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Structural Human Rights Violations: The True Face of Mexico's War on Crime

by *Stephanie Erin Brewer**

INTRODUCTION

INTERNATIONAL NEWS COVERAGE OF MEXICO FOCUSES EVER MORE FREQUENTLY on the actions of drug traffickers, reporting shootouts between government forces and criminals in the Mexican government's war against organized crime. Such a picture, however, conceals many of the true dimensions and victims of Mexico's violent war. In reality, the government carries out its war on crime through an array of human rights abuses whose victims range from detained suspects, innocent and guilty alike, to individuals and communities with no connection to crime.

This article, which forms part one of a two-part series examining Mexico's public security policies from a human rights perspective and presents an overview of some of the human rights violations that characterize Mexico's security operations today.¹

CONTEXT: THE MILITARIZATION OF PUBLIC SECURITY IN MEXICO

In December 2006, President Felipe Calderón began his administration by launching large-scale militarized crime-fighting operations in Mexican states including Sinaloa, Durango, Sonora, Michoacán, Baja California, and Guerrero. These operations, portrayed as a necessary response to drug-related violence, have deployed military and federal police agents in checkpoints on highways and roads, as well as involving searches of homes, sweeps of neighborhoods, and the detention of countless individuals. To carry out these operations, soldiers perform numerous public security tasks that legally fall within the competence of the civilian police or public prosecutors. An average of 45,000 soldiers now participate monthly in such operations,² with the Department of Public Security declaring in 2008 that it was going "all-out" to step up its "direct fight" and "frontal combat" against criminals.³

Despite these highly visible militarized security operations, the number of killings associated with organized drug crime in Mexico has more than tripled over the past three years, going from over 1,500 in 2005⁴ to over 5,500 in 2008.⁵ These data highlight the ineffectiveness of the militarized frontal combat approach to drug trafficking. Indeed, the frontal combat approach, by reducing the concept of public security to a territorial war against criminals, fails to address the factors



Courtesy of Juan Carlos Cruz

Federal soldiers during a door-to-door house search in Culiacán, Sinaloa State, Mexico.

that drive insecurity, including not only endemic flaws in law enforcement practices but also extreme disparities in access to resources and quality work and educational opportunities. Notwithstanding these concerns, the Calderón administration continued to increase its reliance on frontal combat security policies in 2008, announcing the deployment of more soldiers to existing and new operations in states such as Chihuahua, Oaxaca, Chiapas, Coahuila, Sonora, Tabasco, and Campeche,⁶ as well as promoting harsh criminal justice reforms, including provisions that violate basic standards of due process.

UNMASKING MEXICO'S DRUG WAR: GRAVE VIOLATIONS TO FUNDAMENTAL RIGHTS

The participation of the armed forces in civilian policing tasks and the general intensification of Mexico's war on crime under the Calderón administration have led to a growing incidence of serious human rights violations. Over the past two years these have included dozens of arbitrary executions (including numerous cases in which soldiers have shot and killed civilians attempting to drive through military checkpoints), a significant number of rapes, frequent arbitrary detentions, routine warrantless searches of homes, and the widespread use of torture. The number of reports alleging human rights violations by Mexico's Department of Defense (army and air force) received by the National Human Rights Commission more than sextupled during the first two years of the Calderón administration, going from 182 in 2006⁷ to 1,230 in 2008, causing the Department of Defense to become the government agency against whom more violations are alleged than any other agency.⁸

As another indicator, national media articles from January 2007 through November 2008 registered at least 101 cases

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“Indeed, the frontal combat approach, by reducing the concept of public security to a territorial war against criminals, fails to address the factors that drive insecurity, including not only endemic flaws in law enforcement practices but also extreme disparities in access to resources and quality work and educational opportunities.”

or generalized situations of human rights violations by the military, which included shootings, torture, illegal searches, and aggression against vulnerable populations such as indigenous communities and migrants.⁹ In the case of Chihuahua State, for example, between April and November 2008 alone (that is, after the implementation of the militarized security operation Joint Operation Chihuahua), the state witnessed at least thirteen cases of military abuses reported in the media.¹⁰ According to the National Human Rights Commission, torture and arbitrary detention have been among the most frequent violations, and in the case of persons detained in military bases, “the victims are interrogated by military personnel who extract information through torture: beatings, electric shocks, submersion in water, placing plastic bags over their heads. . . .”¹¹

