

Recalling the Rule of Law:

Report of the lawyers' delegation to Mexico

A report on the protection of human rights defenders and the
rule of law in the states of Guerrero and Oaxaca, Mexico

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BAR HUMAN RIGHTS
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Table of Contents

Acronyms	1
Executive Summary.....	2
1. Methodology.....	4
2. Introduction.....	6
2.1 The Mexican context.....	6
2.2 Political and legal structure.....	8
2.3 Protection of human rights.....	8
2.4 Indigenous peoples.....	10
2.5 Guerrero and Oaxaca.....	11
3. Rule of Law.....	12
3.1 Judicial reform.....	12
3.2 Legal aid.....	13
3.3 Police accountability.....	13
<i>Case study 1: Juan Manuel Martínez Moreno</i>	17
3.4 Pre-charge and pre-trial detention.....	18
3.5 Prison conditions.....	21
3.6 Language restrictions in the criminal justice system.....	22
3.7 Military jurisdiction.....	23
<i>Case study 2: Valentina Rosendo Cantú and Inés Fernández Ortega</i>	26
<i>Case study 3: Rosendo Radilla Pacheco</i>	28
<i>Case study 4: Bonfilio Rubio Villegas</i>	29
4. Lawyers and Human Rights Defenders.....	34
<i>Case study 5: Tlachinollan Human Rights Centre</i>	35
<i>Case study 6: Organisation of Indigenous Me'phaa People (OPIM) and Organisation for the Future of the Mixteco People (OFFPM)</i>	36
4.1 Perception of human rights defenders in Mexico.....	37
4.2 Criminalisation of social protest.....	37
<i>Case study 7: Marcelino Coache</i>	38
<i>Case study 8: Raúl Hernández</i>	39
4.3 Attacks on and harassment of human rights defenders and their lawyers.....	40
<i>Case study 9: Raúl Lucas Lucía and Manuel Ponce Rosas</i>	40
<i>Case study 10: Lorenzo Fernández Ortega</i>	41
<i>Case study 11: Otilia Eugenio Manuel, President of the Me'phaa Indigenous People's Organisation (Organización del Pueblo Indígena Me'phaa) (OPIM)</i>	41
4.4 Protection of human rights defenders (protective measures).....	43
<i>Case study 12: María de la Luz Martínez and Maurilio Santiago</i>	44
4.5 Protecting the rights of human rights defenders – a way forward.....	46
5. Conclusion.....	48
6. Recommendations.....	49
7. Appendices.....	53
Appendix A:.....	53
Appendix B:.....	55

Acronyms

ACHR	American Convention on Human Rights
APBO	<i>Asamblea Popular de los Pueblos de Oaxaca</i> (Popular Assembly of the People of Oaxaca)
BHRC	Bar Human Rights Committee of England and Wales
CERESO	<i>Centro de Readaptación Social</i> (Social Rehabilitation Center)
CNDH	<i>Comisión Nacional de Derechos Humanos</i> (National Human Rights Commission)
CODDEHUM	<i>Comisión para la Defensa de los Derechos Humanos en Guerrero</i> (Commission for the Defence of Human Rights in Guerrero)
EZLN	<i>Ejército Zapatista de Liberación Nacional</i> (National Zapatista Liberation Army)
IACFDP	Inter-American Convention on Forced Disappearance of Persons
ICCPR	International Covenant on Civil and Political Rights
IACHR	Inter-American Court of Human Rights
IAHRC	Inter-American Human Rights Commission
MNPT	<i>Mecanismo Nacional de Prevención de la Tortura</i> (National Mechanism for the Prevention of Torture)
MOCIPOL	<i>Monitor Civil de la Policía y de las Fuerzas de Seguridad</i> (The Police and Security Forces Civil Monitor)
NGO	Non-governmental organisation
OFPM	<i>Organización para el Futuro del Pueblo Mixteco</i> (Organisation for the Future of the Mixtec People)
OPIM	<i>Organización del Pueblo Indígena Me'phaa</i> (Organisation of Indigenous Me'phaa People)
PAN	<i>Partido de Acción Nacional</i>
PBI	Peace Brigades International
PGJE	<i>Procuraduría General de Justicia del Estado</i> (State Attorney General's Office)
PGJM	<i>Procuraduría General de Justicia Militar</i> (Military Attorney General's Office)
PGR	<i>Procuraduría General de la República</i> (Federal Attorney General)
PNDH	<i>Programa Nacional de Derechos Humanos</i> (National Human Rights Program 2008-2012)
PRI	<i>Partido Revolucionario Institucional</i>
SEDENA	<i>Secretaría de la Defensa Nacional</i> (Ministry of Defence)
SEGOB	<i>Secretaría de Gobernación</i> (Ministry of the Interior)
UK	United Kingdom
UN	United Nations
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
US	United States of America

Executive Summary

Between 26 November and 4 December 2009, the Bar Human Rights Committee of England and Wales (BHRC) led a high-level international delegation of human rights lawyers to Mexico. Thirteen lawyers represented Canada, England and Wales, Germany, Ireland and the United States of America. The purpose of the delegation was to conduct an independent and impartial audit of the human rights situation in the Mexican states of Guerrero and Oaxaca; in particular, to assess access to justice, respect for the rule of law, and the ability of lawyers and human rights defenders to exercise their vocation freely.

Human rights and the rule of law in Mexico have been violated by state authorities for many years by means including torture, police and military repression, rape, enforced disappearance and extrajudicial killings. Many of these human rights violations have not been adequately addressed, which has led to serious implications of impunity and an increased use and reliance on the Inter-American human rights system.

The delegation was encouraged by the positive commitments of the Mexican Republic to uphold international human rights standards. Mexico has frequently led the way in promoting human rights in a variety of international *fora*, including the United Nations and Organization of American States, and has been open to international reviews of its human rights situation. The delegation was also encouraged by the positive commitments of Mexico to implement human rights policies at the national level.

Unfortunately, the climate of impunity in which these human rights abuses exist at the state and municipal level undermine these commendable efforts at the federal level. The delegation heard examples of a lack of harmonisation and cooperation between the 31 states and the federal district. This has fundamentally undermined such efforts and led to an incongruity for human rights protection and promotion at the grassroots level. Where human rights violations are occurring at the state level and individuals are not receiving adequate protection, intervention by federal officials is often a difficult and bureaucratic process, leaving a void for practical and effective protection of individual rights.

Government officials and civil society actors alike unanimously agreed that trust and credibility in the Mexican criminal justice system, including access to justice for poor and marginalised sectors of society, is a fundamental concern undermining the rule of law in Guerrero and Oaxaca. Failures across all levels of the criminal justice system have led to impunity for human rights abuses, including a lack of competent, thorough, impartial and timely investigations into human rights violations. A lack of police accountability and an overly complex police system at municipal, state and federal levels exacerbate such impunity, in addition to procedural failings of the justice system, including prolonged periods of pre-charge and pre-trial imprisonment, inadequate regard for due process within the trial system and a lack of indigenous language translation services. As such, the delegation welcomed the adoption of the *2008 Public Security and Criminal Justice Reform Programme* which aims to streamline, modernise and further professionalise the justice system in all areas, and in particular to establish an accusatory, oral criminal trial system into Mexico that is based on the presumption of innocence. This key reform encourages more transparency and seeks to establish a more rights-based system in which the rights of the victim and the accused are equally respected.

Recognising the need for Mexico to combat the narcotics trade, the delegation notes that the use of the military to achieve this has exposed the civilian population to an increased risk of serious human rights violations and impunity for military offenders. The use of military jurisdiction in cases of human rights abuses committed by members of the military against civilians has been widely criticised by national human rights defenders and lawyers, as well as the international community. The delegation hopes Mexico will implement the recommendations to adopt necessary legislative reforms to harmonise the Code of Military Justice with recognised international standards at the earliest opportunity and remove jurisdiction from the military justice system in cases of alleged human rights violations committed by members of the armed forces against the civilian population.

Mexican lawyers and human rights defenders continue to effectively and passionately advocate on behalf of the most vulnerable portions of the population. The delegation were encouraged and uplifted by the high level of professional skills, expertise and dedication demonstrated by the various lawyers, professional bodies, human rights defenders and civil society organisations it met in Guerrero, Oaxaca and Mexico City. As their work often forces them to challenge the status quo, they routinely face harassment and intimidation at the hands of the government or its agents, most commonly in the form of threats to their lives and physical health, consequently jeopardising the rule of law as well as efforts by the Mexican authorities to promote human rights.

As the situation in Guerrero and Oaxaca demonstrates, while it is clear that there are Mexican public institutions committed to the promotion and protection of human rights, a more cohesive approach with public institutions acting in concert needs to be adopted to achieve this end. The significant number of victims of human rights violations, human rights defenders and local lawyers in Guerrero and Oaxaca, for whose protection precautionary and provisional measures have been issued by the Inter-American Commission on Human Rights and Inter-American Court of Human Rights, is evidence of the inability of state officials to effectively protect such individuals. Inadequate implementation of these measures has disabled the proper functioning of human rights organisations identified as their intended beneficiaries, further hindering the realisation of human rights and access to justice in these states.

I. Methodology

Between 26 November and 4 December 2009, the Bar Human Rights Committee of England and Wales (BHRC) led an international delegation of human rights lawyers to Mexico.

The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. The Committee is also concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The purpose of the delegation was to conduct an independent and impartial audit of the human rights situation in the Mexican states of Guerrero and Oaxaca; in particular, to assess access to justice, respect for the rule of law, and the ability of lawyers and human rights defenders to exercise their vocation freely.

BHRC, through their partner organisation Peace Brigades International (PBI), has in recent years built-up contacts with lawyers and legal organisations in both these states, providing them with support and solidarity for the work in which they engage in. By sending a delegation to the region, BHRC hoped to provide international support and encouragement to members of their own profession in Guerrero and Oaxaca, as well as carrying out an investigation into the rule of law, access to justice and the protection of human rights and human rights defenders in these two states. PBI provided the delegation with logistical assistance and regional expertise. However, all the recommendations contained in this report are solely the findings of the members of the delegation and in no way represent the views of PBI.

The delegation comprised the following individuals:

1. Nancy Allison: Lawyer (Canada)
2. Sarah-Anne Barriault-Poulin: Lawyer and representative of Lawyers without Borders (Canada)
3. N. Kay Bridger-Riley: Civil Rights Lawyer from Oklahoma and representative of the American Bar Association's Center for Human Rights (USA)
4. Nigel Dodds: Solicitor and representative of the Law Society Charity (UK)
5. Cara Gibbons: Lawyer and representative of Lawyers' Rights Watch Canada (Canada)
6. Adam Hiddleston: Barrister and representative of the BHRC (UK)
7. Ajanta Kaza: Barrister and Executive Committee member of the BHRC (UK)
8. Jacqueline Macalesher: Former Project Coordinator of the BHRC (UK)
9. Anna Manning: Solicitor and representative of the Law Society's International Action Team (UK)
10. John No: Barrister and Solicitor at Community Advocacy & Legal Centre (Canada)
11. David Palmer: representative of Solicitors International Human Rights Group (UK)
12. Jasmina Prpic: Lawyer representative of Commission of Human Rights of the Association of Judges and State Attorneys and the Association of Lawyers, Freiburg, and Attorneys without Borders, Freiburg (Germany)
13. Rod Ramsden: Solicitor and representative of the Law Society (UK)

While in Mexico, the delegation met with representatives of the Federal Ministry of Interior, the Federal Attorney-General's Office, the Supreme Court, the National Commission for Human Rights, and state and municipal officials in Guerrero and Oaxaca. The delegation also met with the Office of the UN High Commissioner for Human Rights, the British Ambassador and various members of the diplomatic community, local lawyers, human rights defenders and non-governmental organisations (NGOs) in Mexico City, Guerrero and Oaxaca, and the officers of the three major Bar Associations in Mexico. In the UK, the delegation met with the Mexican Ambassador to the UK and other embassy staff. A full list of interlocutors is provided in Annex A of this report. Information referenced from interviews is based on notes taken by members of the delegation during meetings.

The team also consulted relevant legislation and various past reports on human rights and judicial reform in Mexico, and has compiled twelve case studies throughout the text of this report, which are illustrative of the various human rights and rule of law issues prevalent in Guerrero and Oaxaca.

Some weeks prior to the departure of the delegation, letters requesting meetings were sent to the Minister of Defence and the Federal Attorney-General. No replies were received to these letters. The delegation was disappointed that they were unable to attend a meeting and contribute to its findings. While in Mexico the delegation sought once again to make contact with those individuals as well as with their offices, but without success.

This report does not purport to present an exhaustive analysis of the functioning of the judicial system of Mexico. Rather, it outlines major obstacles facing the rule of law and human rights in the states of Guerrero and Oaxaca and assesses the areas in which assistance and reforms at the state and federal level may be most constructively applied in order to improve access to justice and human rights in these states.

The members of the delegation would like to express their particular thanks for the kind support of I Pump Court Chambers (UK), the Solicitors' International Human Rights Group (UK) for their financial and logistical assistance, and also to the Community Advocacy & Legal Centre (Canada), the Law Society Charity (UK) for their financial and logistical assistance and also to, Lawyers' Rights Watch Canada (Canada), Lawyers Without Borders Canada, the Commission of Human Rights of the Association of Judges and State Attorneys (Germany) and the Association of Lawyers (Freiburg) and Attorneys without Borders Germany for their participation and assistance.

The delegation would like to express their personal thanks to Sally Longworth and Julia Breslin for their editorial assistance. Particular thanks also goes to Michael Tamblyn and Susi Bascon at PBI, and to Jacqueline Macalesher, for their tireless work in making this delegation a success.

2. Introduction

2.1 The Mexican context

Internal conflict, a rampant narcotics trade, fundamental socio-economic problems and a wieldy federal structure have resulted in a myriad of fundamental human rights issues underlying this democratic state. This includes problems of torture, police and military repression, rape, enforced disappearance and extrajudicial killings.

The *Partido Revolucionario Institucional* (PRI) held presidential power for seventy-one consecutive years until 2000, when *Partido Acción Nacional's* (PAN) Vicente Fox came to power. During this period, Mexico's economy grew significantly, however this "Mexican Miracle" did not benefit all citizens. Inequitable wealth distribution left many Mexicans – especially indigenous people and those who lived in rural areas – in an impoverished state, while the rich and powerful became more so. Disempowerment and marginalisation resulted in increased radicalisation, leading to what has now become known as the Dirty War or *La Guerra Sucia*.

From the 1960s to the early 1980s, a number of loosely connected groups and organisations began to challenge the political hegemony of the PRI through both peaceful and violent methods. Dissident groups – composed of university students, Marxists, Socialists, *campesinos* (peasants or subsistence farmers), and indigenous peoples, among others – engaged in guerrilla warfare and kidnappings as well as peaceful marches and protests.¹

During this period, the Mexican government acted with force against real and perceived opponents, encouraging the military and the police to violently repress dissidents by beatings, arbitrary detentions, torture, executions, massacres, and forced disappearances. However, the number of violent outbursts decreased toward the end of the Dirty War as electoral reforms in the late 1970s allowed opposition political parties to gain a foothold in the political arena.

In 2001, President Vincent Fox, under the newly elected PAN party, established the Office of Special Prosecutor to address the abuses committed by the government during the Dirty War. In 2006, the Office published a report accusing three former Mexican Presidents – Gustavo Díaz Ordaz, Luis Echeverría, and José López Portillo – of a sustained policy of violence targeting armed guerrillas and student protesters alike, including the use of massacres, forced disappearance, systematic torture, and genocide.² The report made clear that the abuses were not the work of individual military units or renegade officers, but represented the official practice of those former Presidents. Unfortunately, the Office ultimately failed to obtain a single criminal conviction. From the more than 600 forced disappearance cases identified by the Office, it filed charges in only sixteen cases and obtained indictments in nine.³ President Calderón officially closed the Office soon after he came into power.⁴

1 Human Rights Watch, *Justice in Jeopardy: Why Mexico's First Real Effort to Address Past Abuses Risks Becoming Its Latest*, (hereinafter "HRW *Justice in Jeopardy* 2003"). 24 July 2003, B1504, available at: <<http://www.unhcr.org/refworld/docid/3f4f5958d.html>>.

2 The Office of Special Prosecutor, *Informe Histórico a la Sociedad Mexicana*, 2006 available at: <<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB209/informe/intro.pdf>>.

3 Human Rights Watch, *Mexico Country Summary*, (January 2010) available at: <http://www.hrw.org/sites/default/files/related_material/mexico_0.pdf>.

4 *Ibid.*

Much to the dismay of the international and national human rights communities, Calderón appointed military officers accused of past human rights violations to high government posts.⁵

To this day, many human rights organisations and the families of those who were disappeared during the Dirty War continue to seek justice through various legal and political mechanisms, including the Inter-American Court of Human Rights (IACHR).

Narcotics Trade

Mexico is now engaged in a self-declared “war on drugs”. It is the main source of heroin, marijuana and methamphetamine for the United States of America (US) and the leading transit country for cocaine from South America. Approximately 70 per cent of the foreign narcotics that flow into the US are supplied by the Mexican drug cartels.⁶

The government’s response to the drug trade has shown increasing reliance on the Mexican armed forces. With exorbitant profits at stake, the drug cartels are violently fighting against each other and government forces to keep control of the drug trade. Some recent Mexican military and police confrontations with drug cartels have resembled small-unit combat, with cartels employing automatic weapons and grenades.⁷ In 2009, international media reported some 7,600 deaths in the war on drugs,⁸ and according to an estimate by Mexico’s federal Attorney-General, there were 6,290 drug-related murders in 2008.⁹ Officials say more than 15,000 Mexicans have died since President Calderón declared war on the drug cartels shortly after taking office in December 2006.¹⁰ Most of the drug violence occurs in Mexico’s northern states, but southern states such as Guerrero and Oaxaca also sustain a great number of casualties of the violence.

Aside from the questionable effectiveness of the government’s military approach, it is alleged that corrupt officials who work for drug cartels further complicate and hinder the “war on drugs”. Some human rights defenders complain that the government and the military are using the “war” as a justification for not respecting the civil liberties of the Mexican people.¹¹ Indigenous peoples are particularly vulnerable to abuse and have been victims of numerous human rights violations at the hands of military personnel.

5 Peace Brigades International, *Mexico Project 2008 Activities Report*, (San Francisco: Peace Brigades International, 2009) at page 5 (hereinafter “PBI Mexico Project 2008”).

6 James Creechan, *An overview of drug cartels in Mexico*, Paper presented at the annual meeting of the American Society of Criminology (ASC), Los Angeles Convention Center, Los Angeles, CA, 1 November 2006 available at: <http://www.allacademic.com/meta/p126166_index.html>.

7 US Department of State, Mexico – Security, available at: <http://travel.state.gov/travel/cis_pa_tw/tw/tw_4755.html>.

8 Arthur Brice, ‘Deadliest year in Mexico’s war on drugs’, CNN, 1 January 2010, available at: <<http://www.cnn.com/2009/WORLD/americas/12/31/mexico.violence/index.html>> (hereinafter ‘Deadliest year in Mexico’s war on drugs’).

9 ‘Felipe Calderón denies Mexico is a failed state’, *The Daily Telegraph*, 26 February 2009, available at: <<http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/4841701/Felipe-Calderon-denies-Mexico-is-a-failed-state.html>>.

10 See, for example, ‘Deadliest year in Mexico’s war on drugs’, *supra* n. 8; ‘Protest disrupts Calderón’s visit to Ciudad Juárez’, *BBC* (12 February 2010), available at: <<http://news.bbc.co.uk/1/hi/8511904.stm>>; and Anne Barrowclough, ‘US consulate workers killed in Mexico drug wars’, *The Times* (15 March 2010), available at: <http://www.timesonline.co.uk/tol/news/world/us_and_americas/article7061983.ece.a>.

