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Mr Yuji IWASAWA  
Chairperson, Human Rights Committee

Office of the High Commissioner for Human  
Rights  
UNOG-OHCHR  
CH 1211 Geneva 10  
Switzerland

18 May 2009

Dear Mr Iwasawa

## 96<sup>TH</sup> SESSION OF THE HUMAN RIGHTS COMMITTEE – PRE-SESSIONAL MEETING ON MEXICO

Amnesty International would like to draw your attention to the following areas of concern in relation to the implementation of the International Covenant on Civil and Political Rights (ICCPR). We would appreciate if you would make this information available to the members of the Country Report Task Force for Mexico ahead of their pre-sessional meeting and the adoption of the list of issues.

### ■ **Article 2: Constitutional and legal framework in which the Covenant is implemented, principle of non-discrimination, right to effective remedies**

Amnesty International recognises the government of Mexico's commitment to international human rights protection mechanisms and its receptiveness to recommendations made by these bodies. However, despite several important legal reforms in recent years, Amnesty International believes that the government of Mexico has failed in its obligation under Article 2 of the ICCPR to take legislative and other measures to give effect to the rights recognised in the Covenant and to ensure effective remedies in cases of violations.

In spite of the government's repeated commitment to reform the Constitution to ensure express recognition of international human right treaties, this has not taken place yet and courts as well as other key institutions routinely ignore Mexico's international human rights obligations.<sup>1</sup> Positive judicial decisions by the National Supreme Court in recent years do not yet constitute binding jurisprudence for new cases, and have therefore not altered this common practice.<sup>2</sup> Similarly, many of Mexico's 31 state governments often fail through law and practice to uphold human rights protected in the ICCPR, such as by failing to prevent and punish arbitrary detention, torture, unlawful killings and unfair trials.

Amnesty International is concerned that the government has also failed to ensure access to effective remedy for those whose Covenant rights have been violated. Those responsible for arbitrary detention, torture and other ill-treatment, unlawful killings and politically motivated criminal prosecutions are rarely held to account. In cases where these violations are committed in state jurisdictions, the federal

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<sup>1</sup> Constitutional reforms presently under discussion in Congress may result in some progress, but the text presently under discussion does not ensure the effective application of treaty obligations.

<sup>2</sup> In 1999 the National Supreme Court (*Suprema Corte de Justicia de la Nación, SCJN*) issued an isolated ruling (*tesis aislada*) that international human rights treaties rank below the Constitution but above federal and state laws (*Tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en Segundo plano respecto de la constitución federal. Novena Época. Instancia Pleno. Semanario judicial de la Federación. Tomo X noviembre de 1999. Tesis: P. LXXVII/99 página 46, materia constitucional. Tesis aislada*). In 2007 the SCJN issued a similar ruling confirming this interpretation (*Semanario Judicial de la Federación y su Gaceta, novena época, tomo XXV, abril de 2007, tesis P. IX/2007, pág. 6*).

**AMNESTY  
INTERNATIONAL**



**AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT**  
Peter Benenson House, 1 Easton Street  
London WC1X 0DW, United Kingdom  
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157  
E: [amnestyis@amnesty.org](mailto:amnestyis@amnesty.org) W: [www.amnesty.org](http://www.amnesty.org)

government frequently argues that it does not have authority to ensure accountability or access to justice. Despite legal reform to facilitate compensation claims for human rights violations, proving such cases remains extremely difficult.

Impunity for federal, state and municipal officials accused of human rights violations remains the norm. The federal government has established human rights units in most principal institutions, such as the military, police and prosecutor's offices. These units are valuable for developing human rights training, but they do not address the issue of effective remedy for victims of human rights violations. Some of the national network of human rights commissions, including the National Human Rights Commission, have highlighted patterns of human rights violations, but have often proved ineffective at securing legal action, or any other form of remedy, against perpetrators of human rights violations and implicated institutions.<sup>3</sup>

The military justice system continues to be granted jurisdiction to investigate and try allegations of human rights violations committed by military personnel, frequently resulting in impunity and denial of access to justice for the victims.