The dramatic surge in reported military human rights violations following the implementation of militarized anti-crime operations is not a phenomenon explained by the wayward actions of a few isolated individuals or regiments. Instead, it is a direct consequence of using the military for policing tasks that is both widespread (having been reported in the majority of Mexico’s 32 states) and systematic. Among other factors, since soldiers are trained for war, members of the armed forces often react with the mentality that they are involved in a war against enemy combatants, leading to the excessive use of force. Another structural factor perpetuating systematic military abuses is the historic impunity for these abuses that stems largely from the use of military jurisdiction to investigate such crimes, to be discussed further below.

Illustrative examples of specific military human rights violations committed under the current administration include the case of four civilians shot and killed by soldiers on the evening of March 26, 2008 on a road in the state of Sinaloa. The victims were not armed, nor is there any evidence that they were participating in any crime. Another example from Sinaloa state occurred when soldiers shot and killed five family members at a military checkpoint in La Joya, Sinaloa, on June 1, 2007. In this case, soldiers opened fire on eight members of the Esparza Galaviz family. Five of the family members, all women and children, died in this attack, while the other three (including two more children) sustained injuries.¹² This is one of more than seventeen cases of violations committed at a military checkpoint

reported since January 2007.¹³ Other arbitrary executions have included the shooting of two *campesinos* in Lachivía, Oaxaca, in August 2008¹⁴ and the shooting of 16-year-old Iván Calderón in front of a military camp in Morelia, Michoacán, on May 12, 2008.¹⁵ There is no indication that any of these victims was engaged in illegal activities of any kind.

Other types of human rights violations that characterize the crime war are exemplified by the generalized abuses that took place in Carácuaro, Nocupétaro, and Huetamo, in the state of Michoacán, during the first week of May 2007. Following an ambush in which several soldiers were killed by criminals, the army initiated a search for the perpetrators that quickly turned into an excuse for indiscriminate repression against the region’s population. More than 1,000 soldiers maintained the area under a virtual siege for three days, while the mayors of Carácuaro and Nocupétaro reported “countless” cases of torture and warrantless searches of homes.¹⁶ Several residents who attempted to file reports of human rights abuses with the state human rights commission were prevented from doing so, beaten, and threatened in retaliation.¹⁷ Soldiers also sexually abused four minor girls in Nocupétaro, Michoacán. After interrogating the girls about drug cartel activity in the area, beating them, and threatening to kill them, soldiers took the victims to a military base and sexually assaulted them.¹⁸ The National Human Rights Commission, which documented the case, later verified that two of the girls had been raped.¹⁹

It is also worth noting the pattern of attacks and threats against journalists who attempt to cover police and military operations. A paradigmatic example of abuses in this category include attacks and threats by soldiers against journalist Emilio Gutiérrez Soto and his family in Chihuahua in May 2008, which forced him to flee the country and seek asylum in the United States.²⁰

Finally, the war on crime lends itself to the existing tendency toward criminalization of social protest and the persecution of social movements by Mexican state authorities, producing a high number of unjustified detentions of social activists who are accused of some form of criminal activity. Authorities make use of the war on drug trafficking as a pretext for the repression of indigenous communities, whose leaders may be accused of organized crime.²¹ Meanwhile, in states such as Chiapas

migrants are robbed and attacked by state authorities who sometimes cite the need to search for arms and drugs.²²

ENTRENCHED IMPUNITY AND THE ILLEGAL EXTENSION OF MILITARY JURISDICTION

A key factor facilitating the human rights abuses highlighted above is Mexico's environment of entrenched impunity for human rights violations. Indeed, unlike other Latin American countries, where years of struggle have led to trials and convictions for many human rights violators from the era of military dictatorships, Mexico has not held accountable any perpetrators of its own Dirty War of the late 1960s through the early 1980s.²³ The absence of such accountability has set the stage for continued impunity for violations today.

In the sphere of military human rights violations, Mexico's continued use of military jurisdiction to investigate human rights crimes helps to maintain impunity. Article 13 of the Mexican Constitution establishes that "military jurisdiction subsists for crimes and offenses against military discipline. . ."²⁴ However, "military discipline" is defined by the army, in Article 57 of its Code of Military Justice, in an expansive manner that includes even crimes committed by military personnel that violate civilians' basic human rights.²⁵ These crimes are thus investigated and tried by military authorities who lack impartiality and independence from the agents they are charged with investigating.

