

Uncontrolled and unpunished: the Mexican State's violations of fundamental civil and political rights

Report presented to the UN Human Rights Committee on the occasion of
the fifth periodic report of Mexico on its compliance with the International
Covenant on Civil and Political Rights

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I. Overview of the information presented in this report

In this report, the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh)¹ presents information to assist the Human Rights Committee in its consideration of the fifth periodic report of Mexico, submitted in July 2008 and due for evaluation in March 2010 (UN Doc. CCPR/C/MEX/5, dated Sept. 24, 2008).

The present report focuses on several areas in which the Mexican government is currently committing systematic and unpunished violations of fundamental civil and political rights. The themes analyzed correspond to issues of concern identified by this Committee both in its previous concluding observations on the fourth periodic report of Mexico, published on July 27, 1999 (UN Doc. CCPR/C/79/Add.109), and in its List of Issues to be taken up in the evaluation of the fifth periodic report (UN Doc. CCPR/C/MEX/Q/5 of Aug. 24, 2009).

In 1999, this Committee correctly identified numerous subjects of deep concern regarding human rights in Mexico. As demonstrated by the information provided below, the Mexican government, far from complying with the Committee's 1999 recommendations in many of these areas, has in recent years implemented measures that have increased the violations of the ICCPR occurring on a daily basis.

In the context of the federal government's "frontal war" against crime, a strategy that has become the central pillar of the policies implemented by the current presidential administration of Felipe Calderón (Dec. 2006-present), the armed forces participate in large-scale anti-crime operations in numerous states throughout Mexican territory, acting without meaningful civilian control as they carry out tasks that are the exclusive legal competence of the civilian police. As will be discussed below, the government's decision to use the army to perform the work of the police has imposed a *de facto* state of exception on the civilian population and has provoked drastic increases in human rights violations.

Impunity for serious civil and political rights violations, including arbitrary executions, torture, forced disappearances, illegal detentions, warrantless searches, and other abuses committed by Mexico's security forces, remains the overwhelming norm. The use of military jurisdiction to investigate human rights crimes committed by the armed forces has served to prevent the perpetrators from facing justice. As for crimes committed by the police, including torture, the government has not taken the necessary steps to hold to account the perpetrators of even well-documented cases of grave abuse.

The foregoing problems occur against a backdrop of ongoing impunity for the crimes committed by the State during Mexico's Dirty War of the 1960's-1980's. Unlike in other Latin American countries that have advanced in processes of transitional justice and accountability, in Mexico not a single perpetrator has been punished for crimes

¹ The Miguel Agustín Pro Juárez Human Rights Center (Center Prodh) was founded in 1988. Our purpose is to defend, promote, and improve respect for human rights in Mexico, with a focus on the most marginalized and vulnerable social groups in the country, such as indigenous communities, women, migrants, and victims of social repression. Center Prodh seeks to contribute to structural change to bring about a society in which all people can enjoy and exercise all human rights in conditions of equality. Since September 2001 we have held Consultative Status before the UN Economic and Social Council. We are also an Accredited Organization before the Organization of American States (OAS). For more information about our work, please consult our website at www.centroprodh.org.mx.

committed during the Dirty War. This legacy of impunity for the State-sponsored campaign of repression that included hundreds of forced disappearances and the systematic use of torture continues to set the tone for the lack of acknowledgement and accountability for the grave human rights abuses committed by the security forces today.

Another ongoing source of serious human rights violations is Mexico's criminal justice system, which continues to be characterized by structural flaws and features of the inquisitorial model despite the introduction of Constitutional reforms to amend this system in 2008. The criminal justice system, as it currently functions, provides incentives for the use of torture to obtain confessions; lends itself to manipulation as a tool to criminalize social protest; discriminates against vulnerable groups such as members of indigenous communities; and does not respect the presumption of innocence.

Finally, we note with grave concern that when human rights defenders in Mexico respond to these and other problems, seeking justice on behalf of victims or advocating for changes in governmental policies, they may face harassment, criminalization or even physical attacks, which have resulted in the deaths of numerous human rights defenders in the last ten years. These crimes generally remain unpunished.

Below, we first present general observations on the State's fifth periodic report. In the sections that follow, we present more detailed analysis of several of the themes mentioned above, providing concrete examples from the cases documented and defended by Center Prodh. Further information about these case studies or about the topics analyzed in this document is available by contacting us (see contact information at the end of this report).

II. General observations on the fifth periodic report of Mexico

In its fifth periodic report, the Mexican State gives brief descriptions of a long list of programs, trainings, and legal provisions that it has enacted in the last ten years. However, in most cases there is an absence of analysis of whether and to what extent these provisions have reduced actual levels of human rights violations in daily life, particularly in regard to sensitive topics such as human rights abuses committed by security forces. Most strikingly, the report contains few to no examples of punishment of those responsible for human rights abuses. Were the report to include more data on the real-life level of respect for the rights enshrined in the ICCPR and accountability for violations of these rights, it would reveal a stark contrast between Mexico's willingness to ratify international instruments and inaugurate human rights programs on the one hand, and the prevailing reality for significant sectors of Mexican society on the other.

In light of this contrast, we underscore the relevance of the Committee's past approach to analyzing the human rights situation in Mexico based not on what is nominally established in the law or whether programs exist in a certain theme, but rather based on the effects of such laws, jurisprudence, or programs for their target populations and to what extent the rights contained in the ICCPR are actually respected in the day-to-day practice of governmental authorities.

Having offered these general observations on the government's fifth periodic report, we will not address every topic discussed in that report, but rather will provide information on a series of specific themes. We will likewise not address most of the contents of the government's response to the Committee's previous set of recommendations (UN Doc. CCPR/C/79/Add.123, Aug. 24, 2000), except to observe that said response contains a number of misleading statements and assertions of absolute compliance that would be difficult for any State party to support² and that demonstrate the State's desire at that time to dismiss recommendations made by the Committee rather than address in good faith the serious problems identified.³

III. Information regarding specific human rights themes of interest to the Committee

A. The militarization of public security: abuses, impunity, and lack of civilian control over the armed forces (paras. 9 & 16 of the List of Issues)

In its 1999 concluding observations, this Committee expressed its concern at "the increase of action by the armed forces within society, particularly in the States of Chiapas, Guerrero and Oaxaca, where they conduct activities pertaining to the police forces. Order should be maintained within the country through the civil security forces" (para. 8).

² For example: "...as far as paragraph 6 is concerned, the Government of Mexico has already taken all the measures needed for compliance with paragraphs 6 and 7 of the Covenant" (para. 1.c); "There is complete freedom of expression in Mexico" (para. 9); "There has not been a single case of conscientious objection" (para. 15). The government also stated, "All the forms of torture specified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are punished under both federal law and the legislation of the 31 States of the Republic" (para. 1). However, the Committee Against Torture expressed its concern in 2007 that the definition of torture differs from one state to another and that the crime of torture does not appear in the penal code of Guerrero state. See Concluding Observations of the Committee Against Torture, UN Doc. CAT/C/MEX/CO/4, Feb. 6, 2007, para. 11.

³ More recent events likewise reveal a lack of serious commitment on the part of the State to receive and implement recommendations from UN human rights mechanisms. For instance, the present administration has refused to schedule a visit requested in 2009 by the Special Rapporteur on Extrajudicial Executions until the year 2011, an extended delay that the federal Department of Foreign Relations (*Secretaría de Relaciones Exteriores*) justified by stating in a press release that the government had already scheduled two visits by Rapporteurs for 2010 and that it was otherwise occupied with turning in its reports to treaty bodies. See Dept. of Foreign Relations, *El Gobierno de México reitera su política de plena cooperación y apertura con mecanismos internacionales de derechos humanos* (press release), Oct. 30, 2009, available at www.sre.gob.mx/csocia/social/comunicados/2009/oct/cp_316.html. It later transpired that one of the visits referred to by the Department of Foreign Relations as "already confirmed" for 2010 – a visit by the Special Rapporteur on the Independence of Judges and Lawyers – had in fact never been scheduled. Center Prodh spoke by telephone in November 2009 with the office of that Special Rapporteur, who informed us that no visit to Mexico was planned.

