

Troubling Patterns

The Mexican Military and the War on Drugs

By Laurie Freeman

The Latin America Working Group is a coalition of over sixty nongovernmental, religious, grassroots and development organizations dedicated to education and advocacy for US policies that promote human rights, peace, and sustainable development.

110 Maryland Ave., NE
Box 15
Washington, DC 20002
Tel: 202.546.7010
www.lawg.org

Copies of this report are available for \$7.50.

I. Introduction

The Mexican military has a dominant and expanding role in Mexico's war on drugs. As its role grows, so does its relationship with the US military, due to their common counter-drug mission. US organizations working to promote human rights and democracy in Mexico are concerned about human rights violations committed by the Mexican military in the drug war, as well as possible implications for US policy and the military-to-military relationship.

By analyzing 27 cases of human rights violations committed by the Mexican military during anti-drug activities from 1996 to the present, this study has identified distinct patterns of military abuse in the context of anti-drug efforts.¹ The cases in this study show that:

- The Mexican military's involvement in the drug war has led to human rights abuses;
- There is no adequate system to address these abuses when they occur; and
- The Leahy Law is not being adequately implemented by the US Embassy to ensure that US training and assistance are not provided to Mexican military units that have been implicated in human rights violations.

Laurie Freeman is currently a researcher at the Washington Post's Mexico City Bureau, and previously worked for the Miguel Agustín Pro Juárez Human Rights Center in Mexico City. The views expressed in this paper are the author's alone.

The Mexican criminal justice system overlooks, allows, and may even encourage human rights violations by the military. In many of the study's cases, members of the military practiced illegal, warrantless arrests; held detainees in secret, prolonged detention; tortured them into confessing to drug-related crimes; fabricated evidence against them; and lied to cover up evidence of abuse. The injustices often continued after the accused drug criminals were transferred from military to civilian custody. Civilian prosecutors typically accepted, without question, the evidence obtained illegally by the military. Civilian judges often used this evidence, and little else, to convict the victims of human rights violations for drug crimes. When victims denounced abuse, the civilian authorities always ceded the investigations to the military authorities, who rarely determined that its members were responsible for any abuse.

The tendency of civilian prosecutors and judges to use evidence illegally obtained by the military in order to prosecute and convict defendants creates incentives for illegal arrests, coerced confessions, fabrication of evidence, and other abuses by the military. There is no system to hold these abuses in check because the military authorities generally do not seriously investigate or prosecute alleged abusers. There is little evidence that military authorities take actions against alleged abusers, as the military does not willingly provide such information to the victims or their families, press, NGOs, or even government officials. As a result, the Mexican military's involvement in the drug war has led to human rights violations that are not rectified.

II. Violations Committed in Pursuit of the Drug War: A System that Encourages Abuses

Since 1995, in the face of experience and logic that argues against putting the military into a policing role, the Mexican military has been granted expanded policing powers throughout Mexico.² Soldiers stepped up patrols in mountain regions where drugs are grown, isolated beaches or fields where drug shipments are trafficked, and even city streets in major urban areas like Guadalajara. They have also set up checkpoints along roads throughout the country in an attempt to catch drug or weapons traffickers.

As a consequence of these expanded policing powers, members of the military have committed grave human rights violations. The cases in this study show an alarming recurrence of human rights violations by the army, and how the army has at times attempted to conceal them. The cases also show how civilian authorities have reinforced, or even encouraged, the army's abusive actions by validating so-called evidence gathered during illegal detention and torture, and by turning a blind eye to clear signs of human rights violations and improper procedure.

PATTERN ONE: Illegal Arrests: Members of the military carried out illegal, warrantless arrests, later justifying them as occurring en flagrante, or in the act of a crime. In 18 of the study's 27 cases, the military carried out illegal detentions. In at least ten of those cases, the military claims to have caught the suspects en flagrante. In one other case, police carried out the arrest but held the detainees at a military barracks.