Numerous international human rights bodies have explained that Mexico's use of military jurisdiction to investigate and try human rights cases is not permissible under international law and prevents accountability for violations. Former UN Special Rapporteur on Torture Sir Nigel Rodley reported after a visit to Mexico, "Military personnel appear to be immune from civilian justice and generally protected by military justice,"²⁶ and specified, "[c]ases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice."²⁷ Similar calls have been issued to the Mexican government by the UN Committee Against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Arbitrary Detention.²⁸ It is also worth noting the constant jurisprudence of the Inter-American Court of Human Rights, which establishes that military jurisdiction "is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations."²⁹ At the end of 2008, however, Mexican authorities continued to apply military jurisdiction to cases of human rights abuses in violation of the Constitution and the international standards listed above.

VIOLATIONS IN MEXICO'S CRIMINAL JUSTICE SYSTEM

Military abuses are far from the only type of violation that characterizes Mexico's war on crime. Rather, for individuals arrested by police in Mexico, human rights violations are systematic and widespread at both the state and federal level. Among subjects of great concern in this regard are the violation of the rights to personal liberty, due process, and physical integrity.

Torture in particular continues to be a hallmark of Mexican police work. Researchers for Mexico's National Human Rights Center have concluded that roughly two-thirds of Mexico's investigatory police rely on torture to obtain information from detainees.³⁰ Here too, entrenched impunity perpetuates violations. Although more than one out of five of the recommendations issued by Mexico City's Human Rights Commission over its fifteen-year period of operations have been for cases of torture committed by city authorities, with city prosecutors opening 197 investigations based on complaints of torture from July 2005 to July 2008, none has led to the conviction of those responsible.³¹ In Jalisco, despite the enactment fourteen years ago of a law against torture, no official has yet been convicted of this crime.³² In the major city of Monterrey, Nuevo León, the ten-year-old law against torture has led to just one conviction.³³

“The dramatic surge in reported military human rights violations following the implementation of militarized anti-crime operations is not a phenomenon explained by the wayward actions of a few isolated individuals or regiments. Instead, it is a direct consequence of using the military for policing tasks that is both widespread . . . and systematic.”

In light of the dysfunctional model by which Mexico's criminal justice system has long functioned—one that too often convicts defendants based on confessions extracted under torture, which in many cases are not true—the comprehensive reform of the criminal justice system has been one of the long-standing demands of the Mexican human rights movement.

Unfortunately, Felipe Calderón's 2007 proposals for criminal justice reform made clear that respect for human rights was not the defining factor in his plan. The modified version of his proposed reform package that eventually became law and reformed the Mexican Constitution in June 2008 contained some essential advances, but also serious setbacks for human rights, publicized by the government as necessary measures in the war on crime.

Among the advances contained in the recent criminal justice reforms, the most notable is the adoption of an adversarial, oral criminal justice system. Following years of advocacy by civil society, academics, and experts in this field, Article 20 of Mexico's Constitution now explicitly establishes a criminal justice system based on oral trials for criminal defendants, to be implemented gradually over the next seven years.

Among the setbacks contained in the same criminal justice reform is the elevation to Constitutional status of *arraigo*. *Arraigo* is a type of detention, already common in Mexico, in which prosecutors may detain individuals for months prior to charging them with any crime. This logic of 'detain first and investigate later' has naturally encouraged the use of torture during the period of *arraigo* to produce leads regarding the possible participation of the detainee or others in crimes. In cases of suspected organized crime, Article 16 of Mexico's Constitution now provides that prosecutors may place individuals under *arraigo* for up to eighty days.³⁴ This prolonged period of detention without charge violates the right to liberty established in the American Convention on Human Rights and the International Covenant on Civil and Political Rights. As Human Rights Watch has pointed out, the eighty-day period of pre-charge detention now authorized in the Mexican Constitution is also "the longest of its kind in any Western democracy. In other countries, the limit for any form of pre-charge detention. . . is generally less than seven days."³⁵

The same set of criminal justice reforms also incorporated into the Constitution a special "regime" of exceptional measures for individuals accused of involvement in organized crime, which restricts due process rights and applies starting from the phase of investigation. This special regime of exception allows for intrusive and human rights-violating measures (such as *arraigo* and relaxed evidentiary standards) that undermine basic due process guarantees to the detriment of those investigated, charged, or sentenced within its framework.