In the legislative realm, a current proposal to amend the federal Constitution would reinforce the current hierarchy of human rights treaties such as the ICCPR as below the Constitution by establishing that in cases of "conflict" (*contradicción*) between the Constitution and international law, the Constitution prevails. However, the Constitution itself contains provisions that violate the ICCPR, such as allowing for 80-day pre-charge detentions (art. 16) and establishing a special regimen of reduced due process guarantees for certain categories of detainees. Until the language referring to the hierarchy of the Constitution in cases of "conflict" is eliminated, the proposed reform will block application of provisions of the ICCPR violated by the Constitution. The bill, approved by the House of Representatives on April 23, 2009, is currently under consideration in the Senate.

Far from implementing the Committee's recommendation, in the last three years the current administration has significantly increased the role of the armed forces in carrying out police work. This militarization of public security has led to drastic increases in human rights violations, none of which has been tried by the competent civilian authorities.

Militarization of public security: an undeclared state of exception

The Mexican government states in its fifth periodic report, "The Supreme Court of Justice of the Nation has held that it is constitutionally possible for the Army, Air Force and Navy, during times when no suspension of guarantees has been declared, to act in support of the civil authorities with respect to various public security tasks. However, they may in no event do so "by and for themselves"; rather, it is indispensable that they do so at the expressly stated and well-founded request of the civil authorities and, in their support functions, must remain subordinate to those authorities and, fundamentally, to the legal order laid down by the Constitution, the laws deriving from it and treaties that are consistent with it, in keeping with the provisions of article 133 of the fundamental law" (para. 145).

However, the actual role of the armed forces far exceeds the limits described in the previous paragraph. In the context of the militarized anti-crime operations underway in diverse states, requiring the deployment of tens of thousands of troops at a time, the army routinely carries out tasks that legally fall within the exclusive competence of the civilian police. It is not uncommon for members of the military to be named as the chiefs of local or state police forces, sometimes at the designation of the Department of Defense, or to assume tasks that fall to other civilian authorities, including carrying out investigations (a job that belongs to the public prosecutor's office and for which soldiers are not trained). These actions, understood together with the discretion that military authorities have to make decisions regarding actions to be carried out in the regions that they occupy, can in no way be considered as simply "support functions" to the civilian authorities.

Neither does the army's behavior conform to "the legal order laid down by the Constitution, the laws deriving from it and treaties that are consistent with it."⁴ Aside from the unconstitutional nature of the army's current role in public security tasks, the military's operations are characterized by acts that violate the basic human rights of the civilian population, ranging from warrantless searches, to the torture of civilians detained in irregular conditions in military facilities,⁵ to arbitrary executions.

⁴ Note that article 129 of Mexico's Constitution establishes that in times of peace, "no military authority may perform duties beyond those that are directly related to military discipline." The text of the Constitution is available at www.ordenjuridico.gob.mx/Constitucion/cn16.pdf. Our translation.

⁵ A review of the recommendations issued by the National Human Rights Commission (CNDH) over the past three years reveals a pattern by which soldiers detain and torture civilians, often holding them in irregular conditions in military facilities. See, e.g., the following CNDH recommendations issued to the Department of Defense: 73/09; 71/09; 70/09; 66/09; 63/09; 61/09; 59/09; 55/09; 54/09; 53/09; 41/09; 38/09; 34/09; 33/09; 28/09; 18/09; 13/09; 67/08; 60/08; 33/08; 32/08; 31/08; 30/08; 29/08; 39/07; 38/07, available at www.cndh.org.mx. Recurring methods of torture documented by the CNDH include beatings, application of electric shocks to sensitive body parts, and the use of plastic bags to suffocate victims.

In this context, the number of complaints of human rights violations received by the National Human Rights Commission (CNDH) against the Department of Defense more than sextupled during the first two years of the administration of Felipe Calderón, with 1230 complaints filed in 2008 alone and a higher rate of complaints reported for 2009.⁶

Between January 1, 2007 and July 31, 2009, media sources monitored by Center Prodh reported on more than 200 cases of presumed human rights violations committed by the military. Such cases have been reported in the states of Guerrero, Tamaulipas, Chihuahua, Michoacán, Sinaloa, Nuevo León, Chiapas, Oaxaca, Veracruz, Baja California, Mexico state, Morelos, Tabasco, Aguascalientes, Coahuila, Durango, Guanajuato, Querétaro, Sonora, Yucatán, Tlaxcala, San Luis Potosí, Puebla, and Mexico City⁷ - that is, in 24 of Mexico's 32 federal entities. These reports include dozens of cases of attacks with firearms, numerous cases of torture (including sexual torture), widespread arbitrary detentions and searches, executions, and forced disappearances.⁸

This Committee stated in 1999 that “although a state of emergency has not been proclaimed in areas in conflict, the population has been subjected to derogations from its rights corresponding to a state of emergency, such as control points impeding freedom of movement. All necessary derogations from the rights guaranteed by the Covenant must comply with the conditions laid down in article 4 of the Covenant” (para. 12).

Under the administration of Felipe Calderón, the use of control points has formed part of the militarized anti-crime operations carried out in numerous states. Such checkpoints have frequently become sites of human rights abuses including arbitrary executions. For example, from January 2007 to June 10, 2008 alone, at least 14⁹ cases were reported in media sources monitored by Center Prodh in which civilians were victimized at military checkpoints, usually when soldiers shot them for not having stopped their vehicles on time for inspection, with fatal outcomes in various cases. Among emblematic cases of this phenomenon is the shooting of eight family members in La Joya, Sinaloa, in June 2007. In that case, five women and children were killed, while the other three passengers were wounded.¹⁰

⁶ See annual reports of the National Human Rights Commission at www.cndh.org.mx. The exact figures for 2009 should be available by the time of the Committee's evaluation of Mexico in March 2010.

⁷ See Center Prodh, *La justicia militar propicia impunidad: en manos de la SCJN fortalecer el control civil sobre el ejército* (press release), March 9, 2009, available at www.cencos.org/es/node/20426; Center Prodh, *Military Abuses in Mexico* (briefing), July 14, 2008, available at www.centroprodh.org.mx/2008/publicaciones%202008/briefing/080714_Prodhbriefing2_ing%20y%20es_p_militares.pdf; No Más Abusos, *Boletín Informativo sobre Abusos en el Contexto de los Operativos Militarizados 2009*, Sept. 2009, available at www.nomasabusos.org/sept.pdf.

⁸ In this last regard, for instance, in May 2009 the Department of Defense publicly acknowledged strong evidence pointing to the responsibility of soldiers in the forced disappearance of three civilians in the state of Tamaulipas. See Center Prodh, *Possible involvement of soldiers in forced disappearances confirms the urgent need to empower civil controls over the armed forces*, press release SC-04-09, May 13, 2009, <http://centroprodh.org.mx/english/images/stories/documentos/090515%20tamaulipas%20-%20military%20security%20-%20press%20release.pdf>.

⁹ See Center Prodh, *Military Abuses in Mexico* (briefing), July 14, 2008, available at www.centroprodh.org.mx/2008/publicaciones%202008/briefing/080714_Prodhbriefing2_ing%20y%20es_p_militares.pdf, p. 4.