As a general rule, only the judicial police can make arrests, and only if a warrant has been previously issued by a judge. One broad exception to this rule is the case of *flagrancia*, defined in federal law as catching a person in the act of a crime

or, in cases of serious crime, up to 48 hours afterwards if a witness identifies the suspect or if the object of the crime is in the suspect's possession. Anyone, including members of the military, may arrest a criminal suspect without a warrant in such cases, and is required to take them immediately to the proper civilian authorities.³

Many cases in this study show that members of the military have taken advantage of the *en flagrante* provision to arrest people they consider suspicious, but who have not been caught in the act of a crime. After the arrest, the detainees were held for a prolonged time in military custody while evidence was fabricated against them, often through coercion or torture to elicit a confession. Once this "evidence" was obtained, the military transferred the detainees to the custody of the civilian authorities. According to the Mexican government's official human rights commission (*Comisión Nacional de Derechos Humanos*, CNDH), arrest records were falsified in at least three cases to cover up evidence of prolonged detention and to make it appear as if the military had indeed immediately transferred the detainees to the civilian authorities. In two of those cases, the CNDH determined that the military had falsely described the arrests as *en flagrante*, but had not arrested the suspects in the act of any crime. In another case, the CNDH determined that the military had lied about being unable to promptly transfer detainees to civilian custody.

The CNDH documented the case of José Merced González Mariano, a Federal Judicial Police agent, who was illegally detained by members of a military intelligence group in Jalisco state in 1996. He was held in military custody for twelve hours, where he was blindfolded, handcuffed, tortured, and interrogated about drug trafficking and the DEA. He was photographed with weapons to incriminate him. He was taken to the civilian authorities, where he was accused by military officials of illegal weapons

PATTERN ONE: Illegal Arrests

Members of the military carried out illegal, warrantless arrests, later justifying them as occurring en flagrante, or in the act of a crime. In 18 of the study's 27 cases, the military carried out illegal detentions. In at least ten of those cases, the military claims to have caught the suspects en flagrante. In one other case, police carried out the arrest but held the detainees at a military barracks.

possession. The military gave a false account of his arrest.

Soldiers also used the *en flagrante* exception to justify their arrest of environmental activists Rodolfo Montiel and Teodoro Cabrera in May 1999. The CNDH determined that Montiel and Cabrera were not committing any crimes at the time of their arrests; instead, the

responsible for the investigation of crimes and prosecution of perpetrators.) However, the military has often kept detainees in its custody in order to “investigate” them.

As many of the case studies show, victims of illegal arrest have been tortured by members of the military into confessing to drug crimes. The military has often further fabricated evidence against detainees by

The tendency of civilian prosecutors and judges to use evidence illegally obtained by the military in order to prosecute and convict defendants creates incentives for illegal arrests, coerced confessions, fabrication of evidence, and other human rights abuses by the military.

military planted evidence of drug and weapons crimes against them.

PATTERN TWO: Members of the military carried out torture in order to elicit confessions, and concealed evidence of human rights violations against detainees by issuing false arrest and/or medical reports to the civilian authorities. In 19 of the study’s 27 cases, there was credible evidence that the military tortured detainees. In eight cases, the CNDH concluded that the military tortured detainees, and in six of those cases, the CNDH determined that military doctors had issued false medical reports to cover up evidence of abuse. In 11 cases, the detainees confessed to crimes. In the cases where confessions were not elicited, torture and rape were often used to intimidate and to extract intelligence.

According to Mexican law, the military is not allowed to investigate drug suspects that they catch *en flagrante*.⁴ They are required to take the suspects immediately to the Public Ministry, the only authority with powers to perform criminal investigations. (The Public Ministry is part of the Attorney General’s Office that is

photographing them with drugs and/or weapons that it supplies. Only after securing this “evidence” against the detainees have the military authorities turned them over to the civilian authorities. In many cases, they issued false reports to the civilian authorities about the date, time, and circumstances of the arrests, as well as the physical state of the detainees, in order to conceal evidence of illegal detention and torture.

In one example from November 1998 documented by the CNDH, Carlos Montes Villaseñor was illegally detained by members of the military in Guerrero state. He was tortured into confessing to drug crimes and belonging to a guerrilla group. A military doctor issued a false medical report that concealed evidence of physical abuse. Two days after his arrest, soldiers took Montes to the civilian authorities and provided false information about the circumstances of his arrest. The Public Ministry opened an investigation against him but did not perform a medical evaluation to determine how Montes had been treated while in military custody.

In a similar case from Jalisco state, also documented by the CNDH, soldiers arrested police agent Oswaldo Gómez, and tortured him into confessing to a weapons

PATTERN TWO: Members of the military carried out torture in order to elicit confessions, and concealed evidence of human rights violations against detainees by issuing false arrest and/or medical reports to the civilian authorities. In 19 of the study’s 27 cases, there was credible evidence that the military tortured detainees. In eight cases, the CNDH concluded that the military tortured detainees, and in six of those cases, the CNDH determined that military doctors had issued false medical reports to cover up evidence of abuse. In 11 cases, the detainees confessed to crimes. In the cases where confessions were not elicited, torture and rape were often used to intimidate and to extract intelligence.