By establishing two separate justice systems in the Mexican Constitution—one for organized crime and another for common crimes—the reforms in effect translate into one criminal justice system for those seen as citizens and another for those seen as enemies of the State. They divide Mexican society into those who possess human rights, on one hand, and those who are seen as enemies first and human beings second.

ENEMIES OF THE STATE: GOVERNMENTAL DISCOURSE IN THE WAR ON CRIME

The government has frequently sought to justify its actions in the war on crime, including human rights violations, by portraying human rights as irrelevant ideals or as an obstacle to fighting criminals. The former head of Mexico's Special Office for the Investigation of Organized Crime argued that the criminal justice reforms discussed immediately above were necessary to fight crime because "[w]e do not live in an ideal country fit for the application of ideal laws, we live in a country in con-

flict. . ."³⁶ For those who might still have qualms over the annulment or violation of their human rights, the Calderón administration has made clear that persons suspected of organized criminal activities (portrayed in official discourse as the only population affected negatively by the authorities' war against crime) are not normal citizens in any case, but rather enemies of the State: "in this war against crime, against the enemies of Mexico, there will be no truce made nor quarter given."³⁷ This dehumanizing mentality is also apparent among members of the security forces, such as one high-profile army general who summarized the results of a shoot-out in which he reported that fourteen individuals had been killed by stating simply, "[now] there are fourteen fewer criminals."³⁸

In recent months, the government has moved beyond a mere false dichotomy between human rights and public security, and has sought to appropriate human rights discourse to portray the government's drug war as affirmatively in favor of human rights. In December 2008, Calderón explained during a ceremony to present the National Human Rights Award:

" . . . the principal human rights challenge facing Mexico today comes from the unpunished action of crime . . . if we are to transform Mexico into a country characterized by the rule of law and human rights, where the latter are fully respected, it is clear that the public and governmental authorities must join forces [against] this principal challenge of Mexican society.

. . .

This is the reason for the [militarized public security] operations, in which we strengthen the power of the State in regions that are dominated by the unpunished action of crime."³⁹

This argument pays lip service to human rights as a concept, yet seeks to divert attention from government authorities' failure to respect a broad spectrum of human rights by convincing the public that organized criminals, the enemies of the State, are the real source of human rights violations.⁴⁰ In this way, the government seeks to neutralize one of the human rights movement's most powerful tools—the moral capital of the words 'human rights'—by turning it into a weapon in its own arsenal as it wages the drug war.

CONCLUSION

Rather than a just war against enemies of the State, Mexico's war on crime frequently takes the form of an assault against civilians who are arbitrarily detained, tortured, or even killed within its framework. As has historically been the case in Mexico's criminal justice system, these and other violations often fall disproportionately on members of marginalized social groups, who may or may not have any connection to crime.

As Mexico seeks to reverse the dramatic rise in drug-related crime seen over the past few years, it is necessary to reorient the criminal justice system to embody the positive aspects of recent legal reforms, while taking decisive action to eliminate policies and practices that violate human rights. In light of the widespread human rights violations committed by the military, in a strategy of force that has not reduced overall levels of criminal violence, the government must withdraw the armed forces from the streets and recognize that law enforcement duties require the action of an effective, professionalized police structure act-

ing in concert with an efficient judicial system. To this end, the government should implement the system of adversarial, oral criminal trials established in the Constitution as soon as practicable, observing the prohibition on the use of testimony obtained through torture and consequently catalyzing improvements in police investigatory practices. Another concrete step urgently needed in the current context is the prosecution—in *civilian* jurisdiction—of state security agents who commit torture and other human rights violations, ending the current cycle of impunity. Such measures would in turn increase public trust in police, as would the existence of effective police oversight mechanisms and the recruitment and training of a better-paid and better-educated police force. In a country in which under-reporting of crimes to the authorities is the leading cause of impunity for criminals, the advantages of these steps for human rights and security alike are clear.

Simultaneous actions to eliminate structural causes of insecurity, such as those aimed at reducing poverty and vast disparities in access to government services, are crucial. Such measures, sometimes erroneously dismissed as idealistic plans that must wait until the crime problem is solved, are instead urgent legal obligations and some of the most critical steps to achieving security in the country (addressing these problems also appears considerably less idealistic than a plan to achieve security through indefinite combat against a self-replenishing supply of criminals).