11 See, for example, interview with Santiago Aguirre (Lawyer Centro PRODH), Mexico City, 30 November 2009; see also Peace Brigades International, *Mexico was evaluated: A country without human rights... is not democratic*, 12 (San Francisco: Peace Brigades International 2009).

2.2 Political and legal structure

The Constitution

Mexico is a federation composed of 31 states and one Federal District. The Political Constitution of the United Mexican States, approved in 1917, applies to the Federal District and to all 31 states. No law, including international treaties, may contradict the Constitution. Mexico's legal system does, however, consider international treaties to be hierarchically above general, federal, and local legislation.

The judiciary

The judiciary is divided into federal and state court systems. The legal system itself is a hybrid in that it draws primarily from a European code-based inquisitorial system¹² but also incorporates some aspects of the common law system.

A typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony. A judge in chambers issues a final written ruling after reviewing the case file. The law does provide for the right of the accused to attend the hearings and challenge the evidence presented.

Mexico has a public defender/legal aid system in place, but it is not adequately funded and does not have the capacity to handle its large caseload.¹³

2.3 Protection of human rights

Domestic legislation and policy

As a federation, each Mexican state and district has its own set of laws. For example, there are 33 penal codes in Mexico – a code for each of the 31 states and the Federal District, as well as the National Penal Code. The National Penal Code is the only one that deals with specific crimes such as drug trafficking. Likewise, human rights legislation and protections vary within each jurisdiction.

Article 102 of the Constitution stipulates that the “Congress of the Union and the States Legislatures, within their respective jurisdiction, shall establish organisms for the protection of human rights protected by the Mexican legal order.” As such, there is currently an independent National Human Rights Commission and thirty two local commissions. These organisations hear complaints regarding possible human rights violations committed by any authority or public servant except for the federal judicial branch. They, however, cannot undertake legal proceedings and can only draft non-binding public recommendations. This lack of power within the state Human Rights Commissions often undermines their ability to tackle serious human rights violations. For example, the President of the Oaxaca Human Rights Commission told the delegation that he had submitted a request to the Oaxaca Congress to broaden the Commission's powers. This new power would require state bodies to justify before members of Congress why they have not fulfilled the Commission's recommendations.¹⁴ In Guerrero, the Advisor to the Governor told the delegation that there were tense relationships

12 An inquisitorial system is a legal system where the court or a part of the court is actively involved in determining the facts of the case. The presiding judge is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He or she actively steers the search for evidence and questions the witnesses, including the respondent or defendant. Lawyers play a more passive role. The inquisitorial system can be compared with the adversarial, or accusatorial, system where the role of the court is solely that of an impartial referee between parties. It is often argued that the adversarial system places a premium on the individual rights of the accused, whereas the inquisitorial system places the rights of the accused secondary to the search for truth.

13 Interview with Santiago Aguirre (Lawyer Centro PRODH), Mexico City, 30 November 2009; and Amnesty International, *Mexico: Criminal Justice System in Crisis*, 7 February 2007: <<http://news.amnesty.org/index/ENGAMR410042007>>.

14 Interview with Heriberto Garcia (President, Oaxaca Human Rights Commission), Oaxaca, 27 November 2009.

between the state authorities and the Guerrero Human Rights Commission.¹⁵ Furthermore, there is little information sharing among the various state Human Rights Commissions, and no reporting of human rights cases or complaints from the state level to the National Human Rights Commission.¹⁶

Mexico has in many respects been very open to the advancement of human rights, especially at the federal level where many institutions are actively engaged in promoting human rights. The 2008-2012 National Human Rights Programme is one such example.¹⁷ The Programme, adopted in August of 2008, is a particularly important development as it is binding on all federal institutions. It focuses on four main areas:

- 1) The inclusion of a human rights perspective in public policies;
- 2) Strengthening and institutionalising legal and administrative mechanisms for the promotion and protection of human rights;
- 3) Promotion and reinforcement of a human rights culture; and
- 4) Strengthening compliance with international human rights obligations.

Implementation of human rights legislation and policies at the state level, however, has not been as pronounced as implementation at the federal level. A lack of harmonisation and cooperation between the 31 states and the federal district has led to an incongruity for human rights protection and promotion at the grassroots level.

International obligations

At the international level, Mexico is in many ways a leader in promoting human rights in a variety of international fora, including the United Nations (UN). It has helped bring into being several key human rights instruments, including the UN International Convention for the Protection of All Persons from Enforced Disappearance, and the UN Declaration on the Rights of Indigenous Peoples. Mexico has been involved in reforms of international human rights institutions with a view to increasing protection of human rights and has signed and ratified almost all international and regional human rights treaties and conventions (see Appendix B). International treaties signed by the President of Mexico and approved by the Senate constitute the supreme law of the land, below the Constitution, as established in Article 133 of the Constitution.

Mexico has also been active in promoting human rights in the Organization of American States (OAS) and its related entities, including acceptance of the jurisdiction of the IACHR. In this respect, Mexico has consistently accepted the recommendations of the IACHR. Mexico is not obligated to play this role internationally, a role that many nation states choose not to take, and deserves acknowledgement for the work it has done in this area.

Mexico has been notably open to international scrutiny of its human rights record, including allowing access to international observers such as this delegation. It also invited the Office of the UN High Commissioner for Human Rights to establish a permanent office in Mexico City. Additionally, the UN Human Rights Council (UNHRC) conducted its Universal Periodic Review (UPR) of Mexico in 2009.

¹⁵ Interview with Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

¹⁶ Interview with Luis Ortiz Monasterios (Executive Secretary, National Commission for Human Rights), Mexico City, 3 December 2009.

¹⁷ *Programa Nacional de Derechos Humanos 2008-2012* (National Human Rights Program 2008-2012), adopted 28 August 2008 by the President of Mexico, the Minister of the Interior, the Minister of the Treasury and Public Credit, and the Minister of Public Service, <http://www.derechoshumanos.gob.mx/archivos/anexos/PROGRAMA_NACIONAL_DE_DERECHOS_HUMANOS_2008-2012.pdf> (in Spanish) (hereinafter "PNDH 2008-2012").

The UPR is a process which involves a review of the human rights records of all 193 UN Member States once every four years. The UNHRC conducts a UPR using information: (1) provided by the State under review, (2) contained in the reports of independent human rights experts and groups, human rights treaty bodies, and other United Nations entities, and (3) from other stakeholders, including non-governmental organisations (NGO) and national human rights institutions.

Many of the recommendations which came out of the UPR for Mexico relate to the reform of the criminal justice system as well as its military justice system. While the majority of recommendations were accepted by Mexico, a number of fundamental recommendations involving the criminal and military justice systems have not yet been adopted.

However, while Mexico has been a leader at the international level, its advancements are often undermined by its poor record of implementation of these human rights treaties and conventions at the domestic level. A fundamental challenge is the absence of a system of uniformity for implementation. There is a need for consistent implementation of treaty obligations at all levels of government.

2.4 Indigenous peoples

Mexico's indigenous people have experienced extreme hardship since the colonisation of Mexico by Spain in the sixteenth century. The Spanish colonial authorities relocated indigenous communities into larger towns where they could be more effectively controlled and also on to the least fertile lands. The Europeans took possession of the better lands that had historically provided bountiful and reliable harvests for indigenous communities since time immemorial.¹⁸

There are approximately 10 million indigenous people in Mexico representing many different ethnic groups. This accounts for approximately 9.8 per cent of the total Mexican population.¹⁹ In 2002, 89.7 per cent of the indigenous population lived in poverty as compared to 46.7 per cent of the non-indigenous population. Likewise, 68.5 per cent of the indigenous population lived in extreme poverty compared to 14.9 per cent of the non-indigenous population.²⁰ In Guerrero and Oaxaca, the incomes of indigenous people are, respectively, one-third and one-half of their non-indigenous counterparts.²¹

While Mexico's economy grew after its independence from Spain, many indigenous people worked as virtual slaves on large *haciendas* (estates) owned by a small number of wealthy elites born in Mexico but of direct Spanish descent (*Criollo*). Although the Mexican Revolution of 1910-1920 established many reforms, the political elites continued to place little importance on indigenous rights in the following decades. The longstanding marginalisation of indigenous peoples resulted in, among other things, the 1994 armed rebellion of the National Zapatista Liberation Army (EZLN) in the southern state of Chiapas. The EZLN continues to demand land reform, autonomy and collective rights for indigenous peoples.

The government has attempted to reform its protection of indigenous populations in recent years, including passing constitutional reforms and other legislation to protect indigenous languages and to fight discrimination. For example, the Law on Linguistic Rights of the Indigenous Languages (*Ley General de Derechos Lingüísticos de los Pueblos Indígenas*) establishes 62 indigenous languages as national languages, recognising the fact that many indigenous people do not speak Spanish. These

18 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Mexico: Overview*, 2007, available at: <<http://www.unhcr.org/refworld/docid/4954ce409a.html>>.

19 National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council resolution 5/1, 10 November 2008 (A/HRC/WG.6/4/MEX/1) para. 114 (hereinafter "UPR National Report, addendum").

20 *Ibid.*, para. 118; and Center for Latin American Studies at Georgetown University, *Indigenous Peoples, Democracy and Political Participation*, available at: <<http://pdba.georgetown.edu/IndigenousPeoples/demographics.html>>.

21 PBI Mexico Project 2008, *supra* n. 5, page 4.

initiatives, however, have remained largely symbolic and have not addressed the serious inequalities and disadvantaged status of Mexico's indigenous population.

2.5 Guerrero and Oaxaca

Guerrero and Oaxaca are two of the three poorest states in Mexico (along with Chiapas). Both of these states present serious human rights challenges. Aside from economic-social development issues, both states have a high number of indigenous people, which has led to polarisation and violence over land demarcations and the defence of local traditions, cultures and languages. Organised crime is also a serious problem in both states.

Located in the southern region of Mexico, Guerrero borders the Pacific Ocean to the south, Michoacán to the west, Oaxaca to the east, and Mexico State, Morelos, and Puebla to the north.

While Guerrero has a large indigenous population, this aspect of the state culture is not as visible as it is in other southern Mexican states. Nahuatl, Mixteco and Tlapaneco are the most common languages spoken in the state except Spanish.

In addition to bordering Guerrero, Oaxaca borders Puebla to the northwest, Veracruz to the north, Chiapas to the east, and the Pacific Ocean in the south. Oaxaca is the fifth largest state in the Republic. It is also the historic home of the Zapotec and Mixtec peoples, and more speakers of indigenous languages live in this area than in any other Mexican state. There are 12,000 settlements representing 16-18 different types of indigenous groups in Oaxaca, as well as 570 municipalities, which make up one quarter of all municipalities in Mexico. The reason so many municipalities exist is, in part, a product of the state's large size. However, its rough terrain also acts to geographically isolate communities, which has historically caused indigenous communities to identify strongly with their smaller villages, rather than their region.

A 2006 crisis following a teachers' strike, the effects of which can still be felt in Oaxaca today, brought violence and sowed distrust between state authorities and civil society organisations. In June 2006, Governor Ulises Ruiz Ortiz ordered police to evict protesting teachers from the buildings and streets they were occupying. Police were armed with tear gas and rifles. In response to the Governor's order, various organisations, NGOs and associations formed the Popular Assembly of the Peoples of Oaxaca (APPO), and demanded his resignation. Between June 2006 and July 2007, a number of citizens and protesters were killed, tortured and arbitrarily detained and many human rights defenders were threatened and attacked. This period of unrest has led to a deepening of Oaxaca's already authoritarian structure, and legal proceedings related to the crisis continue today.

3. Rule of Law

Amongst issues raised during the delegation's visit, government officials and civil society actors alike unanimously agreed that trust and credibility in the Mexican criminal justice system, including access to justice for both rich and poor members of society, is a fundamental concern undermining the rule of law in Guerrero and Oaxaca. Many members of Mexican society believe that the system does not work for the individual unless you have money. Failures across all levels of the criminal justice system are affecting the rule of law in Mexico, leading to impunity for human rights abuses and a lack of access to justice for victims of abuse. Such injustices include a lack of thorough, impartial and timely investigations; problems with police accountability; inadequate due process within the trial system; poor prison conditions; and the use of military jurisdiction for human rights abuses committed by members of the armed forces.

3.1 Judicial reform

On 18 June 2008, the Mexican government passed legislation to reform the justice system. The legislation establishes an eight-year timetable within which the reforms must be fully implemented at both the state and federal levels.

The Public Security and Criminal Justice Reform Programme aims to streamline, modernise and further professionalise the justice system in all areas, including prevention, law enforcement, the administration of justice, and rehabilitation and social reintegration of convicts. One of the most fundamental reforms has been to establish an accusatory, oral criminal trial system in Mexico that is based on the presumption of innocence. At present, Mexico currently has an inquisitorial legal system. This key reform encourages more transparency and seeks to establish a more rights-based system in which the rights of the victim and the accused are all respected.²² A number of government officials at both the state and federal level told the delegation that, if fully implemented, this fundamental change would constitute one of the greatest advances for due process in Mexico made to date. The delegation has high hopes of this new system being implemented effectively and efficiently in all states at the earliest opportunity, and was encouraged to hear that Oaxaca has already implemented oral trials for all crimes.

The 2008 reforms also establish strict guidelines on the use of confessions. The reforms require that confessions may only be made before a judge, thus establishing a substantially more transparent judicial process with a diminished reliance on confessions. In particular, this rule aims to reduce the instances of confession evidence being extracted through the use of torture, cruel or inhuman treatment. The reforms also facilitate alternative dispute resolution mechanisms for less serious offences and give police more responsibility for conducting investigations.

At the state level in Guerrero, the local court in Chilpancingo demonstrated a promising vision for improving access to justice through improvements to infrastructure, procedure, professionalism and dignity of workers. Representatives of the court presented to the delegation a proposed plan to implement voluntary mediation for indigenous peoples, including human rights defenders and requiring prosecutors and other officials to learn to speak indigenous languages. If the framework outlined in the Court's presentation is implemented as the delegation was shown, this will represent a positive development for access to justice in Guerrero.

A number of state officials mentioned other areas of reform that they believed would help improve the justice system. They noted the need to educate the population regarding their individual rights

²² UPR National Report, addendum, *supra* n. 29, paras. 30 - 32.

and guarantees; a reappraisal of sentences through the use of community service; improved resources for the use of forensic experts, resulting in better investigations; and ensuring access to translators for indigenous people at all levels of the criminal justice system.

The delegation hopes most sincerely that the 2008 justice reforms will improve the judiciary's credibility and the public's trust in the system, ensure that access to justice is available for both rich and poor members of Mexican society, and guarantee that rule of law can be upheld and respected at all levels of the criminal justice system. The delegation encourages the implementation of these reforms at both state and federal level as soon as is reasonably possible.

3.2 Legal aid

A full review of the legal aid systems in Guerrero and Oaxaca is outside the scope of the delegation. The provision of effective legal aid is an issue which caused the delegation concern and certainly merits further investigation. However, the delegation's findings in this respect are confined to a brief overview sufficient to facilitate an overall understanding of the legal system.

The high poverty rates in Guerrero and Oaxaca have a huge social impact on access to justice. The 2008-2012 National Human Rights Programme guarantees that "at all times during the preliminary investigation, a public defender paid by the State be assigned to any accused who has not named a private defence attorney."²³ While state lawyers do take on most legal aid cases, the delegation heard reports that there had been serious examples of state lawyers conducting themselves in unfavourable conditions, and where the same state lawyers are not actually properly licensed attorneys.²⁴ The salary for most public defence lawyers was described as shockingly low. At the federal level it seems that legal aid functions a little more effectively, but at the state level individual public defenders lack the capacity to handle their caseload.

The Town Mayor of Tlapa, Guerrero state, told the delegation that the complete lack of legal aid has led to high conviction rates.²⁵ While the high conviction rate should be affected in a positive way by the implementation of the new accusatory, oral criminal trial system in Mexico and the newly mandated presumption of innocence, it would also be helped by improving the system of legal aid for public defence.

Many civil society organisations provide legal support to communities in need, particularly to marginalised groups and members of the indigenous population in Guerrero and Oaxaca. For more information, see the below Chapter 4: *Lawyers and Human Rights Defenders*. As such, lawyers and human rights defenders must be protected in that capacity so that they can continue to carry out their vital work.

3.3 Police accountability

The police structure in Mexico is complex. There are approximately 500,000 agents representing around 2,500 police entities covering the federal, state and municipal level, with 60 per cent of police entities at the municipal level.²⁶ The two main police forces are the Preventative police (*Policía Preventiva*) and the Ministerial Judicial Police (*Policía Ministerial*). Both exist at federal and state level.

23 PNDH 2008-2012, *supra* n. 27.

24 Interview with Santiago Aguirre (Lawyer Centro PRODH), Mexico City, 30 November 2009.

25 Interview with Willy Reyes Ramos (Town Mayor, Tlapa) Guerrero, 1 December 2009.

26 US Department of State (2009) *2008 Human Rights Report: Mexico* page 3: <<http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119166.htm>> (hereinafter "US 2008 Report"); and Interview with Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK), London, 15 February 2010.

The Preventative police force maintains order and public security. It falls within the remit of the Ministry of Public Security. Judicial police serve as the investigative force under the authority and direction of the public ministries (prosecutors' office). Institutional and cultural reform of the police structure is one aspect of the 2008 public security and criminal justice reform programme.

Several government and civil society officials told the delegation of problems of professionalism within the police force that seriously undermine trust and credibility with the public. According to the Minister of the Interior, the professionalisation of police forces is a slow process at the state level, specifically with regards to the state Judicial police.²⁷ The delegation notes that one potential effect of fundamental reform of the police would be to restore public trust.²⁸ In Guerrero, a programme of reform has been underway since 2008 that aims to professionalise the police. This programme is designed to build capacity, re-educate and to improve the salaries of the state police force. While recognising that reforms are taking place within the state Preventative police, albeit slowly, the delegation heard that difficulties remain regarding professionalism within the state Judicial police in Guerrero. One particular problem raised with the delegation was the intimidation of victims of crime by the state Judicial police.²⁹ As the Judicial police are more rooted in the criminal justice system, the delegation is concerned that the lack of progress in reforming and professionalising the state Judicial police will continue to undermine the rule of law in Guerrero.

Beyond the state level, the Mexican Ambassador to the UK explained to members of the delegation that the police system as a whole is seriously fragmented and would benefit from being more streamlined. Suggested reforms include reducing the number of police entities, currently standing at approximately 2,500, to 33 (representing the 31 states plus Mexico D.F. and the federal level). However such reforms would need further political agreement through Congress.³⁰

Human rights abuses by police

Human rights abuses by the police include alleged killings and torture. The delegation was also informed of cases indicating police corruption and a lack of accountability. The delegation heard from lawyers and human rights defenders that the problem of police abuse persists today,³¹ and that misconduct was particularly serious in relation to the Judicial police.³²

The Police and Security Forces Civil Monitor (*Monitor Civil de la Policia y de las Fuerzas de Seguridad, MOCIPOL*), a civil society organisation based in Tlapa, Guerrero, that monitors police activities in the region of Montaña, told the delegation that it had filed 115 cases of police abuse in 2009 in that region.³³

The delegation notes the case of Manuel Ponce Rosas and Raúl Lucas Lucía who were allegedly kidnapped by members of the Judicial police near Ayutla, Guerrero, on 13 February 2009. The bodies of the two men were found on 22 February and showed visible signs of torture. Raúl Lucas Lucía was found with his hands tied to his front, with a bullet in his head and severe bruising. He also had severe burns. Similarly, the body of Manuel Ponce Rosas showed severe bruising, his teeth were shattered and his hands were tied to his front.³⁴ To date, no one has been held accountable for the kidnapping, torture

27 Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

28 See, for example, interview with Alejandro Mojica Nava (Legal Affairs and Human Rights, Secretary of Public Security, Chilpancingo) Guerrero, 2 December 2009.