PHOTO: OSCAR MIRELES, REFORMA

Unidentified Soldier in poppy field

PATTERN THREE: Civilian authorities prosecuted persons detained by the military, using as a basis for their cases the “evidence” gathered by the military under circumstances that violated the detainees’ human rights. In at least 11 of the study’s cases, civilian authorities prosecuted detainees based on evidence gathered illegally by the military. Prosecution occurred in four of those cases despite the civilian authorities’ own documented medical evidence that the detainees showed signs of abuse. In only one of those cases did prosecutors subsequently drop charges because of overwhelming evidence of torture by the military.

crime. Gómez was examined by a military doctor who issued a false medical report that failed to certify evidence of torture. Nearly 24 hours after his arrest by soldiers, Gómez was taken to the civilian authorities. Even though a Public Ministry doctor found evidence of recent physical wounds, the Public Ministry pressed charges against Gómez.

PATTERN THREE: Civilian authorities prosecuted persons detained by the military, using as a basis for their cases the “evidence” gathered by the military under circumstances that violated the detainees’ human rights. In at least 11 of the study’s cases, civilian authorities prosecuted detainees based on evidence gathered illegally by the military. Prosecution occurred in four of those cases despite the civilian authorities’ own documented medical evidence that the detainees showed signs of abuse. In only one of those cases did prosecutors subsequently drop charges because of overwhelming evidence of torture by the military.

Mexican law holds that a confession alone is not sufficient evidence upon which to

charge or convict a defendant.⁵ In practice, however, great evidentiary value is given to the confession, considered by jurists throughout Mexico to be the “queen of evidence” in the Mexican criminal justice system. If the confession is corroborated by other evidence, it assumes even greater credibility in the eyes of prosecutors and judges. This evidence can take the form of photographs of the detainee with contraband material, the military’s account of the suspect’s arrest, or a medical report certifying that the detainee was not injured while in military custody. But as the cases in the study show, this information has often been falsified by military authorities.

What compounds this problem is that the civilian authorities have tended not to question the military’s accounts or seek to verify them. Instead, they have been willing to “bootstrap” a tainted confession with tainted corroborating evidence provided by the military, and have used it to prosecute the detainees. This has occurred even in cases where their own forensic doctors documented torture.

The CNDH documented one such case from May 1996, in which Abelardo Gastelum Maldonado was illegally detained by soldiers in Guadalajara. They blindfolded him, took him to a military base, and interrogated him about drug trafficking. They tortured him until he lost consciousness. Four days after his arrest, Gastelum was taken to the Public Ministry. The military claimed that it had arrested Gastelum *en flagrante* and that he was immediately placed in the custody of the civilian authorities. Once in civilian custody, a forensic doctor examined Gastelum and certified evidence of recent physical wounds. Yet the civilian authorities charged Gastelum with drug crimes anyway. Eight other individuals who had been detained and tortured by soldiers in Guadalajara during May 1996 were also prosecuted by the Public Ministry, even though doctors there certified evidence of the abuse against them.

In an October 1998 case from Guerrero state, documented by Human Rights

Watch, soldiers on a drug patrol executed José Venedo Barragán Rojas while he was walking along a mountain path with his brother Rosendo. According to Rosendo, after watching his brother bleed to death, he was beaten by soldiers in an attempt to force him to confess to drug crimes and to shooting at the soldiers first. Then they took him to the Public Ministry. While he was there, soldiers entered his cell and threatened him further to ensure that he would confess to various crimes. He did so and was subsequently charged with weapons and

torture often took place. The detainee had the fewest legal protections at this time.⁷

According to the principle's peculiarly distorted interpretation in Mexican law, a subsequent declaration made in the presence of a judge or defense lawyer is considered less true.⁸

If the defendant wants to retract the original confession, he bears the burden of proof to establish that he was tortured. That is difficult to do when the military has issued false medical reports and the Public

Mexican judges adhere to the “principle of procedural immediacy,” which suggests that the first statement taken from a detainee after arrest has greater veracity and credibility than subsequent ones.

drug crimes. He was never asked to declare about the abuses and he never denounced them to the authorities.

