

# Armed with Impunity

*Curbing Military Human Rights Abuses in Mexico*



SPECIAL REPORT

By Catherine Daly, Kimberly Heinle, and David A. Shirk

**Trans-Border Institute**

*Joan B. Kroc School of Peace Studies*

University of San Diego



## **About the Report:**

This report was prepared for the Justice in Mexico Project ([www.justiceinmexico.org](http://www.justiceinmexico.org)) coordinated by the Trans-Border Institute (TBI) at the University of San Diego. Since 2002, this project has been a focal point for research, scholarly interchange, and policy engagement to address the challenges and opportunities for the rule of law in Mexico. This project has been made possible by the generous support of The William and Flora Hewlett Foundation and The John D. and Catherine T. MacArthur Foundation. This report also benefited from the support of the National Defense Intelligence College, now known as the Defense Intelligence University, for a graduate capstone project that generated a portion of the research and analysis.

Copyright Justice in Mexico Project, 2012.

ISBN-10: 098356745X

ISBN-13: 978-0-9835674-5-5

### **Trans-Border Institute (TBI)**

University of San Diego

5998 Alcalá Park,

San Diego, CA 92103

[www.sandiego.edu/tbi](http://www.sandiego.edu/tbi)

# Armed with Impunity

---

*Curbing Military Human Rights Abuses in Mexico*

SPECIAL REPORT

Catherine Daly, Kimberly Heinle, and David A. Shirk

**Trans-Border Institute**

*Joan B. Kroc School of Peace Studies*

University of San Diego





# TABLE OF CONTENTS

LIST OF FIGURES .....	iii
LIST OF TABLES .....	iii
EXECUTIVE SUMMARY .....	iii
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. BACKGROUND .....</b>	<b>2</b>
A. The Historical Role of Mexico’s Military .....	2
B. The Militarization of Counter-Drug Efforts .....	4
<b>III. MILITARY HUMAN RIGHTS ABUSES IN THE DRUG WAR .....</b>	<b>10</b>
A. Complaints .....	10
B. Recommendations .....	13
<i>i. Types of Abuse Registered Since 2007</i> .....	16
<i>II. Location of Abuses</i> .....	20
<i>III. Victims</i> .....	23
C. Compliance .....	24
<b>IV. CURBING MILITARY HUMAN RIGHTS ABUSES .....</b>	<b>25</b>
A. Deference to Military Justice .....	27
B. The Limits of Mexico’s National Human Rights Commission .....	28
C. Calderón’s Response to Military Human Rights Abuses .....	30
D. Constitutional Reforms and Supreme Court Rulings .....	31
<b>VI. PENDING REFORMS AND FUTURE CONCERNS .....</b>	<b>32</b>
A. Continued Concerns from Human Rights Groups .....	32
B. Revising the Military Code of Justice .....	33
C. Recognition of Military Abuses in the Drug War .....	34
D. The Incoming Peña Nieto Administration .....	36
E. The Role of the United States and the Mérida Initiative .....	38
<b>VI. CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>39</b>
A. Reduce Overall Reliance on Military Deployments in Mexico’s Counter-Drug Efforts .....	40
B. Invest in Greater Human Rights Training for Military and Judicial Sector Personnel .....	41
C. Implement Reforms to Transfer All Military Abuse Cases to Civilian Jurisdiction .....	41
D. Bolster the CNDH to Fulfill Its New Responsibilities .....	41
E. Strengthen Civil Society to Combat Abuses and Improve Security .....	42
F. Reframe U.S.-Mexico Collaboration to Better Protect Human Rights .....	42

## LIST OF FIGURES

FIGURE 1: SEDENA AND SEMAR PERSONNEL, 1980 TO 2011	7
FIGURE 2: TOTAL AUTHORIZED BUDGET FOR SEDENA AND SEMAR, 1996 TO 2012	7
FIGURE 3: COMPLAINTS REGISTERED WITH CNDH AGAINST SEDENA	11
FIGURE 4: AGENCIES WITH THE GREATEST NUMBER OF REGISTERED COMPLAINTS TO CNDH IN 2011	12
FIGURE 5: CNDH ISSUED RECOMMENDATIONS DURING THE CALDERÓN ADMINISTRATION	15
FIGURE 6: PERCENTAGE OF CNDH RECOMMENDATIONS DIRECTED TOWARDS MILITARY	16
FIGURE 7: TYPE OF ABUSE FOUND IN CNDH RECOMMENDATIONS TO THE MILITARY SINCE 2005	17
FIGURE 8: NUMBER OF RECOMMENDATIONS TO THE MILITARY FOR THE 10 MOST FREQUENT TYPES OF ABUSE (BY YEAR)	19
FIGURE 9: ABUSES BY THE MILITARY BY STATE PER YEAR AS DOCUMENTED IN CNDH RECOMMENDATIONS	21
FIGURE 10: LOCATION OF ABUSES DOCUMENTED IN CNDH RECOMMENDATIONS BY STATE SINCE 2005	22
FIGURE 11: DOCUMENTED ABUSES IN BORDER STATES PER YEAR	23
FIGURE 12: CNDH RECOMMENDATIONS TO SEDENA INVOLVING BORDER STATES VERSUS NON-BORDER STATES	23

## LIST OF TABLES

TABLE 1: NUMBER OF CASES IDENTIFYING SPECIFIC TYPES OF ABUSE (BY YEAR)	18
TABLE 2: INTERNATIONAL TREATIES AND AGREEMENTS THAT MEXICO HAS SIGNED WITH REGARD TO HUMAN RIGHTS	26