In short, as photos and headlines continue to bring news of Mexico's crime war to the international community, it is increasingly crucial to recall that reducing criminal violence is a goal that neither justifies nor, evidently, is advanced by unleashing a systematic war on the human rights of Mexico's population.

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ENDNOTES: Structural Human Rights Violations

¹ Part two of the series will focus on the impact of US foreign policies, specifically the Mérida Initiative aid package, on the human rights situation in Mexico.

² Enrique Méndez, *El narcotráfico, la "mayor amenaza" a la seguridad nacional, asegura la Sedena*, LA JORNADA, Sept. 30, 2008, available at <http://www.jornada.unam.mx/2008/09/30/index.php?section=politica&article=007n1pol>.

³ Alfredo Méndez, *Se actuará contra 'blancos específicos' en el combate al crimen organizado*, LA JORNADA, Jan. 9, 2008, available at <http://www.jornada.unam.mx/2008/01/09/index.php?section=politica&article=008n1pol>. Author's translation.

⁴ See Maureen Meyer, Coletta Youngers and Dave Bewley-Taylor, *At a Crossroads: Drug Trafficking, Violence and the Mexican State* 1 (Washington Office on Latin America, Nov. 2007), available at <http://www.wola.org>; See also Luciano Franco, 2005, *el año de la violencia en México: CNDH; hubo 1,500 ejecuciones*, LA CRÓNICA DE HOY, Jan. 26, 2006, available at http://www.cronica.com.mx/nota.php?id_notas=222888.

⁵ Mexican Attorney General Eduardo Medina Mora states that 5,376 such homicides were committed between 1 January and 2 December, 2008. See Afp & Reuters, *Medina Mora a medios extranjeros: los narcoasesinatos crecieron 117% en un año*, LA JORNADA, Dec. 9, 2008, available at <http://www.jornada.unam.mx/2008/12/09/index.php?section=politica&article=011n1pol>. The National Human Rights Commission placed this figure at 5,585 by mid-December 2008. See National Human Rights Commission, *Segundo Informe Especial sobre el ejercicio efectivo del derecho fundamental a la seguridad pública en nuestro país*, Sec. IV.1, Dec. 2008, available at <http://www.cndh.org.mx>.

⁶ For instance, the government sent thousands of additional soldiers to reinforce Joint Operation Chihuahua over the course of 2008. See, e.g., *Reforzarán 1,400 militares el Operativo Chihuahua*, MILENIO, July 1, 2008; See also Alfredo Méndez, *Reforzarán mil 200 soldados la Operación Conjunta Chihuahua*, LA JORNADA, Nov. 28, 2008, available at <http://www.jornada.unam.mx/2008/11/28/index.php?section=politica&article=007n2pol>; Jorge Alejandro Medellín, *Sedena planea ampliar operativos antidrogas*, EL UNIVERSAL, Oct. 16, 2008, available at <http://www.eluniversal.com.mx/nacion/162990.html>.

⁷ Data available in the National Human Rights Commission's annual report for 2006, at <http://www.cndh.org.mx>.

⁸ Data available in the National Human Rights Commission's annual report for 2008, at <http://www.cndh.org.mx>.

⁹ Miguel Agustín Pro Juárez Human Rights Center, *¿Comandante supremo? La ausencia de control civil sobre las Fuerzas Armadas al inicio del sexenio de Felipe Calderón* (2009), p. 24.

¹⁰ *Id.*

¹¹ Victor Ballinas, *Chihuahua, primer lugar en abusos de militares: CNDH*, LA JORNADA, July 16, 2008, available at <http://www.jornada.unam.mx/2008/07/16/index.php?section=politica&article=019n1pol>. Author's translation.

¹² See, e.g., *Matan a familias en retén*, REFORMA, June 3, 2007.

¹³ See Miguel Agustín Pro Juárez Human Rights Center, *¿Comandante supremo? La ausencia de control civil sobre las Fuerzas Armadas al inicio del sexenio de Felipe Calderón* (2009), p. 26AFP, *Matan militares a embarazada por "confusión" en Chihuahua*, EL SOL DE HIDALGO, Dec. 12, 2008, available at <http://www.oem.com.mx/elsoldehidalgo/notas/n968011.htm>.