PATTERN FOUR: Civilian judges convicted persons illegally detained by the military, basing their decisions on evidence obtained through human rights violations. Of the study's 10 cases where victims of military abuse were prosecuted in civilian courts, judges convicted the defendants in seven. In one case, the defendant won an appeal overturning his indictment. In two other cases it is not known if the defendants were convicted or acquitted.

Once a detainee confesses to a crime, it is almost impossible for him to retract it. This is because Mexican judges adhere to the “principle of procedural immediacy,” which suggests that the first statement taken from a detainee after arrest has greater veracity and credibility than subsequent ones.⁶ For the cases in this study, the first confession was the one given to civilian authorities after prolonged detention in military custody, during which time coercion or

Ministry does not perform medical examinations adequately. Even if he manages to prove abuse at the hands of the military, if his confession is corroborated by other evidence, it can be used by the judge. This means that judges rarely throw out confessions even if there are indications that they were coerced.⁹

As a result, judges have convicted defendants whose cases originated from human rights violations committed against them by members of the military.

One example is the case of Rodolfo Montiel and Teodoro Cabrera, illegally detained by soldiers in May 1999. They were held in military custody for five days, and tortured into confessing to weapons and drug crimes. A civilian prosecutor actually traveled to the military base to take their confessions. The CNDH determined that Montiel and Cabrera had been illegally detained and were likely tortured, and that the evidence against them had been fabricated by soldiers. Despite this finding, the men were later convicted. The judge based his decision on the coerced confessions and the

PATTERN FOUR: Civilian judges convicted persons illegally detained by the military, basing their decisions on evidence obtained through human rights violations. Of the study's 10 cases where victims of military abuse were prosecuted in civilian courts, judges convicted the defendants in seven. In one case, the defendant won an appeal overturning his indictment. In two other cases it is not known if the defendants were convicted or acquitted.



PHOTO: WITNESS FOR PEACE

PATTERN FIVE: Members of the military committed extrajudicial executions. Of the 27 cases in this study, the military was responsible for extrajudicial executions in 14 cases, for a total of 15 execution victims. In at least two of those cases, the victim died as a result of torture. In another case the military was identified as responsible for a disappearance, and the victim is presumed dead.

soldiers' account of their arrest. When interviewed by Human Rights Watch, the judge stated that "when differences arise between the testimony of civilian defendants and military personnel, the latter enjoy a presumption of good faith." He also stated that defendants bear the burden of proof to demonstrate that they were tortured, if they so allege.¹⁰

Another example is the case of Alvaro García Avila, Juan García Avila, and Alfredo García Torres, documented by Human Rights Watch. They were detained by soldiers and taken by helicopter to a military base in Petatlán, Guerrero state. They claim they were tortured for several hours, then transferred to the Public Ministry, where they were beaten and forced to sign confessions to weapons charges. The military claims that the men had been arrested in the act of illegal drug and weapons possession.

A judge convicted Alvaro García Avila of weapons crimes, based on his confession and the testimony of soldiers. García Avila had tried to retract his confession. Despite the fact that his retraction was corroborated by witnesses and one soldier, the judge chose to rely on the first confession, citing the "principle of procedural immediacy." Alfredo García Torres was convicted on

drugs charges. In his case, he had not even confessed — the judge's decision was based only on soldiers' testimonies. He was also convicted of the 1999 murder of four police officers, a crime that the soldiers who detained him claim he voluntarily confessed to on the way to the military base.

PATTERN FIVE: Members of the military committed extrajudicial executions. Of the 27 cases in this study, the military was responsible for extrajudicial executions in 14 cases, for a total of 15 execution victims. In at least two of those cases, the victim died as a result of torture. In another case the military was identified as responsible for a disappearance, and the victim is presumed dead.

This study also revealed an alarming number of extrajudicial executions by members of the army. Many of the victims were minors. Many were refused medical help by the soldiers who shot them, and bled to death over the course of hours. Most of the victims were poor and lived in remote communities. The military often denied its involvement or attempted to justify the executions by claiming that the victims were drug traffickers.

