 2007, five council members expressed their concerns regarding the CNDH's decision to challenge the constitutionality of a Mexico City law that legalized

³⁸¹ Minutes from advisory council meetings on March 11, 2003; April 8, 2003; July 8, 2003; January 11, 2005; February 8, 2005; March 8, 2005; April 5, 2005; May 17, 2005; June 14, 2005; July 12, 2005; August 16, 2005; September 13, 2005; October 11, 2005; November 8, 2005; December 13, 2005; January 20, 2006; February 14, 2006; March 14, 2006; April 4, 2006; May 9, 2006; June 13, 2006; July 11, 2006; August 8, 2006; September 12, 2006; October 10, 2006; November 14, 2006; December 12, 2006; January 16, 2007; February 13, 2007; March 13, 2007; April 17, 2007; May 8, 2007; June 12, 2007; July 10, 2007; August 14, 2007; September 11, 2007; and October 9, 2007.

³⁸² CNDH, "Acta de la sesion extraordinaria numero 197 del Consejo Consultivo de la Comision Nacional de los Derechos Humanos" [Minutes from the extraordinary session 197 of the CNDH advisory council], January 11, 2005. CNDH, "Acta de la sesion extraordinaria numero 210 del Consejo Consultivo de la Comision Nacional de los Derechos Humanos" [Minutes from the extraordinary session 210 of the CNDH advisory council], January 20, 2006.

³⁸³ CNDH, "Acta de la sesion extraordinaria numero 223 del Consejo Consultivo de la Comision Nacional de los Derechos Humanos" [Minutes from the extraordinary session 223 of the CNDH advisory council], January 16, 2007.

³⁸⁴ See chapter VII on victims' participation in the conciliation process, and chapter VI and the following section on the CNDH's implementing regulations of the federal transparency law.

abortion in the first 12 weeks of pregnancy, they did so after the CNDH had already presented its brief before the Supreme Court.³⁸⁵

Finally, there is a basic structural factor that makes it virtually impossible for the advisory council to serve as an effective accountability mechanism: the CNDH president is also the council's president.³⁸⁶ Rather than being overseen by the council, the CNDH president directs it.

Federal Superior Auditor

The CNDH's budgetary practices are monitored by its Internal Control Office (Organismo Interno de Control, OIC). The OIC is not an independent entity, but is subordinate to the CNDH president.³⁸⁷

The main external control is the Federal Superior Auditor (Auditoria Superior de la Federación, ASF), which reports to the federal legislature. Since 1999 the ASF has had responsibility for auditing how the federal government, including constitutionally autonomous agencies, spends public funds.³⁸⁸ Through a technical unit created for this purpose, a Vigilance Commission of the ASF within the House of Representatives monitors the ASF's work. In practice, the ASF is only able to review how the government spends less than 7 percent of the total federal budget.³⁸⁹

³⁸⁵ CNDH, "Acta de la sesión ordinaria número 229 del Consejo Consultivo de la Comisión Nacional de los Derechos Humanos" [Minutes from the ordinary session 229 of the CNDH advisory council], July 10, 2007. See chapter V of this report for an analysis of why the Mexico City law, which the CNDH challenged, is in accordance with international human rights law.

³⁸⁶ Human Rights Watch interview with Jesus Naime, technical secretary of the CNDH, Mexico City, March 20, 2007.

³⁸⁷ The OIC also requests external private offices to carry out audits, but these are hired by the CNDH whenever they consider it is necessary. Pablo Escudero Morales and Jose Galindo Rodriguez, *Transparencia y Rendición de Cuentas en la CNDH, así como su función transversal de control en la administración pública [Transparency and Accountability in the CNDH, as well as its transversal role controlling the public administration]* (Mexico City: CNDH, 2007), pp. 126 - 128.

³⁸⁸ Mexican Constitution, art. 74. See also the Law on Superior Monitoring of the Federation (Ley de Fiscalización Superior de la Federación), the Internal Rules of Procedure of the ASF (Reglamento Interior de la ASF), and the Internal Rules of Procedure of the Evaluation and Control Unit of the Vigilance Commission of the House of Representatives (Reglamento Interior de la Unidad de Evaluación y Control de la Comisión de Vigilancia de la Cámara de Diputados).