29 Interview with Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

30 Interview with Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK), London, 15 February 2010.

31 See, for example, interview with Obtilia Eugenio Manuel (President of the Me'phaa Indigenous People's Organisation, OPIIM, Ayutla de los Libres), Guerrero, 2 December 2009.

32 Interview with Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

33 Interview with Matilde Pérez (Coordinator, Civil Monitor (MOCIPOL), Tlapa), Guerrero, 1 December 2009.

34 Letter to State Attorney General of Guerrero from Human Rights Watch dated 25 February 2009, available at: <<http://www.hrw.org/en/news/2009/02/25/letter-state-attorney-general-guerrero-mexico-regarding-killing-human-rights-defende>>.

and murders of the two men. For a detailed description of this case, please see Chapter 4.3: *Attacks on and harassment of human rights defenders and their lawyers*.

The delegation also notes the case of Raúl Hernández, who has been held in detention since 18 April 2008 for the murder of Alejandro Feliciano García. When describing his arrest, Raúl Hernández told the delegation that during the police interrogation he was threatened with suffocation by “the bag”,³⁵ and was promised he would be released in three days, if he would confess.³⁶ The alleged conduct of the police in this case suggests the persistence of a police culture that uses inhumane methods to extract confessions. For more detail regarding Raúl Hernández see Chapter 4.2: *Criminalisation of social protest*.

Article 22 of the Mexican Constitution prohibits a suspect from being the subject of torture. Article 20(A)(IX) states that “[A]ll evidence obtained by violating the fundamental rights shall be null and void”. The prohibition against torture has been implemented into federal legislation via the Federal Law to Prevent and Sanction Torture (*Ley Federal para Prevenir y Sancionar la Tortura*). While some Mexican states have passed similar legislation at the state level, Guerrero has not.

The Mexican Ambassador to the UK explained that evidence obtained in a wrongful manner would be excluded from court.³⁷ It is argued that this is supported by 1993 the revisions to Article 22 of the Mexican Constitution. However, the 2008 US Department of State report on the human rights situation in Mexico suggests evidence obtained under torture was still being admitted in court. The report states that despite the 2008 penal reform process, judges reportedly continue to allow statements coerced through torture to be used as evidence against the accused.³⁸ Moreover, during 2008, the Mexican National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, or CNDH) received 588 complaints of cruel and/or degrading treatment and 21 complaints of torture against law enforcement officers.³⁹

Investigations into allegations of human rights abuses by the Judicial police are generally carried out at a local level by the same police force accused of committing abuses. When these allegations implicate the police, this gives rise to a lack of independence and impartiality by investigators, which contributes to impunity.

However, legislative barriers seem to exist that prevent the transfer of investigations away from the units that contain police officers who are the subject of an inquiry. An official from the Federal Unit for the Promotion and Defence of Human Rights in the Ministry of the Interior (SEGOB) stated that there are very few criminal matters that can be dealt with at a federal level.⁴⁰ Article 73 of the Constitution allows the federal Attorney-General to take jurisdiction from state level if necessary and appropriate. He added that Congress is thinking of amending Article 73 at the level of public security, and that the number of federal offences will be increased.⁴¹

35 “By the bag” means interrogation when the accused has a bag placed over his head, often causing suffocation as well as obscuring vision, and in some cases, hearing, of those being interrogated. See further Office of the United Nations Commission for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004), United Nations, New York and Geneva, HR/P/PT/8/Rev.1 para. 14 (hereinafter “Istanbul Protocol”).

36 Interview with Raúl Hernández Abundio (OPIM, Ayutla Prison, Ayutla), Guerrero, 1 December 2009 and interview with Rogelio Teliz García, (Tlacinollan Lawyer for Raúl Hernández, Ayutla prison Ayutla), Guerrero, 1 December 2009 and subsequent communication via email.

37 Interview with Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK), London, 15 February 2010. See further Article 20(A)(IX) Mexican Constitution.

38 US 2008 Report, *supra* n. 16, page. 7.

39 *Ibid.*

40 Interview with Dr. José Antonio Guevara (Head of the Unit for the Promotion and Defence of Human Rights, Ministry of the Interior), Mexico City, 3 December 2009.

41 *Ibid.*

The absence of any apparent oversight of the investigation into the Raúl Hernández case, as well as the Manuel Ponce Rosas and Raúl Lucas Lucía cases, indicates the apparent impunity for those responsible for the abuses and for those failing to conduct a thorough investigation. Moreover, the lack of an adequate investigation and an effective remedy is a breach of regional and international human rights standards.⁴²

Criminal investigations

A lack of thorough, impartial and effective investigations carried out by the state and federal Judicial police undermines access to justice for victims of crime. The delegation received information about cases in which police investigations had been poor, fraught with irregularities and omissions. Such poor quality criminal investigations often allow true criminals to remain free while innocent people are charged and convicted in their stead, leading to impunity in the rule of law. In so doing, such investigations are also likely to reduce the credibility of the police force in the eyes of the populace.

The delegation notes the case of Inés Fernández Ortega, who was allegedly raped by a member of the Mexican Army in 2002 in Guerrero state. Following a gynaecological examination, the Public Ministry destroyed the semen samples that were taken from Inés as forensic evidence.⁴³ The Guerrero state Sub Secretary for Legal Affairs stated to the delegation that they were aware that evidence had been destroyed as a result of the tests conducted on it.⁴⁴ When the military learned that soldiers were being accused, they took all of the evidence so that they could try the case in the military courts. To date, no proceedings have been commenced, and neither the Public Ministry nor the Advisor to the Governor felt like there was anything they could do once the Military assumed jurisdiction. For further detail regarding the case of Inés Fernández Ortega, please see Chapter 3.7: *Military jurisdiction*.

The delegation received information from the Advisor to the Governor of Guerrero that the Judicial police would often ask victims of crime for “money for the gas” in order to investigate the crime.⁴⁵ If this practice is happening across the board, it raises serious concerns about corruption within the Judicial police, as well as being indicative of incompetence and partiality in the investigation of crimes.

The delegation also notes the case of Juan Manuel Martínez Moreno, who was arrested in October 2008 and wrongly accused of the murder of American journalist Brad Will in Oaxaca in 2006. While Juan Manuel Martínez Moreno was recently freed from prison due to lack of evidence, he spent 490 days in detention, and the murderers of Brad Will are still at large.

42 United Nations, *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, principles 9-17, recommended by the Economic Social Council resolution 1989/65 of 24 May 1989, available at: <<http://www2.ohchr.org/english/law/pdf/executions.pdf>>. Additionally, the lack of an effective remedy for unlawful killings is a breach of Mexico's obligations under: principle 20 of *Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*; International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, article 2 (hereinafter “ICCPR”); and American Convention on Human Rights, OEA/ser. K/XVYI.1.1, Doc. 65, Rev. 1, Corr. 1 OASTS, No. 36 (1970), article 25 (hereinafter “ACHR”). With respect to torture it is also a breach of Article 14 of the UN Convention against Torture and Other Cruel, Inhumane and Degrading Treatment and Punishment G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), adopted 10 December 1984, entered into force 26 June 1987 (1984), 1465 UNTS 85, and Article 1 of the Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, Basic Documents Pertaining to Human Rights in the Inter-American System 29, OEA/ser. L/V/I.4, rev. 9 (2003).

43 See further Application from the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12.580) against the United Mexican States, 7 May 2009, available at: <<http://www.cidh.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%207mayo09%20ENGLISH.pdf>>.

44 Interview with Jesús Sálas Morena (Sub-Secretary of Legal Affairs, Chilpancingo), Guerrero, 2 December 2009.

45 Interview with Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

Case study 1: Juan Manuel Martínez Moreno

On 27 October 2006, an American journalist, Brad Will, was killed in Oaxaca State. Two years later, in October 2008, **Juan Manuel Martínez Moreno**, a 35-year-old local activist, was arrested and charged as the probable killer. Brad Will died as he was covering a street battle between armed government supporters and protesters led by the anti-government 'Popular Assembly of the People of Oaxaca' (APPO). Brad Will had been documenting a teacher-led protest against Governor Ulises Ruiz.

The prosecution's evidence against Juan Manuel was weak and tenuous and posed irregularities regarding the investigation. Lawyers representing Juan Manuel told members of the delegation that there was no single piece of evidence that directly linked Juan Manuel to the crime. They believed that the charges against Juan Manuel issued by the Federal Attorney General's Office (*Procuraduría General de la República*, PGR) are utterly baseless, premised on fabricated evidence and contrary to eyewitness testimonies.

Following the death of Brad Will, 70 witnesses testified to the police. None of these 70 testimonies implicated Juan Manuel as the killer. Furthermore, lawyers for Juan Manuel told the delegation that still photographs taken from Brad Will's video camera at the time of his death do not identify Juan Manuel as being present. The government case depends solely on hearsay evidence, which does not even directly mention Juan Manuel, specifically the testimony of two "witnesses" who stated they did not see the murder but "heard other people say that APPO people shot Brad Will." Police officials have attributed this testimony to Juan Manuel. Witnesses have never been able to describe or identify the assailant. In fact, multiple witnesses say Brad Will was shot by paramilitaries who are seen in photos shooting towards Will.

The arrest of Juan Manuel seems to be inextricably linked to the approval of funding from the US Congress under the Merida Initiative. US\$60million of US funding destined for the Mexican military was withheld in 2008 pending US Secretary of State reports that Mexico had not met human rights conditions. These included credible investigations to identify those responsible for the killing of Brad Will. The day before the deadline set by the US Congress, Juan Manuel was arrested. It is feared that Juan Manuel has been used as a scapegoat to demonstrate compliance with Merida Initiative conditions.

Several investigations into this murder have been carried out. Many, including independent forensic experts and the National Human Rights Commission (CNDH), criticised the basis of Juan Manuel's detention. Despite this knowledge, Brad Will's killers have yet to be imprisoned.

Following the delegation's visit to Mexico, on 17 February 2010, a federal court upheld a lower court's ruling that Juan Manuel be freed due to lack of evidence. The PGR initially appealed the lower court's order. That appeal was defeated and Juan Manuel was freed from the Santa María Ixcotel prison on 18 February 2010 after spending 490 days in detention for a crime he did not commit. While the delegation welcomes this recent advance in the case, it is still concerned that Brad Will's killers have not yet been brought to justice and that an innocent man spent 490 days in detention due to an apparent lack of respect for the rule of law and due process by the state of Oaxaca.

In the interests of access to justice and in order to combat impunity from prosecution for criminal activity, the delegation recommends that the Judicial police implement reforms to ensure that all criminal investigations are carried out in a thorough, impartial and timely manner, with professionalism and sensitivity to the victims of crime. The Judicial police should undergo additional training in evidence gathering, particularly in regard to forensic evidence.

Police Reforms

The report submitted by the Mexican government to the UNHRC during its 2009 UPR recognised that “Mexico must purge and professionalise its police force.”⁴⁶ A number of officials from Guerrero state and at the federal level confirmed a need for such reform to the delegation. These officials acknowledged that improvements were still needed and that changes to an entire state police force would take some time to implement.⁴⁷

The problems of impunity within the police are exacerbated as a result of an absence of a national records system for police misconduct. The lack of such a system means that a police officer dismissed for misconduct in one state can potentially be employed in a similar role in a different state that would have no knowledge of the earlier dismissal or the circumstances surrounding it. The Advisor to the Governor of Guerrero confirmed to the delegation that police officers are able to move to another state to avoid justice. He added that a database of police misconduct was required, together with the ability to check the records of all Mexican police officers.⁴⁸

The delegation notes with interest that Congress enacted legislation establishing a four-year deadline to vet all of the country’s 2,500 police forces. Confidence checks are being conducted for all federal police officers and will be replicated at the state and municipal levels.⁴⁹

The Mexican Ambassador to the UK also confirmed to members of the delegation that the problem of a police officer being dismissed or convicted in one state and then being recruited in another should no longer happen due to the 2008 reforms. The Ambassador added that new recruits to the police will now have to take a polygraph test which in his opinion ought to solve the problem of recruiting officers who have lied about their past conduct.⁵⁰

3.4 Pre-charge and pre-trial detention

Pre-charge detention refers to the period of time that an individual can be held and questioned by police prior to being charged with an offence. Pre-trial detention refers to the period of time between when an individual has been charged with an offence and when the trial for that offence commences.

The delegation found that despite reforms made to pre-charge and pre-trial detention practices, suspects were still vulnerable to abuse.⁵¹ Although the Constitution enshrines protections for suspects, the delegation found that such safeguards were violated.

According to Article 16 of the Constitution, no one may be detained without a judicial arrest warrant. Such a warrant is issued only if a legally recognised criminal offence meriting a prison sentence has been reported. Moreover, a judge must be satisfied as a result of the preliminary investigation (*averiguación previa*) that a crime has been committed and that the detained person is probably responsible for it.

In addition, anyone detained on the basis of a judicial warrant must be placed at the disposition of the judge “without any delay” (*sin dilación alguna*). Article 16 provides two exceptions for the need of

46 UPR National Report, addendum, *supra* n. 19, para. 41.

47 See, for example, interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009; and interview with Arturo Martínez Núñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

48 Interview with Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo), Guerrero, 2 December 2009.

49 UPR National Report, addendum, *supra* n. 19, para. 41.

50 Interview with Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK), London, 15 February 2010.

51 See further *Report of the Visit to Mexico by the UN Special Rapporteur on Torture*, UN doc. E/CN.4/1998/38/Add2 which found that as a result of the information submitted to him that most cases of torture occurred immediately after the victims’ arrest. See further E/CN.4/2000/9/Add.1; E/CN.4/2002/76/Add.1, paras. 949-990 and 996-999; E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; E/CN.4/2006/6/Add.2 ; A/HRC/4/33/Add.2 and A/HRC/7/3/Add.2: <<http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm>>.

a judicial warrant to carry out an arrest: a) when someone is detained “red-handed” or shortly after committing a criminal offence, at which point the person must be taken without delay to the Public Prosecutor’s Office; or b) in “urgent cases”, when a judge is not available to issue a warrant, a prosecutor may authorise the arrest of a suspect of a serious crime.

Pre-charge detention is permitted under Article 16 of the Constitution, which allows a suspect to be held for 48 hours in the custody of the Public Prosecutor’s Office. During this time a suspect may be interrogated by the Judicial police. After 48 hours the suspect must either be released or charged with a crime and placed in prison under the authority of a judge. An exception to this rule is when the Public Prosecutor’s Office is investigating organised criminal offences and the period of custody can be extended up to 96 hours. A breach of these procedures by a police officer or prosecutor is a criminal offence.⁵² While the relatively strict limits placed on pre-charge detention are welcomed by the delegation, the caveat related to organised crime is disconcerting in so far as it may be abused.

Pre-trial detention is also restricted under the Constitution. For crimes where the maximum sentence does not exceed two years’ imprisonment, pre-trial detention is limited to four months. For crimes that carry a minimum two-year sentence, the Constitution stipulates that proceedings be completed within twelve months of when the suspect was first detained. However, the judicial system often fails to meet this requirement. Over 40 per cent of prisoners in Mexico have never been convicted of a crime but are being held, sometimes for years, in pre-trial detention.⁵³ The Town Mayor of Tlapa, Guerrero, told the delegation that some individuals had been held in detention for up to four years before their cases came to trial.⁵⁴

Organised Crime: The law of “arraigo”

The law of *arraigo* is a security measure that authorises the pre-charge detention of a person in order to pursue an investigation, where they are suspected of having committed an organised crime offence. That individual may be held for a period of up to 80 days.⁵⁵

At the request of the public attorney, a federal judge specialising in this area can make an order for *arraigo* for an initial maximum period of 40 days in the case of persons suspected of organised crime where the alleged offence comes under a definitive list of criminal activities. *Arraigo* can be extended up to a maximum period of 80 days by a Federal judge. The case can only be referred to a judge by the Federal Public Prosecutor’s Office if it can prove that there is a need to hold the suspect because evidence relating to the allegation is complex and difficult to obtain. This could, for example, include a situation where there is a transnational element to the crime, to protect others or legal assets, or where there is a risk that the accused might flee from justice.

Government officials told the delegation that due to the “war on drugs”, the need for *arraigo* was essential to combat serious organised crime in Mexico. State representatives informed the delegation that *arraigo* was used regularly in Oaxaca state.⁵⁶

The constitutional amendment to Article 16 paragraph 8, defines organised crime as “a de facto organisation of three or more persons that commits crimes in a permanent or repeated way as defined by the law on the subject.” The Federal Law against Organized Crime provides an exhaustive list of the

52 This appears to be contained in a reform of the Constitution on 24 August 2009.

53 US 2008 Report, *supra* n. 36.

54 Interview with Willy Reyes Ramos (Town Mayor, Tlapa) Guerrero, 1 December 2009.

55 In some states, the period of detention can be for up to 90 days while they are waiting to enact secondary legislation in conjunction with this reform.

56 Interview with Heriberto García (President, Oaxaca Human Rights Commission), Juan Rodriguez Ramos (General Coordinator, Oaxaca Human Rights Commission), Dr Maribel Mendoza (Field Worker, Oaxaca Human Rights Commission) and Pedro Omar Ruiz Cruz (Director of Complaints, Oaxaca Human Rights Commission) 27 November 2009.

crimes that it prohibits: terrorism; crimes against health; counterfeiting or altering currency; operations with illicitly-acquired funds; stockpiling and trafficking in arms; trafficking in undocumented persons; trafficking in organs; the corruption of minors, pornography involving minors, sexual terrorism involving minors, enslavement of minors, the assault or kidnapping of or trafficking in minors; stealing vehicles; trafficking in persons; and crimes that are included in the Federal Criminal Code, the Federal Law on Firearms and Explosives, the General Population Act, the General Law on Health and the Act to Prevent and Punish Human Trafficking.⁵⁷ While this list is clearly defined, it is still extremely broad.

The UN Convention against Transnational and Organised Crime contains a definition of organised crime in a manner that more adequately describes this type of offence. Article 2 of the Convention provides the following definitions:

(a) "*Organized criminal group*" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; (b) "*Serious crime*" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty; (c) "*Structured group*" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.⁵⁸

This definition is less susceptible to being used for unjustified prolonged detention. The delegation recommends that the Mexican definition of organised crime be modified so that it is consistent with the definition found within the UN Convention.

The delegation notes that under the National Human Rights Programme 2008-2012, the SEGOB recommends that *arraigo* be used "only under the strictest legal criteria".⁵⁹ As such, the delegation recommends that the Public Prosecutor's Office adopt this recommendation and only use *arraigo* in the strictest legal sense.

A representative from the Ministry of Foreign Affairs informed the delegation that the law of *arraigo* is consistent with international procedures on combating crime.⁶⁰ However, in November 2009 the Inter-American Human Rights Commission (IAHRC) requested an explanation from the Mexican state as to the legal framework of *arraigo* after having heard evidence regarding persons being tortured in military facilities.⁶¹ Under the 2009 UNHRC's UPR, while the Government accepted Recommendation 39 to "evaluate the use of *arraigo*", it did not accept Recommendation 94.2, to "abolish the practice of *arraigo*".⁶²

The delegation has serious concerns that this process can be open to abuse and brings to the fore the wider question of civil liberties. The delegation is concerned that *arraigo* seriously undermines due process by violating the right to personal freedom and undermining the newly adopted principle of presumption of innocence and the well-established principle of equality before the law. The delegation also has concerns that 80 days of detention may perpetuate a lack of incentive for prosecutors and police agents to fully investigate. Because they will have the suspect at their disposal, there is a risk that illegal and/or inhumane methods be used to obtain evidence. Furthermore, while it is true that a judge must sanction *arraigo*, the delegation is concerned that there is insufficient judicial oversight, as an individual can effectively be detained for up to 40 days before judicial intervention is required.

57 UPR National Report, addendum, *supra* n. 29, para. 26.

58 UN Convention Against Transnational Organized Crime, Nov. 15, 2000, 40 I.L.M. 335.

59 PNDH 2008-2012, *supra* n. 27, strategy 2.2.

60 Interview with Alejandro Mojica Nava (Legal Affairs and Human Rights, Secretary of Public Security, Chilpancingo), Guerrero, 2 December 2009.

