

VIA E-MAIL: kfox@ohchr.org

Kate Fox Principi
Secretary Human Rights Committee, Section One
Human Rights Committee
Human Rights Treaties Division
Office of the United Nations High Commissioner for Human Rights

25 April 2014

Re: List of Issues Prior to Reporting - Mexico

Dear Ms. Fox,

The Open Society Justice Initiative writes to bring to the Human Rights Committee's attention several key issues in advance of the development of a List of Issues Prior to Reporting (LOIPR) for Mexico. We respectfully submit the following concerns (alongside their relevant Covenant articles) for the Committee's consideration for inclusion in the LOIPR.

1. Accountability for Grave Crimes (Articles 6, 7, 8)

In December 2012, President Enrique Peña Nieto took office committing to address the rampant drug-related violence that has wracked Mexico since 2006, bringing a toll of 70,000 deaths, 26,000 reported disappearances, and 250,000 displaced persons. Despite these staggering figures, the Mexican government has failed to adequately define and make illegal under domestic law a number of these crimes. The crime of enforced disappearances is not yet adequately defined in federal and state criminal codes, while most of the state legislation criminalizing torture falls short of international standards. Indeed, impunity for torture in Mexico, for state and non-state actors alike, has been nearly absolute. Moreover, in the rare instances where it is investigated and prosecuted, torture is often categorized as a lesser offense. Related to the epidemic of disappearances, the additional crime of enslavement has not yet been criminalized at either the federal or state level.

The Committee should ask Mexico:

- To explain the domestic legal framework that currently applies, and the financial and human resources allocated, for the prosecution and investigation of the following serious crimes: extrajudicial killings, enforced disappearances, torture, and enslavement/trafficking.
- To identify what steps it is taking to review efforts by law enforcement public security authorities to investigate and sanction these crimes and what, if any, steps the state is taking to address gaps or inadequacies in this regard.
- To clarify whether it intends to submit to the Committee on Enforced Disappearances' competence to receive and consider individual communications. Inclusion of this matter in the LOIPR may encourage the government to do so, given that it rejected a similar recommendation by states during its recent UPR cycle.

2. Effective Implementation of the Victims' Law (Article 3)

Mexico's new General Victims' Law, signed by President Peña Nieto in January 2013,

was designed, in part, to respond to a prolonged surge in violent crime and human rights abuses. It obligates Mexico's states to ensure access to truth, justice and reparations, including the creation of a national victims' registry, legal representation for those who wish to pursue criminal prosecution, and the establishment of a compensation mechanism.. The Victims' Law requires that all 32 federal entities of Mexico should adopt local victims' laws, create victims' registries, legal assistance units and establish reparation funds by May 2014. Currently, however, only six states (Aguascalientes, Colima, Morelos, Oaxaca, Querétaro, and Quintana Roo) have advanced in a significant manner towards legislative harmonization and institution building, while the Executive Commission for Implementation of the Victims' Law (CEAV) reports that some states are ignoring their legal obligation to do so. Relevant provisions of the Victims' Law must also be incorporated into the new National Code of Criminal Procedure (NCPC), which was signed into law in March 2014 and continues Mexico's "transition from an inquisitorial criminal justice system to an adversarial one" (Common Core document, 18 July 2012, para. 95).

The Committee should ask Mexico:

- To provide information on the status of implementation of the Victims' Law at both the federal and state levels.
- To request specific information from the following district authorities, as identified by CEAV, as to why they have not yet begun implementing the Law: Chiapas, Baja California Sur and Tlaxcala.
- To clarify how it intends to harmonize provisions of the Victims' Law alongside those of the NCPC, as well as with other relevant human rights legislation, i.e., against torture and enforced disappearances.

3. Access to Data and Information (Article 19)

Despite some efforts at declassifying information from the country's so-called "dirty war," Mexico has never scrutinized large-scale violence in its modern history through rigorous national efforts at documentation, clarification, acknowledgment, or public accountability. Important data and details regarding disappearances, broadly, as well as more specifically the killings and disappearances of migrants, have been unevenly reported and often kept confidential despite appeals by victims, their family members, and civil society for greater public disclosure and accountability. This has contributed to widely varying assessments of the scale and nature of grave crimes committed, and confusion over the adequacy of the criminal justice response to grave crimes. As an illustration of this problem, the criminal justice statistics provided in Mexico's Common Core document (paras. 59-60) fail to disaggregate any of the persons prosecuted or sentenced by the nature of the crimes committed.

Such information that is publicly available has been disclosed largely as a result of requests made under Mexico's Law on Transparency and Access to Public Governmental Information, which established a general right to access to public information and created the Federal Institute for Access to Public Information and Data Protection (IFAI). However, IFAI has continued to withhold critical information of public interest, including information held by Mexico's prosecutorial authorities related to the investigations of grave human rights violations. To this end, it will be important for the Committee to clarify that, consistent with Mexico's right to truth obligations, it must disclose significant information of public interest regarding any investigations (or the lack thereof) for grave human rights violations and serious violations of international humanitarian law.

