

Security and Human Rights: Human Rights violations in the fight against organized crime

Briefing for the High Level Dialogue on Human Rights EU-Mexico

In recent years, Mexico has experienced a humanitarian crisis caused by the security strategy and the so-called “war against organized crime”. Security policies have taken precedence over the respect for human rights. Despite a new federal government taking power in December 2012, security policies are still based on militarization and the use of even lethal force.

The participation of the Armed Forces in public security tasks has significantly increased, even when several international human rights mechanisms have consistently recommended that police tasks should be carried out by civilian authorities. A failed drug policy, based on prohibition, has negatively impacted the lives of thousand people across the country, putting at risk the full exercise of human rights and the stability of the Rule of Law.

The numbers of abuses and human rights violations committed in Mexico during the last years is frightening and provide a strong foundation from which to state that human rights violations in Mexico are systematic and generalized. Moreover, we believe that the intensity and prolonged conflict period between the Armed Forces and organized crime demonstrates that we are facing an armed conflict in several regions of the country.

The official and non-official figures show that violence in Mexico has left over 100.000 people killed, more than 150.000 internally displaced people due to the increasing violence,¹ and over 25.000 people disappeared during the last administration.² Furthermore, thousands of complaints of torture have been presented before the different public human rights institutions (ombudsman)³ and have demonstrated the risks in the extensive use of the figure of *arraigo*, a form of arbitrary detention which allows for up to 80 days of detention.

A year after the change of power at the federal level, despite repeated statements regarding a shift in the security strategy, it remains unchanged. According to information provided by the National Commission for Human Rights, between December 1, 2012, and January 1, 2014, at least 938 complaints of human rights violations were filed against the Armed Forces.⁴ To date, the federal government has not been clear

¹ Informe del Observatorio de Desplazamiento Interno del Consejo Noruego para Refugiados sobre el desplazamiento forzado en México a consecuencia de la violencia de los cárteles de la droga, disponible en [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E65A0D75E1B5E8F8C125781F00318DF2/\\$file/Mexico_Dec2010_sp.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E65A0D75E1B5E8F8C125781F00318DF2/$file/Mexico_Dec2010_sp.pdf)

² Steimberg, Nik. “Vanished: The disappeared of Mexico’s Drug War”. Human Rights Watch. New York, 2013. Disponible en <http://www.hrw.org/news/2014/01/08/vanished-disappeared-mexicos-drug-war>

³ RedTDT. “Informe conjunto presentado por las organizaciones de la sociedad civil mexicana para la segunda ronda del Examen Periódico Universal de México”. 4 de marzo 2013. Disponible en <http://cmdpdh.org/wp-content/uploads/2013/07/Informe-conjunto-presentado-por-organizaciones-de-la-sociedad-civil-mexicana-para-la-segunda-ronda-del-EPU-a-M%C3%A9xico.pdf>

⁴ SEDENA. “Quejas y Recomendaciones Notificadas por la Comisión Nacional de Derechos Humanos”. <http://www.sedena.gob.mx/images/stories/D.H/2014/graficaquejas.pdf>

regarding the withdrawal of the Armed Forces from public security tasks and has not given any details on incorporating human rights standards into the security policy. In addition, military jurisdiction is still competent in investigating abuses committed by the military and the impunity for such crimes remains almost absolute.

Cases of torture have alarmingly increased in the so-called war against organized crime, and it has been systematically used for the procurement of illicit evidence, which is frequently admitted by judges as valid. Moreover, there has not been any substantial progress in the investigation and processing of those responsible for committing torture, and the lack of autonomous agencies to implement the Istanbul Protocol has hindered its capacity.

Cases of sexual violence as torture have been documented as a tool for obtaining self-incriminating confessions and other evidence. This is the case of Miriam López, who was arbitrarily detained at a military checkpoint in the city of Tijuana, Baja California, and taken into a military facility. She was then tortured and sexually abused on multiple occasions by military elements, who forced her into signing a self-incriminating declaration. Two years later, this case remains in total impunity.

Torture in Mexico is rarely punished, and impunity is the rule. According to official information, since 2006 only 12 people have been charged for torture in Mexico.⁵

Enforced disappearance has reemerged in Mexico with a striking force since 2006 with the current war on drugs. Unlike what was experienced in Mexico during the Dirty War years in which disappearances were committed for political purposes, today these are not only committed against activists or political opponents but extend to broad groups of the general population. People with no political or social activism, accused by the State of being part of organized crime, have been victims of enforced disappearance.

While there are no official figures on the number of victims of enforced disappearance, the Ministry of the Interior revealed at the beginning of 2013 that the number of disappeared has reached 26.000,⁶ although there is no information on how many of these were committed by State actors or third parties with the approval of the authorities. In many cases, despite evidence revealing an enforced disappearance, authorities deny investigating as such and are documented as a different crime, even creating the infamous term of *levantones*.⁷

⁵Información obtenida por la CMDPDH mediante solicitudes de acceso a la información 0001700000914

⁶Booth, William. "Mexico's crime wave has left about 25,000 missing, government documents show" en *The Washington Post*. 29 denoviembre de 2012.