61 Democrata Norte de México, 25 November 2009, CIDH Pide a Calderon Fundamentar Arriago y Detención Militar.

62 2009 Universal Periodic Review: Mexico (A/HRC/11/27), recommendation 94.2.

The delegation would in the first instance recommend that Mexico abolish the use of *arraigo*. However, at a minimum, the delegation would recommend that Mexico limit the legal circumstances in which *arraigo* can be used; reduce the number of days in which an individual can be held in pre-charge detention; and ensure that there is continual oversight by judicial authorities so that if circumstances surrounding the detention change, a decision can be reviewed as quickly as possible, thereby limiting the risk of violating the individual's right to liberty.

3.5 Prison conditions

During 2008, the National Human Rights Commission (CNDH) and other human rights NGOs reported that corruption, overcrowding and drug addiction were prevalent in most prison facilities. Health and sanitary conditions were poor, and most prisons did not have psychiatric care. Poorly trained, underpaid, and corrupt guards staffed most prisons. Prisoners often had to bribe guards to acquire food, medicine and other necessities.⁶³ Prison overcrowding continues to be a problem. As of November 2008, the prison system was running approximately 32 per cent above capacity, with 222,671 prisoners occupying the country's 439 penal facilities.⁶⁴

The delegation obtained an account of prison conditions in Ayutla, Guerrero, from Raúl Hernández Abundio. Raúl Hernández is an inmate at the *Centro de Readaptación Social (CERESO) de Ayutla, de los Libres*, Guerrero, (Centre for Social Rehabilitation of Ayutla de los Libres) the local state prison in Ayutla. He explained that there were five people in his cell and that there are no doctors, nurses, or medicines at the prison where he is held. He added that many prisoners are sick and often go without treatment and that there is not enough water. He told the delegation that his wife has brought him water, but that guards would not allow him to receive it. He explained the food is bad and the prisoners, who are mostly indigenous people, become sick because they are fed rotten meat. He stated he now suffers from gastritis and has pain all through his body, including his head. He added that family visits were rarely allowed when he was first incarcerated but are more frequent now.⁶⁵

The allegations in relation to the provision of food, water, medical treatment and contact with family run contrary to Article 10 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 (2) of the ACHR. The standard of care alleged by inmates does not meet the requirements of the UN Standard Minimum Rules on the Treatment of Prisoner,⁶⁶ and the Principles and Good Practice on the Protection of Persons Deprived of Liberty in the Americas.⁶⁷

The Town Mayor in Tlapa, Guerrero, with whom the delegation met, highlighted the problems of prison conditions that he has had to address. Prior to coming into office in 2009, Tlapa only had one prison, where overcrowding and poor conditions were problems. The Town Mayor has overseen the construction of three new prisons, one for men, one for women and one for minors.⁶⁸

According to information received by the delegation from the Oaxaca Human Rights Commission, there are 15 prisons currently in operation in Oaxaca with the capacity to hold 4,000 inmates. At the time the delegation was in Mexico, the number of inmates in Oaxaca stood at approximately 4,500.⁶⁹

63 US 2008 Report, *supra* n. 36, page 3.

64 UPR National Report, addendum, *supra* n. 19 para. 35.

65 Interview with Raúl Hernández Abundio (OPIM, Ayutla Prison, Ayutla), Guerrero, 1 December 2009.

66 Adopted by the First UN Congress on the Prevention of Crime and Treatment of Offenders in 1955, and approved by the UN Economic and Social Council resolution 663C (XXIV) 31 July 1957; and amended by Economic and Social Council resolution 2076 (LXII) of 13 May 1977.

67 Adopted by the IAHRC by virtue of resolution I of 2008.

68 Interview with Willy Reyes Ramos (Town Mayor, Tlapa) Guerrero, 1 December 2009.

69 Interview with Heriberto García (President, Oaxaca Human Rights Commission), Juan Rodríguez Ramos (General Coordinator, Oaxaca Human Rights Commission), Dr Maribel Mendoza (Field Worker, Oaxaca Human Rights Commission) and Pedro Omar Ruiz Cruz (Director of Complaints, Oaxaca Human Rights Commission) 27 November

The delegation received no information on the existence of a complaints mechanism as a method of rectifying poor treatment and prison conditions.

The frequent use of lengthy pre-trial detention periods, including pre-charge detention and the use of *arraigo*, as well as the infrequent use of bail are major contributing factors to overcrowding.⁷⁰ For example, at the time of writing Raúl Hernández has been in custody for over two years.⁷¹

The UN Special Rapporteur on Torture acknowledged recent measures taken by the Mexican government that are aimed to help prevent human rights abuses and monitor conditions in places of detention in his follow-up report of 2008. The Special Rapporteur praised the efforts made to implement the Istanbul Protocol⁷² at both federal level and in various states throughout the Republic. Efforts to improve the training of officials on the prohibition of torture were also acknowledged and the National Human Rights Commission was commended for its work in monitoring and reporting human rights violations. In June 2007, the Mexican Government established the National Mechanism for the Prevention of Torture (*Mechanismo Nacional de Prevención de la Tortura*, MNPT) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading treatment. From September 2007 to February 2008, representatives of the MNPT visited over 100 law enforcement facilities throughout Mexico, including prisons and detention centres.⁷³

3.6 Language restrictions in the criminal justice system

While the law requires that translation services from Spanish to indigenous languages be available for the accused at all stages of the criminal process, this is generally not done in practice. The indigenous populations of Guerrero and Oaxaca are particularly vulnerable to this violation of their rights due to the lack of translators and the disproportionately high number of different indigenous languages spoken in this region. The delegation notes the case of Raúl Hernández who, when initially interviewed by the police, was not allowed to speak in his local indigenous language. The delegation heard similar problems raised by the Town Mayor of Tlapa, Guerrero, who stated that the lack of funds to procure translators undermined the justice system's ability to implement the legislation and has continued to exacerbate the indigenous communities' lack of faith in the criminal justice system.⁷⁴ According to the US State Department's 2008 Human Rights Report of Mexico, indigenous defendants who did not speak Spanish were sometimes unaware of the status of their cases, and some suspects were convicted without fully understanding the documents they were required to sign.⁷⁵ Mexico's own national report to the UNHRC during the 2009 UPR also acknowledges that "Mexico still faces the difficult task of effectively providing counsel and qualified translators and interpreters for all trials and procedures in which indigenous language-speakers are a party."⁷⁶

Following the 2009 UPR, Mexico did confirm that the "Superior Court of Justice has created specialised courts that use their normative systems and their own languages and judges are elected by a community assembly."⁷⁷ However, the delegation saw no evidence that these specialised courts have been implemented at the state level, and the delegation received no information of this from government officials and/or lawyers and human rights defenders while in Mexico. As such, the delegation recommends that such specialised courts be implemented in the first instance in states where there is a large indigenous population, such as in Oaxaca and Guerrero. However, the delegation notes with

2009.

70 IACHR Press Release No. 9/10, *IACHR expresses concern over violent deaths in Mexican Prison*, available at: <<http://www.cidh.oas.org/Comunicados/English/2010/5-10eng.htm>>.

71 Article 20 (VII) also states that "salvo que solicite mayor plazo para su defensa", which means, "unless additional time is requested for the defence".

72 The Istanbul Protocol, *supra* n. 45.

73 US 2008, *supra* n. 36, page 3.

74 Interview with Willy Reyes Ramos (Town Mayor, Tlapa) Guerrero, 1 December 2009.

75 US 2008 Report, *supra* n. 36, page 3.

76 UPR National Report, addendum, *supra* n. 29, para. 120.

77 *Ibid*, para. 39.

interest that Oaxaca has enacted legislation which establishes the right of indigenous peoples, in all trials and proceedings in which they or their communities are a party – whether individually or collectively – to have their customs and cultural specificities taken into account and to be assisted by interpreters and defence counsel who have knowledge of their language and culture.⁷⁸

3.7 Military jurisdiction

The armed forces in Mexico have a unique and historic role. Unlike many other Latin American states, military coups did not become an established form of political change. After the 1910 Revolution, the military never attempted an armed coup. Subsequently, the loyalty of the armed forces toward the state, and vice-versa, is pronounced. In reality, this has meant that the armed forces have been supportive of the regime and, in return, gained a great deal of power and autonomy.

Mexico today faces significant and particular challenges in maintaining public security. The high level of illegal trade in narcotics has given rise to serious drug-related violence and organised crime on a significant scale⁷⁹. There is a pressing need for the Mexican authorities to address this problem. The appropriateness of its nominated strategy to tackle the issue has, however, been criticised consistently by both domestic and international organisations. Its strategy relies heavily on the employment of the military, a course preferred historically by the Mexican authorities. The use of the armed forces has been a feature of the Government's approach to counter-insurgency and counter-narcotics operations for decades.⁸⁰ The Mexican authorities defend the use of the armed forces, claiming that they are the most effective institution to maintain public security and counter drug trafficking at the scale and gravity currently experienced in Mexico.⁸¹ Indeed, the Interior Minister himself argued that in Guerrero, where there is a high level of organised crime, sometimes only the armed forces prevail and that the specific terrain requires military involvement.⁸²

The human rights community takes the view that the military is not the ideal institution to carry out the maintenance of public security and that the presence of the military exposes the civilian population to an increased risk of serious human rights violations.⁸³ The veracity of the government's justification itself is also doubted by some who contend that the military intervention has concentrated more on counter-insurgency and public security than counter-narcotics.⁸⁴

It is beyond the remit of this report to examine the justifications for the presence of the military but the delegation's findings and research indicate that the presence of the military has contributed to the deterioration of the human rights situation in certain states in Mexico,⁸⁵ particularly in Guerrero and Oaxaca.⁸⁶ Accounts were received by the delegation of human rights violations committed by the military

78 *Ibid.*, para. 119.

79 Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* *Uniform Impunity*, page 2 (April 2009), <<http://www.hrw.org/sites/default/files/reports/mexico0409web.pdf>> (hereinafter "HRW Uniform Impunity").

80 *Ibid.*

81 PBI, Mexico Project, *Human Rights Defenders in the State of Guerrero: Cases of resistance and initiatives from civil society regarding the defense and promotion of fundamental rights in Mexico*, (December 2007), page 32.

82 Interview with the Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

83 Amnesty International, *Mexico: Amnesty International submission to the UN Periodic review*, 4 (Amnesty International London: 2008), <<http://www.amnesty.org/en/library/asset/AMR41/038/2008/en/23dfe7d8-9076-11dd-b16f-6118895def38/amr410382008en.html>> (hereinafter "AI UPR submission"). See further Amnesty International, *Mexico: New reports of Human Rights Abuses by the Military*, 6 (2009), <<http://www.amnesty.org/en/library/asset/AMR41/058/2009/en/e1a94ad6-3df1-4724-a545-f0b93f39af69/amr410582009en.pdf>> (hereinafter "AI New Abuse by Military").

84 AI UPR submission, *supra* n. 83, page 4.

85 HRW *Uniform Impunity*, *supra* n. 89 page. 2 contains an exposition of the scale of human rights abuses in Mexico alleged to be perpetrated by military agents. It states that the Mexican military is responsible for the vast majority of abuses committed during the country's "Dirty War" in the 1960s and 1970s, at page 22.

86 According to Tlachinollan Human Rights Centre, *Against the Silence and Abandonment* (June 2003 to May 2004), the

within the state of Guerrero since the 1980s. This included rapes, murders, forced disappearances, arbitrary detention and harassment.⁸⁷

The delegation was particularly concerned that human rights abuses have gone unpunished in a number of cases involving the military and questions whether military officers are able to act with impunity, owing to the failure of the State to hold the perpetrators of human rights violations to account. The de facto protection of the perpetrators is achieved through the use of the military justice system, with its structural and associated deficiencies, to investigate and prosecute such acts.

Nonetheless, there was evidence that the federal government is aware of international concern regarding the extent of the use of the military justice system. The Minister of the Interior, when interviewed by the delegation, acknowledged that there were some abuses of power, yet defended the use of the military jurisdiction, insisting that it was required to secure military discipline.⁸⁸ While failing to definitively acknowledge the extent of the issue of impunity, the Minister nonetheless conceded that consideration of reform of the military justice system was in progress.⁸⁹

Scale and gravity of violations

The Mexican military has been identified by the human rights community as being responsible for the vast majority of abuses during the Dirty War in the 1960s, 1970s and 1980s. The abuses included torture and enforced disappearance of hundreds of civilians. Statistics indicate that the armed forces are allegedly responsible for more than 100 killings and 600 forced disappearances that took place between the 1960s and the 1980s.⁹⁰ Human rights organisations state that no member of the military has ever been held to account for these crimes.⁹¹

Human rights violations committed by members of the armed forces continue to the present day, with local human rights organisations reporting at least 50 incidents of unlawful killings, rape, torture, arbitrary detention allegedly committed by military personnel between January 2007 and June 2008.⁹² The frequent failure to investigate such reports in a prompt, impartial and effective manner continues to be a real concern.⁹³

Domestic Legislation

Military jurisdiction is used to investigate almost all alleged human rights violations committed by army personnel, even where such crimes involve members of the civilian population. Article 13 of the Mexican Constitution provides that:

"...Military jurisdiction shall be recognised for the trial of crimes against and violation of military discipline, but the tribunals shall in no case have jurisdiction over persons who do not belong to the army. Whenever a civilian is implicated in a military crime or violation, the respective civil authority shall deal with the case."⁹⁴

army's interventions have resulted in a high number of human rights violations in Guerrero.

87 Interview with Otilia Eugenio Manuel (President of the Me'phaa Indigenous People's Organisation, OPIM, Ayutla de los Libres), Guerrero, 2 December 2009.

88 Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

89 *Ibid.*

90 *AI UPR submission, supra* n. 93, at page. 4.

91 *HRW Uniform Impunity, supra* n. 89, at page. 22.

92 *AI UPR submission, supra* n. 93, at page. 4.

93 *AI New Abuse by Military, supra* n. 93 page. 5.

94 Text translated from *Constitución Política de los Estados Unidos Mexicanos*, Trigesima Quinta Edición, 1967, Editorial Porrúa, S.A., México, D.F. Originally published by the Pan American Union, General Secretariat, Organization of American States, Washington, D.C., 1968. An alternative translation is contained within *HRW Uniform Impunity, supra* n. 85, at 12-13:

Military jurisdiction prevails for crimes and faults against military discipline; but under no cause and for no circumstance may military courts extend their jurisdiction over persons which are not members of the Armed forces. When a crime or a fault to military law involves a civilian, the case shall be brought before the competent civil authority.

One interpretation of this provision would prohibit the use of military jurisdiction for the investigation and prosecution of crimes committed against civilians. Such an interpretation would arguably comply with Mexico's international obligations.

However, the latitude in interpretation of Article 13 can be found in secondary legislation, specifically Article 57(II)(a) of the Code of Military Justice, which relies upon a wide definition of military discipline including "faults under common or federal law... when committed by military personnel in active service or in connection with acts of service." This Article provides an expansive, and in some cases, ill-defined list of types of offences that are "against military discipline" thereby allowing for the inclusion of serious criminal charges and human rights abuses committed against civilians. The types of offence include: crimes against international law, violations of all duties of military personnel, abuse of authority, mistreatment of prisoners, detainees or wounded, crimes in the administration of justice, and interference in the administration of justice.⁹⁵

The Code of Military Justice refers to two types of service and also provides a wide interpretation of the Constitution by including "armed service" and "economic service", which has been taken to include any task that does not require firearms to fulfil it.⁹⁶ By providing such a broad definition of "service", in practice any alleged criminal activity committed by army personnel against a civilian, whether in the course of active service or not, can be investigated and tried under military jurisdiction rather than the civilian criminal justice system. In fact, state and federal prosecutors have absolutely no jurisdiction to carry out their own investigation in matters involving military personnel.

Article 435 of the Mexican Code of Military Justice permits the Military to decide which cases it will investigate and prosecute. These cases have included serious human rights violations such as unlawful detention, rape, murder and torture.⁹⁷ As such, the federal Attorney General's Office (*Procuraduría General de la República*, PGR) automatically sends all cases in which an active-duty member of the military is accused of committing a crime to the Military Attorney General's Office (*Procuraduría General de Justicia Militar*, PGJM).

Appeal/"Amparo"

There are limited rights of appeal in relation to the use of military justice. If a victim or their family want to challenge a decision made within the military justice system, their only remedy is to apply for *amparo*.

Amparo is a legal tool established in the Mexican Constitution and in secondary legislation under the *Amparo Law (Ley de Amparo)*. *Amparo* is effectively a request for legal protection and allows a federal court to review the procedural decisions of lower courts to ensure that individual rights have not been violated. Individuals may file an application at the federal court level if they feel that their constitutional rights have been violated or that a law is unconstitutional.

Political Constitution of the United States of Mexico (Constitución Política de los Estados Unidos Mexicanos), available at: <<http://www.scjn.gob.mx/PortalSCJN/RecJur/Legislacion/ConstitucionPolitica/ConstitucionPolitica.htm>>.

95 Further to the Second Chapter of the Military Code.

96 Code of Military Justice, Article. 57(II)(a). The Code of Military Justice refers to two types of "service": "arms service," which is any assignment (*comisión*) that requires the use of firearms to fulfil it, and "economic service," defined as any assignment that does not require the use of firearms to fulfil it. *Ibid.*, art. 434 (VII) and (VIII). Internal Rules for the Interior Service of the Units, Offices, and Installations of the Mexican Armed and Air Forces (*Reglamento para el Servicio Interior de las Unidades, Dependencias e Instalaciones del Ejército y Fuerza Aérea Mexicanos*), available at: <<http://www.cddhcu.gob.mx/LeyesBiblio/regla/n219.pdf>>.

97 Article 435 of the Mexican Code of Military Justice: *La facultad de declarar que un hecho es o no delito del fuero de guerra, corresponde exclusivamente a los tribunals militares. A ellos toca también declarar la inocencia o culpabilidad de las personas y aplicar las penas que las leyes señalen. Sólo aquella declaración se tendrá como verdad legal.*

Amparo is always used against acts of authorities and not of individuals. However, it is only available in limited circumstances, such as when a prosecutor closes an investigation or decides not to press charges.⁹⁸

In terms of military jurisdiction, *amparo* can only be used once the trial has come to an end, and not to halt proceedings where an individual believes their rights to due process have been violated. District courts and collegiate circuit courts may legally consider applications for *amparo* involving the Supreme Military Court.⁹⁹

Impunity within the military justice system

The delegation is concerned that the military justice system appears to be ill-equipped to meet Mexico's international obligations in cases of allegations of grave human rights abuses committed by military personnel against civilians. The problems associated with the use of military justice for crimes against the civilian population can be illustrated by a number of important cases presented to the delegation. The cases of Valentina Rosendo Cantú and Inés Fernández Ortega, who were allegedly raped by soldiers in 2002, demonstrate the impunity that is upheld by the current system. Each woman was raped in separate instances when army personnel came into their communities. In both instances, following inadequate, delinquent and opaque investigations, no one has been held accountable.

Case study 2: Valentina Rosendo Cantú and Inés Fernández Ortega

In 2002, **Valentina Rosendo Cantú**, 17 years old, and **Inés Fernández Ortega**, of the indigenous Me phaa's community, Guerrero, were tortured and raped by members of the military.

On 16 February 2002, **Valentina Rosendo Cantú** was washing clothes in the river about 200 meters from her house when eight soldiers arrived and asked her if she knew certain persons. When she said that she did not know the persons, one of the soldiers, who was pointing a gun on her, hit her in the stomach with the butt of his weapon. Following the blow she hit her mouth on a rock. One of the soldiers then violently grabbed her hair and removed her clothing. She was subsequently raped by two soldiers for about five to six minutes each while the other six soldiers stood and watched.

