

Civil Society Assessment of the Human Rights Requirements in the Merida Initiative

July 2015

In providing security assistance to Mexico under the Merida Initiative, the U.S. Congress has recognized the Mexican government's need to make substantive progress in its respect for human rights within the framework of security operations and efforts to strengthen the rule of law in the country. However, our research and documentation, as well as the work done by the U.N. Special Rapporteur on Torture and the U.N. Committee on Enforced Disappearances, illustrate that the Mexican government has failed to make sufficient progress on the human rights priorities identified by Congress in its assistance to Mexico, specifically in investigating and prosecuting violations of human rights, the high number of enforced disappearances, and the widespread use of torture.

In light of the information available, we believe that it is essential that the U.S. government does not provide assistance to Mexico's armed forces through the Merida Initiative, as this reinforces and sustains the inappropriate and dangerous open-ended role of the armed forces in domestic law enforcement. In general, providing Mexican security forces with more training and equipment while corruption and abuses continue unchecked does little to improve security in Mexico, and is likely to continue to exacerbate an already dire human rights situation.

The U.S. State Department's report on the human rights requirements included in the Merida Initiative offers a vital opportunity for the State Department to provide a thorough, accurate assessment of important human rights benchmarks. Such an analysis is crucial if the bilateral relationship between the United States and Mexico is to serve as a channel to press for measurable progress in the areas of human rights, accountability, and transparency.

What follows is a list of the current human rights requirements for U.S. assistance to Mexico, followed by our assessment of the Mexican government's progress in complying with each requirement.

Requirement 1: The Government of Mexico is investigating and prosecuting violations of human rights in civilian courts

Under the Peña Nieto administration, human rights violations by Mexico's federal security forces continue to occur at alarming levels, and the government is failing to effectively investigate and sanction state agents responsible for these crimes. Mexico's National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) submitted 435 criminal complaints before legal authorities (federal and state level) between 2010 and 2014, but of these, only 43 cases had led to indictments and none had led to convictions.

Research and documentation of cases by our organizations (described in the memo) demonstrate that Mexican security forces responsible for human rights violations are not being effectively investigated and prosecuted in civilian jurisdiction for these crimes.

Mexico's Code of Military Justice was reformed in 2014, prohibiting military jurisdiction in cases of civilian crime victims, including in cases of human rights violations; however, the Inter-American Court has found that this reform was incomplete and failed to establish that *all* human rights violations must be investigated and tried in civilian jurisdiction. The Court identified that the military should have no role in the criminal investigation of a case unless the crime solely involves violations of military discipline, and highlighted the June 2014 killing of

22 civilians by soldiers in Tlatlaya, Mexico State, as an example of ongoing problems in this area. In this case, an initial investigation took place in military jurisdiction, leading to a military trial against a small group of soldiers for the crime of “disobedience,” while there is also a parallel criminal trial open in civilian (federal) jurisdiction. The fact that the military had access to both the scene of the crime and to the accused before federal investigators, and that the military court could issue a sentence on these events, undermines the possibility of a full and untainted civilian investigation and trial of this matter.

Requirement 2: The Government of Mexico is enforcing prohibitions against torture and the use of testimony obtained through torture

Recent cases and reports by Mexican and international human rights organizations, as well as the United Nations Special Rapporteur on Torture, confirm that torture plays a central role in policing and public security operations by military and police forces across Mexico. The legal framework and safeguards in place in the country to prevent and punish the use of torture, and prevent the admissibility of evidence obtained through torture, are regularly disregarded by the police, the military, prosecutors, and judges. Furthermore, the failure to adequately investigate reports of torture has created a culture of impunity conducive to its continued use, as perpetrators do not fear reprimand or conviction.