¹⁴ Genaro Altamirano and Alberto López, *Soldados atacan y matan a 2 campesinos*, EL UNIVERSAL, 7 de agosto de 2008, available at <http://www.eluniversal.com.mx/estados/69266.html>.

¹⁵ Rafael Rivera, *Soldado mata a menor frente a campo militar*, EL UNIVERSAL, May 13, 2008, available at <http://www.el-universal.com.mx/nacion/159445.html>.

¹⁶ Francisco Gómez and Marco Antonio Duarte, *El Ejército asume el control de Carácuaro*, EL UNIVERSAL, May 5, 2007, available at <http://www.el-universal.com.mx/estados/64593.html>. Author's translation.

¹⁷ Ernesto Martínez, Jaime Márquez, Antonio Aguilera, Daniela Morales, and Gustavo Castillo, *Denuncia alcalde de Nocupétaro abusos de las fuerzas armadas durante operativos*, LA JORNADA, May 5, 2007.

¹⁸ Ángeles Cruz, *Ante la CNDH, mujeres violadas en Michoacán relatan agresión*, LA JORNADA, May 17, 2007, available at <http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=016n2pol>.

¹⁹ See *Soldados sí violaron a 2 menores en Carácuaro*, LA CRÓNICA DE HOY, June 15, 2007, available at http://www.cronica.com.mx/nota.php?id_notas=306833.

²⁰ See, e.g., Rubén Villalpando y Julia Antonieta Le Duc, *Periodista pide asilo en EU por acoso de militares*, LA JORNADA, June 20, 2008, available at <http://www.jornada.unam.mx/2008/06/20/index.php?section=politica&article=020n2pol>.

²¹ Such repression includes the persecution of social leaders and community members, who may be searched, threatened, or detained under the pretext of possessing arms or being otherwise connected to crime. See, e.g., Hermann Bellinghausen, *Acciones intimidatorias del Ejército contra comunidad zapoteca en Oaxaca*, LA JORNADA, June 28, 2007, available at <http://www.jornada.unam.mx/2007/06/28/index.php?section=politica&article=016n1pol>; Ángeles Mariscal, *Incursión militar en Chiapas*, LA JORNADA, Sept. 1, 2007, available at <http://www.jornada.unam.mx/2007/09/01/index.php?section=politica&article=012n3pol>.

²² See María de Jesus Peters, *Militares cobran entrada al país a indocumentados, dicen en Chiapas*, EL UNIVERSAL, April 14, 2007.

²³ Although of a smaller numerical scale than the Dirty Wars of the Southern Cone, this period of state-sponsored repression included the use of forced disappearance (which claimed hundreds and perhaps more than 1,000 victims) and several high-profile massacres. See *Esclarecimiento y sanción a los delitos del pasado durante el sexenio 2000-2006: Compromisos quebrantados y justicia aplazada*, 2006 (book by a coalition of seven Mexican NGOs and a national network of human rights organizations, on file with author), pp. 9-10, 50.

²⁴ Author's translation.

²⁵ Earlier this year, Center Prodh filed two *amparos* (legal actions designed to protect an individual against illegal governmental conduct) challenging the constitutionality of Mexico's Code of Military Justice insofar as it extends military jurisdiction over cases of human rights violations. These legal actions come in the context of the military's arbitrary shooting of six individuals in the community of Santiago de Caballeros, Sinaloa, in March 2008, resulting in the deaths of four of the victims. Following the initial denial of the *amparo* actions, we and several of the victims' family members appealed and asked Mexico's Supreme Court to hear the case, which would give the Court the opportunity to declare that the use of military jurisdiction to investigate and judge human rights violations is unconstitutional.

²⁶ *Report of the Special Rapporteur*, ¶ 86, E/CN.4/1998/38/Add.2 (Jan. 14, 1998) (prepared by Mr. Nigel Rodley).

²⁷ *Id.* at ¶ 88j.