Following the attack, Valentina went to the nearest health centre where she was refused help. The health centre was worried about repercussions from the military. Valentina went to the general hospital in Ayutla where they noticed her stomach injury but did not make any further examination. It was not until August 2002, six months after the attack, that Valentina received proper medical care.

Valentina reported the attack on 8 March 2002, and on 15 April the Public Prosecutor's Office for the Investigation of Sexual Crimes began their investigation.

On 16 May 2002, the Department of Justice declared that it did not have jurisdiction and sent the case to the military court system.

Before the Public Ministry declined competence in this case, Valentina lodged an application for *amparo* asking that the case be investigated and resolved under criminal jurisdiction because the military authorities lacked independence and impartiality in this case. In all respects her *amparo* application was dismissed. The reason of the decision was founded on Article 57 of the Code of Military Justice.

98 *Ibid.* p.18.

99 Article 37(a) Federal Organic Act of the Judicial Power.

On 20 January 2003, the Public Military Minister accepted competence and agreed to investigate the rape of Valentina under military jurisdiction.

On 22 March 2002, **Inés Fernández Ortega**, was in her kitchen with her four children in the next room when eleven soldiers arrived and three entered her kitchen asking her in Spanish where her husband was. Inés did not speak Spanish and the soldiers did not question her in her indigenous language. As such, Inés did not answer the soldiers' questions.

One of the soldiers, while pointing his weapon at her, grabbed her hands and pushed her violently on the floor. They continued to ask her questions that she did not understand. The soldiers pressed their weapon on her chest and ordered her to lie down on the floor. One of the soldiers then raped Inés for approximately ten minutes while the other two soldiers watched.

Two days later, on 24 March 2002, Inés went to the Public Ministry in Ayutla, Guerrero, to report the crime. The following day, a gynaecological exam was conducted on Inés where a sample of semen was taken. The examination was conducted at the Unidad Hospitalaria by Dr. Radilla López, and the result of the forensic examination was sent to the Health Ministry. The results confirmed the existence of semen in the vaginal cavity. When Inés requested the results of the exam, the Public Ministry responded that the samples had been accidentally destroyed.

On 17 March 2002, the Public Ministry declared that it did not have jurisdiction and transferred the case to the Public Military Minister.

On 17 February 2003, the military prosecution closed the case because Inés did not want to proceed through the military jurisdiction system due to fears of lack of impartiality. Inés requested that the case be transferred back to the criminal justice system.

At this point the Public Military Minister accepted competence and was ready to carry out an investigation. Consequently, Inés lodged an *amparo* on the basis that military jurisdiction would not be able to carry out an impartial and independent investigation of the aggression. As in Valentina Rosendo's case, the *amparo* was dismissed for the same reason, citing Article 57 of the Code of Military Justice.

Petition to Inter-American Commission of Human Rights (IACHR)

In November 2003 and in June 2004, respectively, Valentina and Inés referred their cases to the IACHR following the transfer of their respective cases to the military jurisdiction. Their argument is based on the apparent lack of impartiality and independence of the military justice system, including the lack of effectiveness and the incompetence in the investigation of the cases by the military prosecutor. At the time the Mexican Government maintained that the cases were still being investigated and argued that the internal justice mechanism had not been exhausted. As a result, the IACHR should not admit these cases.

Despite Mexico's request, in October 2006, the IACHR admitted both cases, stating that the military justice system is inadequate to investigate and punish human rights violations and so the legal requirement to exhaust all domestic remedies is not enforceable in these cases.

The IACHR heard the cases of Inés Fernández Ortega and Valentina Rosendo Cantú in April and May 2010 and is due to issue a judgement later in the year.

The delegation notes the case of Rosendo Radilla Pacheco, who disappeared in August 1974, and whose body has never been found.

Case study 3: Rosendo Radilla Pacheco

In August 1974, during the 'Dirty War', **Rosendo Radilla Pacheco** was detained at a military checkpoint and subsequently disappeared in Atoyac de Alvarez, Guerrero. His body has never been found. It is widely believed that Rosendo Radilla was the victim of a forced disappearance by the Mexican Army because the military had suspected he was supporting the guerrilla movement. He was in fact an indigenous community leader and mayor of his local community.

At the time of Radilla's disappearance the family did not make any complaints to the authorities for fear of reprisals. It was not until 1990 that the Radilla family were able to report the disappearance to the local authorities, which subsequently transferred the case to the federal level. The federal system declined competence and transferred the case to the military jurisdiction system. The Radilla family claimed that the Government failed to adequately investigate the events that gave rise to the enforced disappearance of Rosendo, and they turned instead to the IACHR.

In December 2009, the IACHR condemned the Mexican State for the forced disappearance of Rosendo Radilla, finding that Mexico had violated his rights to life, liberty and personal integrity also the right to due process and access to justice for Mr Radilla and his family. The Government, according to the Court, failed to carry out a thorough investigation. The court ordered Mexico to reopen the case and carry out a thorough investigation and identify those responsible for his disappearance and pay reparations to the Radilla family. In terms of the broader issues of military jurisdiction, the court also ordered the Mexican state to adopt, within a reasonable time frame, the necessary legislative reforms that would harmonise Article 57 of the Code of Military Justice with recognised international standards, including the ACHR; remove the reservation to Article IX of the Inter-American Convention on Forced Disappearance of Persons; and to assure that the Attorney-General's Office and judges receive training on the investigation of crimes of forced disappearance.

The delegation also notes the case of Bonfilio Rubio, who was killed at a military checkpoint in June 2009 near Tlapa, Guerrero. Discrepancies in the investigation carried out by the military and the Public Prosecutor's Office indicate either incompetence or a total lack of impartiality in this case.

Case study 4: Bonfilio Rubio Villegas

On 20 June 2009, a coach was stopped at a military check-point in Huamuxtitlán municipality, Guerrero. The passengers stepped off the bus and were searched by members of the 93rd Infantry Battalion. One civilian, a Mixtec Indigenous man, Fausto Saavedra Valera, was arrested for the unauthorised use of official insignia; he was wearing military style boots. As a consequence, officials logged this arrest in the driver's logbook, and then the bus was authorised to continue its journey.

Seconds after the bus moved away from the check-point, the army opened fire, killing 29-year old **Bonfilio Rubio Villegas**, a member of the Na Savi Indigenous population and a passenger on the departing bus. According to an official statement by the Department of Defence's 35th military zone, "...the driver of the passenger coach, number 45, was asked to stop. He refused and continued on his way. The soldiers shot in the air so that the driver would stop, but he continued driving and the soldiers caught up to him ten minutes later on the highway where they detained the driver." Subsequently, the Secretary of National Defence (SEDNA) accused the driver of "transporting 10 kilos of marijuana", in spite of the fact that the soldiers did not report finding any drugs when all the passengers, including the driver, had alighted from the bus to be searched.

Following the incident, the State General Justice Prosecutor's office inspected the bus. Aside from Bonfilio's body, nothing out of the ordinary, such as weapons or drugs, was found on the bus. Bonfilio had two bus tickets; it seems he had missed an earlier bus. He also had receipts showing that he had withdrawn 20,000 pesos from a savings account (the money was not found).

According to statements made by the soldiers at the Public Prosecutor's Office, the bus was stopped and searched. The bullets in the bus, as well as the bullet in Bonfilio's neck, demonstrate that the shots were not fired into the air. The bus had at least six bullet holes, which were produced by weapons used by the army.

On 14 July 2009, José Rubio Villegas, Bonfilio's brother, presented a document to the Guerrero State Department of Justice (PGJE) to request that the case not be turned over to military jurisdiction and that the PGJE continue with the investigation.

Work has continued with the Public Prosecutor's Office to see if there has been any agreement to date, however, according to information received no agreement has yet been reached as to which jurisdiction can continue the investigation. There is a serious risk of impunity if this case is turned over to the military jurisdiction. Furthermore, the complete lack of information on whether a decision has been made on the investigation of this case months after Bonfilio was killed undermines the ability of the Guerrero justice system to bring Bonfilio's killers to justice. Bonfilio's representatives told the delegation that their plan was to proceed with filing an *amparo* to request that the case be kept within the criminal justice system. If they were unsuccessful at that level, they plan to take the case to the IACHR because they believe that there is no foundation for this case to be presented in the military justice system. (Interview with Matilda Perez, Civil Monitor, Guerrero, 1 December 2009.)

The rights of victims within the current military jurisdiction system are often abused, and they have very little control over proceedings, and are often excluded from proceedings. The Minister of the Interior implicitly acknowledged some of the deficiencies of the system by conceding that it is in need of reform. However, he defended the use of military jurisdiction.¹⁰⁰

¹⁰⁰ Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

Not surprisingly, victims of human rights abuses carried out by army personnel are wary of having their case brought within the military jurisdiction for fear that their rights to due process may be violated by the lack of an effective, impartial or competent investigations in the case or proceedings.

Military justice and international norms

The reservation and declaration placed on Article IX when Mexico ratified the Inter-American Convention on Forced Disappearance of Persons (IACFDP) appears to have been an attempt to reduce the scope of military jurisdiction under the Convention, thereby limiting its obligations under international law. Article IX requires that acts constituting forced disappearances should be tried according to the “ordinary laws” of each state. The full text of Article IX is:

“Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions. The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties. Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.”

Mexico’s reservation to Article IX reads:

“[T]he Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact.”¹⁰¹

The result of this reservation is that the Convention does not apply to military personnel accused of having committed acts constituting the offence of forced disappearance.

Mexico’s declaration in respect of Article IX states:

“Based on Article 14 of the Political Constitution of the United Mexican States, the Government of Mexico declares [...] that it shall be understood that the provisions of said Convention shall apply to acts constituting the forced disappearance of persons ordered, executed, or committed after the entry into force of this Convention.”¹⁰²

As a result of this declaration, the Convention is also not applicable in Mexico to forced disappearances that were ordered, executed or committed before the Convention came into force on 9 June 1994.

While it is encouraging that Mexico has ratified the IACFDP, its reservation and declaration run contrary to the practices of 13 State Parties to the treaty. None of the other 13 State Parties have submitted a reservation allowing the use of military jurisdiction for cases of human rights abuses of civilians by military personnel. Furthermore, no other state party limited the treaty’s application to cases arising after it came into force. Mexico’s decision to do so has serious implications for attempts to hold accountable those responsible for over 600 cases of forced disappearances that the Office of Special Prosecutor identified as having taken place during the Dirty War.

In addition, while the Mexican Government ratified the UN International Convention for the Protection of All Persons from Enforced Disappearance, which has not yet come into force, it refused to recognise the competence of the UN Committee established under the Convention to consider individual complaints. In so doing, it has failed to take the opportunity to allow for more scrutiny of individual cases.

¹⁰¹ Inter-American Convention on the Forced Disappearance of Persons, *supra* n 42. Reservation made when depositing the instrument of ratification (9 April 2002).

¹⁰² Interpretative declaration made when depositing the instrument of ratification (9 April 2002).

Concerns relating to the extensive use of military justice in Mexico have been previously expressed by various UN experts. Such views were expressed by the UN High Commissioner on Human Rights during her visit in 2008,¹⁰³ the UN Committee against Torture in their 2006 report¹⁰⁴ and the UN Special Rapporteur on the Independence of Judges and Lawyers, following his visit to Mexico in 2001.¹⁰⁵ These officials have all recommended that civil courts should be used for cases of human rights abuses by the military.

The 2009 UPR made specific recommendations regarding reformat of the military justice system. In particular, Recommendations 94.3 and 94.6 recommends that, Mexico ensures “that the primacy of the civil legal system prevail over military judicial process across the entire territory” and that it “grant jurisdiction to its civil authorities/courts over the acts/human rights violations committed by members of the armed forces...” respectively. However, in its response to the Human Rights Council, Mexico stated that recommendations 94.3 and 94.6 have been overcome, for the reason that “the civil legal system prevails over the military judicial process, because [military jurisdiction]... can be appealed before the civil courts by means of an action for *amparo*.”¹⁰⁶ Further, the national submission stated that military jurisdiction had been established by the Constitution, and that “it is legally unsustainable to have a parallel and alternate jurisdiction over crimes committed by military personnel in the exercise of their duty.”¹⁰⁷ The Mexican Ambassador to the UK confirmed this approach, stating that the Mexican Supreme Court upheld military justice as being constitutional.¹⁰⁸

While *amparo* does provide an appeal process outside of the military jurisdiction process, this can only be applied once the military jurisdiction has been exhausted. This means a victim of a human rights abuse allegedly committed by the military is still subjected to the military justice system even where there are legitimate concerns regarding its impartiality. Furthermore, the delegation has concerns that the *amparo* system is not an effective appeal process for victims. For example, in the cases of Rosendo Radilla, Valentina Rosendo Cantú and Inés Fernández Ortega, *amparo*'s were all lodged and refused, requiring them to reach outside the domestic justice system and have recourse to the Inter-American system. That individuals feel the need to consistently come outside of the domestic legal structure to receive access to justice raises serious concerns.

Legal Challenges to the use of the military jurisdiction

The use of the military justice system was unsuccessfully challenged in the federal courts in the cases of Inés Fernández Ortega, Valentina Rosendo Cantú and Rosendo Radilla Pacheco. The Mexican Supreme Court has upheld the constitutionality of military jurisdiction over human rights abuses committed against civilians when it undertook an analysis of the secondary legislation in the case of 989/2009/ Reynalda Morales Rodríguez (Review of *amparo*). The IACHR, however, has issued verdicts running contrary to the Supreme Court. While the cases of Inés and Valentina were heard by the Court in April and May 2010, the judgment in the case of Rosendo Radilla was delivered in December 2009. The Court recognised that the Mexican state violated the right to due process and access to justice for Mr. Radilla and his family; in particular, the Court found Mexico responsible for the disappearance and subsequent death of Mr Radilla.

103 Statement of the UN High Commissioner for Human Rights, Louise Arbour at the end of her mission to Mexico on 8 February 2008, available at: <<http://www.hchr.org.mx/documentos/comunicados/Declaracionfinalvisitaeng.pdf>>.

104 UN Committee Against Torture, *Report of the Committee against Torture: thirty-seventh session (6-24 November 2006), thirty-eighth session (30 April-18 May 2007)*, 1 December 2007, UN Doc. A/62/44, available at: <<http://www.unhcr.org/refworld/docid/478486ff2.html>>.

105 UN Commission on Human Rights, *Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Kumaraswamy – Mission to Mexico*, UN doc. E/CN.4/2002/72/Add.1, available at: <<http://www.unhcr.ch/huridocda/huridoca.nsf/FramePage/judges%20En?OpenDocument&Start=2.14&Count=15&ExpandView>>.

106 UPR National Report, addendum, *supra* n. 19.

107 *Ibid*, para. 18.

108 Interview with Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK), London, 15 February 2010.

The IACHR emphasised the legal mechanisms and processes currently in place to deal with crimes committed by members of the Mexican Army violates the Mexican's obligation to provide access to justice for its citizens. As such, the IACHR ruled that the investigation of alleged crimes committed by the armed forces against civilians cannot legitimately lie within the jurisdiction of military courts.¹⁰⁹

The Court rejected the contention that Article IX of the IACFDP was inapplicable to Mexico on grounds of the reservation in respect of military jurisdiction. It also ruled that Mexico must adopt, within a reasonable timeframe, the necessary legislative reforms that would harmonise Article 57 of the Code of Military Justice with recognised international standards and with the ACHR.

This ruling conforms with the 2009 UPR which recommended that Mexico "review the Code of Military Justice in order to align it more closely with international human rights obligations." The Court's decision also echoes recommendations under the National Human Rights Programme 2008-2012, which proposed that reforms in the administration and enforcement of military jurisdiction be promoted "in accordance with international commitments on human rights adopted by the Mexican State". It further recommends that the Ministry of the Interior and the Ministry of Foreign Affairs "examine the reservations and interpretive declarations made to legal human rights instruments and, wherever possible, promote their removal within the Legislative Branch."¹¹⁰ The emphatic insistence that Mexico bring its military jurisdiction in line with its international human rights commitments from such a range of international bodies indicates that such reforms should be made immediately.

The IACHR ruling provides the government with crucial guidance on steps that must be taken to ensure the Radilla family, and all other victims of serious human rights violations imputed to the army, have access to justice and that the recommendations should be implemented at the earliest opportunity.

Structural deficiencies/failure of Military Jurisdiction to meet International standards

Where Mexico continues to utilise military jurisdiction for crimes committed against civilians, the delegation have serious concerns about the system's independence and impartiality. While noting that the Minister of the Interior stressed his belief in the "honesty of the military justice system",¹¹¹ the delegation cannot escape the fact that the structure of the military justice system is not independent of the military structure itself. For example, the Secretary of the Defence, himself a military officer, has both executive and judicial roles within the military. He is responsible for directing the armed forces and, in accordance with the military's chain of command, is ultimately responsible for the official acts of its members.¹¹² At the same time, he also directs the military justice system.¹¹³ A lack of clear separation of powers within the military justice system indicated that its independence and impartiality may be brought into question.

His judicial powers allow him to appoint all military prosecutors, public defenders and judges, all of whom are also drawn from the active members of the armed forces. These judicial officers, including the military Attorney General, all military prosecutors, the Head of the Public Defenders' Office, all public defenders, all military judges and members of the Supreme Military Tribunal (*Supremo Tribunal Militar*), are hierarchically below and answerable to the Secretary of the Defence.¹¹⁴

109 See Inter-American Commission on Human Rights, Case 12.130, Report No. 2/06, Inter-Am. C.H.R., OEA/Ser.L/V/II.127 Doc. 4 rev. 1 (2007), para. 85.

110 PNDH 2008-2012, supra n. 17, strategy 4.1.

111 Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

112 Article 7 of the Law on Discipline of the Mexican Army and Air Force provides, "the superior officer will be responsible for maintaining order in the troops under his charge, and for the fulfillment of the troops' obligations, without having the possibility to excuse himself if his officers carry out omissions or errors".

113 Organic Law of the Federal Public Administration, Article 29(X)

114 *Ibid*, Articles 7, 13, 27, 39, 41, 42, 43, 44, 55 and 97.

Significantly, he is empowered with the right to order a military prosecutor to close an investigation. Article 36 of the Code of Military Justice provides that the military prosecutor's office may close an investigation by order of the Secretary of the Defence, orders that may be given "where the social interest provides it."¹¹⁵ He may also issue military pardons when military courts convict soldiers.

The lack of security of tenure for judges and magistrates within the military justice system is also suggestive of a lack of independence. When considered with the "high level of rotation" between posts of between one and three years, as reported by senior officials of the Ministry of Defence (*Secretaría de la Defensa Nacional, SEDENA*),¹¹⁶ it becomes increasingly difficult to argue that the military judiciary enjoy true independence and the ability to act impartially.

According to Articles 87, 88 and 89 of the Military Code of Justice, judges are susceptible to removal "in accordance with the current needs of SEDENA." Under these provisions, a judge may be removed from his post and required to perform different functions as a prosecutor, defender or member of a court-martial. The sanctioning of judges in the military justice system is the responsibility of the president of the Supreme Military Tribunal, himself a military official and appointed by the Secretary for the Defence with the approval of the President of Mexico.¹¹⁷

Transparency in the military justice system

According to human rights organisations, the general public almost entirely lacks access to information regarding military investigations and prosecutions. The delegation's requests to meet with representatives of the Ministry of National Defence to discuss these issues went unanswered.

The final ruling from a military court is often the only information made public, with no telling how long is necessary for such a ruling to be made. Under Article 83 (XIV) and 439 of the Code of Military Justice, victims are permitted to participate in the process and may thus provide information for the public. However, as documented by human rights organisations, distrust of the military justice system runs so deep for most victims and members of civil society organisations that they feel their participation in the process would only serve to legitimise it.¹¹⁸

¹¹⁵ As translated by HRW *Uniform Impunity, supra* n. 79 at page. 17.

¹¹⁶ *Ibid* page. 17.

¹¹⁷ Article 7 Military Code of Justice.