¹⁰ See *Solicita CNDH a Sedena datos sobre asesinato de familia de Sinaloa*, EL UNIVERSAL, June 8, 2007, available at www.eluniversal.com.mx/notas/430091.html.

The use of military jurisdiction to maintain impunity for human rights crimes committed by the armed forces

In its 1999 concluding observations, this Committee expressed its deep concern over the lack of investigation of human rights crimes committed by members of the armed forces and recommended, “The State party should establish appropriate procedures to ensure that independent investigations are conducted into allegations of violations of human rights involving members of the armed forces and the security forces and that the persons accused of such violations are brought to trial. The State should also establish effective remedies for the victims” (para. 9).

As of today, however, the Mexican government continues to defend the use of military jurisdiction to investigate human rights abuses, a practice that perpetuates impunity and is both unconstitutional and impermissible under the ICCPR (particularly since the military authorities do not constitute independent authorities for purposes of investigating human rights crimes; rather, they are members of the Executive Branch under the chain of command of the Secretary of Defense). The continuing application of military jurisdiction to human rights violations exemplifies how the Mexican military operates without meaningful civilian control.

The State recognizes in its fifth periodic report that military jurisdiction “implies recognition of a specialized subject-matter which ensures the legal certainty necessary for just and equitable administration of military justice. To achieve those aims, it is necessary that those who administer military justice have... specific military knowledge in the areas that are part of this specialized realm of justice” (para. 594). The government further states, “it ensures legal certainty and equal protection in the administration of justice by preventing it from being extended to the civilian population and **ensuring that its exclusive sphere of competence is circumscribed to crimes and misdemeanours of a military character**” (para. 596, our emphasis).

However, the government does not apply the criteria quoted above in practice; that is, it does not restrict the application of military jurisdiction to crimes or faults related to military discipline (such as disobedience and other crimes relevant only to members of the military). Instead, the Mexican State applies military jurisdiction to *any* crime committed by soldiers on duty or arising from actions related to their duties, which in practice translates to virtually every crime committed by soldiers, including human rights violations. These acts are not susceptible to, and much less require, investigation and judgment by military officials.

As suggested by the State’s own explanation of military jurisdiction in its fifth periodic report, the use of this jurisdiction to investigate human rights crimes violates article 13 of Mexico’s Constitution, which establishes that military jurisdiction exists “for crimes and faults against military discipline,” thus limiting the subject matter jurisdiction of military courts and investigators. However, article 57.II of Mexico’s Code of Military Justice, a piece of secondary legislation enacted by the Executive rather than the Legislative branch, defines “military discipline” in an unconstitutionally broad manner to include, among others, all crimes committed by members of the military “while on duty or motivated by acts of duty.” This unconstitutional provision is applied to transfer every case of military abuses to military jurisdiction.

This practice has perpetuated impunity for human rights crimes by preventing the competent civilian authorities from exercising control over such cases.¹¹ UN mechanisms that have issued recommendations to Mexico urging it to halt the use of military jurisdiction to investigate and prosecute human rights crimes include the Committee Against Torture, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Violence Against Women, Extrajudicial Executions, Indigenous Peoples, and the Working Group on Arbitrary Detention.¹² These recommendations remain unfulfilled. The unfounded extension of military jurisdiction to investigate and try human rights crimes is also the subject of Human Rights Watch's most recent country report on Mexico, entitled, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*.¹³

The inexistence of any legal remedy to challenge the use of military jurisdiction in human rights cases

In its fifth periodic report, the government states "In Mexico, the governed may avail themselves of jurisdictional mechanisms to demand respect for their fundamental rights recognized by the federal Constitution or in international treaties signed by the Mexican State through an action for amparo" (para. 63). The government further states, with regard to military jurisdiction in particular, "One cannot fail to mention, finally, that article 37(a) of the Organic Law on the Federal Judiciary, empowers the circuit courts to examine judgments or resolutions adopted by the military courts, regardless of the penalties imposed" (para. 602).

The foregoing information is inaccurate or irrelevant as regards the possibility of using mechanisms such as an *amparo* legal challenge or an appeal to a civilian court as a remedy for the extension of military jurisdiction over a case of human rights violations.

¹¹ As for the results of cases tried in military jurisdiction, among statistics released by the government in past months regarding the number of soldiers supposedly convicted of human rights abuses in military jurisdiction, the most cited has been the figure of 12 soldiers sentenced in this jurisdiction during the first two and a half years of the Calderón administration, a statistic presented by the Department of Defense. However, the 12 convictions cited include only one case that clearly stems from violations committed during the current administration (during which, it must be recalled, the Department of Defense has received over 2000 complaints of abuses via the National Human Rights Commission). Further, the Department of Defense does not provide facts of the cases that would permit analysis of whether they were indeed human rights violations or whether the sentence given was proportional to the crime committed. See "*Justicia militar en México*," a presentation by José Miguel Vivanco (Americas Director, Human Rights Watch) to the Mexican Senate, Sept. 2, 2009, available at www.hrw.org/es/news/2009/09/02/justicia-militar-en-m-xico. In a more recent document sent to Human Rights Watch, the Ministry of the Interior affirms that a soldier was sentenced to nine months of prison for shooting and killing a civilian in a checkpoint, although once more the document does not provide detailed information about the facts of the case to permit an analysis of the proportionality of this penalty. See Human Rights Watch, letter from José Miguel Vivanco to Secretary of the Interior Fernando Francisco Gómez Mont, Nov. 20, 2009, available at www.hrw.org/en/news/2009/11/20/carta-respondiendo-al-secrario-de-gobernaci-n-de-m-xico-fernando-francisco-g-mez-m.

¹² See CAT/C/MEX/CO/4, Feb. 6, 2007, para. 14; CAT/C/75, May 25, 2003, para. 220g; E/CN.4/1998/38/Add.2, Jan. 14, 1998, para. 88j; E/CN.4/2002/72/Add.1, Jan. 24, 2002, para. 192d; E/CN.4/2006/61/Add.4, Jan. 13, 2006, para. 69a(vi); E/CN.4/2004/80/Add.2, Dec. 23, 2003, para. 90; E/CN.4/2000/3/Add.3, Nov. 25, 1999, para. 107f; E/CN.4/2003/8/Add.3, Dec. 17, 2002, para. 72f.

¹³ Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, April 28, 2009, available at www.hrw.org/en/reports/2009/04/28/uniform-impunity.

Although soldiers tried in military jurisdiction ultimately have the legal right to appeal their cases to civilian courts, victims of human rights abuses committed by the military do not have the same right. Likewise, the remedy of *amparo* is available only to challenge matters related to reparations, the public prosecutor's decision not to pursue charges against someone, and a few other strictly limited circumstances, but not to challenge the application of military jurisdiction to a human rights crime, as illustrated by the case study below. In this way, civilian judicial authorities cannot be said to exercise meaningful control over the actions of the military in human rights cases. This lack of civilian oversight or control perpetuates impunity for such violations.

Case study: denial of legal standing to family members of civilians arbitrarily executed by soldiers in Sinaloa state in March 2008

The lack of a legal remedy permitting victims to challenge the application of military jurisdiction to human rights cases was demonstrated clearly in a case considered by Mexico's Supreme Court in 2009. The case, documented by Center Prodh in collaboration with the Sinaloan Civic Front, arose from abuses committed on March 26, 2008 in the municipality of Badiraguato, Sinaloa state. On that night, a group of soldiers opened fire without justification on a passing vehicle, killing four of its six passengers (Edgar Geovanny Araujo Alarcón, Zenón Alberto Medina López, Manuel Medina Araujo, and Irineo Medina Díaz). As documented by the human rights organizations involved (and later confirmed by the National Human Rights Commission in its own investigation of the case¹⁴), the victims were unarmed civilians and there was no checkpoint in the place of the shootings.