One young boy from Guerrero, Daniel Alarcón Alonso, was shot by soldiers in May 1996. According to the CNDH, they stayed by him but did not provide medical attention. He bled to death nine hours later. The soldiers justified the killing by claiming they shot him in self-defense while on a drug patrol. In January 2001, another young boy from Guerrero, Esteban Martínez, was shot in the leg by soldiers on a drug patrol and died. His brother, who was with him, managed to escape and returned home to tell his parents that they had been fired upon by soldiers. The boy's mother went to the military camp to ask if they knew where her son was. But the soldiers denied that they had even patrolled the region. They admitted their involvement in the killing only after community members encircled the army

Continued on the following page

Case	Docum- ented by	State	Date d-m-y	Violation(s)	Torture *Confess	Illegal Detention	Execution *Deny Medical help	False Info	Criminal Action vs Victim	Minor	Deny abuse	Mil. jurisdict.	No sentence
1 Rancho Viejo	ONDH	Collima	21-1-01	Extrajudicial execution, wounding			•			•		•	?
2 Esteban Martínez Nazario	ONDH	Guerrero	16-1-01	Extrajudicial execution			•*	•		•	•	•	?
3 Gildardo Avila Rojas	CNDH	Oaxaca	12-5-00	Extrajudicial execution			•	•			•	•	?
4 Octavio Olivas Lachica	COSYDDH AC	Chihuahua	20-4-00	Extrajudicial execution			•					•	?
5 Victoriano Eugenio Manuel	PRODH	Guerrero	7-3-00	Illegal detention, torture	•	•				•	No denunciation was filed, so no investigation occurred.		
6 El Nogal and Las Palancas	HRW	Guerrero	18-2-00	Extrajudicial execution, illegal detention, torture	•*	•	•		•		•	•	•
7 El Cirian	Mexican press	Guerrero	7-5-99	Extrajudicial execution, illegal detention, torture	•	•	•			•	No denunciation was filed, so no investigation occurred.		
8 Environmental Activists	CNDH, PRODH, HRW, NYT	Guerrero	2-5-99	Extrajudicial execution, torture, illegal detention	•*	•	•	•	•		•	•	•
9 Barrio Nuevo San José	PRODH	Guerrero	20-4-99	Extrajudicial execution, rape	•		•			•	•	•	•
10 Carlos Montes Villaseñor	ONDH	Guerrero	13-11-98	Illegal detention and torture	•*	•		•	•		•	•	•
11 Barragán Rojas brothers	HRW	Guerrero	3-10-98	Extrajudicial execution, illegal detention, torture	•*	•	•*		•		No denunciation was filed, so no investigation occurred.		
12 Eber Solano	Tepeyac HRC	Oaxaca	30-8-98	Extrajudicial execution			•			•		•	?
13 Mirey Trueba Arciniega	COSYDDH AC	Chihuahua	22-8-98	Extrajudicial execution			•*			•		•	?
14 Antimarcotics Arrests in Durango	ONDH	Durango	29-12-97	Illegal detention, torture	•*	•		•	•		•	•	•
15 San Juan de Ocotlán	US/Mex. press	Jalisco	12-12-97	Extrajudicial execution, illegal detention, torture	•	•	•*			•		•	
16 Zopilotepec	PRODH	Guerrero	3-12-97	Illegal detention, torture, and rape	•*	•			•			•	•
17 Alberto Gómez García	PRODH	Sonora & Baja, CA	24-5-97	Torture, illegal detention	•*	•			•		No denunciation appears to have been filed, so no investigation occurred.		

Case	Documented by	State	Date d-m-y	Violation(s)	Torture *Confess	Illegal Detention	Execution *Deny Medical help	False Info	Criminal Action vs Victim	Minor	Deny abuse	Mil. Jurisdict.	No sentence
18 Xitoponita	CNDH	Guerrero	12-1-97	Illegal search & detention, robbery, intimidation	•	•			possible		•		•
19 Daniel Alarcón Alonso	CNDH	Guerrero	19-11-96	Extrajudicial execution			*	•		•	•		•
20 Valentín Carrillo Saldaña	COSYDDH AC, IACHR	Chihuahua	12-10-96	Extrajudicial execution, illegal detention, torture	•	•	•	•					
21 Romulo Rico Urea	NYT	Sinaloa	25-9-96	Disappearance		•					No denunciation was filed, so no investigation occurred.		
22 Fausto Soto Miller	HRW	Jalisco	12-8-96	Disappearance, illegal detention, torture	*	•		•	•		No denunciation was filed, so no investigation occurred.		
23 Alejandro Hodyoán	HRW, NYT	Jalisco	11-8-96	Disappearance, illegal detention, torture	•	•					No denunciation was filed, so no investigation occurred.		
24 Antimatricotics Arrests in Guadajalara	CNDH	Jalisco	5-96	Illegal detention, torture, fabrication of crime	*	•		•	•		•		•
25 Oswaldo Gómez Contreras	CNDH	Jalisco	29-3-96	Illegal detention, torture, fabrication of crime	*	•		•	•		•		•
26 José Rosarío Pacheco Duarte & Jesús Daniel Ávalos Romero	CNDH	Sonora	14-2-96	Torture, illegal entry and search, fabrication of crime	•					•			•
27 José Merced González Mariano	CNDH	Jalisco	18-1-96	Torture, illegal detention, robbery, fabrication of crime	*	•		•	•		•		•