³⁸⁹ Human Rights Watch interview with Roberto Michel Padilla, director of the Evaluation and Control Unit of the Vigilance Commission, Mexico City, March 22, 2007.

The ASF rarely audits the CNDH, and when it does, it only evaluates how the CNDH spends part of its budget. According to the head of a technical unit that monitors the ASF, between 1999 and 2005, the ASF carried out three audits of the CNDH: one in 2000 and two in 2002.³⁹⁰ These audits only evaluated a part of the CNDH's spending during the previous year. A CNDH official provided Human Rights Watch with documentation that shows that the ASF has continued to review how the CNDH spends its budget since 2005, but said that, for example, the ASF only reviewed how the CNDH spent between 14 to 18 percent of its budget in 2006.³⁹¹

A major gap in the entire budget accountability process within the CNDH is that it is generally limited to evaluating whether or not the institution violates any laws when spending its budget. Any external evaluation of budgetary spending should, as well, analyze whether the CNDH's available human, material, financial, and technological resources are being used efficiently to fulfill the purposes for which the CNDH was created.

Transparency

In the absence of effective independent oversight mechanisms, the most important means of holding the CNDH accountable is public scrutiny by the press, civil society groups, and ordinary citizens. However, meaningful public scrutiny is only possible if those who would scrutinize have access to sufficient information regarding the activities and budgetary practices of the CNDH. In short, it requires transparency on the part of the CNDH.

Unfortunately, the CNDH is not a very transparent institution. While the 2002 transparency law presented a unique opportunity to open the institution up to greater public scrutiny, the CNDH has done a poor job of implementing the law's provisions.³⁹² In fact, according to a study by the Federal Institute for Access to

³⁹⁰ The Vigilance Commission only evaluates the ASF's work after the ASF presents its annual audit before the Commission. In March 2007 the ASF presented before the Vigilance Commission its audit of the 2005 budget. *Ibid.*

³⁹¹ Human Rights Watch interview with Pablo Escudero, official mayor, Mexico City, March 21, 2007. Letters from Arturo Gonzalez de Aragon, federal superior auditor, to Jose Luis Soberanes, April 1, 2005, January 25, 2006, and January 25, 2007.

³⁹² The transparency law provided detailed rules and mechanisms to obtain information held by the executive branch, but other major government entities—including the judiciary, Congress, the CNDH, and the Federal Electoral Institute (Instituto

Official Information (Instituto Federal de Acceso a la Información Pública, IFAI) and the Center of Economic Research and Teaching (Centro de Investigaciones y Docencia Económicas, CIDE), the CNDH has yet to adjust its operating rules and institutional design to improve access to information.³⁹³ The study analyzed 15 key state entities and ranked the CNDH in the bottom third with respect to implementation of the transparency law.

Incomplete Public Disclosure

Although the information included on the CNDH website has increased since the federal transparency law was passed, the CNDH does not publicize valuable information it holds. As we discussed in chapter VI, the CNDH does not disseminate information on human rights cases that end with a conciliation agreement, which constitute the vast majority of cases in which it documents abuses.

Moreover, even though the CNDH posts online all information requests and responses, the responses that the CNDH posts on its website do not always include the information that is requested, forcing other people who want the same information to ask—and, in some cases, pay—for it.³⁹⁴ In 2005, for example, an individual asked the CNDH for access to collaboration agreements signed with state commissions and other institutions.³⁹⁵ In 2006 the CNDH said it would provide the individual with a list of *recomendaciones* with which government authorities had

Federal Electoral)—had to develop its own. The CNDH adopted its implementing regulations in April 2003 and they entered into force on June 12, 2003. Rules of the National Human Rights Commission on Transparency and Access to Information (Reglamento de Transparencia y Acceso a la Información de la Comisión Nacional de Derechos Humanos), April 29, 2003, <http://www.cndh.org.mx/normat/transp/transp.asp> (accessed February 2007).

³⁹³ CIDE and IFAI, “Estudio en materia de transparencia de otros sujetos obligados por la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental” [Study on transparency and other obligations under the Federal Law on Transparency and Access to Governmental Public Information], <http://www.bibliojuridica.org/libros/libro.htm?l=2446> (accessed May 25, 2007).