²⁸ See Committee Against Torture [CAT], *Concluding Observations*, ¶ 14, CAT/C/MEX/CO/4 (Feb. 6, 2007); Committee Against Torture, *Report on Mexico Produced by the Committee Under Article 20 of the Convention*, ¶ 220g, CAT/C/75 (May 25, 2003); *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 69a(vi), E/CN.4/2006/61/Add.4 (Jan. 13, 2006) (prepared by Yakin Ertürk); *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, ¶ 90, E/CN.4/2004/80/Add.2 (Dec. 23, 2003) (prepared by Rodolfo Stavenhagen); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, ¶ 107f, E/CN.4/2000/3/Add.3 (Nov. 25, 1999) (prepared by Asma Jahangir); *Report of the Special Rapporteur on the independence of judges and lawyers*, ¶ 192d, E/CN.4/2002/72/Add.1 (Jan. 24, 2002) (prepared by Dato'Param Kumaraswamy); Working Group on Arbitrary Detention, *Report of the Working Group on*

Arbitrary Detention on its Visit to Mexico, ¶ 72f, E/CN.4/2003/8/Add.3 (Dec. 17, 2002).

²⁹ *Zambrano Vélez v. Ecuador*, 2007 Inter-Am. Ct. H.R. (ser. C) No. 166, at 19 (July 4, 2007).

³⁰ Georgina Pineda, *Dos de cada tres judiciales torturan para investigar*, MILENIO, Dec. 15, 2008, available at <http://www.milenio.com/node/132062>. The Committee Against Torture found in 2003 that torture remains a systematic practice in Mexico, saying "torture continues to be practised frequently in Mexico. . . the widespread absence of penalties, whether administrative or criminal, for those responsible [is a contributing factor]." See Committee Against Torture [CAT], *Report on Mexico Produced by the Committee Under Article 20 of the Convention*, ¶ 137-38 CAT/C/75 (May 25, 2003).

³¹ See David Saúl Vela & Georgina Pineda, *Por tortura, una de cada 5 recomendaciones en el DF*, MILENIO, Dec. 16, 2008, available at <http://impreso.milenio.com/node/8509865>.

³² Organizaciones Civiles de Derechos Humanos, *Boletín de prensa: Visita del Subcomité para la Prevención de la Tortura a México*, Sept. 12, 2008, available at <http://www.cencos.org/es/node/19396>.

³³ *Id.*

³⁴ The initial limit established in Article 16 is forty days, after which the period of *arraigo* may be extended up to eighty days.

³⁵ Letter from José Miguel Vivanco, Executive Director, Americas Division, Human Rights Watch, to President Felipe Calderón (March 6, 2008) available at http://hrw.org/english/docs/2008/03/06/mexico18221_txt.htm.

³⁶ Ignacio Ilzaga, *Es rosa, no draconiana, la reforma de justicia: PGR*, MILENIO, Feb. 18, 2008, available at <http://www.milenio.com/monterrey/milenio/notaanterior.asp?id=923194>. Author's translation.

³⁷ Presidencia de la República, *En la guerra contra la delincuencia no habrá tregua ni cuartel: Presidente Felipe Calderón*, Sept. 12, 2008, available at <http://www.presidencia.gob.mx/prensa/?contenido=38611>. Referring to the violent character of the government's war on crime, Calderón has stated in numerous speeches, "If you see dust flying, don't worry, it's because we're cleaning the house." See Sergio Javier Jiménez, *Calderón exalta lucha anticrimen*, EL UNIVERSAL, Feb. 15, 2008, available at <http://www.eluniversal.com.mx/nacion/157584.html>. Author's translation. See also Office of the President, *Conferencia Magistral del Presidente Calderón en la Universidad de Harvard* (translation of speech), Feb. 11, 2008, available at <http://www.presidencia.gob.mx/prensa/?contenido=33742>.

³⁸ *La CNDH debería hacer recomendaciones a los cárteles, dice general en Chihuahua*, LA JORNADA, Apr. 8, 2008, available at <http://www.jornada.unam.mx/2008/04/08/index.php?section=politica&article=010n1pol>. Author's translation.

³⁹ President Felipe Calderón, *Discurso en la Entrega del Premio Nacional de Derechos Humanos 2008* (Dec. 11, 2008) available at <http://www.presidencia.gob.mx/prensa/?contenido=40826>. Author's translation.

⁴⁰ See Miguel Agustín Pro Juárez Human Rights Center, Sistema integral de información en derechos humanos (Sididh), *Principal reto en DH "acción impune de la delincuencia": Calderón*, Dec. 12, 2008, available at <http://sididh.wordpress.com/>.