## EXECUTIVE SUMMARY

- This report examines the current context and possible remedies to protect against human rights abuses in Mexico. The report then provides documentation and analysis of the pattern of human rights complaints that have been formally registered against the military since Mexican President Felipe Calderón took office in December 2006 and through mid-2012.
- The military has played a constantly expanding role in efforts to combat drug trafficking organizations, and to provide domestic security more generally. As Calderón deployed tens of thousands of troops to regions and cities known to be drug-trafficking routes and hubs at the outset of his term. Calderón also significantly increased the size of the Mexican army, as well as military spending overall.
- The Mexican public holds mixed feelings about the Calderón administration's strategy. On the one hand, in a March 2012 poll by *Consulta Mitofsky*, 43% of respondents indicated that they viewed the Mexican government's strategy as a "failure," and 53% thought that organized crime was winning the fight against government forces. Only 28% felt Calderón's strategy had been successful. Nevertheless, more than two-thirds of those surveyed support using the military to combat organized crime.
- The massive deployment of the Mexican military has increased civilian exposure and vulnerability to military personnel. In this context, there has been a surge of formal complaints (*quejas*) of military abuses submitted to National Human Rights Commission (CNDH), the ombudsman that generates formal reports or "recommendations" (*recomendaciones*) for the government agency against which a complaint has been levied.
- All told, since the organization was created in 1990 through July 22, 2012, CNDH received 140,699 written complaints, out of which the agency was able to establish that there were reasonable claims of abuse in 34,651 cases, or about one in four cases. A growing number of complaints against the Mexican army (SEDENA) were recorded since the deployment of troops after Calderón took office: 367 in 2007; 1,230 in 2008; 1,800 in 2009; 1,415 in 2010; 1,626 in 2011. As for the current year, SEDENA reported that there were 479 reports as of May 3, 2012.
- Alleged military human rights violations represent a fraction of the total number of complaints in any given year. For example, in 2011, even as SEDENA reportedly held the largest number of complaints for a given agency, it accounted for only 6% of all complaints to CNDH. Still, CNDH reports that during the 12 years that it has been documenting human rights abuses, SEDENA is one of the top three institutions with the most filed complaints against it. In 2011, SEDENA reportedly led the list with 1,626 complaints.
- The Mexican government points out that, as of May 3, 2012, only about 100 (less than 2%) of the 6,544 complaints against SEDENA that CNDH received since December 1, 2006 have resulted in CNDH reports of credible abuses. Moreover, SEDENA reports that 5,661 complaints have been resolved, meaning that they have been settled through reconciliation or closed for other seemingly justifiable reasons.

- Since Calderón took office in December 2006, CNDH has issued 101 formal reports or “recommendations” to the Mexican army (SEDENA) and 17 to the Mexican marines (SEMAR). The first recommendation filed by CNDH under Calderón was issued on May 23, 2007, and the most recent recommendation came on July 11, 2012, just weeks before this report was filed.
- While there were 6 recommendations to the military from 2004-2006, all prior Calderón’s inauguration. There were 7 registered in 2007, 15 in 2008, 31 in 2009, 27 in 2010, and 31 in 2011. In 2009, 40% of the recommendations issued by CNDH were directed to the military, SEDENA accounting for 38% and SEMAR for 2%. By mid-2012, the proportion of CNDH recommendations made to the military was less than half that registered in each of the previous two years, representing only 21%. This trend may indicate that the scaling back of military involvement in key cities, such as Chihuahua, has helped to reduce the number of violations by military personnel.
- Of the 118 CNDH recommendation reports directed to SEDENA since Calderón took office, physical abuse is the most common documented human rights violation, followed by obstruction to access to justice, verbal/mental abuse, excessive or arbitrary use of force or public office, and illegal detention. When broken down by year, the number and type of abuses increased most substantially in 2008 and 2009, at the height of military deployments.
- While the frequency with which torture occurs has decreased since its initial spike in 2008 cases, it is still involved in just over half of all recommendations CNDH issues to the military. Thus, as the proximity with which troops interact with the public has increased over the past *sexenio*, so too has problem of physical abuse, whether loss of life, torture, or physical injury, the last of which was present to some extent in 95 of 118 CNDH recommendations, representing 81% of cases.
- Abuses documented by CNDH occurred in 21 of Mexico’s 31 states, as well as in the Federal District. 13 states and districts comprised 92% of all violations, and just under two thirds occurred in only six states (61%), and almost half occurred in northern states along the U.S.-Mexico border. Considering Chihuahua and Michoacán, the two states that account for 36% of all human rights abuse cases reported by CNDH (29 and 13 cases, respectively), it is clear that the surge in troop deployment to these areas clearly brought an increase in documented abuses.
- Males above the age of 18 constitute the population mostly likely to be abused by the military in its public security efforts. Out of the 516 victims involved in cases recommended to the military, roughly 10% (51) were women and 7% (35) were minors.
- Up until June 2011, the military maintained jurisdiction over all criminal cases and alleged human rights violations involving military personnel, and critics also charged that CNDH was ineffective in following up on and ensuring compliance with its recommendations. In 2011, legislative initiatives in the Mexican Senate, as well as a landmark ruling by the Mexican Supreme Court, emphasized the need for binding civilian court judgments regarding confirmed abuses by military personnel and domestic compliance with international human

rights treaty obligations. It is believed that these developments will greatly bolster the ability of CNDH to protect against human rights abuses.

- It still remains unclear whether recent legislation and court decisions will significantly curb military violations. The crux of the human rights issue hinges on whether the civilian court system will achieve unequivocal jurisdiction over cases of human rights abuse that involve the military and civilians, and supporting legislation to this effect has not yet been passed. Specifically, further legislative efforts are needed to revise Mexico's code of military justice. As the Calderón administration comes to a close, the prospects of these reforms and what lies ahead under the next administration.
- After PRI candidate Enrique Peña Nieto was declared the victor in Mexico's July 1 elections, he affirmed the continued role of the military in domestic security operations. Yet, Peña Nieto has professed a commitment to uphold and preserve the human rights of Mexican citizens "first of all, through the real, objective application of [human rights] protocols to agencies that are dedicated to public security."
- When Peña Nieto takes office in December 2012, it will be important to evaluate how the incoming president will handle pending cases before the Inter-American Commission on Human Rights. One of the most notable cases involves the 2006 rape of 11 women by police forces in Atenco in the State of Mexico that was brought before the commission in November. Since he was the sitting governor of the State of Mexico when this incident occurred, Peña Nieto's handling of this case as president will be an important indicator of the new administration's approach to human rights.
- Ongoing concerns about human rights abuses in Mexico raise questions about what can be done to address these issues under the framework of the Mérida Initiative, a multi-year U.S.-Mexico collaboration initiative launched in 2007. The United States is therefore in a powerful position to support Mexico's efforts to combat drug trafficking organizations, but it also has an obligation to make sure that human rights are respected in the process. If the war on drugs is a joint task, then protecting against human rights violations and other unintended consequences also should be a shared responsibility.
- The authors offer several recommendations to strengthen human rights protections in Mexico, including reducing overall reliance on military deployments in Mexican counter-drug efforts, investing in greater human rights training for military and judicial sector personnel, implementing reforms to transfer all military abuse cases to civilian courts, bolstering the CNDH to fulfill its new responsibilities, strengthening civil society to combat abuses and improve security, and reframing U.S.-Mexico security collaboration to better protect human rights.