³⁹⁴ Between June 12, 2003 and June 30, 2007, the CNDH received 470 information requests and “concluded” 457 of them. The CNDH holds that it provided information to the petitioners in 309 cases, and that the information was already available online in 57 other cases. According to the CNDH, in the rest of the cases: the petitioner desisted from the request in 58, the requested information was considered privileged or confidential in 48, the CNDH was unable to find the information in five, the petitioners requested the CNDH to modify personal data in four, the petitioners were sent to the competent liaison unit in another government office in four, the CNDH could not find the information in four, it was materially impossible to provide the information in two, and the CNDH has not yet concluded putting together the information requested in one case. CNDH. Press Release CGCP/093/07; July 16, 2007.

³⁹⁵ CNDH document CNDH/DGA/002/2005, January 5, 2005.

complied.³⁹⁶ And in 2007 it said it would provide copies of an investigation carried out by the CNDH regarding the administrative responsibility of a company it had hired.³⁹⁷ In none of these cases did it make the information available online.³⁹⁸

Applying Broad Confidentiality Norms

The CNDH has also limited the provision of information by applying broad confidentiality norms, approved by its own advisory council. As we saw in chapter VI, the CNDH's broad application of these norms has resulted in abuse victims, as well as the general public, being denied access to crucial information on the human rights practices of state institutions.³⁹⁹

The CNDH has also applied broad confidentiality norms to limit access to information on its advisory council. In some cases, instead of providing public versions of documents with delicate information crossed out, the CNDH denied access to all requested information, arguing that it is protecting personal data. An example is an information request that asked the CNDH for copies of the resumes of members of its advisory council. Instead of providing a public version of the resumes with the information that the CNDH considered personal data omitted, the CNDH denied access to the entire document.⁴⁰⁰

In other cases, the CNDH responded to requests for copies of advisory council meeting minutes, arguing that the deliberations at such meetings, reflected in the minutes, touch on "ideological positions, opinions, beliefs and convictions that could affect the members," and that such material therefore is confidential.⁴⁰¹ In

³⁹⁶ CNDH document 07336, March 8, 2006.

³⁹⁷ CNDH document OIC/00063/07, March 16, 2007.

³⁹⁸ CNDH, "Transparencia y Acceso a Informacion" [Transparency and access to information], undated, <http://www.cndh.org.mx/normat/transp/transp.htm> (accessed May 25, 2007).

³⁹⁹ See section on Applying Broad Confidentiality Norms in chapter VI.

⁴⁰⁰ CNDH document STCC/0540/05 from file 2005/68-T, May 13, 2005.

⁴⁰¹ CNDH document 1697 from file 2004/85-T, October 26, 2004; CNDH document STCC/0233/05 from file 2005/39-T, March 4, 2005.

In 2004 it provided copies of the minutes with sections considered confidential crossed out; in 2005 it denied access to the minutes in their entirety. And even in the former case, it crossed out even the most basic information, such as the name of the

2004 it provided copies of the minutes with sections considered confidential crossed out; in 2005 it denied access to the minutes in their entirety. And even in the former case, it crossed out even the most basic information, such as the name of the CNDH's president.⁴⁰²

The advisory council members' opinions should not be considered personal data if they are related to the substantive work they carry out as council members, and/or are related to issues of public interest.⁴⁰³ As soon as the meetings of the advisory council conclude and decisions are reached on particular topics, there is no reason to keep secret the record of advisory council debates on those topics. The transparency law states that information that contains opinions, recommendations, or points of view of public officials voiced during deliberative processes will be

CNDH's president. CNDH document 15551 from file 2006/15-T, May 16, 2006, which provided copies of minutes of advisory council meetings held on September 12, 2000, and August 14, 2001.

The NGO requesting information appealed before the CNDH, arguing that the CNDH's interpretation of what constitutes personal data was inadequate, but the CNDH rejected the appeal, arguing the deadline to present it had expired. According to the CNDH, the term to present an appeal began before the petitioners actually saw the copies because they knew they would receive documents with some information crossed out. FUNDAR challenged this decision before the courts, arguing that the term to present the appeal could only begin after they actually saw what information had been provided to them, and won. After losing before the courts, the CNDH must now review the appeal and adopt a decision on the merits. First Circuit Twelfth Collegiate Tribunal in Administrative Matters, "Amparo en Revision RA-423/2006," December 11, 2006. CNDH document CNDH/DGAJ/0011/2007, January 10, 2007.