#### ■ **Articles 3, 7 and 26: Equal rights of men and women, violence against women**

In recent years a number of laws have been introduced strengthening legal equality for women and increased legal obligations on federal and state institutions to prevent and punish all forms of violence against women. Nevertheless, as Amnesty International has documented, these legal advances have yet to be applied in many states, where civil and criminal codes continue to inadequately protect women rights and other measures to prevent and punish violence against women are deficient. As a result, violence against women in the home and community remains endemic in many states. Impunity for such crimes and limited access to justice and reparations remain the norm, as in the well documented situation of Ciudad Juárez and Chihuahua City.<sup>4</sup>

#### ■ **Article 6: Right to life**

Mexico is facing a complex security environment where more than 6000 drug-crime related killings were reported in the media in 2008. The deployment of 45,000 military personnel and thousands of police in high crime areas has also resulted in increased complaints of unlawful killings by federal and state agents, including by the military. The number of reports of abuses committed by the military that have been reported to the National Human Rights Commission has increased six-fold in the last two years.<sup>5</sup>

Amnesty International is concerned that measures instituted to investigate and prosecute those responsible for extrajudicial executions and enforced disappearances committed during the 1960s, 70s and 80s have been inadequate. The Government of Mexico has failed to recognise the State's responsibility for these crimes or take effective action against perpetrators. The few prosecutions that have been initiated have not secured a single conviction and all the cases have ended in acquittals or otherwise collapsed, denying justice, truth and reparations to victims and relatives.<sup>6</sup>

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<sup>3</sup> For example, a variety of reports may be found at the website of the National Human Rights Commission ([www.cndh.org.mx](http://www.cndh.org.mx)) and the Human Rights Commission of the Federal District ([www.cdhd.org.mx](http://www.cdhd.org.mx)).

<sup>4</sup> For more information see Amnesty International reports: *Mexico: Women's struggle for safety and justice* (AI Index: AMR 41/021/2008, <http://www.amnesty.org/en/library/info/AMR41/021/2008/en>); *Mexico: Violence against women and justice denied in Mexico State* (AI Index: AMR 41/028/2006, <http://www.amnesty.org/en/library/info/AMR41/028/2006>); *Mexico: Indigenous women and military injustice* (AMR 41/033/2004, <http://www.amnesty.org/en/library/info/AMR41/033/2004>); *Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (AMR 41/026/2003, <http://www.amnesty.org/en/library/info/AMR41/026/2003>).

<sup>5</sup> "The National Human Rights Commission issues 8 Recommendations to the Minister of Defence" (La Comisión Nacional de los Derechos Humanos emitió ocho Recomendaciones, dirigidas al secretario de la Defensa Nacional, CNDH, CGCP/109/08, 11 July 2008, <http://www.cndh.org.mx/comsoc/compre/2008/109.htm>; Amnesty International Urgent Action UA 282/08, AMR 41/051/2008, <http://www.amnesty.org/en/library/info/AMR41/051/2008/en>).

<sup>6</sup> See Amnesty International Press Release: *Mexico: Hopes of justice vanish*, 27 March 2009, <http://www.amnesty.org/en/for-media/press-releases/mexico-hopes-justice-vanish-20090327>.

Mexico has taken the welcome step of abolishing the death penalty and acceded to the Second Optional Protocol to the ICCPR in September 2007.

■ **Articles 7 and 14: Prohibition of torture or cruel, inhuman or degrading treatment, use of information extracted under torture or other ill treatment**

Torture is a criminal offence in virtually all jurisdictions in Mexico and confessions extracted under torture may not legally serve as evidence.<sup>7</sup> Nevertheless, Amnesty International is concerned that the use of torture and other ill-treatment remain widespread and impunity for such abuses almost total. The obstacles to proving torture mean that confessions and other information gathered by torture are still used in criminal investigations and trials.

The government has established medical examination procedures based on the Istanbul Protocol.<sup>8</sup> However, their application by official medical forensic staff working within local and federal public prosecutor's offices has not led to an increase in prosecutions or an evident reduction in cases. The National Human Rights Commission and state human rights commissions have issued several recommendations to federal and state institutions concerning the use of torture and other ill-treatment, but investigations carried out in response have rarely led to the prosecution of perpetrators or reparations for victims.<sup>9</sup> The failure of federal and state institutions to establish specialist police/prosecutor agencies to bring serious human rights violations, such as torture or other ill-treatment, to trial continues to obstruct effective access to justice and reparations for victims.