# Armed with Impunity

## *Curbing Military Human Rights Abuses in Mexico*

---

“They taped up my eyes and hands; the tape cut the skin of my hands, I couldn’t feel my fingers, then they rolled me in a blanket and began to beat me all over my body, between six men they beat me for an hour, I lost all sense of time; on six occasions I lost consciousness, as I wouldn’t sign what they wanted they kept on hitting me, I don’t know for how long... they took off my boots and put my feet in a container of water, then they put in electric cables and that went on for hours... they put electric cables on my testicles (...) I felt like they were going to kill me... I couldn’t take any more, I signed with my eyes taped up. Today I still can’t feel the fingers in my right hand.”

—Testimony of a guard of the 28<sup>th</sup> Infantry Battalion detained at the Tijuana military base, Aguaje de la Tuna<sup>1</sup>

## I. INTRODUCTION

Between March 21 and March 27, 2009, 23 Tijuana municipal police officers and two others were detained by the Mexican military under charges of participation in organized crime. The officers were initially held incommunicado for three days before being legally transferred to a federal prison. All of the prisoners allege that during their initial detention soldiers tortured them in trying to obtain information and false confessions, including the use of asphyxiation and beatings. The case was well documented and confirmed by a number of respected domestic and international human rights organizations, including Amnesty International, the Mexican Commission for the Defense and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, CMDPDH), and Mexico’s National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH).<sup>2</sup> In 2011, CNDH President Raúl Plascencia Villanueva filed Recommendation 87/2011, a formal report that cited state and federal institutions suspected of playing a role in the incident, including the National Defense Secretariat (Secretaría de la Defensa Nacional, SEDENA), the Attorney General’s Office (Procuraduría General de la República, PGR), the State Government of Baja California (Gobierno Constitucional del Estado de Baja California) and the city of Tijuana.<sup>3</sup>

---

<sup>1</sup> Amnesty International, “Mexico: New Reports of Human Rights Violations by the Military,” under “AI Index: AMR 41/058/2009,” (London: Amnesty International Publications, December 2009), <http://www.amnesty.org/en/library/asset/AMR41/058/2009/en/e1a94ad6-3df1-4724-a545-f0b93f39af69/amr410582009en.pdf> (accessed April 29, 2010), 15.

<sup>2</sup> Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. “Caso 25 policías de Tijuana.” Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. June 6, 2011. <http://cmdpdh.org/multiblog/blogs/index.php/2011/06/06/caso-25-policias-de-tijuana-1?blog=10#more72>

<sup>3</sup> Comisión Nacional de los Derechos Humanos, *Recomendación 87/2011*, CNDH, 2011, <http://www.cndh.org.mx/node/32> (accessed July 2, 2012).

There were multiple recommendations within 87/2011 that CNDH directed specifically to SEDENA. These included recommendations that the institution must: repair all damages to the victims; immediately cease all arbitrary detentions; instruct all SEDENA members to place detained suspects immediately at the hands of the proper authority; refrain from the interrogation, torture, and/or cruel and inhumane treatment of detainees; accurately report all facts and details of the incident, including medical examinations; fully collaborate in CNDH's investigation and proceedings related to the case; and provide the CNDH with all evidence of compliance with said recommendations.<sup>4</sup>

This case is one of thousands of formal complaints and dozens of official CNDH reports directed to the Mexican military since Mexican President Felipe Calderón escalated counter-drug efforts upon assuming office in December 2006. As Calderón deployed tens of thousands of troops to regions and cities known to be drug-trafficking routes and hubs, the number of alleged human rights abuses by the military and the number of formal CNDH reports like the one cited above increased dramatically. While Calderón initially denied the extent of these abuses, domestic and international pressure forced him to acknowledge and address the issue. In 2011, legislative initiatives in the Mexican Senate, as well as a landmark ruling by the Mexican Supreme Court, emphasized the need for binding civilian court judgments regarding confirmed abuses by military personnel and domestic compliance with international human rights treaty obligations. When the declared winner of Mexico's July 2012 presidential election, Enrique Peña Nieto, takes office in December 2012, there is a new window of opportunity to bolster protections against military human rights abuses.<sup>5</sup>

This special report is the result of research and monitoring efforts by the Justice in Mexico Project based at the Trans-Border Institute of the University of San Diego. The report begins with an overview of the growing role of the Mexican military domestic affairs over the last few decades, and especially under the Calderón administration. The report then provides documentation and analysis of the pattern of human rights complaints that have been formally registered against the military since Calderón took office in December 2006 and through mid-2012. Next, the report provides an explanation of Mexico's current international human rights obligations, the factors that have limited protections against military human rights abuses in Mexico, and the recent progress that has been made in recent years in strengthening these protections. With the hope that Mexico will maintain its current direction and momentum in strengthening human rights protections, this report offers policy recommendations on how to continue to curb military human rights abuses in Mexico.

## II. BACKGROUND

### A. The Historical Role of Mexico's Military

For the better part of the past century, the primary activities of Mexico's military were centered on the task of bolstering the domestic order. The military was a key pillar for the architects of the Mexican political system in the wake of the 1910 revolution. That system was ultimately consolidated under the banner of the Institutional Revolutionary Party (PRI), which was founded in

---

<sup>4</sup> CNDH, Recomendación 87/2011, Comisión Nacional de los Derechos Humanos, 2011, <http://www.cndh.org.mx/node/32> (accessed July 2, 2012).

<sup>5</sup> At the launch of this report, Enrique Peña Nieto had won the presidential election, but the final results were still under a legal challenge from his rival, Andres Manuel López Obrador.

