



Advocacy for Human Rights in the Americas

REPORT  
SUMMARY



*AP Photo/Eric Gay*

## OVERLOOKING JUSTICE

### Human Rights Violations Committed by Mexican Soldiers against Civilians are Met with Impunity

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# OVERVIEW

This report analyzes the crimes and human rights violations committed by Mexican soldiers that have been investigated and punished by the civilian justice system, as well as the cases that remain unpunished.

For over ten years, rather than prioritizing justice, Mexico's public security strategy and efforts to combat organized crime have focused largely on using force through the deployment of soldiers into Mexican streets. Efforts to strengthen civilian institutions such as the police and the Attorney General's Office have taken a back seat to this militarized approach. During the early years of its security cooperation with Mexico through the framework of the Merida Initiative, the United States supported this strategy by allocating a significant amount of funds to Mexico's armed forces.

The militarization of public security in Mexico has had at least three grave consequences: violence has increased in the country while human rights violations persist, the urgency and pressure to pass reforms to strengthen the civilian police force has decreased, and accountability has been virtually nonexistent. Soldiers who commit crimes and human rights violations, public officials who request the deployment of soldiers into states or municipalities, and politicians who have failed to undertake serious efforts to improve the civilian police force in Mexico are rarely held accountable.

This militarized public security model has negatively impacted Mexico's criminal justice system. The civilian justice system faces challenges—including military authorities' actions resulting in the obstruction or delay of investigations—which limit civilian authorities' ability to sanction soldiers implicated in crimes and human rights violations.

Civilian investigations are the only way to find truth and justice for victims of crimes and human rights violations committed by soldiers. Therefore, Mexican authorities' top priority should be to strengthen the civilian justice system. Currently the opposite is the case in Mexico, as there is an alarming threat of passing laws—including a Law on Internal Security (*Ley de Seguridad Interior*) that would expand and normalize the militarization of public security—that would weaken the civilian justice system and other reforms that would represent a setback for the adversarial judicial system.

This report establishes a pathway for strengthening the civilian justice system and improving investigations of soldiers. The first section explains reforms to military jurisdiction in Mexico. The report then analyzes official data and discusses obstacles to investigating soldiers in the civilian justice system, as well as the failure to investigate the chain of command in these cases. The final section provides recommendations and emphasizes that if authorities demonstrate political will they can carry out efficient civilian investigations of soldiers implicated in human rights violations and put an end to the impunity that persists in these cases.

# KEY FINDINGS

- **THE 2014 REFORMS TO MEXICO'S MILITARY CODE OF JUSTICE (CÓDIGO DE JUSTICIA MILITAR, CJM) THAT ALLOW CIVILIAN AUTHORITIES TO INVESTIGATE SOLDIERS IMPLICATED IN CRIMES AND HUMAN RIGHTS VIOLATIONS HAVE NOT BEEN FULLY IMPLEMENTED.** While there are some civilian investigations into these cases, these are isolated instances in which authorities have not shown the political will to deliver justice. Additional reforms to the CJM must be passed to ensure serious and successful civilian investigations.
- **VIRTUALLY ALL OF THE ATTORNEY GENERAL'S OFFICE'S (PROCURADURÍA GENERAL DE LA REPÚBLICA, PGR) INVESTIGATIONS INTO HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS REMAIN UNRESOLVED.** According to official figures, between 2012 and 2016, the PGR launched 505 criminal investigations into crimes and human rights violations committed by soldiers against civilians. The majority of these investigations are for human rights violations, with torture (or crimes related to torture) and enforced disappearances being the most recurrent. In the same time frame (2012–2016), there is evidence of only 16 convictions of soldiers in the civilian justice system. Thus, within those four years, the PGR's success rate in prosecuting soldiers was 3.2 percent.
- **THERE ARE AT LEAST THREE PRACTICES RELATED TO MILITARY AUTHORITIES THAT OBSTRUCT OR DELAY CIVILIAN INVESTIGATIONS:** 1) when military and civilian authorities carry out separate investigations into the same case, 2) when military officials limit civilian authorities' access to testimony from accused soldiers or soldiers who are witnesses in investigations, and 3) when soldiers tamper with crime scenes or give false testimony.
- **THE PGR HAS NOT SHOWN THE POLITICAL WILL TO UNDERTAKE SERIOUS AND THOROUGH INVESTIGATIONS OF SOLDIERS WHO HAVE COMMITTED CRIMES OR HUMAN RIGHTS VIOLATIONS AGAINST CIVILIANS.** The PGR's investigations are slow and often lack sufficient evidence to bring strong cases to court. In some cases, it has taken the PGR more than three years to bring soldiers to trial. In others, six years have passed before obtaining a conviction in lower courts.
- **THE PGR FALLS SHORT IN INVESTIGATING THE CHAIN OF COMMAND IN CASES OF CRIMES AND HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS, AS WELL AS THE MILITARY ORDERS INVOLVED IN SUCH CASES.** This report only identifies two convictions of chain of command responsibility: the conviction of a lieutenant colonel for his liability as a superior in a 2009 enforced disappearance case in the state of Chihuahua, and the conviction of an infantry second lieutenant for the enforced disappearance of a civilian in the state of Nuevo León in 2012.