⁷HRW. "Ni seguridad, ni derechos: Ejecuciones, desapariciones y tortura en la 'guerra contra el narcotráfico' de México". Human RightsWatch, 2011.

Militarization of public security in Mexico has also had a direct impact in the exercise of the right to life, in which homicide rates have dramatically increased in recent years. At least 100.000 people have been executed under circumstances related to the war against organized crime.⁸

Children and young people have been particularly affected by this context of violence, where the rights of children remain invisible. Between 2006 and 2011, over 1.200 children lost their lives due to the militarized security strategy.⁹

In the context of joint operations of the Armed Forces and security agencies, several extrajudicial executions have been documented, but these have been denied by federal and local authorities. Authorities have even preferred to use the term “collateral damage”.¹⁰

The “war against organized crime” has been justified in Mexico through the existence of a system of exception that has normalized several practices which are contrary to human rights, such as *arraigo* and protected witnesses. Echoing the international arguments regarding the need to strengthen the faculties of the State for counter terrorism, Mexico integrated into its national legislation the paradigm of an enemy criminal system.

Since then, *arraigo*, house searches, protected witnesses and automatic preventive prison have become the most frequent “techniques” for criminal investigation in the country. In Mexico, judicial guarantees have become flexible, extending the faculties of the State to detain someone. This has threatened the true sense of justice.

Between January 2008 and October 2012, more than 8.595 people were detained under *arraigo*, but only 3.2% of them were eventually convicted,¹¹ showing its inefficiency as a measure to facilitate the investigation of organized crime.

Despite some steps towards restricting military jurisdiction in Mexico, it is still a reality. In the context of an elevated presence of military elements in the streets taking on tasks of public security, the increase in human rights violations committed by the Army is evident. Most of them remain unpunished.

According to information provided by the Ministry of Defense, from 113 recommendations issued by the CNDH against them between 2006 and 2012, only two judgments were issued even though 63 recommendations were already concluded. It should also be noted that the CNDH has only issued recommendations to the Ministry of Defense in 1.5% of the total complaints received against them.

⁸ Miroff, Nick y Booth, William. “Mexico’s drug war is at a stalemate as Calderon’s presidency ends”. en *Washington post*. 27 de Noviembre de 2012.

⁹ REDIM. “Informe Alternativo sobre el Protocolo Facultativo de la Convención de los Derechos del Niño relativo a la Participación de Niños en Conflictos Armados”. Red por los Derechos de la Infancia en México. México, 2011

¹⁰ Acosta, Mariclaire. “La impunidad crónica de México: Una aproximación desde los derechos humanos”. CDHDF, abril 2012. Pp. 90

¹¹ Información recabada por la CMDPDH a través de solicitudes a la PGR de acceso a la información pública (oficios No. SJA/DGAJ/06812/20011, No. SJA/DGAJ/05398/2012 y No. SJA/DGAJ/11715/2012)

Investigating and prosecuting militaries for human rights violations is still difficult and delayed due to the lack of clarity on the capacity to initiate the investigation. In addition, a formal declination of competence is still needed from the Military Attorney General. Despite the Supreme Court having declared unconstitutional article 57 of the Military Code of Justice, the reform is still pending to be discussed and approved by the Congress.

Such is the case of Mr. Jorge Parral, who was presumably extrajudicially killed in 2010 by elements of the Army in the state of Nuevo Leon. On April 26, the Military Attorney General initiated an investigation on the crime and denied jurisdiction in favor of civil authorities. The victims had to present recourse of *amparo* in order to force the rejection of military jurisdiction, which was only conceded three years later, in October 2013.

Drug policies based on prohibition have not produced the expected results. On the contrary, they have generated harmful effects hindering the human rights of thousands of people, and has even put at stake the stability of the Rule of Law. In light of the deteriorated situation and the elevated human and social costs, it becomes imperative to change the current strategy of the “war on drugs” and implement a new paradigm based on health and respect for human rights.

Thus, we urge Mexico and the European Union, in the context of the High Level Political Dialogue on Human Rights, to look for alternatives to the current international drug policy, and in particular for the security strategy implemented to combat organized crime. The crisis in Mexico has to come to an end.

At a multilateral level, Mexico and the European Union should promote at different forums a real shift in the international drug control strategy intended to avoid the use of the Armed Forces as the cornerstone of security and drug control policies.

Similarly, it could be promoted at the United Nations the creation of a Special Rapporteur for the protection of human rights in the context of the fight against organized crime.

In addition, Mexico and the EU should promote the inclusion of a genuine human rights perspective and the inclusion of civil society in the United Nations General Assembly Special Session on drugs to be held in 2016.

Both governments should work together for the harmonization of the international conventions of the United Nations on drugs, so that human rights conventions take precedence.

At a domestic level, Mexico and the EU should promote new policies to put an end to the criminalization of drug users, emphasizing drug policies based on health, moving away from pretenses of national security.

In addition, Mexico and the EU should promote exhaustive and impartial investigations on all allegations of human rights violations committed by the Armed Forces in civilian tribunals, and to punish all those responsible.

Finally, both governments should implement harm reduction policies for problematic drug users, and guarantee their access to health.