

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Among Mexico's most serious human rights problems are those affecting its criminal justice system. Persons under arrest or imprisonment face torture and other ill-treatment, and law enforcement officials often neglect to investigate and prosecute those responsible for human rights violations.

President Vicente Fox has repeatedly promised to address these problems and has taken important steps toward doing so, establishing a special prosecutor's office to investigate past abuses and proposing justice reforms designed to prevent future ones. Unfortunately, neither initiative has lived up to its potential.

#### ***Torture, Ill-treatment, Police Brutality, and Pretrial Detention***

Torture remains a widespread problem within the Mexican criminal justice system. A factor perpetuating the practice is the acceptance by some judges of evidence obtained through violations of detainees' human rights. Prison inmates are subject to abuses, including extortion by guards and the imposition of solitary confinement for indefinite periods of time. Children in some juvenile detention facilities are forced to live in squalid conditions and are reportedly subject to beatings and sexual abuse. Foreign migrants are especially vulnerable to abusive practices, including extortion, by government agents.

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

In 2004, President Fox proposed reforms designed to fix features of Mexican criminal procedure that perpetuate and even encourage the use of torture by law enforcement officials. The new legislation would bar all evidence obtained illegally and allow confessions to be entered as evidence at trial only when they were made in the presence of a judge and defense counsel.

The reform package also contained measures to address the problem of preventive detention. Specifically, it would amend the Constitution to establish that criminal suspects are presumed innocent until proven guilty. The reform would allow judges to decide in each case, based on objective criteria, whether preventive detention is necessary.

Although the Senate approved several positive pieces of the reform package in July 2005, Congress has yet to vote on measures addressing the critical problems of torture and preventive detention.

#### ***Impunity***

The criminal justice system routinely fails to provide justice to victims of violent crime and human rights abuses. The causes of this failure are varied and include corruption, inadequate training and resources, and a lack of political will. One prominent example is the unsolved murders of hundreds of young women and girls over the last decade in Ciudad Juárez, a city on the U.S. border in Chihuahua state. Several individuals facing charges for some of the Juárez killings have recanted confessions that they claim were coerced through torture.

A major shortcoming of the Mexican justice system is that it leaves the task of investigating and prosecuting army abuses to military authorities. As Human Rights Watch documented in a 2001 report, the military justice system is ill-equipped for such tasks. It lacks the independence necessary to carry out reliable investigations and its operations suffer from a general absence of transparency. The ability of military prosecutors to investigate army abuses is further undermined by fear of the army, which is widespread in many rural communities and which inhibits civilian victims and witnesses from providing information to military authorities. The Mexican Supreme Court had an opportunity to address the problem of military jurisdiction in a 2005 case, but in September it upheld the military's authority over cases involving army members even when the alleged crimes were committed while off-duty.

### ***The Special Prosecutors Office***

The special prosecutors office that President Fox established in 2001 to address past abuses has produced limited results. In November 2003, the special prosecutor won a landmark decision from the Mexican Supreme Court holding that statutes of limitations do not apply to old disappearance cases as long as the victims' bodies have not been found. He then obtained arrest warrants for several high-level officials, and secured custody of three of them.

But these advances have been counterbalanced by significant failures. The majority of the suspects pursued by the special prosecutor have managed to escape arrest. The special prosecutor has also made only limited progress in uncovering the fate of hundreds of people who were disappeared in the 1970s.

The special prosecutors most ambitious move—the indictment of former president Luis Echeverría for genocide—was thrown out by a trial judge on grounds that the statute of limitations had expired. The special prosecutor won an appeal before the Supreme Court, which ruled in June 2005 that the statute of limitations had not expired in Echeverría's case because he had been shielded by immunity during his presidency. But the case was thrown out again by a lower court in July 2005, on the grounds that the 1971 massacre did not constitute genocide.

The special prosecutor subsequently sought to indict Echeverría again on genocide charges for a 1968 massacre of student protesters, but in September 2005 a lower court once again rejected his argument.

### ***Labor Rights***

Legitimate labor-organizing activity continues to be obstructed by collective bargaining agreements negotiated between management and pro-management unions. These agreements often fail to provide worker benefits beyond the minimums mandated by Mexican legislation, and workers sometimes only learn of the agreements when they grow discontented and attempt to organize independent unions. Workers who seek to form independent unions risk losing their jobs, as the government generally fails to protect them from retaliatory dismissals.

### ***Freedom of Expression***

Journalists have occasionally faced harassment and attacks, particularly those who have investigated drug trafficking or have been critical of state governments. In April 2005, a journalist in Tamaulipas and one in Veracruz were killed. During that same month, another journalist in Sonora disappeared, and at this writing is still missing. In June 2005, thirty-one journalists of the Oaxaca-based *Noticias* newspaper were forced to stay inside the newspaper facilities for more than a month because members of a pro-government trade union had initiated a strike outside the building. Newspaper staff maintain that the strikers did not actually work at the newspaper and aimed merely to stop the paper's publication.

Mexican defamation laws continue to be excessively restrictive and tend to undermine freedom of expression. Besides monetary penalties, journalists can be subject to criminal prosecution for alleged defamation of public officials.

### ***Right to Education***

A chronic concern in Mexico is the government's failure to ensure that tens of thousands of rural children receive primary education during the months that their families migrate across state lines to work in agricultural camps. A large number of parents choose to have their children work in the fields rather than attend school during these months. The government's failure to enforce child labor laws facilitates this choice. Although there is a federal program to provide primary schooling in the agricultural camps, the classes are generally offered in the evening when children are too exhausted from their work to study.

### ***Electoral Rights***

According to electoral laws in Mexico, presidential candidates must be nominated by political parties. Jorge Castañeda, a former foreign relations minister, challenged these laws, arguing that he should be allowed to run as an independent candidate. In August 2005, the Supreme Court refused to hear his appeal on the grounds that only political parties have standing to challenge the electoral laws.

### ***Key International Actors***

As part of a Technical Cooperation Agreement signed by President Fox, the U.N. High Commissioner for Human Rights maintains an in-country office that, in December 2003, produced a comprehensive report documenting ongoing human rights problems and providing detailed recommendations for addressing them. The Fox administration's justice reform proposal incorporates some of those recommendations while ignoring others, such as the recommendation to end military jurisdiction over cases involving human rights violations. In December 2004, the administration presented a national human rights program that outlined a wide range of policy objectives based on the report's recommendations. In 2005, the administration established a committee, with representatives from the government and civil society, to monitor the implementation of the program.

Along with the United States and Canada, Mexico is a party to the North American Free Trade Agreement and its labor side accord. The side accord commits the three countries to enforcing their laws protecting workers' rights and grants them authority to hold one another accountable for failing to meet these obligations. Under the accord, when a government of one country receives a complaint of violations committed in one of the other two, it can investigate the charges. However, because the complaint process is convoluted and enforcement mechanisms are weak, the accord has had little impact on labor rights violations in Mexico.

Mexico has maintained its leading role at the international level in pressing for human rights promotion to be considered an integral part of counter-terrorism efforts. It sponsored resolutions to that end at both the U.N. General Assembly and the U.N. Commission on Human Rights, and successfully pressed the Commission to name an independent expert on the protection of human rights and fundamental freedoms while combating terrorism.

In an important move, Mexico, after a long process, ratified the Rome Statute of the International Criminal Court in October 2005, becoming the 100th state party of the court.

Human Rights Watch defends the rights of people in 90 countries worldwide, spotlighting abuses and bringing perpetrators to justice

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