From the outset, the Department of Defense issued misleading information about the case and even initially accused the two surviving passengers of criminal responsibility for the deaths. On March 29th, the civilian investigatory authorities (specifically, the agent of the federal public prosecutor assigned to the area) declined jurisdiction over the case in favor of military jurisdiction, the standard action in cases of military abuses that are investigated. The family members of the victims were not informed of this at the time. On April 4, 2008, responding to the public attention generated by the case, the Department of Defense issued a press statement entitled *Incidente in the Municipality of Badiraguato, Sinaloa*¹⁵ in which it announced that its prosecutors had charged five military members for the killings. The relevant charges were "violence against persons causing homicide" and "reckless homicide."¹⁶

¹⁴ See Recommendation 36/2008 of the CNDH at www.cndh.org.mx.

¹⁵ Department of Defense, *Incidente en el Municipio de Badiraguato, Sin.* (press release), April 4, 2008, available at www.sedena.gob.mx/index.php?id_art=1975. This press statement exemplifies the dissemination of misleading information about the case, as it characterizes the events as an "incident" in which four civilians "and two soldiers" were killed. While two soldiers died that same day, the four (unarmed) civilian victims of the case discussed in this section had nothing to do with their deaths; rather, forensic analysis later demonstrated conclusively that the two soldiers had been shot in the back by fellow soldiers. See Recommendation 36/2008 of the CNDH at www.cndh.org.mx; Liliana Alcántara, *Militares víctimas de fuego amigo fueron baleados por la espalda*, EL UNIVERSAL, April 10, 2008, available at www.eluniversal.com.mx/nacion/158702.html.

¹⁶ See Department of Defense, *El Juez Militar Adscrito a la III Región Militar Dicta Auto de Formal Prisión a 5 Militares* (press release), April 11, 2008, available at www.sedena.gob.mx/index.php?id_art=1984. Our translations.

Family members of the victims attempted to challenge the transfer of the case to military jurisdiction by filing *amparo* legal action in federal (civilian) courts seeking to revoke the federal public prosecutor's declination of jurisdiction over the case. The federal courts did not recognize the family members as having legal standing to bring such a complaint and rejected the *amparo* remedies. However, the *amparo* filed by family member Reynalda Morales was appealed and eventually the Supreme Court elected to take jurisdiction over the case, which was designated as *Amparo under Review 989/2009*.

In this *amparo*, the petitioner, represented by Center Prodh and Fundar Center for Analysis and Investigation, argued that article 57 of the Code of Military Justice (analyzed *supra*) is unconstitutional in light of the limits placed on military jurisdiction by article 13 of the Constitution. She also argued that the application of military jurisdiction to human rights crimes violates Mexico's international treaty obligations.¹⁷

On August 10, 2009, the plenary of the Supreme Court held in a 6-5 split decision¹⁸ that petitioner Reynalda Morales did not have legal standing to bring her complaint because her request to have her husband's killing investigated by the competent civilian authorities was not among the rights protected by the legal action of *amparo*.¹⁹

The Supreme Court's August 2009 decision cancels all possibilities for victims of military human rights violations to avoid the processing of their cases by military authorities, and thus eliminates the possibility for domestic remedies to protect the victims' due process rights. For this reason, victims and family members in the situation described can only seek to bring their cases directly to international bodies such as the Inter-American Commission on Human Rights.

In light of the information presented above, we ask the Human Rights Committee to recommend to the Mexican State:

- That public security tasks be carried out by civilian, not military, security forces;
- That the State enact the necessary reforms to article 57 of the Code of Military Justice to exclude human rights cases from the competence of military jurisdiction;

¹⁷ See Center Prodh, *¿Comandante Supremo? La ausencia de control civil sobre las Fuerzas Armadas al inicio del sexenio de Felipe Calderón*, Jan. 2009, pp. 52-53 and 55-56, available at www.centroprodh.org.mx/Publicaciones/InformeAbusosMilitaresCOMP090309.pdf.

¹⁸ The text of the majority decision is available at <http://www2.scjn.gob.mx/expedientes/> by searching for Expediente 989/2009 and clicking on the document that corresponds to the Pleno (plenary) of the Supreme Court. Note that as of December 2009, the dissenting votes in favor of the petitioner were not included in this published version of the sentence, depriving the public of access to the legal arguments of the Supreme Court justices who would have held that the petitioner had legal standing and/or that the Code of Military Justice is unconstitutional.

¹⁹ The text of Mexico's Amparo Law can be found at www.ordenjuridico.gob.mx/Federal/Combo/L-9.pdf. Article 10 of this law explicitly mentions that victims can file *amparo* actions related to obtaining reparations or related to the public prosecutor's decision not to charge someone for a crime. The Supreme Court's overly restrictive reading of this article led to its decision to reject petitioner Reynalda Morales' *amparo* action asking that the competent civilian authorities investigate her husband's killing.

- That the State (a) recognize that victims and family members have the right to ask a civilian court to review the application of military jurisdiction to their cases and (b) immediately provide a suitable legal mechanism (such as *amparo*) to allow affected individuals to obtain this civilian court review.

B. Torture (*para. 12 of the List of Issues*)

In its last set of concluding observations on Mexico, this Committee noted the promulgation of the Federal Act for the Prevention and Punishment of Torture, which it considered a “significant advanc[e] as far as investigating human rights violations and preventing impunity are concerned” (para. 4). However, in the ten years that have elapsed since the Committee’s last evaluation of Mexico, the existence of this law and similar state-level legislation has not led to a meaningful number of convictions for torture in Mexico, despite the systematic practice of torture by security forces. While examples of both advances and setbacks exist and vary from one city or state to another, in Mexico as a whole torture remains widespread as a tool of intimidation, punishment, and above all extraction of information from detained victims.²⁰

Below we discuss in greater detail two of the most serious problems that perpetuate the use of torture by security forces in Mexico today: (1) the existence of incentives for State agents to use torture to obtain confessions to be used as evidence against defendants; and (2) the overwhelming impunity that characterizes even notorious and well-documented cases of torture, including sexual torture.

1) The use of torture to obtain confessions (*para. 12 of the List of Issues*)

In its 1999 concluding observations on Mexico, the Committee noted with concern “that confessions obtained by coercion may be used as evidence against an accused person. The State party should amend the provisions of the law as necessary to ensure that the burden of proof that a confession used in evidence has been made by the accused person of his own free will shall lie with the State, and that confessions obtained by force cannot be used as evidence in trial proceedings” (para. 7).

In the ten years that have elapsed since this recommendation, despite the promulgation of a set of Constitutional reforms in the area of criminal justice in June 2008, Mexico has not yet implemented the necessary reforms to prevent the use of confessions or other statements obtained without due process as evidence against a defendant.

The UN Committee Against Torture concluded in 2003, following a visit to Mexico under article 20 of the CAT, that in Mexico:

“...the purpose of the torture (nearly always to obtain information or a self-incriminating confession); the similarity of the methods employed; and the fact that such methods are widespread, all convinced the Committee members that these are not exceptional situations or occasional violations committed by a few

²⁰ For a visual example of torture committed by Mexican police in recent months, see the Oct. 2009 video footage of police brutally beating a detainee available on the website of Citizens in Support of Human Rights: www.cadhac.org/derechos_humanos/abuso-indignante/.

police officers but that, on the contrary, **the police commonly use torture and resort to it systematically...**²¹

That Committee's finding that torture was practiced systematically by police to obtain coerced statements came just a few years after the Mexican government had represented to the Human Rights Committee that, due to an internal legal framework that "guarantees that confessions cannot be obtained by coercion[.]"²² the Committee's 1999 recommendation on this subject "ha[d] been fully met."²³ This illustrates the need to look beyond the legislative provisions cited by the government in its communications with this Committee and to question the actual level of respect for these rights by government agents in daily practice.