CNDH: National Human Rights Commission (Mexican government)
COSYDDHAC: Commission of Solidarity and Defense of Human Rights (Chihuahua-based human rights group)
HRW: Human Rights Watch
IACHR: Inter-American Human Rights Commission (of the Organization of American States)
NYT: New York Times
PRODDH: Miguel Agustín Pro Juárez Human Rights Center (Mexico City-based human rights group)
Tepeyac HRC: Tepeyac Human Rights Center (Oaxaca-based human rights group)

?: Soldier(s) detained for investigation and/or prosecution, but it is not known if convicted for human rights abuse
Minor: the victim was a minor
False info: military provided false information about the circumstances of the arrest/execution or the medical condition of the detainee to the civilian authorities
Military Juris: the investigation and prosecution of alleged human rights violations is being carried out by the military authorities

camp, preventing soldiers from leaving until military and civilian authorities arrived to investigate the boy's death.

III. The Military Justice System Does Not Deal with Abuses

The majority of the cases in this study show that the military cannot be trusted to impartially and effectively handle investigations into human rights violations committed by its members. The evidence suggests that the military justice system

reports in order to conceal evidence of abuse while in military custody. In the Esteban Martínez case, soldiers initially denied that they had been patrolling the region where the boy was killed.

Military authorities have demonstrated reluctance to investigate or prosecute abuse, by dragging their feet when it comes to opening investigations or gathering testimony from victims and witnesses. Of the 27 cases, it appears that the military opened investigations in 19, and all of those investigations appear to have been marred

In practice, military authorities have jurisdiction over cases of alleged human rights abuse committed by military personnel, but they are not impartial investigators or prosecutors of such abuses.

shelters human rights abusers, granting them almost complete impunity.

In some cases, military officials and medical personnel preemptively issued false information about the circumstances of arrests, where their troops were at the time an execution or other human rights violation took place, and the physical condition of detainees. If allegations of abuse were later to be made, the official military record would show that no human rights abuses had occurred. Of the 27 cases, the military issued false information about its involvement in human rights abuse in at least 11. In nine of those cases, the CNDH proved that the military had issued false information; in the other two, the military's original accounts were shown to be false by subsequent court documents.

For example, in the Gastelum and Montes Villaseñor cases, both documented by the CNDH, the military held the suspects in detention for one or more days. When military officials finally transferred the men to civilian custody, they falsely claimed to have just arrested them in the act of a crime. Military doctors issued false medical

by reluctance and/or delays. (As of printing, information was not available about whether or not investigations had been initiated in 7 other cases; civilian authorities opened an investigation in one.)

For example, according to the CNDH, soldiers illegally arrested Oswaldo Gómez in March 1996, interrogated and tortured him, and forced him to confess to illegal weapons possession. When Gómez was brought to the Public Ministry the next day, a doctor there found evidence of torture. The Public Ministry opened an investigation into Gómez's illegal detention and torture, but ceded jurisdiction to the military. As of October 1999 — more than three years after the fact — the military had merely opened criminal and administrative investigations into the events, but had not charged anyone with crimes, let alone prosecuted or convicted them.

All of the 27 case studies occurred at least one year ago, with some dating back more than five years — more than sufficient time to conduct a proper investigation and trial. Yet in only two of the study's cases is it clear that members of the military were convicted for human rights abuse.