Public security and criminal justice reforms introduced into the Constitution in 2008 may reduce reliance on torture as an investigative technique by requiring evidence, such as confessions, to be presented directly before the presiding judge. However, secondary legislation establishing due process to uphold these principles has yet to be introduced in most jurisdictions. The reforms allow an 8 year transition period for many of the procedural reforms to be brought in, but do not establish a clear programme for implementation.<sup>10</sup> The manner in which many states will apply these reforms is not clear.<sup>11</sup>

■ **Article 9: Right to liberty and security of person: No arbitrary detention, right to compensation**

Arbitrary detention by federal, state and municipal law enforcement agencies and the military remain common. Irregular migrants in transit in Mexico are also often detained by state or municipal police solely on the grounds of their legal status which they are not legally empowered to do.<sup>12</sup> Despite

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<sup>7</sup> Guerrero State has continued to fail to establish torture as a separate criminal offence.

<sup>8</sup> *Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 9 August 1999, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>9</sup> In February 2009, a coalition of more than 50 non-governmental organizations from all over Mexico informed the UN Human Rights Council that they were not aware of a single conviction for torture; see [http://cencos.org/files/UPR\\_JointSubmission\\_MexicoNGOs\\_Feb2009\\_english1.pdf](http://cencos.org/files/UPR_JointSubmission_MexicoNGOs_Feb2009_english1.pdf).

<sup>10</sup> Transitory articles in the Constitution allow an 8 year period in which secondary legislation must be introduced to apply many of constitutional reforms establishing the oral accusatory procedural system: "Transitorios del decreto por el que se reforman y adicionan diversas disposiciones de la constitución política de los estados unidos mexicanos, publicado en el diario oficial de la federación el 18 de junio de 2008, Art Segundo (<http://info4.juridicas.unam.mx/ijure/fed/g/157.htm?s=>).

<sup>11</sup> See Amnesty International Public Statements: *Reforms to the criminal justice system: steps forward, steps backward* (AMR 41/004/2008, 7 February 2008, <http://www.amnesty.org/en/library/info/AMR41/004/2008>); *Mexico: A Historic Opportunity Should Not Be Lost* (AMR 41/007/2008, 28 February 2008, <http://www.amnesty.org/en/library/info/AMR41/007/2008>).

<sup>12</sup> Unless migrants are caught committing a criminal offence or are subject to an arrest warrant, only the Federal Police and officials of the National Migration Institute (INM) are legally empowered to verify the legal status of suspected irregular migrants and detain (asegurar) those without legal status (Ley General de Población). Other police and security force personnel may be authorised to carry out this task on receipt of written requests to participate in specific irregular migrant round up operations. In 2008, unauthorised irregular presence in Mexico was decriminalized in order to remove the excuse often used by state and municipal police to justify detentions or extortion of migrants. However, Amnesty International has continued to receive reports of such detentions by state and municipal police without legal authority.

prohibition of unlawful detention, most detentions are ruled legal by judges and those responsible for carrying out arbitrary detentions are not held to account.

Arbitrary detentions include those carried out with a judicial warrant, but without police identifying themselves, displaying the warrant or informing the suspect of the reasons for the detention or their rights. *In flagrante* detention powers continue to be extensive which mean that suspects can be arrested hours or, in some cases, up to three days after the alleged offence without a warrant.<sup>13</sup> 2008 constitutional reforms limit the scope of such powers, but secondary legislation in most states, has still to be reformed to regulate these changes. Furthermore, Amnesty International continues to receive reports of the fabrication of evidence, by police in order to legitimize detentions and initiate prosecutions.<sup>14</sup> The failure of prosecutors or judges to adequately scrutinise the manner in which detentions are carried out may enable such cases to result in lengthy arbitrary detention and unfair trials, particularly against the poorest in society who face the greatest obstacles to ensure their due process rights are upheld and in their access to an effective recourse.<sup>15</sup>

Recent criminal justice reforms have included some negative steps, most notably the incorporation into the Constitution of powers to hold those suspected of organized crime offences in preventive pre-charge custody, known as "arraigo".<sup>16</sup> The provision existed in secondary legislation at federal and state level prior to the 2008 constitutional reforms for those suspected of serious offences. It allows prosecutors, on request to a judge, to detain a suspect in unofficial premises, such as confiscated properties, run by the prosecutor's office who restrict detainee access to relatives, legal or medical services, without filing charges for up to 80 days in order to assist investigations and prevent flight.<sup>17</sup> Many state public prosecutors' offices continue to use "arraigo" in the terms of their own secondary legislation which are subject to even less judicial control than federal provisions. In 2002 the UN Working Group on Arbitrary Detentions concluded that "arraigo" is a form of preventive detention of an arbitrary nature.<sup>18</sup> In 2007 the Committee against Torture recommended that it be abolished at federal and state level.<sup>19</sup>

#### ■ Article 14: Right to fair trial

Amnesty International is concerned that despite legal guarantees, access to fair trial, including equal treatment before the law, is routinely denied. In particular, Indigenous People and others belonging to poor or marginalized sectors of society are often denied due process, such as the right to effective legal counsel and interpreters from the moment of detention.