The government's fifth periodic report reiterates arguments made in its 2000 response to this Committee's recommendations, reproducing once more statements that do not reflect the actual practice of obtaining confessions in the criminal justice system. For example, the State argues once again, as it did in 2000: "the confession must be made before a jurisdictional authority and in the company of a person trusted by the accused, ensuring that no confession can be extracted by coercion. Moreover, a confession alone is not enough evidence to convict a person" (para. 571). In fact, confessions made before authorities other than judicial authorities (namely, to agents of the public prosecutor, as explicitly contemplated in article 287.II of the Federal Code of Criminal Procedure²⁴) can still serve as evidence in court proceedings. Further, in practice confessions often form a central element of evidence used to charge and/or convict defendants.

The foregoing is possible, among other reasons, because the set of modifications to the criminal justice system enacted through the June 2008 Constitutional reforms (which provide for an oral, accusatory system in which evidence must generally be produced directly before a judge²⁵) will not enter into force until the various jurisdictions issue secondary, implementing legislation. The reforms provide an eight-year window to fulfill this requirement²⁶ and few states have advanced significantly in the implementation of the accusatory and oral system in the year and a half since the Constitutional reforms.

While the current (pre-reform) justice system persists, confessions obtained by non-judicial authorities continue to have a significant and often decisive weight in the consideration of the alleged guilt of accused individuals. This is largely due to the unique understanding of the principle of "judicial immediacy" (*inmediatez procesal*) as developed in national jurisprudence. This principle, which in other countries is understood to mean that evidence should be produced directly before a judicial authority, in Mexico has been interpreted to mean that the first statement of a detained

²¹ Committee Against Torture, *Report on Mexico Produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico*, CAT/C/75, May 26, 2003, para. 218. Our emphasis.

²² *Comments by the Government of Mexico on the concluding observations of the Human Rights Committee*, UN Doc. CCPR/C/79/Add.123, Aug. 24, 2000, para. 2.b.

²³ *Id.*

²⁴ Text available at www.ordenjuridico.gob.mx/Federal/Combo/C-6.pdf.

²⁵ See article 20 of the Constitution.

²⁶ See the transitory provisions of the Constitutional reform published in the official gazette on June 18, 2008, available at www.dof.gob.mx.

person should be weighed most heavily in subsequent court proceedings against him or her, since – according to the theory sustained by relevant jurisprudence – it is most likely to be the truth.²⁷ This line of jurisprudence thus provides a strong incentive for the authorities who have pre-trial contact with a detained person (e.g., agents of the public prosecutor (*ministerio público*)) to obtain a confession through coercion. In practice, the burden will then fall on the defendant to demonstrate that the confession was coerced if he or she seeks to retract it in court. This problem has been identified by numerous international human rights bodies and non-governmental organizations. When understood against the backdrop of frequent arbitrary detentions carried out by both police and soldiers in Mexico, as well as the longstanding and growing use of the criminal justice system as a tool to criminalize social protest, it is clear that the significant weight afforded to initial statements and confessions propitiates unjust convictions.

Case study: arbitrary detention, torture, and conviction on false charges of environmental defenders Rodolfo Montiel and Teodoro Cabrera

To illustrate briefly the use by judicial authorities of confessions obtained without due process, we offer the example of the conviction for fabricated crimes of two environmental human rights defenders, Rodolfo Montiel and Teodoro Cabrera, of Guerrero state. The underlying facts began in May 1999 but the majority of the criminal process occurred within the time period covered by the government's fifth periodic report to the Human Rights Committee, and the principles illustrated remain current today. This case has been documented and defended by Center Prodh.²⁸

Rodolfo Montiel and Teodoro Cabrera belonged to a local *campesino* organization founded to protect the forests of Petatlán and Coyuca de Catalán, Guerrero, from illegal and excessive logging. Montiel was one of the founding leaders of this organization. In the late 1990s, the *campesino* environmentalists succeeded in triggering the withdrawal from the region of a transnational logging company. However, their activism triggered retaliation from powerful actors. In May 1999, a contingent of approximately 40 soldiers arrived to the community of Pizotla, Guerrero, and attacked and detained Montiel and Cabrera. For the next several days, the victims remained under the custody of the armed forces, who employed brutal physical and psychological torture to force the ecologists to confess to crimes they had not committed. It was not until five days after their arbitrary detention that the victims appeared before a judicial authority.

²⁷ This interpretation of the principle of judicial immediacy can be seen, for instance, in the following jurisprudence of the Supreme Court:

RETRACTION. IMMEDIACY. The first statements merit greatest weight, since due to their proximity to the events they are generally the most truthful, as there did not exist sufficient time for the declarant to reflect upon the convenience of altering the facts. This juridical standard, which gives preference to initial depositions, is supported by the logical principle of contradiction and is appropriately applied not only with respect to retractions by the accused, or by witnesses, but also by the injured party.

Jurisprudential thesis VI.2o. J/61, p. 576, *Semanario Judicial de la Federación y su Gaceta* IV, Ninth Period, August 1996. Our translation.

²⁸ See also Inter-American Commission on Human Rights, Report 11/04, Petition 735/01: Teodoro Cabrera García and Rodolfo Montiel Flores (Feb. 27, 2004), available at www.cidh.org/annualrep/2004eng/mexico.735.01eng.htm.

Although both victims repeatedly denounced having been tortured, judicial authorities delayed in ordering an investigation to determine whether torture had occurred (and the eventual investigation took place in military jurisdiction and yielded no results). In the criminal trial of the two ecologists that followed, neither the first instance judicial authority who resolved the case (the Fifth District Judge of the 21st Circuit, who convicted the two victims on Aug. 28, 2000), nor the multiple appeals courts (the First Unitary Tribunal of the 21st Circuit, which confirmed the convictions on Oct. 26, 2000 and again on July 16, 2001; and the Second Collegiate Tribunal of the 21st Circuit, which confirmed the convictions on several counts on Aug. 14, 2002), at any time questioned the evidentiary value of the confessions of the two victims, which were instead afforded particular weight.

In the sentence of August 28, 2000, the District Judge who convicted the two victims offered the following reasoning with regard to the role of the confessions in the proceedings:

In our justice system, it is not sufficient that someone alleges that they have been physically or mentally abused for the person to be liberated, since in principle they should prove that such violence existed and that it served as the means to obtain the confession, which, at most, would invalidate the confession. But if despite the foregoing there exist various pieces of evidence that demonstrate the person's guilt in a given crime, the person may be convicted...²⁹

While the victims in this case were eventually liberated from prison for health reasons, their convictions stand. The case is currently before the Inter-American Court of Human Rights.

2) Impunity for torture, including sexual torture (paras. 3 & 12 of the List of Issues)

Despite the existence of federal and state laws regarding torture, impunity remains the norm for this frequent human rights violation.³⁰ This climate of impunity combines with the motives to use torture mentioned above to create a context in which members of the security forces have incentives to commit this human rights violation.

In addition to its recommendations on the subject of torture, this Committee expressed its concern in 1999 over “the many allegations of rape or torture by the security forces of women in detention... The State party should take effective measures... to ensure that all allegations of abuse are investigated and the perpetrators brought to justice” (para. 16). However, as demonstrated by the example that follows, numerous women raped and sexually tortured by police in one of the most emblematic cases of human

²⁹ Sentence issued by Fifth District Judge of the 21st Circuit, Aug. 28, 2000, Causa Penal 61/99. Our translation.