PHOTO: WITNESS FOR PEACE

Some cases in the study show that military investigators often determine, despite evidence to the contrary, that members of the military were not responsible for abuse (González case, see below). In other cases, the military authorities merely open investigations into alleged abusers (Xitopontla case), appearing to interpret the mere act of opening an investigation or pressing charges as tantamount to a sanction. In other cases, military authorities go through the motions of bringing alleged abusers to justice, such as pressing charges but failing to issue arrest warrants (Oswaldo Gómez case).¹¹

For example, in the case of José Merced González Mariano, who was illegally detained and tortured by soldiers in January 1996, the military authorities opened criminal and administrative investigations against the implicated soldiers, but the military prosecutor decided not to press charges. (The military prosecutor appears to have ignored ample evidence, documented by the CNDH, that González was tortured so severely while in military custody that he had to be hospitalized; this evidence included conflicting medical reports issued by the same military doctor, the first declaring him healthy and a later report certifying his injuries.)

In 25 of the 27 cases, no information is available showing that any members of the military had been convicted for human rights abuse. (In five of those cases, at the time of publication, members of the military reportedly were or had been in jail awaiting trial for human rights violations.) In only two cases — San Juan de Ocotán and Valentín Carrillo — were members of the military convicted and sentenced by military courts for human rights abuses. But the convictions in the Carrillo case were the result of years of pressure by human rights organizations and a recommendation by the Inter-American Commission on Human Rights.

This kind of information is difficult to know with certainty because the military authorities regularly deny information about the results of investigations and prosecutions to the victims of violations, their legal representatives, the press, and government institutions. In July 2001 and in April 2002, the Latin America Working Group (LAWG) requested information from the Mexican government on the military's efforts to investigate and prosecute alleged abusers in the 27 cases, but has yet to receive a response.

In none of the 27 cases did civilian judges try members of the military alleged to have violated the rights of civilians. In some cases, such as the Rancho Viejo case, civilian prosecutors charged members of the military with crimes, but the judge declined the case, arguing that it corresponded to military jurisdiction. According to the Mexican Constitution, civilian jurisdiction should be the rule, not the exception. The Constitution states that "where a civilian is involved in a military crime or misdemeanor, the corresponding civilian authority will preside over the case," and establishes military jurisdiction for "offenses against military discipline."¹² However, the Military Code establishes such a broad definition of military jurisdiction — including any "offenses under common or federal law...when committed by military personnel on active duty or in connection with active

duty”¹³ — as to render the Constitution’s provision completely useless in practice.

In practice, military authorities have jurisdiction over cases of alleged human rights abuse committed by military personnel, but they are not impartial investigators or prosecutors of such abuses.

Numerous international human rights experts have criticized the military’s biased handling of human rights cases. The UN Special Rapporteur on Torture stated that “military personnel appear to be immune from civilian justice and generally protected by military justice,” and the UN Special Rapporteur on

abuse by the Mexican military, and submitted these cases, along with supporting documentation, to the US Embassy. The goal was to see how the embassy kept track of human rights violations by the military, as well as how the embassy used this information to vet proposed recipients of US training. The United States trains between 600 and 1,000 Mexican military personnel per year. Most training is paid for with counterdrug-restricted funds.

LAWG found that the embassy database used to keep track of human rights violations involving the military and for vetting potential trainees was seriously incomplete: only a handful of the over 60

Cases of serious crimes committed by military personnel against civilians, should, regardless of whether they took place in the course of service, be subject to civilian justice.

Executions found that the “military justice system is arbitrary, resulting in miscarriage of justice.” Human Rights Watch found that “weaknesses in the methodology of the military investigations...are so severe that they call into question the seriousness of the army’s efforts to investigate its own ranks.”¹⁴ Cases of serious crimes committed by military personnel against civilians, should, regardless of whether they took place in the course of service, be subject to civilian justice.

IV. The Leahy Law is Not Effectively Implemented

In November 2000, LAWG began monitoring the implementation of the Leahy Law by the US Embassy in Mexico. The Leahy Law prohibits US assistance to foreign security force units that have been credibly accused of human rights violations until action is taken against the accused. LAWG collected information on more than 60 cases of alleged

cases had been registered in it prior to LAWG’s providing the information. The embassy did not appear to have a routine procedure for collecting information on human rights abuses by the military and was not seeking out information on past violations allegedly involving the military.

Furthermore, it was not clear that the embassy had procedures for vetting proposed trainees by unit and not just personal history as required by the Leahy Law. Vetting the full unit is important for two reasons. One, even in the most extensively documented cases, victims and witnesses can rarely identify the military personnel involved by name, though they often can provide information that can be used to identify the unit. Two, the Leahy Law’s leverage in encouraging foreign militaries to prosecute human rights abusers comes from the fact that it withholds assistance to entire units until the individual human rights abusers within those units are brought to justice. The incentive to bring human rights abusers to justice is removed

if an individual member within an abusive unit can be cleared to receive training.