Public security and criminal justice reforms initiated in 2008, particularly elements of the accusatory oral trial system in which the judge will be present in evidentiary hearings and play an active role in determining the rights of suspects, may produce improvements in the course of the 8 year transition period.<sup>20</sup> However, there is no express requirement to ensure that secondary legislation to implement

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<sup>13</sup> Federal District Criminal Procedural Code, Art 267.

<sup>14</sup> See for example Amnesty International Urgent Actions: UA 92/07, AMR 41/017/2007, <http://www.amnesty.org/en/library/info/AMR41/017/2007>; and UA103/09 (AMR 41/021/2009, <http://www.amnesty.org/en/library/info/AMR41/021/2009>).

<sup>15</sup> See Amnesty International documents: *Mexico: Promoting indigenous rights in Mexico: Me' phaa Indigenous People's Organization* (AMR 41/040/2008, <http://www.amnesty.org/en/library/info/AMR41/040/2008>); *Mexico: Injustice and impunity: Mexico's flawed criminal justice system* (AMR 41/001/2007, <http://www.amnesty.org/en/library/info/AMR41/001/2007>); *Mexico: A year of injustice for Diego Arcos Meneses* (AMR 41/061/2007, <http://www.amnesty.org/en/library/info/AMR41/061/2007>); *Mexico: Violence against women and justice denied in Mexico State* (AMR 41/028/2006, <http://www.amnesty.org/en/library/info/AMR41/028/2006>).

<sup>16</sup> Mexican Constitution, Art 16, para 7.

<sup>17</sup> Arraigo is not formally recognised as detention, but in 2005 the Supreme Court ruled, in a case brought in reference to Chihuahua State, that it violated the right to personal liberty and the Constitution. *Semanario Judicial de la Federación y su Gaceta*, XXIII, Febrero de 2006 Página: 1171, Tesis: P. XXIII/2006.

<sup>18</sup> Report of the Working Group on Arbitrary Detention on its visit to Mexico (27 October to 10 November 2002), E/CN.4/2003/8/Add.3, para 50, available at: <http://www2.ohchr.org/english/issues/detention/visits.htm>.

<sup>19</sup> Conclusions and recommendations of the Committee against Torture: Mexico, CAT/C/MEX/CO/4 (2007), para 15, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2e3ffd18d95b0739c12572b30042e140](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2e3ffd18d95b0739c12572b30042e140).

<sup>20</sup> Transitory articles in the Constitution establish an 8 year period for secondary legislation to apply many of the constitutional reforms (<http://info4.juridicas.unam.mx/ijure/fed/9/157.htm?s=>).

reforms and establish the detail of due process is in line with international human rights standards – particularly Article 14 of the ICCPR.

Amnesty International is concerned that the 2008 reforms create a set of special federal legal procedures for “organized crime” offences in which some due process guarantees are restricted. The definition of organized crime adopted in the reforms is broader than the Convention against Transnational Organized Crime. The reforms provide greater scope for evidence gathered by police and prosecutors during the preliminary investigation of organized crime offences to have the same value as admissible proof during trial.<sup>21</sup> These powers are similar to those that existed in criminal proceedings prior to reforms and were sometimes insufficiently scrutinised by the judiciary to ensure the reliability or legality of evidence presented, particularly at state level, resulting in unfair trials and miscarriages of justice. Amnesty International is concerned that these powers, fail to meet Covenant obligations on the right to fair trial. Local human rights organizations have expressed concern that these powers may also be misused against legitimate social protesters as they have been in the past.<sup>22</sup>