1929.<sup>6</sup> All of Mexico's early post-revolutionary leaders emanated from the military until 1946, when the PRI produced its first civilian president, Miguel Alemán (1946–52). Thereafter, although all subsequent presidents were civilians, the military remained a steadfast sentinel of the post-revolutionary regime.<sup>7</sup> Moreover, despite the fact that it lacked a significant external mission, the Mexican military scrupulously avoided intrusions into domestic politics that might jeopardize its perks and autonomy within the existing order.<sup>8</sup>

In this sense, the loyalty of Mexico's military marked a stark contrast to its counterparts in other Latin American countries, many of which suffered extra-legal seizures of power by the military and dictatorships run or backed by the armed forces. Still, the Mexican military's role in supporting the PRI regime led to occasional abuses. Over the course of the post-revolutionary era, the military was occasionally deployed to repress Catholic zealots, independent unions, popular movements, and other dissidents.<sup>9</sup> Later, the military was an essential instrument of the state as many of Mexico's insurgent groups of the 1960s and 1970s were subjected to acts of state terror and intimidation.<sup>10</sup>

The PRI regime's use of military repression was perhaps most visible with the deployment of troops to suppress student protests in the summer and fall of 1968, which culminated in the deaths and disappearances of a still disputed number of Mexican citizens.<sup>11</sup> Following this incident, the government continued to use military force to repress leftist groups and activists into the 1970s and 1980s.<sup>12</sup> Later, in the 1990s, when deployed to quell the 1994 uprising of the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN), the military was implicated for allegedly supporting and attempting to cover-up the 1997 Acteal massacre, when 45 civilian supporters of the EZLN were brutally killed by a paramilitary group.<sup>13</sup>

In short, while the military has not been a threat to Mexico's modern political order, it has a long history of repression and abuse on behalf of the state. Yet, despite its past abuses, the military has

---

<sup>6</sup> The PRI was initially founded as the National Revolutionary Party (PNR), but was subsequently renamed under President Manuel Avila Camacho in 1946. For more on the role of the military during the 1930s and 1940s, see: Ackroyd, William Stanley. 1988. "Descendants of the Revolution: Civil-Military Relations in Mexico." PhD diss., University of Arizona; Colson, Harold. 1989. *National Security Affairs and Civil-Military Relations in Contemporary Mexico: A Bibliography*. Monticello, Ill.: Vance Bibliographies; Ronfeldt, David F. 1985. *The Modern Mexican Military: Implications for Mexico's Stability and Security*. Santa Monica, Calif.: RAND.

<sup>7</sup> Camp, Roderic Ai. 1992. *Generals in the Palacio: The Military in Modern Mexico*. New York: Oxford University Press.

<sup>8</sup> Because Mexico's post-revolutionary governments maintained a foreign policy of non-intervention, known as the Estrada Doctrine, the military's involvement in major international confrontations was limited.

<sup>9</sup> See: Meyer, Jean A. *La Cristiada*, Vol. 1. (México, DF: Siglo Veintiuno Editores, 1976); Howard Handelman, "The Politics of Labor Protest in Mexico: Two Case Studies," *Journal of Interamerican Studies and World Affairs* 18, no. 3 (1976): 267–94.

<sup>10</sup> See Castellanos, Laura, and Alejandro Jiménez Martín del Campo. *México Armado, 1943–1981*. Mexico City: Ediciones ERA, 2007; Oikión Solano, Verónica, and Marta Eugenia García Ugarte. *Movimientos armados en México, siglo XX*. Vol. 2. Mexico, D.F.: CIESAS, Colegio de Michoacán, 2006.

<sup>11</sup> See Mariano Herrera Motte, *1968, lo peor y lo mejor de México* (México: Federación Editorial Mexicana, 1975); Donald J. Mabry, *The Mexican University and the State: Student Conflicts, 1910–1971* (College Station: Texas A&M University Press, 1982); Salvador Martínez Della Rocca, *Estado y universidad en México, 1920–1968 : Historia de los movimientos estudiantiles en la UNAM* (México: J. Boldó i Climent, 1986); Manuel Moreno-Sánchez, *México, 1968–1972, crisis y perspectiva* (Austin: Institute of Latin American Studies University of Texas–Austin, 1973); Tarsicio Ocampo V, *México: Conflicto estudiantil, 1968* (Cuernavaca: Centro Intercultural de Documentación, 1969).

<sup>12</sup> Ulloa Bornemann, Alberto. *Surviving Mexico's Dirty War: A Political Prisoner's Memoir*. Philadelphia: Temple University Press, 2007.

<sup>13</sup> "Breaking the Silence The Mexican Army and the 1997 Acteal Massacre," National Security Archive. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB283/index.htm>

maintained a relatively high degree of public confidence in Mexico. Many Mexican men and women, particularly those from poor and rural families, also have personal ties to the military because large numbers enlist to fulfill mandatory public service requirements.<sup>14</sup> Also, by virtue of its comprehensive territorial reach and organizational capacity, Mexico's military has long been the default option for authorities to deal with issues and areas where the state has limited administrative capability, order maintenance, civil engineering, and disaster relief. As a result, in public opinion polls measuring levels of trust, the military is typically ranked higher than any other government institution, and is widely perceived to be the best hope for promoting law and order in Mexico.

## B. The Militarization of Counter-Drug Efforts

In addition to its role as a pillar of Mexico's domestic political order, the military has played a constantly expanding role in efforts to combat drug trafficking organizations, and to provide domestic security more generally.<sup>15</sup> Although frequently perceived to be a recent phenomenon, the military's involvement in Mexico's counter-drug efforts has been a "permanent campaign" that stretches back to the deployment of troops in drug-fighting initiatives as early as the 1930s.<sup>16</sup> During the post-war era, the military was charged with major eradication initiatives, including the so-called "Great Campaign" in the late-1940s. In part due to the corruption of ground forces charged with eradication efforts, as well as intense pressure from the Nixon administration, Mexico launched an aerial eradication program known as "Operation Condor," which was the first of its kind in this hemisphere.<sup>17</sup> The military's use of aerial surveillance and herbicidal spraying proved to be very efficient in detecting and eradicating crops, and these operations produced unprecedented numbers of seizures of marijuana and heroin.<sup>18</sup>

The success of counter-drug efforts in the 1970s led in turn to a further evolution of Mexico's drug trade by paving the way for a new generation of drug trafficking organizations, and by reshaping the dynamics of corruption.<sup>19</sup> As a result, drug trafficking evolved from a local and regional

---

<sup>14</sup> Approximately 6% of Mexico's enlisted personnel are female, according to Calderón's 2011 State of the Nation address (Quinto Informe).