# KEY FINDINGS

- **FEDERAL JUDGES HAVE ORDERED THE SEARCH FOR VICTIMS DISAPPEARED BY SOLDIERS IN MILITARY FACILITIES AND HAVE ORDERED SERIOUS AND THOROUGH INVESTIGATIONS OF SOLDIERS.** These decisions could help to improve the results of the PGR's investigations. Conversely, other judicial decisions have hindered civilian investigations of soldiers implicated in crimes and human rights violations.

# RECOMMENDATIONS

The 2014 reforms to Mexico's Military Code of Justice were an important step towards strengthening investigations into crimes and human rights violations committed by soldiers against civilians. However, much still needs to be done to ensure that these reforms translate into successful civilian investigations and bring truth and justice for victims.

The poor results of criminal investigations of soldiers show that authorities lack the political will to bring about justice in these cases. It also demonstrates the pressing need to strengthen the civilian justice system and to reject legal reforms that would counteract the adversarial judicial system. Further, it exposes the negative impact of having neglected police reform in Mexico for decades. Mexican authorities cannot indefinitely avoid these debates; the more they do so, the more they expose society to danger and abuses, as well as expose soldiers to public discredit.

Mexico must urgently develop a strategy to gradually withdraw soldiers from public security tasks. This strategy must go hand in hand with strengthening the civilian police force with a citizen security-focused approach, increasing accountability, and improving civilian investigations of soldiers implicated in crimes and human rights violations.

Among the actions authorities should implement to improve civilian investigations of soldiers are:

## FOR MEXICO:

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### **1. STRENGTHEN THE CIVILIAN JUSTICE SYSTEM TO IMPROVE INVESTIGATIONS INTO CRIMES AND HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS AGAINST CIVILIANS BY:**

- Improving the capacity to investigate these cases, including by improving training for investigative police, forensic experts, prosecutors from the Attorney General's Office, and civilian police forces, as well as by sharing good investigative practices between attorney general's offices and the Federal Judiciary (*Poder Judicial de la Federación*, PJF).
- Improving coordination between federal and local attorney general's offices and military authorities so that civilian authorities—instead of soldiers—carry out the first investigative actions in cases where soldiers are implicated in crimes and human rights violations against civilians.
- Ensuring that Mexico's new National Prosecutor's Office (*Fiscalía General de la República*, FGR) is autonomous and that the federal prosecutor is appointed through a transparent process, with the participation of civil society. Mexico's first

# RECOMMENDATIONS

*fiscal general* must be independent and have an appropriate background to resist any political pressure that may arise when investigating soldiers. Additionally, forensic services should be autonomous, professional, and independent—by law or in practice—from the authority of the FGR.