Following his 2014 visit to Mexico, U.N. Special Rapporteur on Torture, Juan E. Méndez, concluded that torture in Mexico is “generalized,” and is used “mainly from the moment when a person is detained until he is brought before the judicial authority, its purpose being to punish and extract confessions or incriminating information.”¹ The Mexican government’s initial rejection of the Special Rapporteur’s assessment on torture raises serious concerns about Mexico’s openness to making progress on prohibiting torture and the use of testimony obtained through torture.²

While the number of federal investigations formally opened for torture has increased in recent years, this increase has not translated into proportionately higher levels of trials and convictions. According to official information obtained through information requests to Mexico’s Federal Judicial Council, and confirmed in the report of Rapporteur Juan Méndez, from 2005 to 2013 only two un-appealable convictions have been handed down for torture at the federal level in Mexico (of five convictions in total), highlighting the near-absolute impunity that prevails for this crime.

Testimony obtained through torture continues to be admitted in court, even in jurisdictions that operate under Mexico’s new adversarial justice system which is meant to establish and strengthen safeguards that prohibit torture. The Special Rapporteur highlighted the “many cases in which people with no apparent link to the criminal conduct under investigation report having been detained, forced to sign statements under torture and, in some cases, sentenced on the basis of these statements.”³ Even in high-profile cases, such as the enforced disappearance of the 43 students of Ayotzinapa, the government’s investigations have been put into question because of the possibility that some of the testimonies were obtained through torture.⁴

Requirement 3: The Mexican army and police are promptly transferring detainees to the custody of civilian judicial authorities, in accordance with Mexican law, and are cooperating with such authorities in such cases

By law, Mexican security forces are required to immediately transfer detainees to prosecutors, who in turn must free them or place them at the disposition of judges. However, in practice,

security forces often delay the transfer of detainees, and it is during this lapse of time when they most often commit acts of torture and other abuses. Prolonged, illegal detention by security forces (military and civilian, federal and local), continues to be a routine practice in Mexico, as is the falsification of the time of the detention and judicial authorities' willingness to accept false data or to overlook clear cases of prolonged detention if the victim is brought to trial.

A national database to track detainees, with a protocol for immediately registering critical information such as the time and location of detention and the names of the officers responsible for the detainee, could help prevent abuses from occurring from the moment of detention. However, despite clear mandates, Mexico's current databases to address these issues are sorely incomplete, and there are indications of great discrepancies in some of the data.

Requirement 4) the Government of Mexico is effectively searching for the victims of forced disappearances and is investigating and prosecuting those responsible for such crimes.

Disappearances continue in Mexico at extremely high levels, and the government's efforts to search for people who have been forcibly disappeared and to investigate and prosecute those responsible are inadequate. In February 2015, the United Nations Committee on Enforced Disappearances concluded that disappearances are "generalized" in large parts of Mexico, many of which could be considered enforced disappearances, and that there is a "near absence" of successful prosecutions in cases of enforced disappearances, as well as a lack of precise and reliable figures of the number of disappeared.⁵

Very few Mexican officials have been effectively investigated and sanctioned for their participation in acts of enforced disappearance. The Mexican government documents only six convictions for enforced disappearance at the federal level;⁶ there have been no convictions for enforced disappearance at the state level.

Mexico's national registry of missing and disappeared persons currently contains 25,293 cases of individuals who disappeared between 2007 and January 2015. However, human rights organizations that document cases of disappearances report that the cases in the registry reflect only a fraction of total cases: when searching the registry, they found that it did not include anywhere from 63 to 98 percent of the cases they had documented.⁷ Given that many families do not come forward to report the disappearance of their loved ones out of fear of reprisals, we can infer that the number of unregistered cases is even greater. Numerous additional flaws persist in Mexico's system to register disappeared persons, including the criteria used to purge the names of individuals who have been found, living or deceased, from the registry, and to identify potential matches in cases of disappeared persons in the investigation of remains in mass graves.