The situation in the 31 states and the Federal District, in whose jurisdictions the majority of criminal trials take place, remains very uncertain during the 8 year transitional period to introduce reforms. Existing state legal provisions for organized crime will continue until such a time as the federal congress legislates otherwise.<sup>23</sup> There is no clear programme for introducing and financing reforms or training the principal operators of the justice system. As a result, there are insufficient guarantees of how or when the regular denial of fair trial that Amnesty International has documented in its reports will be overcome.<sup>24</sup>

The federal review mechanism (*amparo*) to protect constitutional rights remains one of few legal remedies with the potential to mitigate some of the effects of unfair trials in state jurisdictions, where the independence and impartiality of judicial authorities is often very weak. Nevertheless, *amparo* proceedings often do not draw on international human rights standards as the Constitution does not adequately recognise international human rights treaties (as has previously been noted). Steps to reform *amparo* proceedings to increase access and effectiveness have not advanced. A successful *amparo* petition against the actions of state agents does not usually result in administrative or other action against the authority responsible.<sup>25</sup>

#### ■ Articles 19, 21 and 22: Freedom of expression, assembly and association

Freedom of expression and assembly are legally recognised in principle. The recent reform of the Federal Criminal Code made defamation a civil, non criminal offence. Also recent reforms have been proposed to make crimes committed against freedom of expression a federal crime. However, Amnesty International remains concerned that in recent years several journalists, often those reporting on drugs-trafficking and corruption, have been threatened, murdered or abducted by unknown individuals, creating an extremely difficult environment for media workers to exercise their right to freedom of expression. The majority of the perpetrators, who are presumed to be linked to organized crime networks, have not been held to account. The failure of the authorities, including that of the special federal prosecutor for crimes against journalists (*Fiscalía Especializada para la Atención de Delitos cometidos contra Periodistas, FEADP*), to prevent and punish such crimes has increased concern about the safety of many journalists.<sup>26</sup>

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<sup>21</sup> Mexican Constitution, Art 20, B, V.

<sup>22</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/JS2\\_MEX\\_UPR\\_S4\\_2009\\_anx4\\_EPU.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/JS2_MEX_UPR_S4_2009_anx4_EPU.pdf).

<sup>23</sup> “Transitorios del decreto por el que se reforman y adicionan diversas disposiciones de la constitución política de los estados unidos mexicanos, publicado en el diario oficial de la federación el 18 de junio de 2008, Art. Sexto (<http://info4.juridicas.unam.mx/ijure/fed/9/157.htm?s=>).

<sup>24</sup> See reports listed in footnote 15.

<sup>25</sup> See Amnesty International: *Mexico: Laws without justice: Human rights violations and impunity in the public security and criminal justice system*, (AI Index: AMR 41/002/2007, <http://www.amnesty.org/en/library/info/AMR41/002/2007>).

<sup>26</sup> See for example Amnesty International Urgent Actions UA 82/09 (AMR 41/017/2009, 25 March 2009, <http://www.amnesty.org/en/library/info/AMR41/017/2009>) and UA 321/08 (AMR 41/061/2008, 21 November 2008, <http://www.amnesty.org/en/library/info/AMR41/061/2008>).

Human rights defenders, particularly those working for protection and recognition of local or community rights in states such as Guerrero and Oaxaca, continue to face threats, harassment and smear campaigns questioning the legitimacy of their activities. In some instances Amnesty International has documented cases where such defenders have faced fabricated criminal charges, unfair judicial proceedings and lengthy detention.<sup>27</sup> The State has failed to conduct effective investigations to hold those responsible to account or provide effective protection against harassment or attack. The result is that human rights defenders may be deterred from exercising their right to freedom of expression and association.

I hope that this information will be of use to the Committee in preparing its list of issues for its consideration of the periodic report of Mexico.

Yours sincerely,

Hugo Rodriguez-Brignardello  
Legal Adviser, Americas

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<sup>27</sup> See Amnesty International reports *Mexico: Promoting indigenous rights in Mexico: Me' phaa Indigenous People's Organization* (AMR 41/040/2008, <http://www.amnesty.org/en/library/info/AMR41/040/2008>); *Mexico: Injustice and impunity: Mexico's flawed criminal justice system* (AMR 41/001/2007, <http://www.amnesty.org/en/library/info/AMR41/001/2007>); *Mexico: A year of injustice for Diego Arcos Meneses*, AMR 41/061/2007; *Mexico: Oaxaca - clamour for justice* (AMR 41/031/2007, <http://www.amnesty.org/en/library/info/AMR41/031/2007>).