³⁰ For example, on the occasion of the visit of the UN Subcommittee on the Prevention of Torture to Mexico in September 2008, human rights organizations informed the Subcommittee that in Jalisco state, despite the 14-year-old law against torture, they had no knowledge of any authority who had been convicted for this crime, while in Monterrey, the 10-year-old law against torture had resulted in just one known conviction. See *Visita del Subcomité para la Prevención de la Tortura a México*, Sept. 12, 2008, available at www.redtdt.org.mx/media/descargables/VisitaSubcomite120908.pdf.

rights violations of the past decade continue to seek justice after more than three years of impunity for the violations committed against them.

Case study: impunity for the sexual torture of women in San Salvador Atenco

On May 3 and 4, 2006, a group of local flower sellers clashed with police forces in the towns of Texcoco and San Salvador Atenco in the state of Mexico. With the support of the local social movement People's Front in Defense of the Land (FPDT), the flower sellers protested the forced relocation of flower stalls by the municipal government. Refusing to negotiate, authorities ordered over 2,500 members of state and federal police forces to surround the town and suppress the protest.

Throughout the police operation, police officers indiscriminately assaulted and detained both protesters and by-standers not involved in the conflict. Two individuals, aged 14 and 20, were killed as a result of police brutality and the police arbitrarily detained more than 200 other people, beating the detainees and forcing them to lie piled on top of each other in the buses used to transport them to a detention center.

During the journey by bus to the detention facility, the police raped, threatened, and otherwise sexually tortured dozens of women whom they had arbitrarily detained in San Salvador Atenco. The sexual torture committed during the police operation has been documented by Center Prodh as well as by both the National Human Rights Commission (see recommendation 38/2006 of the CNDH) and Mexico's Supreme Court, which investigated the case and issued its findings in February 2009, confirming the grave human rights violations that had occurred in Atenco but failing to place responsibility on any given State official.

Despite the detailed documentation and evidence available in this nationally known case, Mexican authorities have not charged any police who participated in the Atenco operation with either torture or rape, and have instead brought minor charges, such as 'abuse of authority,' in just a handful of cases. As of December 2009, three and a half years after the events in San Salvador Atenco, not one police officer has been punished for the serious crimes committed there.³¹

Center Prodh represents eleven of the women who suffered sexual torture at the hands of the police and, together with the victims, in the months following the events we presented numerous pieces of evidence to the federal Special Prosecutor for Crimes related to Violence against Women (FEVIM/FEVIMTRA) to aid this body of the federal Attorney General's Office in investigating the case. However, in July 2009 the Special Prosecutor declined jurisdiction over the case in favor of local Mexico state authorities. Upon declining jurisdiction, the FEVIMTRA sent a list of more than thirty police officers implicated in sexual torture to local authorities in Mexico state for follow-up. However, these local authorities'

³¹ A single police officer was originally sentenced to pay a sum of money for having forced a detained woman to perform oral sex on him, but even this conviction was overturned on appeal, leaving the sexual torture committed in Atenco in total impunity. See Center Prodh, *Atenco: La impunidad continua* (press release), June 16, 2009, available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=138&Itemid=65.

actions over the past three and a half years have demonstrated a notorious lack of impartiality rising to the level of publicly accusing the women of fabricating rape charges because they belong to “radical” groups (a statement made by Governor of Mexico state Enrique Peña Nieto³²); using the pretext of the investigation into the abuses committed in Atenco to investigate the victims; and placing under indefinite reserve any investigation for the crime of torture.³³ The state attorney general, upon being questioned regarding the FEVIMTRA’s declination of jurisdiction over the case, commented that state authorities probably “lacked evidence” to charge anyone for the crimes committed in Atenco.³⁴

Far from being held accountable, high-ranking members of the government implicated in the Atenco abuses continue to hold office or assume new and prestigious posts. Eduardo Medina Mora, who held the post of Secretary of Public Security during the Atenco operation and was ultimately in charge of the federal police at that time, was soon thereafter named federal Attorney General, and hence placed in charge of the investigation into the abuses that occurred under his watch as Secretary of Public Security. As explained above, his office did not advance the investigation and has now effectively absolved all federal police of responsibility by declining jurisdiction over the case. In late 2009, Medina Mora retired as Attorney General and will now represent Mexico on the international plane as Ambassador to the United Kingdom. On December 17, 2009, the federal government once more showed its indifference to the grave human rights violations committed in Atenco when Wilfrido Robledo Lamadrid, ex-chief of the Mexico state police and one of those who planned and oversaw the Atenco operation, was named head of the newly created Federal Investigatory Police (*Policía Federal Ministerial*). This pattern of promotion of officials with a history of serious political and civil rights violations sends a damaging message of impunity that perpetuates such violations at all levels.

Given the lack of access to justice at the local and national levels, the women of Atenco have brought their case to the Inter-American Commission on Human Rights.

In light of the information presented above, we ask the Human Rights Committee to recommend to the Mexican State:

- That it ensure, effective immediately, that no statement made to authorities other than judicial authorities is admitted as evidence against a defendant in court;
- That it charge and appropriately punish the perpetrators of the sexual torture committed in San Salvador Atenco and do the same in all other cases of torture, providing the victims with reparations designed to respond to the gravity and nature of these offenses.

³² See *Desestima Peña abusos en Atenco*, REFORMA, June 16, 2006, p. 2.

³³ Accord of March 8, 2007, authorized on March 14, 2007, by which the agent of the public prosecutor (state attorney general’s office, Mexico state), reserved the investigation for torture in investigation TOL/DR/I/466/2006. See CNDH, *Informe Anual de Actividades 2007, Seguimiento General de Recomendaciones Durante el Periodo del 1 de Enero al 31 de Diciembre de 2007*, available at www.cndh.org.mx/lacndh/informes/informes.htm.

³⁴ See Center Prodh, *PGJEM carece de imparcialidad para investigar caso Atenco* (press release), Sept. 30, 2009, available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=187&Itemid=1.

C. Structural flaws and discrimination in the justice system (*arts. 9 & 14 of the ICCPR*)

In its 1999 concluding observations, this Committee recommended that “The State party should establish a procedure ensuring that accused persons enjoy all their rights in a suit at law in accordance with the abovementioned article 14” (para. 11).

Ten years later, the justice system remains a continuous source of human rights violations. Basic guarantees of due process and the presumption of innocence are routinely disregarded, with an especially severe impact on vulnerable social groups.

We do not pretend to offer an exhaustive analysis of the justice system in the present report. Rather, by way of illustration we offer the example of three indigenous women whose cases exemplify the devastating and arbitrary impact of the justice system in the lives of vulnerable populations and how easily this system lends itself to the criminalization of social protest and the imprisonment of innocent victims.

Case study: arbitrary detention, discrimination, and unjust imprisonment of Jacinta Francisco Marcial, Alberta Alcántara Juan, and Teresa González Cornelio

The Mexican government states in its fifth periodic report that “For indigenous communities, the federal Constitution states that they have the right, in all cases and proceedings to which they are party individually or collectively, to have their customs and cultural differences taken into account. They must also be assisted by interpreters and advocates who have knowledge of their language and culture, in order to understand and be understood in legal proceedings...” (para. 604). These provisions are often not implemented in practice. A paradigmatic case that illustrates the experience of many indigenous defendants in the justice system is that of three indigenous women in Querétaro state, accused of a fabricated kidnapping.

On December 19th, 2008, Jacinta Francisco Marcial, Alberta Alcántara Juan, and Teresa González Cornelio, three ñhã-ñhú (Otomí) indigenous women, were convicted of having kidnapped six armed agents of the Federal Investigation Agency (AFI, for its initials in Spanish) on March 26th, 2006 in the community of Santiago Mexquititlán in Querétaro. The three women were sentenced to twenty-one years in prison. Center Prodh documented the case in the context of taking on the defense of Jacinta Francisco Marcial.