<sup>15</sup> Donnelly, Robert, and David Shirk. 2009. *Police and Public Security in Mexico*. San Diego: Trans-Border Institute.

<sup>16</sup> Astorga Almanza, Luis Alejandro. *Mitología del "narco traficante" en México*. (México, D.F.: Universidad Nacional Autónoma de México, Plaza y Valdés Editores, 1995); "Drug Trafficking in Mexico: A First General Assessment." In *Management of Social Transformations*. (Paris: UNESCO, 1999); *Drogas sin fronteras*. (México, D.F.: Grijalbo, 2003); *El siglo de las drogas: El narco tráfico, del Porfiriato al nuevo milenio*. (Mexico City: Plaza y Janis, 2005).

<sup>17</sup> Aerial eradication brought huge gains in destruction of growing fields and the dismantling of drug trafficking organizations. "Through bilateral understandings, the Mexican government also decided to formalize the presence of U.S. police agents in Mexico who had been gathering drug-related intelligence for many decades, with or without previous notification to Mexican authorities. Nearly thirty U.S. agents were allowed to oversee the implementation of the program and to offer assistance in identifying fields." From 1975-76, more than U.S. \$35 million was spent in year-round eradication and confiscation of drugs, with the U.S. contributing 20% (\$1 for every \$4 spent by Mexico's government). María Celia Toro (1995), *Mexico's "War" on Drugs: Causes and Consequences* (Boulder; London: Lynne Rienner Publishers), p. 18.

<sup>18</sup> Counter-drug operations during this time also contributed to the dismantling of major trafficking networks controlled by operatives of the Sicilia-Falcón organization, the Herrera family, and the Favela Escobar organization, who were incarcerated or driven out of business. Ibid. 18-27.

<sup>19</sup> On the one hand, the shift to cocaine made possible the emergence of new trafficking networks capable of generating much higher than previously achieved through the traditional trafficking of heroin and marijuana. The shift in strategy to aerial eradication campaigns also dramatically changed the dynamics of corruption in Mexico by requiring traffickers to secure protection not only at the local level where cultivation took place, but at significantly higher levels of government. Ibid, 18-27.

phenomenon to what President Miguel de la Madrid (1982-88) described as a “national security” problem.<sup>20</sup> Under the Salinas administration (1988-1994), the military was granted an elevated role in national security matters when the Secretariats of National Defense (Secretaría de Defensa Nacional, SEDENA) and the Navy (Secretaría de Marina, SEMAR) were included in the formation of the national security cabinet.<sup>21</sup> Thus, civilian oversight of the military is diminished in Mexico by the fact that high-ranking officers are themselves charged with direct oversight and command of the armed forces at the highest levels within the executive branch.<sup>22</sup>

Meanwhile, as part of the overall effort to bolster domestic security, the military became increasingly integrated into civilian law enforcement agencies. By the early part of the Zedillo administration (1994-2000), more than half of Mexico’s thirty-two states had military officers assigned to police command positions; by the end of his term, the overwhelming majority of states (28) had made such appointments.<sup>23</sup> At the same time, hundreds of military personnel were incorporated into rank-and-file positions in civilian police agencies.<sup>24</sup> Moreover, in 1996, Zedillo invited top military officials to form part of the National Public Security Council, thereby formally integrating the armed forces into the security apparatus that determines domestic law enforcement policy in Mexico.<sup>25</sup>

Unexpectedly, reliance on the military for domestic security matters only accelerated after the PRI was ousted from power in the 2000 presidential election, which was won by opposition candidate Vicente Fox of the National Action Party (Partido Acción Nacional, PAN). As a presidential candidate, Vicente Fox, had promised to remove the military from counter-drug operations, but rampant corruption among federal, state, and local police led him to choose otherwise after taking office.<sup>26</sup> Rather, Fox deepened the military’s involvement in civilian law enforcement affairs by naming General Rafael Macedo de la Concha as Attorney General. Moreover, upon creating the Public Security Secretariat, a cabinet-level agency, the Fox administration integrated thousands of military personnel as auxiliary units within the Federal Preventive Police (Policía Federal Preventiva, PFP), which was later reformulated as the Federal Police (Policía Federal, PF) in 2009.<sup>27</sup> Finally, toward the end of his administration, Fox deployed hundreds of troops to Baja California, the Federal District (Distrito Federal, DF), Sinaloa, Tamaulipas, and other states in an effort to boost

---

<sup>20</sup> Ibid.

<sup>21</sup> SEDENA oversees both the Army and Air Force. Secretaría de la Defensa Nacional. "Powers." Secretaría de la Defensa Nacional | sedena.gob.mx. <http://www.sedena.gob.mx/en/index.php/get-to-know-sedena/powers> (accessed March 14, 2011). See also Camp, “Armed Forces,” 296.

<sup>22</sup> While civilian cabinet secretaries have been the norm in the United States throughout the post-war era, this is not the case in Mexico. Since the elevation of SEDENA and SEMAR to cabinet level positions, no civilian has ever been appointed to oversee these agencies. During the Calderón administration the head of SEDENA was General Guillermo Galván Galván (2006-2012) and the head of SEMAR was Admiral Mariano Francisco Saynez Mendoza (2006-2012). See: Marcos Pablo Moloeznik, “The Militarization of Public Security and the Role of the Military in Mexico.” In *Police and Public Security in Mexico*, edited by Robert A. Donnelly and David A. Shirk, 61-86. San Diego: Trans-Border Institute, 2009, 76.

<sup>23</sup> Alvarado, Arturo, and Diane Davis. “Cambio político, inseguridad pública y deterioro del estado de derecho en México: Algunas hipótesis en torno del proceso actual,” in Arturo Alvarado and Sigrid Arzt. *El desafío democrático de México: Seguridad y estado de derecho*, (Mexico: El Colegio de México, 2001), p. 130.

<sup>24</sup> Camp, “Armed Forces,” 300.

<sup>25</sup> Moloeznik, “The Militarization of Public Security,” 79.

<sup>26</sup> Camp, “Armed Forces” 292, 303.