The Committee should ask Mexico:

- To provide it with information as to how many cases of extrajudicial killings, enforced disappearances, disappearances, torture, and enslavement/trafficking have been recorded; how many have been investigated over the past 10 years; and what the results of those investigations have been.
- To provide information about whether there is an intention to centralize its data collection practices, and the status of any such efforts.

4. Pretrial Detention (Articles 9, 10)

The pursuit of accountability must go hand in hand with an effective criminal justice system. By promulgating a national code, the federal legislature has effectively taken on the authority to establish a national policy on pretrial detention, and the national government is now better positioned than ever before to assume responsibility for addressing its use. The recently adopted NCPC includes some progressive provisions—such as the establishment of pretrial services—but it also maintains an extensive list of automatic detention crimes that severely limits judicial discretion, obliging judges to dictate pretrial detention to all persons charged with a large variety of crimes, regardless of their individual circumstances.

Furthermore, *arraigo*—a form of sustained pre-trial detention typically lasting 40 days—has exacerbated Mexico’s torture problems since it was incorporated into the constitution in 2008 and in special federal laws against organized crime. Although not addressed in Mexico’s Common Core document, the *arraigos* ordered between mid-2008 and mid-2010 generated 120 formal complaints to the National Human Rights Commission; of these, 77 alleged torture, the most of any category of complaint. Special courts routinely (95 percent of the time) grant *arraigo* requests; however, even government officials now acknowledge that once they bring charges against those held under *arraigo* before ordinary criminal courts, prosecutors overwhelmingly fail to demonstrate sufficient evidence to initiate a proceeding.

While the government insists that this type of deprivation of liberty has been used only exceptionally under the Peña Nieto administration, information received by the General Prosecutor’s Office (pursuant to an IFAI request) indicates that, during the first two months of 2014, it placed 693 people in *arraigo* (12 per day); moreover, almost 40 percent of these individuals were held for 80 days, the maximum length permitted by law. This issue urgently requires the Committee’s review: of the 176 recommendations made to Mexico during its second UPR cycle, the abolishment of *arraigo* was one of only a handful of recommendations that the government did not accept.

The Committee should ask Mexico:

- To explain why the catalogue of automatic detention offences is maintained and clarify its intention to develop mechanisms that allow for appropriate individualized consideration of pretrial release or detention based on appropriate standards and the available facts.
- To explain why it considers it necessary to maintain the *arraigo* procedure, as well as the meaning of “exceptional use” in qualitative and quantitative terms.
- To provide detailed information on the use of pretrial detention. As recommended by a recent report on pretrial detention published by the Inter-American Commission on Human Rights, such information should ideally include: (a) the number of people held in pretrial detention broken down by type

of crime, sex and age; (b) the number of requests for the application of pretrial detention made by prosecutors, compared to the cases in which they request the application of an alternative measure, and the number of requests made compared to the pretrial detention orders granted by judges; (c) the duration of pretrial detention (including the number of persons in pretrial detention beyond legally-established terms); and (d) the number of pretrial detainees who were acquitted or freed before the process in the first instance, due to insufficient evidence or statute of limitations.

5. Compliance with Inter-American Court Judgments (Article 3(c))

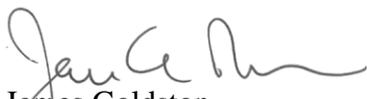
As the Committee has noted in the context of its own views, “A duty to cooperate ... arises from an application of the principle of good faith to the observance of all treaty obligations” (para. 15, General Comment 3). This same obligation applies to Mexico under the American Convention on Human Rights, which requires it to comply with all judgments of the Inter-American Court of Human Rights (Article 68). Nevertheless, of the six judgments issued by the Court against Mexico to date, five have yet to be fully implemented: *González y Otras* (2009), *Radilla Pacheco* (2009), *Fernández Ortega et al.* (2010), *Rosendo Cantú et al.* (2010), and *Cabrera García and Montiel Flores* (2010). All of these cases remain open under the Court’s compliance proceedings.

The Committee should ask Mexico:

- To provide information from the government as to its efforts to ensure the full implementation of these five judgments and when it expects to do so.
- To explain the status of any proposed national legislation that identifies the role, responsibilities, and procedures to be followed by government actors (executive, legislative, and judicial) throughout the implementation process.

The Justice Initiative hopes that you will find this information useful in advance of the preparation of the LOIPR for Mexico. We would be happy to provide further information and clarification should you require.

Very truly yours,



James Goldston
Executive Director