What had actually occurred on March 26, 2006, the date of the supposed “kidnapping,” is that six AFI agents carrying no official identification entered the main square of Santiago Mexquititlán and proceeded to confiscate the local merchants’ goods without legal basis. When the merchants protested and a superior officer arrived, the agents offered to compensate the damage caused and left to bring compensation money, leaving behind one agent as a guarantee of their return. The agent who stayed behind was in communication with his superiors at all times and did not suffer any kind of physical aggression. The incident ended

that same day around 7.00pm, when all the agents left the town after compensating the merchants.

More than four months after the event, on August 3rd, 2006, Jacinta Francisco, Alberta Alcántara, and Teresa González were arrested. Without having been informed of the reason for their detentions, they were presented before the media, accused of having kidnapped six armed AFI agents during the incident in the market of Santiago Mexquititlán. The only evidence against them was a series of notoriously contradictory statements made by the federal agents, who acted as victims, witnesses, and investigators, as well as newspaper photos taken of the gathering in the town square in which the women appear, in some cases simply passing through the background of the photo and clearly not engaged in any illegal activity (the photos themselves show that no violent activity was taking place). The AFI agents did not accuse any indigenous women of kidnapping them in their initial statements, but after seeing the newspaper photos, they accused the three women, whose faces happen to be discernible in the photos.³⁵

During their criminal trials, the women's right to have interpreters present was not respected. Their trials exemplified the deficiencies of a justice system still characterized by inquisitorial elements: the judge simply confirmed the validity of the arguments presented by the public prosecutor, without having any evidence presented before him that established the women's responsibility. When the judge was presented with exculpatory evidence, he refused to consider it. On appeal, the appeals judge found "substantial contradictions" in the testimony of the AFI agents but chose not to acquit but rather to order the reproduction of evidence. The National Human Rights Commission confirmed multiple human rights violations and procedural irregularities in the detention and trial of the three women in its Recommendation 47/2009 of July 17, 2009.³⁶

After the reproduction of evidence, and amidst a campaign of public solidarity in favor of Jacinta Francisco Marcial, who was adopted as a Prisoner of Conscience by Amnesty International, the federal public prosecutor dropped charges against Jacinta and she was freed from prison in September 2009. However, this same authority continues to press charges against her co-defendants Alberta and Teresa, accused of the same fabricated kidnapping, and now asks for the maximum penalty (more than forty years of prison) based solely on the same evidence already discredited in the case of Jacinta (insofar as the public prosecutor recognized that such evidence did not demonstrate her guilt of any crime).³⁷

³⁵ See Center Prodh & Centro de Derechos Humanos Fray Jacobo Daciano, *Caso Alberta y Teresa / La PGR insiste en acusar a dos mujeres por el secuestro de seis afís* (press release), Nov. 30, 2009, available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=199&Itemid=1; *Jacinta Francisco Marcial*, http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=122&Itemid=97; *Recomendación de la CNDH confirma inocencia de Jacinta, Teresa y Alberta* (press release), July 20, 2009, available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=158&Itemid=97.

³⁶ *Id.*

³⁷ See Center Prodh & Centro de Derechos Humanos Fray Jacobo Daciano, *Caso Alberta y Teresa / La PGR insiste en acusar a dos mujeres por el secuestro de seis afís* (press release), Nov. 30, 2009, available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=199&Itemid=1; *Jacinta Francisco Marcial*, http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=122&Itemid=97;

In relation to Jacinta, the federal Attorney General's Office maintains that no reparations are due to her for spending more than three years unjustly imprisoned. In an example of the lack of implementation of the presumption of innocence in the Mexican justice system, this highest national prosecutorial authority stated in September 2009 that the fact that charges had been dropped against Jacinta "in no way means that her innocence in this case has been demonstrated."³⁸ Such statements demonstrate that the federal Attorney General's Office's understanding of the case is the opposite of that mandated by the presumption of innocence, since it places the burden on the accused to demonstrate her innocence.

At the time of this writing, Alberta Alcántara and Teresa González await their new sentence following the reproduction of evidence mentioned above. It is important to emphasize that the case of these three women is not an isolated event, but rather a sample of a much larger universe of cases in which defendants are convicted not based on rigorously proven facts but rather because their social and economic status leave them defenseless in a system that does not respect basic due process rights. This case is also emblematic of the use of the justice system to repress social protest against government abuses, as the invention of the kidnapping was an act of retaliation for the fact that the merchants of the town had protested against the irregular confiscation of their goods.

In light of the information presented above, we ask the Human Rights Committee to recommend to the Mexican State:

- That it take all necessary steps to implement the due process rights contained in the ICCPR, with special attention to the rights of indigenous defendants;
- That it take all necessary steps to halt the use of the justice system to criminalize non-violent social protest and that it investigate and prosecute such abuse.

D. Obstacles to the work of human rights defenders (*para. 22 of the List of Issues*)

Under the administration of Felipe Calderón, the work of human rights defenders faces increasing obstacles in the context of governmental discourse that propitiates the idea that human rights are obstacles to achieving public security. In response to this Committee's interest in the subject of attacks against human rights defenders, we offer the following examples as a non-exhaustive list of some of the attacks that have occurred during the time period covered by the fifth periodic report and in the following months:

Recomendación de la CNDH confirma inocencia de Jacinta, Teresa y Alberta (press release), July 20, 2009, [available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=158&Itemid=97](http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=158&Itemid=97).

³⁸ See Center Prodh, *Afirmaciones de la PGR en los casos de Jacinta, Alberta y Teresa denotan su incapacidad para ajustarse a las exigencias de un estado democrático de derecho* (press release), Sept. 23, 2009, [available at http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=186&Itemid=58](http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=186&Itemid=58). Our translation.

- The killing in May 2007 of environmental rights defender Aldo Zamora, 21 years old, in an ambush in which his younger brother Misael Zamora, 16 years old, was wounded. Both are children of renowned defender of the forests Idefonso Zamora, who has struggled for years against illegal logging in the state of Mexico.³⁹
- Harassment and threats against Sister Consuelo Morales Elizondo, Director of the organization Ciudadanos en Apoyo a los Derechos Humanos (Citizens in Support of Human Rights or CADHAC) in Nuevo León, in 2008.⁴⁰
- Threats and judicial persecution against Sr. Martín Amaru Barrios Hernández of the Comisión de Derechos Humanos y Laborales del Valle de Tehuacán (Human and Labor Rights Commission of the Tehuacán Valley or CDHLVT) in Puebla, in June 2008.⁴¹
- Harassment and acts of intimidation against Father Alejandro Solalinde, defender of migrants' rights, in Oaxaca in June 2008.⁴²
- Acts of harassment and intimidation by soldiers against Mercedes Murillo Monge, President of the Frente Cívico Sinaloense (Sinaloan Civic Front), in Culiacán, Sinaloa, in November 2009.⁴³
- The forced disappearance, torture, and extrajudicial execution of human rights defenders and indigenous community leaders Raúl Lucas Lucía and Manuel Ponce Rosas in the state of Guerrero in February 2009.⁴⁴
- Death threats received by President of the Organización del Pueblo Indígena Me'phaa (Me'phaa Indigenous People's Organization or OPIM) and human

³⁹ Case defended by Center Prodh. See also Observatorio para la Protección de los Defensores de Derechos Humanos, *México: Defensores de derechos humanos frente a la mutación política y la violencia*, Feb. 2009, p. 3, available at www.omct.org/pdf/Observatory/2009/Informe_Mision_Mexico.pdf, Anexo 6, pp. 114-120.