⁴⁰² CNDH document 15551 from file 2006/15-T, May 16, 2006, which provided copies of minutes of advisory council meetings held on September 12, 2000, and August 14, 2001.

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⁴⁰³ The transparency law states that information is "confidential" if individuals who provide the information to the government state it should be kept confidential, or if it constitutes "personal data," which the law defines to include: "all information concerning an individual, identified or identifiable, including their ethnic or racial origin, or related to their physical, moral or emotional characteristics, their personal and family life, residence, telephone number, patrimony, ideology, political opinions, religious or philosophical beliefs or convictions, physical or mental health, sexual preferences, or any other similar preferences that could have an impact on their intimacy." Transparency law, arts. 3(II), 18 and 19. Under the transparency law, "personal data" about an individual can only be disclosed if that individual authorizes the disclosure. The law also establishes the rights of individuals to obtain access to their own "personal data" and to require that government entities correct any incorrect data in their possession. See also transparency law, arts. 20 to 26. Information can also be confidential if the person who provided it to a government entity specifically indicated that it should remain so. Transparency law, art. 18.

privileged “until the definitive decision is adopted.”⁴⁰⁴ Furthermore, according to IFAI guidelines on producing public versions of documents, the names of public officials and information on decisions they reach cannot be deemed privileged.⁴⁰⁵

As recently as March 2007, CNDH staff members told Human Rights Watch that the reason they could not provide information on advisory council members was that the members were not public officials.⁴⁰⁶ Yet article 108 of the Mexican Constitution defines as public official “any person who works for, or holds a position or commission of any type in, the federal public administration.” And, even if the council members are not considered public officials, the IFAI has held that minutes of these types of advisory councils register “the exercise of legal abilities and the activity of an entity subject to the [transparency] law, which uses and administers public resources and is composed of public officials” and thus have to be made public.⁴⁰⁷

Nonetheless, as of this writing, the CNDH posts on its website the resumes of all advisory council members, chief investigators, and heads of all offices within the CNDH, as well as minutes from advisory council meetings carried out since 2005, without blacking out council members’ names.⁴⁰⁸

Prohibitively High Costs for Copies

The CNDH has even limited public access to information that it itself acknowledges should be disclosed by imposing prohibitively high costs for photocopies of documents.

⁴⁰⁴ Transparency law, arts. 5 and 14, VI.

⁴⁰⁵ IFAI, “Lineamientos para la Elaboracion de versiones publicas, por parte de las dependencias y entidades de la Administracion Publica Federal” [Guidelines for the elaboration of public versions by government offices of the executive branch], April 13, 2006, arts. 4 and 5.

⁴⁰⁶ Human Rights Watch interview with Jose Luis Soberanes, CNDH president, Mexico City, March 21, 2007.

⁴⁰⁷ IFAI, Decision on case 679/06, August 10, 2005.

⁴⁰⁸ CNDH, “Curriculum de los titulares de area” [Resumes of heads of offices], undated, <http://www.cndh.org.mx/normat/transp/transp.htm> (accessed November 20, 2007). CNDH, “Acuerdos del Consejo Consultivo” [Decisions by the Advisory Council], undated, <http://www.cndh.org.mx/normat/acucons/acucons.asp> (accessed December 13, 2007).

The CNDH has charged 93 pesos (approximately US\$8) for each copy of a page containing privileged or confidential information.⁴⁰⁹ So, for example, when the Mexican NGO Fundar requested copies of files on prison abuses that had concluded with *recomendaciones* between July 2005 and July 2006, it was asked for a payment of 90,000 pesos (approximately \$8,100) in exchange for the documents.⁴¹⁰ Similarly, when the Atalaya Program of the ITAM University requested copies of the files for all cases that ended in *recomendaciones* in 2003, 2004, and 2005, it faced a charge of 580,000 pesos (approximately \$53,000).⁴¹¹