In May 2013, the Mexico's Attorney General's office created the Special Unit for the Search for Disappeared Persons (*Unidad Especializada de Búsqueda de Personas Desaparecidas*, UEBPD). However, from its inception to January 2015, Mexican authorities reported that the UEBPD had located just 102 people (72 alive and 30 dead) who had been previously been reported disappeared or missing.⁸ Despite the gravity and scope of disappearances in Mexico, the UEBPD lacks adequate resources: the UEBPD's 2015 budget was cut by 63 percent,⁹ and its staffing has been insufficient to carry out its important mandate.

In addition, the Mexican government currently does not have effective mechanisms to search for disappeared persons when they are alive and to coordinate relevant government agencies to carry out immediate search and investigation when individuals are reported disappeared.

Organizations:

Amnesty International

Centro de Derechos Humanos "Miguel Agustín Pro Juárez" A.C. (Centro Prodh)

Centro de Derechos Humanos de la Montaña Tlachinollan

Ciudadanos en Apoyo a los Derechos Humanos A.C. (CADHAC)

Fundar, Centro de Análisis e Investigación

Latin America Working Group (LAWG)

Robert F. Kennedy Human Rights

Washington Office on Latin America (WOLA)

¹ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*,

<http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

² Alejandro Pacheco, "Relator contra la tortura de la ONU no fue profesional, ni ético; no vendrá de nuevo: SRE," *SDP Noticias*, March 26, 2015,

<http://www.sdpnoticias.com/nacional/2015/03/26/relator-contra-la-tortura-de-la-onu-no-fue-profesional-ni-etico-no-vendra-de-nuevo-sre>.

³ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*

⁴ Rocío Méndez Robles, "Pide CIDH unificar expedientes de investigación sobre normalistas de Ayotzinapa," *Noticias MVS*, May 11, 2015,
http://www.noticiasmvs.com/?fb_xd_fragment#!/noticias/denuncia-grupo-de-expertos-de-cidh-tortura-contra-detenidos-por-caso-ayotzinapa-714.html.

⁵ U.N. Committee on Enforced Disappearances, *Concluding Observations on Mexico*, Eight Session, February 2015, <http://bit.ly/1J9QldT>

⁶ Government of Mexico, *INFORME DEL ESTADO MEXICANO SOBRE LA CONVENCIÓN INTERNACIONAL PARA LA PROTECCIÓN DE TODAS LAS PERSONAS CONTRA LAS DESAPARICIONES FORZADAS EN VIRTUD DEL ARTÍCULO 29 DE LA CONVENCIÓN*, March 2014, http://fundar.org.mx/wp-content/uploads/2015/01/Informe_de_Mexico-marzo-2014.pdf

⁷ The *Centro Diocesano para los Derechos Humanos Fray Juan de Larios* in Saltillo, Coahuila found that only 26 of the 147 cases they had documented were listed in the Registry. Similarly, *Ciudadanos en Apoyo a los Derechos Humanos*, based in Nuevo Leon, found that only 23 of 61 cases it had documented could be found in the Registry. In the case of the *Comite Hasta Encontrarlos* they found that of the 82 cases of disappearances of human rights defenders, a mere 2 could be found in the registry. Fundar did the same exercise with 34 cases that it assists with, and could only find 12 cases in the Registry.

Informe sobre la crisis de desapariciones forzadas en México, Thematic Hearing before the Inter-American Commission on Human Rights on Marcy 20, 2015.

⁸ "En dos años la PGR ha localizado a 102 de 23 mil 271 desaparecidos," *Proceso*, January 19, 2015, <http://www.proceso.com.mx/?p=393548>.

⁹ Tania L. Montalvo. "Gobierno federal y diputados disminuyen en 63% los recursos para la búsqueda de desaparecidos," *Animal Politico*, November 18, 2014,
<http://www.animalpolitico.com/2014/11/gobierno-federal-y-diputados-disminuyen-en-63-los-recursos-para-la-busqueda-de-desaparecidos/>.