⁴⁰ Center Prodh has direct knowledge of this situation. Observatorio para la Protección de los Defensores de Derechos Humanos, *México: Defensores de derechos humanos frente a la mutación política y la violencia*, Feb. 2009, p. 3, available at www.omct.org/pdf/Observatory/2009/Informe_Mision_Mexico.pdf, Anexo 6, pp. 114-120.

⁴¹ Center Prodh has intervened in this case. See also Observatorio para la Protección de los Defensores de Derechos Humanos, *México: Defensores de derechos humanos frente a la mutación política y la violencia*, Feb. 2009, p. 3, available at www.omct.org/pdf/Observatory/2009/Informe_Mision_Mexico.pdf, Anexo 6, pp. 114-120.

⁴² Observatorio para la Protección de los Defensores de Derechos Humanos, *México: Defensores de derechos humanos frente a la mutación política y la violencia*, Feb. 2009, p. 3, available at www.omct.org/pdf/Observatory/2009/Informe_Mision_Mexico.pdf, Anexo 6, pp. 114-120.

⁴³ Center Prodh has intervened in this case. Amnesty International, urgent action: 232/09, Index: AMR 41/060/2009, Nov. 20, 2009, available at www.amnesty.org/en/library/asset/AMR41/060/2009/en/3526a110-61bf-4b54-a509-c1b238ff972e/amr410602009es.pdf.

⁴⁴ Joint press release of ten human rights organizations, *Se intensifican agresiones contra defensores de derechos humanos en Guerrero*, March 25, 2009, available at www.cencos.org/es/node/20526.

rights defender Otilia Eugenio Manuel, in March 2009 in the state of Guerrero.⁴⁵

- The murder of Ricardo Murillo Monge, of the Frente Cívico Sinaloense (Sinaloan Civic Front), in September 2007 in Culiacán, Sinaloa.⁴⁶
- The attempted murder of Sr. Salomón Monárrez Meraz, Secretary of the Frente Cívico Sinaloense (Sinaloan Civic Front) in Culiacán, Sinaloa, in August 2009.⁴⁷
- Threats and acts of aggression against the members of Belén, Posada del Migrante (Belén Migrants' Shelter) in Saltillo, Coahuila, in October 2009.⁴⁸
- Harassment and attacks against human rights defender Cristina Auerbach Benavides in 2007, 2008, and 2009, in the state of Coahuila, where Sra. Auerbach defends the emblematic case of the explosion of the Pasta de Conchos coal mine, in which 65 miners were killed.⁴⁹
- Attempted murder, attacks, torture, threats, and harassment against investigative journalist and human rights defender Lydia Cacho Ribeiro from 2005 until the present day.⁵⁰
- The murder of Sr. Lorenzo Fernández Ortega, activist of the Organización del Pueblo Indígena Me'phaa (Me'phaa Indigenous People's Organization or OPIIM), in the state of Guerrero in February 2008.⁵¹
- Armed attack against environmental rights leader Sr. Albertano Peñalosa Domínguez, member of the Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán (Organization of Peasant Ecologists of the Sierra de Petatlán and Coyuca de Catalán), causing the deaths of two of his children, in May 2005 in the state of Guerrero.⁵²

⁴⁵ *Id.*

⁴⁶ Observatorio para la Protección de los Defensores de Derechos Humanos, urgent action MEX 009 / 0909 / OBS 130, Sept. 2, 2009, note 2, available at www.omct.org/index.php?id=OBS&lang=es&actualPageNumber=1&articleSet=Appeal&articleId=8785.

⁴⁷ *Id.* Center Prodh has intervened in this case.

⁴⁸ Center Prodh has direct knowledge of this case. See also Amnesty International, urgent action: 277/09, Index: AMR 41/053/2009, Oct. 9, 2009, available at www.amnesty.org/es/library/info/AMR41/053/2009/es.

⁴⁹ Amnesty International, urgent action 272/08, AMR 41/011/2009, Feb. 26, 2009, available at www.amnesty.org/es/library/info/AMR41/011/2009/es.

⁵⁰ Amnesty International, urgent action 137/09, AMR 41/028/2009, June 1, 2009, available at www.amnesty.org/es/library/info/AMR41/028/2009/es.

⁵¹ See Sergio Ocampo Arista, *Pide Amnistía Internacional indagar asesinato de activista*, LA JORNADA, Feb. 26, 2008, available at www.jornada.unam.mx/2008/02/26/index.php?section=estados&article=038n2est.

⁵² This is the same environmental defense organization discussed in the case study *supra* regarding the ecologists Rodolfo Montiel and Teodoro Cabrera. See Observatorio para la protección de los Defensores de los Derechos Humanos, urgent action MEX 004 / 1204 / OBS 094.1, June 5, 2005, available at www.omct.org/index.php?id=OBS&lang=es&actualPageNumber=28&articleSet=Appeal&articleId=5505

- Arbitrary detention and unfounded imprisonment for more than two years of Sra. Concepción Moreno Arteaga, migrants' rights defender, in March 2005 in the state of Querétaro.⁵³
- Arbitrary detention and imprisonment of environmental rights leader Sr. Felipe Arreaga Sánchez, Secretary of the Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán (Organization of Peasant Ecologists of the Sierra de Petatlán and Coyuca de Catalán), in the state of Guerrero in November 2004.⁵⁴
- The killing of human rights lawyer Digna Ochoa y Plácido in the Federal District (Mexico City) in October 2001.⁵⁵

IV. Conclusion

As illustrated in the foregoing pages, the Mexican government has disregarded numerous recommendations made by this Committee in 1999, touching upon some of the gravest civil and political rights violations both then and now.

Notwithstanding the ratification of treaties including the ICCPR, the daily situation of civil and political rights is one of widespread, severe abuses. This situation has worsened during the last three years under the administration of Felipe Calderón due to a militarized war against crime in which civilians suffer torture, arbitrary detention, and executions at the hands of the armed forces, whose increased role in the public security agenda constitutes a *de facto* state of derogation of rights of the population. The military commits abuses in the knowledge that the use of military jurisdiction as the exclusive forum to investigate and try such crimes – in open violation of international and regional treaties as well as recommendations from a vast array of international human rights organs – will ensure near-universal impunity for the perpetrators.

Impunity is also a constant in abuses committed by police, including even the most high-profile cases of torture. On the other hand, while those who torture will likely face no punishment for their crimes, the criminal justice system instead pursues vulnerable groups such as indigenous populations, who face trial in a system that does not respect the presumption of innocence, that reproduces patterns of discrimination found in society and fails to respect the rights of minorities, and that lends itself to use as a tool of social repression against communities that stand up for their rights.

Against this backdrop of grave civil and political rights violations, we ask that the Human Rights Committee evaluate closely the fifth periodic report of the government

⁵³ Case defended by Center Prodh. See Centro de Derechos Humanos Miguel Agustín Pro Juárez, *Concepción Moreno: migración y solidaridad*, in http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=45&Itemid=63.

⁵⁴ Center Prodh intervened in this case. Observatorio para la protección de los Defensores de los Derechos Humanos, urgent action MEX 004 / 1204 / OBS 094, Dec. 17, 2004, available at www.omct.org/index.php?id=OBS&lang=es&actualPageNumber=28&articleSet=Appeal&articleId=5460

⁵⁵ See Observatorio para la protección de los Defensores de los Derechos Humanos, *México: Asesinato de Digna Ochoa y Plácido*, Oct. 24, 2001, available at www.omct.org/index.php?id=OBS&lang=es&actualPageNumber=27&articleSet=Appeal&articleId=1288

from the perspective of the daily reality seen on the ground, and that it include in its concluding observations the recommendations that we have highlighted in this report, each of which is essential to halting the deterioration in human rights currently occurring in Mexico.

V. Contact information

For further information or for questions regarding the contents of this report, please contact:

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