<sup>27</sup> Moloeznik, “The Militarization of Public Security,” 80.

security and bolster police capabilities through Operation Secure Mexico (Operación México Seguro) in 2005.<sup>28</sup>

Under Fox's successor, Felipe Calderón, the military's role in counter-drug and domestic security efforts grew even more dramatically. Calderón came to power in a time of trouble and uncertainty for Mexico. He assumed the presidency after a highly controversial election that severely divided the nation.<sup>29</sup> In the months after the election, federal police and soldiers were deployed to quell unrest in the southern state of Oaxaca, after a mid-summer teachers' strike erupted into violence. To make matters worse, the EZLN announced its return to a state of "red alert" in reaction to a violent police crackdown on flower vendors in the city of Texcoco, outside Mexico City.

In this context, Calderón felt an urgent need to address rising violence among drug-trafficking organizations in states along Mexico's Pacific Coast and northern border regions. More so than previous presidents, Calderón took pains to personally identify himself with Mexico's counter-drug efforts. One month after taking office, in January 2007, Calderón donned an olive-drab military uniform and a cap with the five-star emblem of Mexico's commander in chief, offering praise to the troops and federal police deployed to Michoacán, his home state. "I come as the supreme commander to recognize your work, to urge you to go boldly forward, and to tell you that we are with you," he told them.<sup>30</sup> Over the coming months, Calderón increased standing troop deployments throughout the country from approximately 20,000 to 50,000 soldiers.<sup>31</sup> In addition, he redirected troops from rural to urban areas such as Ciudad Juárez and Tijuana, shifting from a focus on production zones to major trafficking hubs subject to competition among rival criminal organizations.

Its expanded role in the war on drugs has had significant implications for the Mexican military. While the number of enlisted personnel in SEMAR has remained relatively constant over the last three decades, the total for SEDENA personnel more than doubled in the same period. SEDENA's numbers grew by more than 6% over the course of the Calderón administration. (See Figure 1) Military budgets expanded even more generously, with both agencies experiencing a more than fourfold increase in their congressionally approved budgets since 1996, despite relatively low rates of inflation during this period. Indeed, the budgets for both SEMAR and SEDENA more than doubled over the course of the Calderón administration (Figure 2).

---

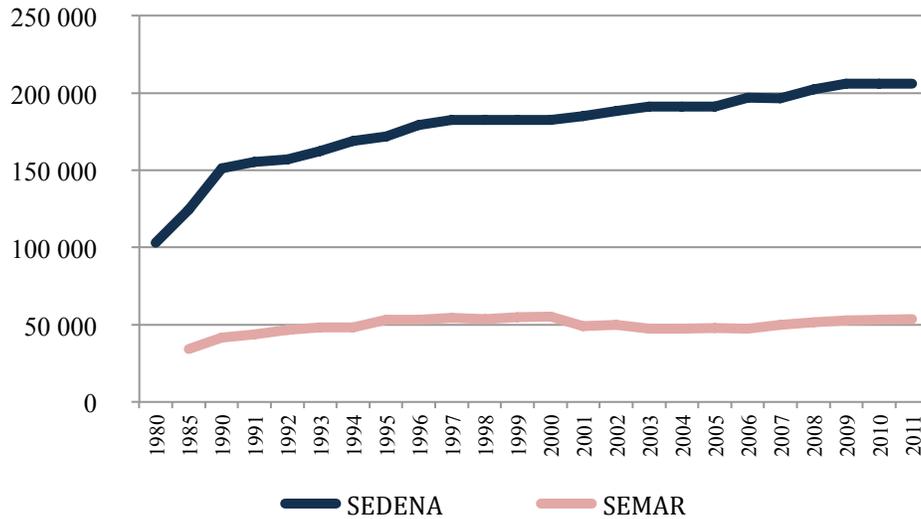
<sup>28</sup> Moloeznik, Marcos Pablo. "The Militarization of Public Security and the Role of the Military in Mexico." In *Police and Public Security in Mexico*, edited by Robert A. Donnelly and David A. Shirk, 61-86. United States of America: University Readers, 2009, 76. See also: Granados Chapo, Miguel Ángel. "México seguro." *El Siglo de Durango*. June 19, 2005. <http://www.elsiglodedurango.com.mx/noticia/72842.mexico-seguro.html>

<sup>29</sup> Even as Calderón took office in December, political protesters who viewed the leftist candidate Andrés Manuel López Obrador as the rightful victor continued to occupy the streets of Mexico City and even the Congress itself. Domínguez, Jorge I. and Chappell H. Lawson. *Consolidating Mexico's Democracy: The 2006 Presidential Campaign in Comparative Perspective* (Johns Hopkins University Press, 2009).

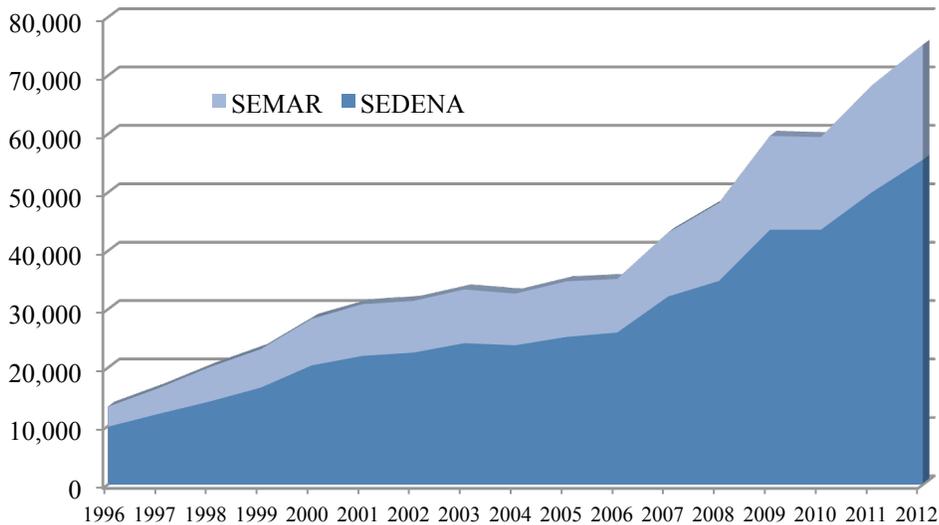
<sup>30</sup> "Vengo hoy como comandante supremo a reconocer su trabajo, a exhortarlos a seguir adelante con firmeza, entrega y a decirles que estamos con ustedes." Author's translation. Herrera, Claudia, and Ernesto Martínez Enviada. 2007. "Vestido de militar, Calderón rinde 'tributo' a las fuerzas armadas." *La Jornada*, January 4.