CNDH officials told Human Rights Watch that the amounts charged in such cases were determined by the Federal Law of Rights (Ley Federal de Derechos), which stipulates how much state institutions can charge for different types of documents—such as certified copies, duplicates, legalization of signatures, etc.—and then determines a specific price “for any other certification or provision of documents different from those listed.” Since the list does not include documents that require the work of blacking out privileged or confidential information, the CNDH concluded that the price for a copy of a single page from such documents should be set at 93 pesos, the price stated in the previously mentioned catch-all clause.⁴¹²

Yet the Federal Law of Rights is not actually intended to apply to the CNDH, but rather to services “provided by any of the state ministries and the attorney general’s office.”⁴¹³ What is directly applicable to the CNDH is the federal transparency law, which states that the maximum price a state institution can charge for copies is the

⁴⁰⁹ Human Rights Watch interview with Maximo Carvajal, CNDH general director of complaints and orientation, Mexico City, March 16, 2007.

⁴¹⁰ FUNDAR, “Resumen ejecutivo” [Executive Summary], February 27, 2007. This document summarizes the arguments that FUNDAR presented during a hearing before the House of Representative’s Human Rights Commission.

⁴¹¹ CNDH document 16255, May 23, 2006; CNDH document 027568 from file 2006/7-RT, August 28, 2006.

⁴¹² Human Rights Watch interview with Maximo Carvajal, CNDH general director of complaints and orientation, Mexico City, March 16, 2007. Human Rights Watch interview with Alejandro Ortega San Vicente, CNDH general director of legal affairs, Mexico City, March 16, 2007.

⁴¹³ Ley Federal de Derechos (Federal Law of Rights), December 2006, <http://www.diputados.gob.mx/LeyesBiblio/doc/107.doc> (accessed May 2007), art. 5.

sum of the reproduction and mailing costs. The transparency law also requires state institutions to strive to lower these charges.⁴¹⁴

In both the Fundar and Atayala cases, courts have held that the CNDH was wrong to charge so much. After Fundar won an injunction from a court, the CNDH decided to charge it only 451 pesos (approximately \$41) for copies of all of the documents.⁴¹⁵ In the Atalaya case, the Supreme Court ruled in favor of the petitioner in June 2007.⁴¹⁶ In October 2007, the CNDH held it would limit the costs it would charge to obtain copies.⁴¹⁷

Limited Review Mechanism

A final serious shortcoming in the CNDH's transparency practices is that it entrusts review of those practices to one of its chief investigators,⁴¹⁸ a member of the very institution responsible for making the information available in the first place. In theory, it is possible to appeal decisions to withhold information before the courts, since Mexican law makes it possible to seek an injunction against any act by the federal government (except for acts by the Supreme Court).⁴¹⁹ But this procedure has proven to be prohibitively long, expensive, and burdensome, and therefore is not a viable option for most Mexicans.

⁴¹⁴ Transparency law, art. 27.

⁴¹⁵ Email communication with Luis Miguel Cano and Graciela Rodriguez from Fundar, July 5, 2007. CNDH document 09884 from file 2006/58-T, March 29, 2007.

⁴¹⁶ The petitioner was represented by Fundar. Email communication with Luis Miguel Cano and Graciela Rodriguez from Fundar, July 5, 2007. At this writing, the Supreme Court decision was not yet available online.

⁴¹⁷ Open letter by Aaron Jimenez Paz, head of the transparency liaison unit at the CNDH, *Reforma*, October 23, 2007.

⁴¹⁸ CNDH implementing regulations of the transparency law, arts. 19 to 26. Up to March 15, 2007, the first visitador had decided 23 appeals. Information provided to Human Rights Watch by Maximo Carvajal, CNDH general director of complaints and orientation, March 16, 2007.

The CNDH itself recognizes that "given that [the chief investigator] has the last word when deciding challenges to decisions on this matter, it has been widely debated that this responsibility relies on one person." Pablo Escudero Morales and Jose Galindo Rodriguez, *Transparencia y Rendición de Cuentas en la CNDH, así como su función transversal de control en la administración pública* [Transparency and Accountability in the CNDH, as well as its transversal role controlling the public administration] (Mexico City: CNDH, 2007), p. 87.

⁴¹⁹ Law that regulates the implementation of Articles 103 and 107 of the Mexican Constitution (Ley de Amparo Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos), January 10, 1936 (last reform on April 24, 2006), <http://www.diputados.gob.mx/LeyesBiblio/doc/20.doc> (accessed May 25, 2007).

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