- 2. THE ATTORNEY GENERAL'S OFFICE MUST ESTABLISH A POLICY TO INVESTIGATE AND PROSECUTE CRIMES AND HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS AGAINST CIVILIANS.** The plan should be made public and specify investigative priorities, which cases they are investigating, and the results of the cases (which should also be made public). The plan should also explicitly promote the investigation of the chain of command and military orders that instruct soldiers to commit human rights violations.
- 3. ABSTAIN FROM INCREASING SOLDIERS' PARTICIPATION IN INVESTIGATING CRIMES IN THE ADVERSARIAL SYSTEM, WHETHER AS FIRST RESPONDERS OR BY ANY OTHER MEANS.** Mexico's Congress must refrain from approving a Law on Internal Security or any other legal reform that goes against the adversarial criminal justice system or civilian oversight of public security.
- 4. THE PJF MUST STANDARDIZE THE JUDICIAL PRECEDENTS REGARDING THE DISTINCTION BETWEEN THE ROLE OF THE POLICE AND THAT OF THE MILITARY.** It should detail what constitutes proportional and rational use of force by law enforcement officials in accordance with international norms. It should also require the PGR to comply with high probative standards in cases involving soldiers. It could also systematize and improve the outreach of judicial information on cases involving soldiers, as well as improve the exchange of experiences and best practices among judges that have tried such cases.
- 5. CREATE A MECHANISM TO MONITOR THE IMPLEMENTATION OF THE 2014 REFORMS TO THE CJM AND THE PROGRESS OF CIVILIAN INVESTIGATIONS OF SOLDIERS.** The mechanism must be public, transparent, and regularly updated. To do so, both the PGR and the PJF must improve their statistics on crimes and human rights violations committed by soldiers against civilians.
- 6. AMEND THE CJM TO CORRECT THE SHORTCOMINGS OF THE 2014 REFORMS.** Articles 37, 49bis, 57, and 129 must be amended to solidify the role of civilian authorities in the investigation of soldiers and to improve the quality and results of civilian investigations. Likewise, the Federal Criminal Code (*Código Penal Federal*, CPF) must be amended to classify as an aggravating circumstance instances where on-duty soldiers or policemen commit a homicide as a result of the use of excessive or unnecessary force.

# RECOMMENDATIONS

- 7. MEXICO'S NATIONAL HUMAN RIGHTS COMMISSION (COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, CNDH) MUST IMPROVE INVESTIGATIONS AND FOLLOW UP TO ITS RECOMMENDATIONS ON HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS.** This includes classifying cases as grave human rights violations when appropriate, recommending the investigation of the chain of command and obedience to military orders, and abstaining from classifying recommendations to the Ministry of National Defense (*Secretaría de la Defensa Nacional, SEDENA*), the Ministry of the Navy (*Secretaría de Marina, SEMAR*), and the PGR as “fulfilled” if there is no meaningful progress in civilian investigations.

## FOR THE UNITED STATES:

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- 1. IN U.S. ASSISTANCE TO MEXICO, PRIORITIZE STRENGTHENING MEXICAN FEDERAL JUDICIAL OFFICIALS' CAPACITY TO CARRY OUT THOROUGH AND EVIDENCE-BASED INVESTIGATIONS, INCLUDING IN CASES INVOLVING SOLDIERS.**
- 2. CONTINUE SUPPORTING JUSTICE SYSTEM REFORMS AND THE RULE OF LAW IN MEXICO.** Prioritize cooperation to solidify civilian police forces and to improve Mexico's internal and external oversight mechanisms. Additionally, the United States must refrain from encouraging and supporting the use of soldiers in public security tasks and to combat organized crime. By doing so, they are supporting a dangerous role for the armed forces that has led to increased abuses in the country.
- 3. USE THE HUMAN RIGHTS REQUIREMENTS OF THE FOREIGN MILITARY FINANCING (FMF) ACCOUNT TO MAKE AN HONEST ASSESSMENT OF THE HUMAN RIGHTS SITUATION IN MEXICO.** Withhold conditioned funds in the absence of measurable and meaningful progress in investigations and sanctions against soldiers and law enforcement officials implicated in human rights violations.
- 4. ENSURE THE ENFORCEMENT OF THE LEAHY LAWS.** These prohibit the State Department and the Department of Defense from providing assistance to any unit of a foreign country's security forces if they have credible evidence that the unit has committed a gross human rights violation.

## **ABOUT WOLA**

The Washington Office on Latin America (WOLA) is a leading research and advocacy organization advancing human rights in the Americas.

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