<sup>31</sup> BBC News. "Q&A: Mexico's Drug Related Violence." January 25, 2012. <http://www.bbc.co.uk/news/world-latin-america-10681249>

**Figure 1: SEDENA and SEMAR Personnel, 1980 to 2011**



**Figure 2: Total Authorized Budget for SEDENA and SEMAR, 1996 to 2012**  
(Millions of Pesos)



Some critics assert that the expanded use of the military puts the integrity and legitimacy of Mexico’s armed forces at risk. Prominent members of Calderón’s political opposition, such as Senator Francisco Labastida, a former-presidential candidate, have argued that the military should not have an active role in the fight against drugs.<sup>32</sup> PRI party spokesperson Alfonso Navarrete Prida also argued that using the military is an inadequate strategy that has generated anxiety throughout

<sup>32</sup> Ricardo Gómez and Horacio Jiménez, “PAN: uso del Ejército es ejemplar,” *El Universal*, December 9, 2009, <http://www.eluniversal.com.mx/nacion/173596.html> (accessed April 30, 2010).

Mexican society.<sup>33</sup> The center-left Party of the Democratic Revolution (PRD) has long argued against military involvement in the drug war, dating back to 1999 when it claimed, “public security is not a military mission.”<sup>34</sup> Similarly, Labor Party (Partido del Trabajo, PT) Senate Coordinator Ricardo Monreal has objected that the current administration “cannot continue utilizing the Army in this way,” and that the current role of the military is in fact damaging its reputation and credibility.<sup>35</sup> Even current and former PAN members have openly challenged their president’s strategy. Legislative leader Roberto Gil criticized Calderón’s tactics in targeting kingpins,<sup>36</sup> while former-President Vicente Fox asserted that the deployment was unwarranted, considering that violence was beginning to decrease in 2006.<sup>37</sup>

Moreover, other critics of Calderón’s strategy, like Mexican security expert Eduardo Buscaglia, have argued that increased military pressure and presence have both aggravated turf wars between organized crime groups and provoked greater violence as a result of clashes between the military and DTOs.<sup>38</sup> From the outset of the Calderón administration in December 2006 to the close of 2011, an estimated 50,000 people died as a result of among such groups.<sup>39</sup> “When we reprimand criminal organizations without taking away their funds and resources, what happens is an increase in levels of corruption and violence to counteract a possible reaction from the State,” argues Buscaglia. “This is called the ‘paradox of repression’ because it generates more repression, more violence, and more corruption.”<sup>40</sup> In his fifth State of the Union address in September 2011, Calderón objected to this view, arguing that:

“The violence is not because of the Armed Forces... on the contrary, the Armed Forces intervene where there is violence and where violence is in a specific location... it is absurd to think the Government is going to quit in this fight... I want to acknowledge the loyalty and patriotism of the Armed Forces and Mexico... Their firm and valiant participation has been key in the defense of Mexico.”<sup>41</sup>

---

<sup>33</sup> Jiménez, Horacio. “PRI critica mensaje de Calderón sobre narco.” *El Universal*. January 4, 2010.

<http://www.eluniversal.com.mx/notas/649458.html>

<sup>34</sup> Camp, “Mexico’s Armed Forces: Marching to a Democratic Tune?” 370.

<sup>35</sup> “Caso Hank daña imagen del Ejército: PRI y PT.” *El Universal*. June 15, 2011.

<http://www.eluniversal.com.mx/notas/772897.html>

<sup>36</sup> Horacio Jiménez, “Partidos dudan que se acabe con los Beltrán Leyva,” *El Universal*, January 3, 2010,

<http://www.eluniversal.com.mx/notas/649296.html> (accessed April 30, 2010).

<sup>37</sup> Ellingwood, Ken. “Book Takes Mexico Drug War to Task,” *Los Angeles Times*, January 1, 2010, under “Foreign Exchange,” <http://www.latimes.com/news/nation-and-world/la-fg-narco-book1-2010jan01,0,6239821.story> (accessed April 30, 2010).

<sup>38</sup> For example, see Escalante Gonzalbo, Fernando. “Homicidios 2008-2009: La Muerte Tiene Permiso.” *Nexos en línea*. March 1, 2011. <http://www.nexos.com.mx/?P=leerarticulo&Article=1943189>; and Steinberg, Nik. “Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico’s ‘War on Drugs.’” Human Rights Watch. November 2011.

[http://www.hrw.org/sites/default/files/reports/mexico1111webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf)

<sup>39</sup> The Mexican Government released its official count as 47,515 as of January 11, 2012. This figure includes cartel members, law enforcement, and army personnel, as well as innocent civilians, journalists, and public figures. Because this figure does not include disappearances and unreported fatalities, it is likely an underestimate of the total number of deaths associated with the war on drugs in Mexico. For a thorough analysis and recent estimates of drug violence in Mexico, see Cory Molzahn, Viridiana Rios, and David A. Shirk, *Drug Violence in Mexico: Data and Analysis Through 2011*. Special Report. San Diego: Trans-Border Institute, March 2, 2012.

<http://justiceinmexico.files.wordpress.com/2010/07/2012-tbi-drugviolence.pdf>.

<sup>40</sup> Ravelo, Ricardo. “Dejará Calderón un Estado hecho pedacitos.” *Demócrata Norte de México*. January 15, 2012.

<http://democratanortedemexico.blogspot.com/2012/01/dejara-Calderón-un-estado-hecho.html>

<sup>41</sup> Calderón, Felipe. “Fifth State of the Union Address.” Presidencia de la República. September 3, 2011.