Finally, the US Embassy was not effectively keeping track of judicial action against members of the military accused of human rights violations. Embassy officials indicated to LAWG staff that they had never asked the military for information on the prosecution of soldiers implicated in abuses. In accordance with the Leahy Law, once action is taken against the accused that unit could be cleared to receive assistance from the United States. If the US Embassy does not track the prosecution of human rights cases involving the military, it would be impossible to keep the database used to vet trainees up to date.

V. Conclusion

An analysis of the 27 cases reviewed in this study show that patterns of human rights abuse occur in the military's execution of the drug war in Mexico for two main reasons: the criminal justice system encourages or at a minimum fails to discourage abuse, and the military does not adequately hold abusers accountable.

Soldiers know that confessions, corroborated by military testimony and other "evidence" offered by the military, are sufficient for prosecuting suspects arrested by soldiers. In other words, soldiers respond to structural incentives to get "evidence" that they know will lead to convictions.

The criminal codes encourage or tolerate illegal detention and torture as forms of "investigation." As cases in this report show, illegal detention is often the first in a series of violations to the detainee's human rights and due process guarantees. Because the law allows members of the military to take advantage of the *en flagrante* provision to carry out arbitrary arrests, the door is opened wide for subsequent human rights and due process violations such as torture, denial of defense, and fabrication of evidence. The Mexican military fails to adequately investigate or prosecute alleged human rights abusers within its ranks and

to send a clear message that such activity will not be tolerated.

Furthermore, the Leahy Law, a mechanism that could be used by the US government to encourage the prosecution of human rights violators, is not being adequately applied. The US Embassy in Mexico has not sought out the kind of information on human rights violations involving the military that would facilitate full implementation of the Leahy Law. The United States is training a large number of Mexican military personnel each year and could better use the Leahy Law to encourage the prosecution of human rights violators. ●

Notes

- ¹ The 27 cases in this report were taken from a study of over 60 cases of human rights abuse by the Mexican army in various contexts — including gun law enforcement and counterinsurgency efforts — dating from 1988 to the present. All cases were documented by the federal government's National Human Rights Commission (CNDH) or by Mexican and US NGOs and the press. The author did not independently investigate the cases.
- ² The military's expanded role in peacetime public security was legislated in 1995 by the General Law Establishing the Terms of Coordination for the National Public Security System and upheld by the Supreme Court in 1996.
- ³ Article 193 of the Federal Code of Criminal Procedure.
- ⁴ Articles 21 and 29 of the Mexican Constitution.
- ⁵ Articles 207 and 287 of the Federal Code of Criminal Procedure.
- ⁶ *Semanario Judicial de la Federación, Apéndice de Jurisprudencia Definida 1917-1971, Segunda Parte, Primera Sala*, page 175.
- ⁷ For example, soldiers tortured Ignacio Ceballos Sarabia and made a recording of his confession to homicide and drug crimes. Then they brought him to the Public Ministry to make his official declaration. They were present while he gave his declaration and threatened to kill him and his family if the declaration did not reflect the tape-recorded confession taken at the military facilities.
- ⁸ The principle of procedural immediacy, under Mexican law, is interpreted differently than in other comparable judicial systems. In most other Latin American countries, it means that evidence, such as a confession, that is presented directly to the judge should have the greatest weight.
- ⁹ Lawyers Committee on Human Rights and Miguel Agustin Pro Juárez Human Rights Center, *Legalized Injustice: Mexican Criminal Procedure and Human Rights*, May 2001, p. 20. The authors did not find a single case where a confession had been excluded from consideration because it had been obtained through coercion.
- ¹⁰ Human Rights Watch, *Military Injustice: Mexico's Failure to Punish Army Abuses*, December 2001, <http://www.hrw.org/reports/mexico>.
- ¹¹ Other cases of military abuse not included in this report show how military authorities went through the motions of justice by issuing warrants without serving them, or singling out one soldier or officer as responsible for egregious abuse, even though many more were probably involved.
- ¹² Article 13 of the Mexican Constitution.
- ¹³ Article 57, Code of Military Justice.
- ¹⁴ Human Rights Watch, "Army Officer Held 'Responsible' for Chiapas Massacre; Accused Found Dead at Defense Ministry," June 1995, <http://www.hrw.org/reports/1995/Mexico2.htm>.