¹¹⁸ See for example, HRW *Uniform Impunity, supra* n. 79 at pages. 19-20.

4. Lawyers and Human Rights Defenders

Despite being harassed, Mexican lawyers and human rights defenders continue to effectively and passionately advocate on behalf of the most vulnerable portions of the population. Their clients often include those who have historically been marginalised, indigenous groups and groups deemed potentially subversive by the government. Because their work often forces them to challenge the status quo, they routinely face intimidation at the hands of the government or its agents, most commonly in the form of threats to their lives and physical health. The government has adopted other scare tactics including judicial intimidation as a means of silencing those advocating for social change. These measures have also adversely affected the work of human rights defenders.

Human rights defenders are recognised as an important part of the international human rights regime. The UN Declaration on Human Rights Defenders provides that:

*"[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels."*¹¹⁹

Article 2 of the Declaration provides that States are responsible for protecting, promoting and implementing human rights and fundamental freedoms.¹²⁰ While the Declaration is not legally binding, it summarises existing applicable international law and legal instruments to which Mexico is a signatory. Although the Mexican state has taken some positive steps towards implementing its human rights obligations vis-à-vis human rights defenders, there remains a fundamental disconnect between Mexico's formal position and the experience of human rights defenders on the ground. Defenders and their lawyers continue to operate in a climate of harassment, fear, intimidation and impunity for injustices.

While positive, recent legal and political reforms, such as the National Programme of Human Rights 2008-2012,¹²¹ have not addressed defenders' fundamental situation at the local level. It is imperative that the Mexican state authorities focus on the protection of human rights defenders at all levels. To fully comply with its international human rights obligations, the government must go beyond merely protecting the lives and physical security of defenders; it must also safeguard the ability of human rights defenders to do their work.

In its interviews with human rights defenders in Guerrero state, the delegation observed that various forms of persistent repression have effectively shut down the work of the Organisation of the Me'phaa People (*Organización del Pueblo Indígena Me'phaa, OPIM*), the Organisation for the Future of the Mixteco People (*Organisation for the Future of the Mixteco People, OFPM*) and Tlachinollan Human Rights Centre, particularly its offices in Ayutla de los Libres, which have been closed since February 2009 as a result of fears for their safety.

¹¹⁹ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, article 1, UN Doc. A/Res/53/144, art. 1 (8 March 1999) <<http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/a.res.53.144.en>> (hereinafter "UN Declaration on Human Rights Defenders").

¹²⁰ *Ibid.*, Article 2.

¹²¹ PNDH 2008-2012, *supra* n. 17, see strategy 1.4, aimed at guaranteeing reliable and effective spaces for the participation of civil society in the drafting of public policies at page. 68.

Case study 5: Tlachinollan Human Rights Centre

The **Tlachinollan Human Rights Centre** works with members of the indigenous population, providing legal support on various rural issues in Guerrero. Tlachinollan lawyers often represent members of OPIM and OFPM (Organisation for the Future of the Mixteco People), amongst others.

On 18 March 2009, the Tlachinollan Centre had to temporarily close its office in Ayutla, Guerrero, due to threats received by members of the organisation.

Throughout March 2009, staff of Tlachinollan received threats and harassment against themselves and their family members. At the time of writing, state police have not undertaken an investigation of these events. In 2009, the IACHR ordered provisional measures for 107 persons including all members of Tlachinollan Human Rights Centre (see Chapter 4.4 for further details).

On 17 November 2009, Tlachinollan Director, Abel Barrera, made a complaint to the State Attorney General against Josafat Altamirano García (a member of the Mexican Army). García allegedly made repeated requests for details regarding Abel Barrera's work hours and activities and photographed Abel on numerous occasions, particularly as he was leaving the Tlachinollan offices and his home. Considering past threats against his colleagues, Abel was concerned that surveillance carried out by García was linked to his work with the indigenous population and cases he has presented at the IACHR.

The delegation met with individual members of the human rights centre on 1 December 2009 in the Guerrero towns of Ayutla and Tlapa. The lawyers told the delegation that they had kept lists of the numerous and varied threats received by its members and had presented these to the police. However, state authorities did not perceive that these represented any threat, and no action has been taken by state officials to ensure the protection of members of Tlachinollan in the carrying out of their work as human rights defenders.

Case study 6: Organisation of Indigenous Me'phaa People (OPIM) and Organisation for the Future of the Mixteco People (OFPM)

OPIM and **OFPM** work closely together to defend the rights of the Me'phaa (Tlapaneca) and the Na Savi (Mixteco) indigenous peoples. Both organisations campaign against discrimination, poverty, exclusion and other human rights abuses committed against indigenous peoples of Guerrero and provide visibility to their needs by criticising these and related issues, such as forced sterilizations and sexual offences.

Several members of OPIM and OFPM informed the delegation that their work as human rights defenders for the local indigenous populations had been persecuted. They have allegedly suffered from a campaign of aggression, and leaders of both OPIM and OFPM have reported that they have been the subject of false criminal accusations, threats, theft, attacks, torture, sexual aggressions, forced disappearance and murder against their members.

Lorenzo Fernández Ortega, a member of OPIM, was kidnapped, tortured and found dead on 9 February 2008.

Raúl Lucas Lucía and Manuel Ponce Rosas, president and secretary of OFPM, were victims of forced disappearance on 13 February 2009, and their bodies were found with evidence of torture seven days later (see below for further details).

Obtilia Eugenio Manuel, President of OPIM, has been the victim of continuous threats in recent years. Following her election to President of OPIM in January 2009 there has been an increase in the intensity of aggression and intimidation, including threats to her life. As a result of these ongoing threats, Obtilia has been forced to leave the region (see below for further details).

Raúl Hernández, member of OPIM, has been falsely accused of murder. He has been in prison since 18 April 2008 until the time of writing. The Prosecution's case rests solely on two very tenuous witness testimonies and a statement based on hearsay (see below for further details).

40 members of OPIM, including Obtilia Eugenio Manuel, and 26 members of OFPM have precautionary measures granted by the IACHR in order to guarantee their security and integrity. This is the second extension of the precautionary measures that were originally granted in January 2005 (the measures were extended for the first time in September 2007, see further Chapter 4.4). Nevertheless, members of OPIM and OFPM, who still live in the area, have repeatedly declared that they live with a sense of insecurity and fear as a result of ineffective implementation of the precautionary measures designed to protect them.

4.1 Perception of human rights defenders in Mexico

In promoting universal human rights and fundamental freedoms, human rights defenders often voice dissent and challenge existing political, economic or social structures. The work of human rights defenders is a necessary and valuable component of any democratic society in that they challenge human rights abuses, strengthen the rule of law and engage in significant work towards creating a more just society.

Despite this, the general perception of human rights defenders in Mexico is highly negative. Human rights defenders state that their work is not valued by the authorities, media or Mexican society generally. They are viewed as troublemakers who pose a threat to those with powerful interests in maintaining the status quo. This view is undoubtedly influenced by deprecating remarks regularly made by the authorities and media, including comments by authorities linking defenders with organised crime, publicly questioning the truth of their reports and their neutrality. For example, an Oaxaca newspaper called *Despertar de Oaxaca* reported in May 2009 that local human rights groups were seeking political advantage. On February 19, 2009, as reported in Mexican daily *El Sur*, the Commander of the Ninth Military Region, Enrique Jorge Alonso Garrido Abreu commented to the media that human rights organisations are frequently covers for organised crime.¹²² The delegation met with human rights defenders in Guerrero and Oaxaca who confirmed that these experiences are common.¹²³

Broad public support of defenders is a necessary component of ensuring their protection. The delegation visited several government officials, including the highest representatives of the Ministry of the Interior,¹²⁴ who are clearly dedicated to promoting and protecting the rights of human rights defenders. It was equally clear, however, that human rights and the protection of defenders is simply not a priority for many other officials, particularly those at the local level.

4.2 Criminalisation of social protest

The delegation witnessed a troubling trend of the application of criminal sanctions to human rights defenders as a silencing mechanism. Charges brought against defenders range from minor offences to murder, and their cases often involve pre-trial detention of a questionably long duration. In each instance, the evidence used against the human rights defenders was of dubious reliability. Another effective form of intimidation is to issue but not implement an arrest warrant, leaving defenders in constant fear of imminent arrest. For example, human rights lawyer Yessica Sánchez told the delegation that a warrant issued for her arrest following the 2006 riots in Oaxaca was still pending. Yessica continues to operate in a status of fear and uncertainty that she will be arrested, particularly when she is representing clients in political or sensitive cases.

International human rights law establishes instances in which restrictions may be lawfully placed on the freedoms of expression, association and assembly. To be valid, the restrictions must be clearly delineated in law and must have been established with a legitimate aim of protecting national security, public safety or public order, public health, morals or the rights or freedoms of others. Additionally, all restrictions must be necessary to accomplish their intended purpose, and the harm they inflict must be proportionate to their perceived benefits.¹²⁵ Peaceful human rights advocacy does not justify restrictions. Mexico's practice in this area, detailed below, has been inconsistent with its international human rights obligations.

122 *Defender los derechos humanos: entre el compromiso y el riesgo: Informe sobre la situación de las y los defensores de derechos humanos in México, Naciones Unidas Derechos Humanos, Oficina del Alto Comisionado para los Derechos Humanos México, 2009* (hereinafter "*Defender los derechos humanos*"). See generally paragraphs 51-54.

123 Meeting with human rights lawyers and defenders, Mexico City, November 30, 2009, see Annex A.

124 The Minister for the Interior told the delegation that "human rights defenders are our ally", Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

125 *UN Declaration on Human Rights Defender*, *supra* n. 119, article 17; *ACHR, supra* n. 42, articles 13, 15 and 16; and the *ICCPR, supra* n. 42, articles 29, 21 and 22.

Manuel Olivares, a Guerrero human rights defender, was charged with “attacks on public roads,” “criminal association” and “riot”, all of which were dropped only after a successful *amparo* application. The delegation heard with concern of the case of Cándido Felix, another defender based in Guerrero, who has been arrested on four separate occasions in relation to peaceful protests. Like Olivares, charges levied against him included “attacks on public roads” and “riot”, as well as “illegal deprivation of liberty”. The state’s evidence in respect to the last offence was a photograph of the accused at a meeting with state officials. The charges were dismissed by a state judge in July 2009 for insufficient evidence; however, the Attorney General appealed the court’s decision and the final verdict is pending to date.

Case study 7: Marcelino Coache

Marcelino Coache, a trade unionist leader from Oaxaca, was detained in prison in 2006 and 2007 due to local uprisings against the government. He was eventually freed due to insufficient evidence, and he continued to work for the local social movement, publishing articles in the local media against the political situation.

In March 2009, he was again detained. Marcelino alleges that that he was the victim of torture while being held in detention. He received cigarette burns to his chest and genitals and repeated beatings, which has consequently affected his hearing and caused a loss of nerves in his arms. At the same time, local police started to harass his seventeen-year old son and his wife.

Marcelino was released from prison, but he and his family continue to receive threats from police authorities. Due to the psychological trauma of these continued threats, and as a result of the torture, Marcelino suffers from constant fear and paranoia, which is affecting his family life. Precautionary measures have been issued by the IACHR to protect the life and integrity of Marcelino and his family. A comprehensive proposal has been drawn up for the implementation of the measures by federal officials (Office for the Promotion and Defence of Human Rights, Interior Ministry). These include: security measures, physical accompaniment, private psychological assistance, surveillance equipment and new phones for Marcelino’s family.

However, a fundamental concern for Marcelino and his family is that these measures should not be implemented by the state structure. Marcelino is justifiably concerned that if state officials know what security plans have been put in place in conjunction with the precautionary measures, they will effectively be useless as the perpetrators will have access to this information. Due to the direct involvement of state police authorities in the allegations of torture and continued threats and harassment, Marcelino registered a formal complaint with the federal Attorney General’s office; however jurisdiction in this case was rejected. A formal complaint was registered with the Oaxaca Attorney-General in April 2009. No investigations have been carried out into the allegations of torture.

Once their cases are reviewed by a higher court, many of the human rights defenders who are falsely charged are eventually released. During this process, however, they are not only denied the right to liberty, they also unnecessarily suffer negative psychological and economic effects brought about by the criminal charges, as well as unwarranted damage to their reputations. The delegation is concerned that the majority of those falsely charged come from economically marginalised and vulnerable populations, which exacerbates the effect of the charges. At the time of writing, no attempts have been made by the state to compensate such defenders nor have any apologies been issued.

The threat of criminal prosecution acts to chill the work of human rights defenders and can derail the work of entire organisations as they are forced to divert scarce resources to the defence of their members who are accused of crimes.

Case study 8: Raúl Hernández

On 18 April 2008, five members of OPIM, including Raúl Hernández, were arrested and detained in Ayutla, Guerrero State. All five were charged with the murder of Alejandro Feliciano García. García was murdered in the village of El Camalote, Guerrero State, on 1 January 2008. The investigation into the murder reportedly made no progress until 10 April, when the body of the victim was exhumed. The following day, 15 warrants were issued for the arrest of OPIM members. Raúl Hernández was accused of shooting García; another four – Manuel Cruz, Orlando Manzanarez, Natalio Ortega and Romualdo Santiago – were accused of instigating the crime on the basis of their alleged participation in an OPIM meeting the day after the shooting. The only evidence against the five men consisted of two almost identical witness testimonies, and a statement based on hearsay. The other ten arrest warrants were not implemented.

The witnesses did not come forward until three days after the incident, when a local *cacique* took them to the Guerrero PGJE. The *cacique*, Romualdo Remigio Cantu, who had been accused by OPIM members of persistent harassment, acted as the witnesses' interpreter. According to information received by the delegation, the Guerrero PGJE failed to carry out the most basic steps to establish the reliability of the witness statements. No effort was made to verify if Raúl Hernández really was where the witnesses claimed he was at the time of the killing. Efforts by the defence lawyers to question the witnesses have been repeatedly ignored, and their whereabouts are not known.

It is believed that the five arrested, including Raúl Hernández, were detained solely for their opposition to the *cacique* while defending the rights of members of their indigenous community.

Tlachinollan Human Rights Centre has presented seven defence witnesses who demonstrate that Raúl was not at the scene of the crime at the time and date of the murder. Witnesses show that Raúl was carrying out other work with local authorities in his role of Commanding Officer of his village police.

On 20 October 2008, a federal appeal judge ruled that the evidence presented did not implicate four of the five accused of the killing. They were released on 19 March 2009, eleven months after they were arrested, after a higher federal tribunal confirmed their appeal. The sole remaining detainee, Raúl Hernández, is still in detention, awaiting trial.

The lawyer representing Raúl met with the delegation on 1 December 2009. During the meeting, state authorities appeared and asked whether a permit to hold the meeting had been obtained. It was unclear whether the authorities were police or military. The lawyer of Raúl Hernández, who was present at the time, was visibly upset by this.

Members of the delegation met with Raúl on 1 December 2009 at the prison in Ayutla. When describing his arrest, Raúl told the delegation that when he and the four other members of OPIM were taken to the police station, the police became angry when they asked for water in their native language instead of Spanish. The police interrogation lasted for three hours, and included threats of suffocation by "the bag". Raúl was told that he would be released in three days if he would just confess. One local government official, who did not want to be named, told the delegation that the case had been full of irregularities right from the beginning of the investigation. Omissions and violations had been made by the police. The opinion of this particular state official was that there was no reason for Raúl to be in prison.

The Judge responsible for Raúl's case granted requests to admit more evidence in Raúl's defence and a date in early December 2009 was set to hear oral evidence. On that date the defence witnesses did not appear. Nobody appears to know why Raúl remains in the Ayutla jail.

4.3 Attacks on and harassment of human rights defenders and their lawyers

Article 2 of the UN Declaration on Human Rights Defenders establishes that states must ensure the implementation of human rights norms within their jurisdictions. Each country is accountable for attacks committed by authorities, must investigate all threats and abuses against defenders and is obligated to take steps to stop such attacks. The Mexican government as a whole has failed to uphold these obligations, but the problem is particularly severe in Guerrero and Oaxaca at both the state and municipal levels.

In its 2009 report on human rights defenders in Mexico, the Office of the UN High Commissioner for Human Rights in Mexico recorded 127 alleged attacks against defenders from 1 January 2006 to 30 May 2009. Of the 127 instances documented by the UN, ten were assassinations.¹²⁶ In 52 per cent of cases, the origin of the attack was unknown.¹²⁷ Only two of the alleged attacks resulted in prosecution, resulting in an impunity rate of 98 per cent.¹²⁸

The delegation notes the case of the forced disappearance and murder of Raúl Lucas Lucía and Manuel Ponce Rosas, respectively the President and Secretary of the OFPM.

Case study 9: Raúl Lucas Lucía and Manuel Ponce Rosas

On 13 February 2009, **Raúl Lucas Lucía** and **Manuel Ponce Rosas**, President and Secretary of the OFPM, respectively, disappeared at a public ceremony in Ayutla de los Libres, Guerrero, in which municipal authorities from Ayutla were present. According to witnesses, three armed men, who allegedly identified themselves as police officers, forced them into an unmarked car.

The wife of Raúl Lucas Lucía received a phone call from an unidentified man using her husband's mobile almost immediately after the abduction. The caller warned her: "Don't start fucking around. Keep quiet or we'll kill your husband. This is happening to you because you're defending Indians." She tried to file a complaint with the Guerrero PGJE on the same day as the forced disappearance, along with the wife of Manuel Ponce Rosas. However, no criminal investigation was opened and the authorities took no steps to locate the two men.

Seven days later, on 20 February 2009, the bodies of **Raúl Lucas Lucía** and **Manuel Ponce Rosas** were found in Tecoanapa, Guerrero State, with visible signs of torture and in an advanced state of decomposition. Relatives who identified the bodies said that both bore injuries and their hands and feet were tied together behind their backs.

There have been questionable delays in the investigation into the deaths of Raúl Lucas Lucía and Manuel Ponce Rosas, and to date no one has been charged. No investigation was opened into the failure of the state authorities to investigate the enforced disappearance of the two men. Due to recent political and international pressure the investigation has now been transferred to the Federal Attorney General's Office (PGR) in August 2009.

While the investigation is ongoing, federal officials who met with the delegation were unable to provide an update on its status. They cited a need for secrecy so as not to jeopardise the investigation and stated that the responsibility for investigation rests with the prosecutorial branch of the federal Attorney General, representatives of which did not meet with the delegation, despite requests. At the time of writing, no perpetrator has been identified and no information on the status of the investigation has been made available by any Mexican authorities.

¹²⁶ *Defender los derechos humanos*, supra n. 122, at para 10.

¹²⁷ *Ibid*, para 41.

¹²⁸ *Ibid*, para 55.

The delegation also notes the case of Lorenzo Fernández Ortega a member of OPIM, who was tortured and killed in 2009, and the case of Obtilia Eugenio Manuel, President of OPIM, who has been the victim of harassment and intimidation.

Case study 10: Lorenzo Fernández Ortega

The body of **Lorenzo Fernández Ortega** was found on 9 February 2009 bearing visible signs of torture. This occurred after Lorenzo, a member of OPIM left his community of El Camelote in Guerrero State, to travel to Huamuxtitlán. He and others planned to present cases of human rights abuses against his community to the UN High Commissioner for Human Rights, Louise Arbour. The abuses he intended to report included the sterilisation of men within his indigenous community and the rape of women (one of whom was his sister, Ines Fernandez Ortega).

According to OPIM, “Lorenzo was killed by paramilitaries that work for the 48th Infantry Battalion of the Mexican Army based in Cruz Grande”. OPIM also states that Lorenzo’s murder occurred after his sister Inés and another woman, Valentina Rosendo Cantú, testified before the IACHR. This testimony implicated members of the army in cases of sexual assault.

The investigations into his death have not resulted in any charges or arrests.

Case study 11: Obtilia Eugenio Manuel, President of the Me’phaa Indigenous People’s Organisation (Organización del Pueblo Indígena Me’phaa) (OPIM)

Obtilia Eugenio Manuel, President of OPIM, has been the subject of numerous death threats as a result of her work advocating for indigenous rights. Obtilia believes that these threats are directly linked to the work she does with the Me’phaa and Mixteco indigenous communities.

Since 2005, Obtilia was the subject of provisional measures. However, following Obtilia’s election to President of OPIM on 24 January 2009, there has been an increase in the intensity of aggressions and intimidation. On 24 January, Obtilia was going to an OPIM meeting, and was followed en route by three vans. She received a threat from one of the people in the vans, stating “I hope you go to prison, [...] if you people don’t go to prison we’re going to kill you.” In March 2009 she received a series of text messages stating that she would be the next to be tortured, disappeared or executed, as had happened to other members of OPIM.

One of the messages stated that even though she had support from Tlachinollan, it wouldn’t save her from “bullets going through her”. As a result of these ongoing threats, Obtilia and her family have been forced to leave the region.

In March 2009 she received death threats via text message while at a memorial commemorating the murdered indigenous activist Raúl Lucas Lucía. One message stated that no human rights organisation could protect her, possibly a reference to the accompaniment provided to her by the NGO PBI.

Individuals who have followed her and threatened her have been variously linked to supporters of the local *cacique* and the military. Upon reporting to state authorities that she was being followed by a *cacique* supporter in 2009, Obtilia was told that she needed to provide more evidence.

On 9 April 2009, the IAHRC adopted precautionary measures requesting that the authorities take further steps to protect the life and integrity of Obtilia and her family. The delegation heard that protection measures had been offered by state authorities, including police accompaniment and security for Obtilia while in her office. However, such measures have not been fully implemented. For example, security devices provided have suffered from frequent technical problems. Communication devices were delivered with unjustified delays, and have been only partially functional. The presence of the police does not always coincide with the agreed schedule.

Obtilia and several other members of her community walked for seven hours on 1 December 2009 in order to personally explain their situation to members of the delegation. Obtilia told the delegation that when they originally formed OPIM, it was based on the needs of the indigenous communities, and not to act directly against the government. However, after OPIM was organised, military presence in the local communities increased, and violations of human rights, theft of their food and destruction of their crops became prevalent.

The delegation notes that its meeting with Obtilia was observed by state authorities; it was unclear whether the authorities were police or military. The authorities asked if we had a permit for the meeting. The lawyer of Raúl Hernández, who was present at the time, was visibly upset by this.

At no time has any Mexican official attempted to investigate this or any other threat made against Obtilia, despite the fact that the forced disappearance and murder of Raúl Lucas Lucía and Manuel Ponce Rosas in February of 2009 confirm that Obtilia's fears for her safety are well-founded.

The threats against Obtilia continue. On 6 March 2010, Obtilia received a written death threat at OPIM's Ayutla offices. The note read: "Obtilia, calm down you son of a bitch. Don't go around making denunciations against the government. I know you're presenting complaints at every level. Calm down. When we want to, we can get you. Don't believe you're made of iron, bullets still go through. We are protected by the government, federal state and local. Don't fool around, we are close by."

There have been no internal investigations of the failure of state authorities to investigate any of the above cases, which contravenes Mexico's responsibility as set out in international standards and norms to protect, promote and implement human rights and fundamental freedoms.

There is a disturbing dichotomy between the actions of Mexican prosecutors in investigating threats to human rights defenders and its prosecution of those defenders. This difference indicates serious and systemic faults in the Mexican justice system. It is noted that most of the defenders are indigenous people or have been active in promoting the rights of indigenous peoples.

4.4 Protection of human rights defenders (protective measures)

In this climate of impunity at a state level, human rights defenders in Guerrero and Oaxaca have frequently resorted to applying for provisional and precautionary measures ordered by the IAHR and the IACHR.

Protective Measures

Mexican defenders threatened as a result of their work can request protective measures from the National Human Rights Commission, the IAHR and the IACHR. Measures ordered by both Commissions are non-binding, while those ordered by the Court are binding at both the state and federal level. These remedies are sought in the IAHR and IACHR after the exhaustion of domestic remedies, which have failed to provide effective protection of defenders at risk.

Article 19 of the Statute of the IAHR permits the Commission to request the IACHR to take appropriate provisional measures in serious and urgent cases that have not yet been submitted to the Court for consideration whenever this becomes necessary to prevent irreparable injury to persons.¹²⁹ The Rules of Procedure of the IAHR further permits the Commission to ask the Court to adopt provisional measures in cases of extreme seriousness and urgency.¹³⁰ Additionally, the Commission is permitted to request a state to adopt precautionary measures under Article 25 of the Rules of Procedure, which provides that "in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State."¹³¹

The Rules of Procedure of the IACHR permit the Court to order binding precautionary measures in cases of extreme gravity and urgency, either on its own motion or at the request of various other parties and to monitor their implementation.¹³²

Precautionary measures tend to cover three specific areas: investigation; accompaniment and infrastructure. Examples of such measures include investigation of claims of harassment and threats of violence, police accompaniment, and improvements to home/office security through the provision of satellite phones for defenders in remote locations, security lights and the use of surveillance equipment. One area that does not tend to be included, and which the delegation would recommend, would be the provision of psychological support and assistance for those who have been the victim of a pattern of harassment.

For ease of reference, when referring to both precautionary and provisional measures, the more general "protective measures" will be used.

Measures ordered

Protective measures were ordered by the IACHR in favour of Otilia Eugenio Manuel and her family members in January 2005. Protective measures were ordered by the IACHR in September 2007

129 Statute of the Inter-American Human Rights Commission, art. 19(c), approved by Resolution N° 447 taken by the General Assembly of the OAS at its ninth regular session (La Paz, Bolivia, October 1979), available at: <<http://www.cidh.org/basicos/english/Basic17.Statute%20of%20the%20Commission.htm>>.

130 Rules of Procedure of the Inter-American Human Rights Commission, art. 76, approved by the Commission at its 109° special session held from 4 to 8 December 2000 and amended at its 116th regular period of sessions (7 to 25 October 2002), available at: <http://www.oas.org/xxxivga/english/reference_docs/Reglamento_CIDH.pdf>.

131 *Ibid*, article 25.

132 See the Rules of Procedure of the Inter-American Court of Human Rights, Annual Report of the Inter-American Court of Human Rights, 1991, O.A.S. Doc. OEA/Ser:L/V/III.25 doc.7 at 18 (1992), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser:L/V/II.82 doc.6 rev.1 at 145 (1992), Article 27 available at: <<http://www.cidh.oas.org/Basicos/English/RulesIACourtNov2009.pdf>>.

to protect Inés Fernández Ortega, her husband and children. Nevertheless, Inés Fernández's brother Lorenzo Fernández Ortega was assassinated in February 2008. The provisional measures were consequently extended to 41 members of OPIM in June 2008. After the murders and other incidents in February and March 2009, the measures were extended to 107 human rights defenders and their families, including the entire staff of the Tlachinollan Human Rights Centre and OPIM.

Case study 12: María de la Luz Martínez and Maurilio Santiago

On 30 April 2008, Melesio Martínez, Gustavo Castañeda and Inocencio Medina – three community leaders in the village of Santo Domingo Ixcatlán, Oaxaca State, were murdered. Since the murders, **María de la Luz Martínez**, daughter, fiancé and niece to the three victims, and **Maurilio Santiago**, who have led the campaign for justice in this case, have been the targets of sustained threats. These threats intensified following the detention of the cacique Freddy Arias on 8 May 2008 in connection with the three killings. Between July and November 2008, shots were frequently fired at night outside the offices of the Human Rights Centre and Consultancy for Indigenous Peoples and in front of Maurilio Santiago's home. On the night of 16 October 2008, four armed men wearing balaclavas tried to break into the office, fired their guns and shouted threats at María de la Luz Martínez who was inside the building. The PGJE office in Tlaxico, Oaxaca State, which is investigating the threats, has carried out some forensic tests. However, those responsible for the threats and acts of intimidation have yet to be identified and brought to justice.

On 19 May 2008, the IAHRM granted precautionary measures for María de la Luz Martínez and 59 other members of the community who witnessed the murder. Three weeks later, the IAHRM extended the precautionary measures to another 117 inhabitants of Santo Domingo Ixcatlán. Despite these measures, María de la Luz has not received any protection to date and remains at risk of further abuses.

Members of the delegation met with María de la Luz Martínez, Maurilio Santiago, Rufina Benitez (the local lawyer representing the victims and family members) and five other members of the Santo Domingo Ixcatlán community on 26 November 2009. They had spent eight hours travelling to meet with the delegation to describe to them the acts of intimidation and harassment that has continued unabated since the murders on 30 April 2008.

While sixteen arrest warrants have been issued against suspects in the murders, only four of those warrants have been executed. The Department for Public Security has competence for executing the arrest warrants, but government representatives informed the delegation that the additional twelve warrants had not yet been executed because they could not find the individuals concerned. However, the local community leaders told the delegation that they knew where the suspects were, that the suspects were allowed to travel freely and had continued to victimise the community through threats and harassment. For example, the community members told the delegation that on 11-17 October 2009, the roads to their community were closed down by the suspects, effectively shutting off any access to the town and imprisoning all townsfolk for a week. During this time, on 15 October 2009, a representative of the Oaxaca Human Rights Commission visited the town and confirmed that this was the case.

The Oaxaca PGJE has provided very little follow-up to this case, and the community leaders continue to face intimidation and harassment. Community leaders told the delegation that they have had 12 or 13 meetings with state officials to implement the IAHRM precautionary measures, but that they believe the spirit of these measures has not been executed fully. For example, two phones have been issued to the local community; however no credit has ever been put on the phones making them effectively useless. The delegation was told that the police had been to the community on 11 October 2009 to make arrests, but declined to confront the paramilitaries. The delegation was shown photos of members of the paramilitary who have been terrorising the community. The Human Rights Commission confirmed the accuracy of the information the delegation was given.

Problems

Mexico has a very strong record of both accepting and responding to protective measures ordered by the IAHRC and the IACHR. Indeed, the Mexican state itself has at times made submissions in favour of the granting of protective measures. Where problems have occurred is in the implementation of the measures.

In several instances, delays and excessive bureaucracy have hampered the implementation of protective measures. It is the SEGOB's Unit for the Promotion and Protection of Human Rights responsibility for overseeing the implementation of protective measures. However, co-operation and agreement between federal and state authorities must be negotiated in each instance, and implementation is generally effectively carried out at the state level, which often makes it difficult for federal officials to intervene. While SEGOB does try to coordinate with local officials, this is dependent upon political will. There is currently no legal mechanism to oblige state officials to comply, and federal officials can only intervene once state officials refuse, which can take time.¹³³ One way to move this forward might be to introduce a new law that would establish the terms of cooperation between federal and state levels.

The implementation of measures occurs by agreement between the beneficiaries and the authorities. However, the provision of adequate protective measures can often be hindered by a lack of trust and credibility between those needing protection and the state department required to provide the protection. The delegation was told that situations often arise whereby human rights defenders do not cooperate with the protection provided.¹³⁴ Lack of funding at the state level can also cause ineffective implementation, especially in states like Guerrero and Oaxaca, two of the poorest states in Mexico.¹³⁵

There is a need to improve the implementation of protective measures in a more effective framework. Specific recommendations from the Ministry of Interior include:¹³⁶

1. Establishing a specific budget for implementing such measures;
2. Establishing a more effective mechanism for cases to be presented at the state and federal level;
3. Professional and objective evaluation of risk, followed by a proper analysis of specific measures against the risk and situation; and
4. Recommendations issued to all authorities at state and federal level to ensure better cooperation.

Additionally, there are no mechanisms for evaluation or monitoring the implementation of measures. Likewise, while the implementation of protective measures requires co-operation between disparate government offices at the federal, state and municipal levels, there is neither a formal process to govern co-ordination and communication between various state entities nor any mechanism to sanction authorities that fail to respond.

Human rights defenders have noted that the measures provided often fail to meet their needs. Moreover, protection involves institutions or persons possibly linked to the threats made against them. Communication between defenders and government authorities is made more difficult by a lack of trust. This is understandable in light of Mexico's record of openly maligning defenders, persecuting them with misuse of the criminal justice system, participating in their repression and completely failing to address the problem of impunity at all levels. This will not be remedied until the Mexican authorities at all levels provide clear and consistent proof through their actions that they take the protection of human rights defenders seriously. Thus far, unfortunately, there are few signs of this occurring.

¹³³ Interview with Dr. José Antonio Guevara (Head of the Unit for the Promotion and Defence of Human Rights, Ministry of the Interior), Mexico City, 3 December 2009.

¹³⁴ Interview with Fernando Gómez-Mont (Minister of the Interior), Mexico City, 4 December 2009.

¹³⁵ *Ibid.*

¹³⁶ Interview with Dr. José Antonio Guevara (Head of the Unit for the Promotion and Defence of Human Rights, Ministry of the Interior), Mexico City, 3 December 2009.

The provisional measures ordered on 30 April 2009 by the IACHR in favour of 107 human rights defenders in Guerrero have not been implemented in a manner that has resulted in the protection of targeted individuals. The lawyers from the Ayutla office of Tlachinollan Human Rights Centre remain unable to return to work and the OFPM is no longer permanently functioning. Since the provisional measures were ordered, these defenders report an actual increase in the number of threats received. When the delegation met with members of Tlachinollan and OPIM in Guerrero in December 2009, both Obtilia Eugenio and the daughter of rape victim Inés Fernández Ortega reported receiving threats in the month prior to the meeting.

4.5 Protecting the rights of human rights defenders – a way forward

Positive developments

Under the National Human Rights Programme 2008-2012 (PNDH), Mexico has included among its goals, to increase the effectiveness of protective measures and other measures aimed at the protection of human rights defenders. Specifically, the PNDH requests that the conditions and modalities under which special protection can be granted to human rights defenders be defined. Additionally, it encourages the Office of the Attorney-General to establish a specific protocol to allow for the investigation of crimes committed against human rights defenders.¹³⁷

The Mexican government further demonstrated its commitment to human rights by its support of all recommendations regarding human rights defenders in the 2009 UPR. Specifically, Mexico agreed to publicly recognise the importance of the role of human rights defenders in society and to undertake effective investigations into threats and attacks on defenders. Mexico committed to increasing the effectiveness of protective measures, including adopting strategies and preventative measures at all levels of government, and promised to establish a dialogue with civil society organisations to monitor implementation.

Strengthening institutional responses to threats against defenders

The heavy reliance of human rights defenders in Guerrero and Oaxaca on remedies from the Inter-American human rights system illustrates the failure of domestic mechanisms to protect human rights defenders. Structural causes of human rights violations and impunity must be addressed by state authorities and should focus on long-term solutions.

At issue is whether the receptivity to human rights demonstrated internationally and federally trickles down to all state institutions at all levels of government. As the cases of Guerrero and Oaxaca demonstrate, they do not. While it is clear that there are several Mexican public institutions committed to the promotion of human rights, it is integral that a human rights approach be undertaken universally. To that end, measures such as the PNDH are beneficial, but limited in that they do not address local authorities, where most violations occur.

It is imperative that the roles of state agencies at all levels be officially clarified. Too often the delegation was told by officials that they were prevented from acting to protect human rights because a required component was outside of their jurisdiction. The Mexican state is responsible for implementing its human rights obligations. Officials and institutions that fail to do so must be held accountable, even if this requires legislative reform. If public authorities do not abide by human rights obligations, local elected representatives should ensure they are held to account. This may require long-term strategies to encourage the development of an electorate that demands this from their elected representatives. Creative policy and legislative reform should also be considered to provide for co-operation between all levels of government.

¹³⁷ PNDH 2008-2012, supra n. 17, strategy 1.4.

The Commission for the Defence of Human Rights (CODDEHUM) in Guerrero has appeared with defenders before the IAHR and the IACHR and signed requests for protective measures. It has also met with relevant authorities to monitor implementation. An active and effective role of the Commission should continue to be encouraged.

While the Human Rights Commission of Guerrero and a few other jurisdictions are active and effectively involved in the promotion of human rights, this cannot be said for the majority of human rights commissions in Mexico.¹³⁸ Institutional reforms should be considered to increase their impact. Commissions should be encouraged to adopt policies to support the protection of human rights defenders and to keep specific records of threats and attacks on human rights defenders if they do not already do so.

Improving the perception of human rights defenders

Measures should be taken to improve the perception of defenders in the eyes of state authorities, media and the broader public.

It is recommended that Mexico continue its efforts at human rights education and training, with the aim of increasing its scope and focusing on improving the situation of particularly vulnerable groups such as women and indigenous peoples. While education of state and local officials is needed, and should be repeated frequently, general public outreach should also be undertaken. Increased public support of human rights and defenders will result in increased protection of human rights.

In order to adhere to the commitments made during the UPR, processes should be in place to enable state authorities to publicly recognise the benefits of human rights defenders. This might be accomplished by a national advertising campaign in print, radio and broadcast media. Ideally this would be created in consultation with civil society organisations.

Addressing social and economic factors that lead to rights violations

While justice reforms and education campaigns are needed, human rights violations are likely to remain an issue as long as the social and economic factors that contribute to their proclivity are addressed. These very long-term attempts to address social and economic inequalities are beyond the scope of the delegation, but bear mentioning in light of their importance.

Implementation of Protective Measures

A formal process for the request and implementation of protective measures is needed. It should include professional and objective evaluation of risk, effective implementation of protection and permit protection to be provided without the necessity of first resorting to the Inter-American system.¹³⁹ The process should involve the collaboration of all levels of government, civil society organisations, and disinterested observers, advisors and experts. This process should include mandatory time limits to ensure authorities respond in a timely manner.

The delegation was advised by members of the Guerrero PGJE that they meet every one or two months with representatives from the federal Attorney General's Office and the Human Rights Protection and Promotion Unit of the Ministry of the Interior. These regular meetings are a positive development; however, this co-ordination should be formalised and include municipal actors. The roles of all actors should be clearly identified and actors should be held accountable for fulfilling their obligations with concrete consequences should they fail to do so.

¹³⁸ See further Amnesty International, *Standing up for Justice and Dignity: Human Rights Defenders in Mexico*, January 2010, London, AMR 41/032/2009, 31 December 2009 page. 24 available at: <<http://www.amnesty.org/en/library/asset/AMR41/032/2009/en/5438d83a-bca8-4c0f-bdf0-b2142c565045/amr410322009es.pdf>>; Human Rights Watch (2008) *Mexico's International Human Rights Commission: A Critical Assessment*, page. I, available at: <<http://www.hrw.org/en/reports/2008/02/12/mexico-s-national-human-rights-commission>>.

¹³⁹ The delegation was advised of instances where protective measures were provided without them being ordered by a human rights body, however, this ability should be formalised.

5. Conclusion

Mexico faces considerable challenges, including very serious problems with organised crime, insecurity, extensive poverty and social inequality. In order to address those challenges, Mexico must develop a fair and effective justice system and promote reconciliation between historically disparate groups with the view of ultimately creating widespread social stability. None of this will be possible until those who commit human rights violations are routinely held to account and the safety of defenders and all civil society actors is ensured.

Members of the delegation were encouraged by the candid acknowledgment of the issues and the commitments of the Mexican Republic to implement human rights policies. However, cultural and institutional obstacles within the justice and public security sectors are undermining the government's ability to address human rights violations and impunity. These efforts should be reinforced with positive action to overcome these obstacles.

The members of the delegation have serious concerns that the institutional failings at all levels are predominantly affecting members of Mexican society who are the poorest and most vulnerable, including the local indigenous population and human rights defenders. These concerns were evidenced by impunity in cases of alleged rape, forced disappearances, extra-judicial killings and torture. This is compounded by a failure to adequately investigate these matters by independent and impartial means.

The delegation recognises the need to combat the narcotics trade. However, the use of the military to achieve this has resulted in cases of human rights abuses and impunity for military offenders. The use of military jurisdiction in cases of human rights abuses committed by military personnel against civilians has been widely criticised at the international and regional level. The delegation notes the December 2009 judgment of IACHR in the case of Rosendo Radilla and hopes that the Government of Mexico will implement the ruling efficiently and effectively.

The significant number of individuals who are the intended beneficiaries of precautionary and provisional measures issued by the Inter-American system for the protection of victims and human rights defenders in Guerrero and Oaxaca is evidence of a widespread problem. Inadequate implementation of these measures, in addition to continued insecurity, has disabled the proper functioning of organisations such as OPIM and Tlachinollan Human Rights Centre in Guerrero, as well as members of the Santo Domingo Ixcatlán community in Oaxaca. The delegation reminds the Mexican government of its responsibility to protect human rights and human rights defenders in accordance with its regional and international commitments.

Access to justice is a fundamental problem for Mexico in its efforts to protect human rights. A failure to prioritise limited resources, inadequate investigations, deficiencies in the number of translators for the indigenous population, corruption and excessive bureaucracy have led to a lack of faith and mistrust in the justice system. The delegation received information on a number of cases that suggest a failure to have proper regard to the principles of due process within the criminal justice system and highlight the need to improve professional standards within the police and judicial sectors.

The delegation was encouraged by the 2008 public security and criminal justice reform programme that aims to streamline, modernise and make more professional the justice system in all areas, including prevention, law enforcement and administration of justice, and rehabilitation and social reintegration of convicts. While the 2008 reform programme allows eight years for state and federal officials to implement the programme, it is hoped that such implementation will take place without delay.

6. Recommendations

The delegation would like to make the following recommendations to the Mexican state, federal officials and state officials of Oaxaca and Guerrero. These recommendations set out a course of action to assist Mexico in renewing their commitment to the rule of law and the protection of human rights defenders:

In reference to recommendations related to rule of law and access to justice:

1. Implementation of human rights legislation and policies at the state level has not been as pronounced as implementation at the federal level, including implementation of international human rights treaties and conventions. A lack of harmonisation and cooperation between the 31 states and the federal district has led to an incongruity for human rights protection and promotion at the grassroots level. The Mexican Government should address this to require states to harmonise human rights practices. Coordination and better communication between the states and the federal government should be formalised. The roles of all actors should be clearly identified and actors should be held accountable for fulfilling their obligations with concrete consequences should they fail to do so.
2. One of the most fundamental reforms coming out of the June 2008 public security and criminal justice constitutional reform has been to establish an accusatory, oral criminal trial system into Mexico and a criminal justice system based on the presumption of innocence. This key reform encourages more transparency and seeks to establish a more rights-based system in which the rights of the victim and the accused are equally respected. Federal and state officials should ensure that the new accusatory, oral system is fully implemented effectively and efficiently at the earliest opportunity. The Bar Human Rights Committee can offer assistance in training members of the judiciary, and also both prosecuting and defence lawyers, in advocacy methods.
3. Federal and state officials should guarantee, at the earliest opportunity, the full implementation of the public security and criminal justice reform programme.
4. The Government of Mexico should extend additional and professional support to public defenders and actively guarantee that legal aid functions effectively and efficiently at the state and federal levels for all members of society.
5. The Government of Mexico should extend its full commitment to ensuring that evidence obtained as a result of torture is not admitted as evidence in any circumstance.
6. Independent and impartial investigations into allegations of human rights abuses committed by state officials, including the police and military personnel, should be carried out in a timely and systematic manner, with respect for due process in the legal proceedings.
7. The Government of Mexico should review the complex police structure and evaluate ways of streamlining the various municipal, state and federal police entities.
8. The Government of Mexico should professionalise investigation and evidence gathering techniques to guarantee thorough, impartial and timely investigations of crimes. Examples of such improvements include a requirement that all interviews of suspects be carried out under taped or videoed conditions and that better use be made of forensic evidence. Allegations of evidence tampering or abuse of police powers should be independently investigated and punished.

9. To reduce the amount of time suspects spend on pre-trial detention, the constitutional limit should be guaranteed: no longer than four months pre-trial detention for cases where the maximum sentence does not exceed two years imprisonment; and no longer than twelve months if the maximum penalty carries at least a two-year sentence.
10. The Government of Mexico should abolish the use of *arraigo*. At a minimum, the Government of Mexico should limit the legal circumstances in which *arraigo* can be used; reduce the number of days in which an individual can be held in pre-charge detention; and ensure that there is continual oversight by judicial authorities so that when circumstances alter, decisions can be reviewed as quickly as possible, thereby limiting the risk of violating due process, including the individual's right to liberty.
11. Prison conditions should be improved. Issues of overcrowding should be addressed, either through the building of newer facilities or by addressing the issue of pre-charge/pre-trial detention and/or reforming sentencing provisions by allowing for the provision of community service. The problems of poorly trained, underpaid and corrupt prison staff should be tackled by providing financial and professional support. In addition, improvements in the provision of healthcare, psychiatric care, sanitary conditions, food and water should all be enhanced.
12. The Government of Mexico should effectively provide qualified translators and interpreters for all trials and procedures in which indigenous language-speakers are a party. This should also include indigenous language-speaking counsel where public defenders are involved. Translation and interpretation should be provided free of charge.
13. The Government of Mexico should amend the Mexican federal law to remove jurisdiction from the military justice system where there are allegations of human rights violations committed by members of the armed forces against the civilian population.
14. Mexico should remove its reservation and declaration in respect of Article IX of the Inter-American Convention on Forced Disappearances. This will enable the Convention to apply to military personnel alleged to have been responsible for acts constituting the offence of forced disappearance, and make the Convention applicable in Mexico to forced disappearances that were ordered executed or committed before the Convention came into force on 9 June 1994.
15. The Government of Mexico should reform the structure of the military justice system to protect its independence and impartiality at all stages, from investigation through to trial and sentencing. This should include providing security of tenure for military judges and improving transparency of information regarding military investigations and prosecutions for the general public.

In reference to recommendations related to human rights defenders:

16. The Government of Mexico should take all necessary measures to allow lawyers to practice their profession without hindrance, intimidation, harassment or undue interference in line with the requirements of the UN Basic Principles on the Role of Lawyers.
17. In accordance with the UN Declaration on Human Rights Defenders, state and federal authorities should actively protect and promote the legitimate work of human rights defenders, guaranteeing that their activities are carried out without any restrictions, reprisals, criminalisation or the fear of such.

18. Prompt, effective and impartial investigation of any allegations of harassment or intimidation of human rights defenders, including where allegations are made against state authorities including the police and military personnel.
19. Provide compensation to human rights defenders who have been falsely accused and imprisoned.
20. Provide effective implementation of all protective measures. To enable this, cooperation between federal, state and municipal officials should be formalised. Such coordination should: enable federal officials to step-in where state officials are unable to do so or if it would be inappropriate for them to comply; establish a specific budget for implementing such measures; carry out a professional and objective evaluation of risk, followed by a proper analysis of specific measures against the risk and situation; invest in improved forms of communication methods for threatened human rights defenders who live in communities without telephones; provide for security infrastructure and police visits to the offices and homes of human rights defenders in coordination with the needs of such individuals; and provide psychological support and assistance for those who have been the victim of a pattern of harassment.
21. Mexico should implement a programme of public outreach to educate members of the public about the important role that human rights defenders play in a democratic society. This might be accomplished by a national advertising campaign in print, radio or broadcast media. Ideally this would be created in consultation with civil society organisations.

In reference to recommendations related to cases in Guerrero and Oaxaca:

22. **Valentina Rosendo Cantú and Inés Fernández Ortega:** while the delegation would not want to pre-empt the forthcoming findings in the IACHR, they would recommend that the Court's rulings be fully implemented as soon as reasonably possible and to bring the perpetrators to justice.
23. **Rosendo Radilla Pacheco:** Implement the December 2009 ruling of the IACHR judgement as soon as possible. This should include reopening the case, carrying out a thorough investigation and identify those responsible for his disappearance; pay reparations to the Radilla family; the State of Mexico to adopt, within a reasonable time frame, the necessary legislative reforms that would harmonise Article 57 of the Code of Military Justice with recognised international standards, including the ACHR; remove the reservation to Article IX of the IACFDP; and to assure that the Attorney-General's Office and judges receive training on the investigation of crimes of forced disappearance.
24. **Juan Manuel Martínez:** Provide compensation to Juan Manuel Martínez following his 490 days held in detention and carry out a prompt, effective and impartial investigation into the death of Brad Will and bring the perpetrators to justice.
25. **Bonfilio Rubio Villegas:** Assure that the investigation of the death of Bonfilio be kept within the criminal justice system and not be granted military jurisdiction. Carry out a prompt, effective and impartial investigation and bring the perpetrators to justice.
26. **Tlachinollan Human Rights Centre:** Carry out a prompt, effective and impartial investigation of the threats of harassment and intimidation. Implement fully and practically the precautionary measures issued in respect of members of Tlachinollan. Provide assurances that members of Tlachinollan will not be subjected to restrictions, reprisals, criminalisation or fear of such.

27. **Organisation of Indigenous Me'phaa Peopple (OPIM) and Organisation for the Future of the Mixteco People (OFPM):** Carry out a prompt, effective and impartial investigation into threats of harassment and intimidation. Implement fully and practically the precautionary measures issued in respect of members of OPIM and OFPM. Provide assurances that members of OPIM/OFPM will not be subjected to restrictions, reprisals, criminalisation or fear of such.
28. **Raúl Lucas Lucia and Manuel Ponce Rosas:** Carry out a prompt, effective and impartial investigation into the deaths of Raúl and Manuel, and bring the perpetrator/s to justice. Carry out a prompt, effective and impartial investigation into the failure of state officials to open an investigation of the enforced disappearance when the wife of Raúl tried to file a complaint with the Guerrero State Attorney General's Office (PGJE).
29. **Raúl Hernández:** Release him unconditionally and drop all charges against him.
30. **Obtilia Eugenio Manuel:** Carry out a prompt, effective and impartial investigation into the threats of harassment and intimidation. Implement fully and practically the precautionary measures issued in respect of Obtilia.
31. **Lorenzo Fernández Ortega:** Carry out a prompt, effective and impartial investigation into the death of Lorenzo and bring the perpetrators to justice.
32. **Santo Domingo Ixcatlán:** Precautionary measures issued in respect of members of the Santo Domingo Ixcatlán community should be implemented in an effective and practical manner. Arrest warrants issued against the twelve remaining suspects should be executed immediately.
33. **Marcelino Coache:** Claims of torture and harassment at the hands of state police official should be investigated in a prompt, effective and impartial manner. Precautionary measures issued in respect of Marcelino and his family should be implemented fully by federal officials. Psychological assistance be provided to members of Coache family.

7. Appendices

Appendix A:

Members of the delegation met with the following individuals:

In Mexico City:

1. Santiago Aguirre (Lawyer, Tlachinollan Human Rights Centre): 30 November 2009
2. Edgar Cortez (Executive Secretary, Human Rights Network 'All Rights for All'): 30 November 2009
3. Alan García (Legal Advisor, Office of the UN High Commission for Human Rights): 3 December 2009
4. Fernando Gómez-Mont (Minister of the Interior): 4 December 2009
5. Humberto Guerrero (Legal Coordinator, Mexican Commission for the Defence and Promotion of Human Rights): 30 November 2009
6. Dr José Antonio Guevara (Head of the Unit for the Promotion and Defence of Human Rights, Ministry of the Interior): 3 December 2009
7. Luis Ortiz Monasterios (Executive Secretary, National Commission for Human Rights): 3 December 2009
8. Pascual Morena (Director of Human Rights, Federal Attorney General's Office): 3 December 2009
9. Alejandro Negrín (Director of Human Rights, Ministry of Foreign Affairs) : 30 November 2009
10. Alfredo Orellana (Judges Coordinator, Supreme Court): 3 December 2009
11. Liliana Valina (Second in Charge, Office of the UN High Commission for Human Rights): 3 December 2009
12. British Ambassador, Ambassador Judith Macgregor, Embassy staff and members of the diplomatic community from the EU and the delegate's countries: 4 December 2009

In Guerrero:

1. Raúl Hernández Abundio (Me'phaa Indigenous People's Organisation, Ayutla): 1 December 2009
2. Juan Alarcon (State Human Rights Commission President, Chilpancingo): 2 December 2009
3. Abel Barrera (Director, Tlachinollan Human Rights Centre, Tlapa): 1 December 2009
4. Jorge Luis Catalán Fernández (Judicial Police, Ayutla): 1 December 2009
5. Rogelio Teliz Garcia, (Lawyer for Raúl Hernández, Ayutla), Guerrero, 1 December 2009
6. Cristina Hardaga (International Area Coordinator, Tlachinollan Human Rights Centre, Tlapa): 1 December 2009
7. José Luis Matínez Hilda (Local Prosecutor, Ayutla): 1 December 2009
8. Andel Leyva (Court Secretary, Chilpancingo): 2 December 2009
9. Predix Luna (Judicial Police, Tlapa): 1 December 2009
10. Obtilia Eugenio Manuel (President of the Me'phaa Indigenous People's Organisation, Ayutla de los Libres), Guerrero: 2 December 2009
11. Jesús Sálas Morena (Sub-Secretary of Legal Affairs, Chilpancingo): 2 December 2009
12. Alejandro Mojica Nava (Legal Affairs and Human Rights, Secretary of Public Security, Chilpancingo): 2 December 2009
13. Arturo Martínez Nuñez (Advisor to the state Governor, Chilpancingo): 2 December 2009

14. Alejandro Ocampo (Local Prosecutor, Tlapa): 1 December 2009
15. Esteban Maldonado Palacios (Public Prosecutor, Costa Chica region, Chilpancingo): 2 December 2009
16. Matilde Pérez (Coordinator, The Police and Security Forces Civil Monitor (MOCIPOL), Tlapa): 1 December 2009
17. Willy Reyes Ramos (Town Mayor, Tlapa): 1 December 2009
18. Armando García Rendón (Town Mayor, Ayutla): 1 December 2009
19. Valentín Díaz Reyes (State Attorney General's Office and Judicial Police, Chilpancingo): 2 December 2009
20. María De La Luz Réyes Ríos (Prosecutor, Special Victims Unit, Chilpancingo): 2 December 2009
21. Vidulfo Rosales (Legal Coordinator, Tlachinollan Human Rights Centre, Tlapa): 1 December 2009
22. Alfredo Sánchez Sánchez (Judge of the First Court, Ayutla): 1 December 2009

In Oaxaca:

1. Rufino Benitez (Lawyer, Cedhapi (Centre for Human Rights and Legal Advice for Indigenous Peoples) representing the Santo Domingo Ixcatlán community): 26 November 2009
2. Vladimir Chávez (representative of Public Security, State Human Rights Secretariat): 27 November 2009
3. Roberto Santiago Cortés (Lawyer, Cedhapi (Centre for Human Rights and Legal Advice for Indigenous Peoples) representing the Santo Domingo Ixcatlán community): 26 November 2009
4. Alba Cruz (Lawyer, Comité 25): 26 November 2009
5. Pedro Omar Ruiz Cruz (Director of Complaints, Oaxaca Human Rights Commission): 27 November 2009
6. Heriberto García (President, Oaxaca Human Rights Commission): 27 November 2009
7. Mariella Jiménez (State Human Rights Secretariat): 27 November 2009
8. Marcos Leyva (Director, Services for Alternative Education (Educa) and Civil Space): 26 November 2009
9. Bernardino Robles Maldonado (representative of the Santo Domingo Ixcatlán community): 26 November 2009
10. María de la Luz Martínez (human rights defender): 26 November 2009
11. Dr Maribel Mendoza (Field Worker, Oaxaca Human Rights Commission): 27 November 2009
12. Migdalia Mingüer (State Human Rights Secretariat): 27 November 2009
13. Tito Ramírez (Director Human Rights Unit, State Attorney-General's Office): 27 November 2009
14. Juan Rodríguez Ramos (General Coordinator, Oaxaca Human Rights Commission): 27 November 2009
15. Yessica Sánchez (Lawyer, Consorcio): 26 November 2009
16. Juan José Guzmán Sánchez (State Human Rights Secretariat): 27 November 2009

In the UK:

1. Ambassador Eduardo Medina Mora I. (Mexican Ambassador to the UK, London) 15 February 2010
2. Laura Elisa García Querol (Second Secretary, Embassy of Mexico to the UK, London) 23 November 2009.

Appendix B:

Mexico is a party to numerous conventions and treaties, which include (in chronological order):

- *Inter-American Convention on the Granting of Civil Rights to Women* (Ratified 1 April 1954)
- *International Convention on the Elimination of All Forms of Racial Discrimination* (Ratified 20 February 1975)
- *American Convention on Human Rights "Pact of San Jose, Costa Rica"* (Ratified 2 March 1981)
- *Convention on the Elimination of All Forms of Discrimination against Women* (Ratified 23 March 1981)
- *International Covenant on Civil and Political Rights* (Acceded to 23 March 1981)
- *International Covenant on Economic, Social and Cultural Rights* (Acceded to 23 March 1981)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Ratified 23 January 1986)
- *Inter-American Convention to Prevent and Punish Torture* (Ratified 22 June 1987)
- *Convention on the Rights of the Child* (Ratified 21 September 1990)
- *Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean* (Ratified 12 July 1993)
- *Inter-American Convention on International Traffic in Minors* (Ratified 27 November 1995)
- *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"* (Ratified 3 August 1996)
- *Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination* (Not yet in force, accepted by Mexico 16 September 1996)
- *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women* (Not yet in force, accepted by Mexico 16 September 1996)
- *Inter-American Convention Against Corruption* (Ratified 5 May 1997)
- *Amendment to article 43 (2) of the Convention on the Rights of the Child* (Not yet in force, accepted by Mexico 22 September 1997)
- *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belem Do Para"* (Ratified 19 June 1998)
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (Ratified 8 March 1999)
- *Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities* (Ratified 6 December 2000)
- *Amendments to articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Not yet in force, accepted by Mexico 15 March 2002)
- *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (Ratified 15 March 2002)
- *Optional Protocol to the International Covenant on Civil and Political Rights* (Acceded to 15 March 2002)
- *Inter-American Convention on Forced Disappearances of Persons* (Ratified 9 April 2002)

- *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Ratified 11 April 2005)
- *Protocol to the American Convention on Human Rights to Abolish the Death Penalty* (Ratified 28 June 2007)
- *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* (Acceded to 26 September 2007)
- *Convention on the Rights of Persons with Disabilities* (Ratified 17 December 2007)
- *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (Ratified 17 December 2007)
- *International Convention for the Protection of All Persons from Enforced Disappearance* (Ratified 18 March 2008 (Not yet in force))

Find out more

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Solicitors International Human Rights Group
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Lawyers Without Borders Canada
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Lawyer's Rights Watch Canada - LRWC
3220 West 13th Avenue, Vancouver, BC CANADA, V6K 2V5
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www.lrwc.org

Community Advocacy & Legal Centre
158 George Street, Level 1 Belleville, Ontario K8N 3H2
Tel: +1 613 966-8686
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The Law Society Charity
113 Chancery Lane
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Tel: +44 20 7320 5736
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The Commission of Human Rights of the Association of Judges and State Attorneys and the
Association of Lawyers (Freiburg)
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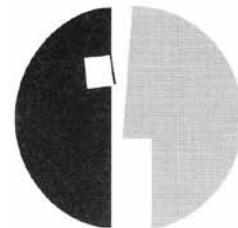
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PUMP COURT



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DER RICHTER UND
STAATSANWÄLTE
UND DES ANWALTVEREINS



LAWYERS WITHOUT BORDERS
AVOCATS SANS FRONTIERES
ABOGADOS SIN FRONTERAS

**COMMISSION
OF HUMAN RIGHTS**
OF THE ASSOCIATION
OF JUDGES AND
STATE ATTORNEYS
AND THE ASSOCIATION
OF LAWYERS