<http://en.presidencia.gob.mx/2011/09/fifth-state-of-the-union-address-2/>

The Mexican public holds mixed feelings about the Calderón administration's strategy. On the one hand, in a March 2012 poll by *Consulta Mitofsky*, 43% of respondents indicated that they viewed the Mexican government's strategy as a "failure," and 53% thought that organized crime was winning the fight against government forces.<sup>42</sup> Only 28% felt Calderón's strategy had been successful. Nevertheless, more than two-thirds of those surveyed support using the military to combat organized crime.<sup>43</sup> As one observer noted, "The majority of the Mexican population isn't angry that Calderón is using the military to fight organized crime. They're angry that he's done such a lousy job of it."<sup>44</sup>

Reliance on the military and military personnel in domestic security matters illustrates the frustration that many authorities feel regarding the institutional weakness of Mexican police agencies.<sup>45</sup> For example, former Chihuahua Governor José Reyes Baeza Terrazas (2004-2010) expressed approval for Calderón's decision to send troops into his state, particularly Ciudad Juárez, as part of the Operation Joint Chihuahua (Operación Conjunto Chihuahua). Said Reyes Baeza, a member of the PRI, in 2008, "We welcome the Army to Chihuahua because they responded to the call from Chihuahua citizens to be together with us and to see positive results in this fight."<sup>46</sup> A year and a half later, following the transfer of the operation from the military to the Federal Preventative Police (Policía Federal Preventativa, PFP), the governor reiterated his support for the military-centered strategy. He specifically acknowledged that the military's withdrawal from Operation Joint Chihuahua was part of the original plan, and that while armed forces would remain in the city and state in other security capacities, they had fulfilled their duties under the operation for the time being.<sup>47</sup>

Yet, the reality is that neither Mexico's domestic police agencies nor its military are well suited to the task of combating organized crime. Indeed, the growing militarization of domestic security poses significant hazards. The military lacks the proper legal mandate and training for law enforcement investigations, raising concerns about the possible mishandling of criminal cases. At the same time, as Buscaglia observes, the military's involvement in combatting organized crime also raises concerns about corruption in its ranks, which has been well documented with regard specifically to counter-drug efforts.<sup>48</sup> The primary issue that concerns this report, however, is that of human rights, as the military's massive exposure of Mexico's civilian population has also increased the number of alleged and documented violations, and the lack of civilian oversight in military affairs has also made it

---

<sup>42</sup> Consulta Mitofsky. "Percepción de Inseguridad Ciudadana en México: MUCD." Consulta Mitofsky. March 21, 2012. <http://consulta.mx/web/index.php/estudios/mexico-opina/462-percepcion-de-inseguridad-ciudadana-en-mexico-mucd>

<sup>43</sup> Bosworth, James. "Majority of Mexicans support military leading fight against cartels." *Christian Science Monitor*. May 15, 2012. <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2012/0515/Majority-of-Mexicans-support-military-leading-fight-against-cartels>

<sup>44</sup> Ibid.

<sup>45</sup> Camp, "Armed Forces 292, 303

<sup>46</sup> La Red Noticias. "Defiende Reyes Baeza la presencia del Ejército; José Luis Soberanes critica." *La Red Noticias*. April 9, 2008. <http://www.larednoticias.com/noticias.cfm?n=10679>

<sup>47</sup> Chaparro, Ana. "Ejército continuará en ciudad Juárez: Baeza." *El Mexicano*. April 14, 2010.

<http://www.oem.com.mx/elmexicano/notas/n1596139.htm>; El Universal. "Ejército sigue en Chihuahua; falta sanear a corporaciones." September 20, 2009. <http://www.eluniversal.com.mx/estados/73125.html>

<sup>48</sup> Carlos Antonio Flores Pérez, "Organized Crime and Official Corruption in Mexico," in Robert A. Donnelly and David A. Shirk (eds.), *Police and Public Security in Mexico* (San Diego: Trans-Border Institute, 2009).

difficult to properly address these abuses. As we discuss below, a proliferation of military human rights abuses in recent years raises serious concerns about this issue.

### III. MILITARY HUMAN RIGHTS ABUSES IN THE DRUG WAR

The massive deployment of the military has increased civilian exposure and vulnerability to military personnel. In this context, there has been a surge of formal complaints of military abuses submitted to National Human Rights Commission (CNDH), Mexico's ombudsman for review of human rights issues. Such complaints pass through three stages: (1) presentation of a complaint (*queja*), (2) presentation of a formal report or "recommendation" (*recomendación*) for the responsible government agency, and (3) ideally, compliance by that agency. As we discuss in more detail below, CNDH is well equipped to manage the first two phases, but has limited legal authority to mandate compliance.

#### A. Complaints

When a victim or family, friend or organization advocating on behalf of the victim feels that a human rights abuse have occurred, they can file a formal complaint (*queja*) with the CNDH. Ideally, CNDH will accept the case, investigate the abuses, and level recommendations to the agency responsible for the accused parties in order to repair and remedy the damages caused. Complaints, which must be registered within a year of when the person lodging the complaint learned of the facts, must be submitted in writing, on-line, or in some cases verbally, and normally are done so by identified person(s). The organization will look into anonymously registered complaints if the allegations are of serious human rights violations, although less egregious cases are most often discarded if the individual lodging the complaint is unidentified.<sup>49</sup> After a complaint is filed, it is either classified as: (1) a presumed violation of human rights, (2) a case the CNDH does not have authority over, (3) a case the CNDH does have authority over that requires legal action, or (4) as a complaint that does not meet the mandatory guidelines and requirements or is unclear.<sup>50</sup>

CNDH attempts to weed out false and frivolous claims through thorough investigation. The possibility of fabricated accusations against Mexican government officials is a serious concern in the context of the drug war, since there is suspicion that organized crime groups have encouraged people to make claims of abuses in order to damage the legitimacy of counter-drug efforts. All told, since the organization was created in 1990 through July 22, 2012, CNDH received 140,699 written complaints, out of which the agency was able to establish that there were reasonable claims of abuse in 34,651 cases, or about one in four cases.<sup>51</sup>

However, if the CNDH has found enough preliminary evidence or reason to move forward with the case, that complaint is accepted as a presumed human rights abuse. Once CNDH has accepted the case as a presumed abuse, the agency that oversees the person or persons allegedly responsible for the abuse must send CNDH a report of the incidence(s) in question, with facts and details surrounding the complaint. If the complaint is not a severe human rights violation (e.g., loss of life,

---

<sup>49</sup> "Procedure to Complain Before CNDH and Procedure to be Heard by SEDENA." Secretary of National Defense. Accessed July 26, 2012.

[http://www.sedena.gob.mx/en/images/stories/D.H./derechos\\_humanos\\_oct/INGL\\_proced\\_queja.pdf](http://www.sedena.gob.mx/en/images/stories/D.H./derechos_humanos_oct/INGL_proced_queja.pdf)

<sup>50</sup> "El Procedimiento de la queja." Comisión Nacional de los Derechos Humanos. Accessed July 26, 2012.

<http://www.cndh.org.mx/node/74>

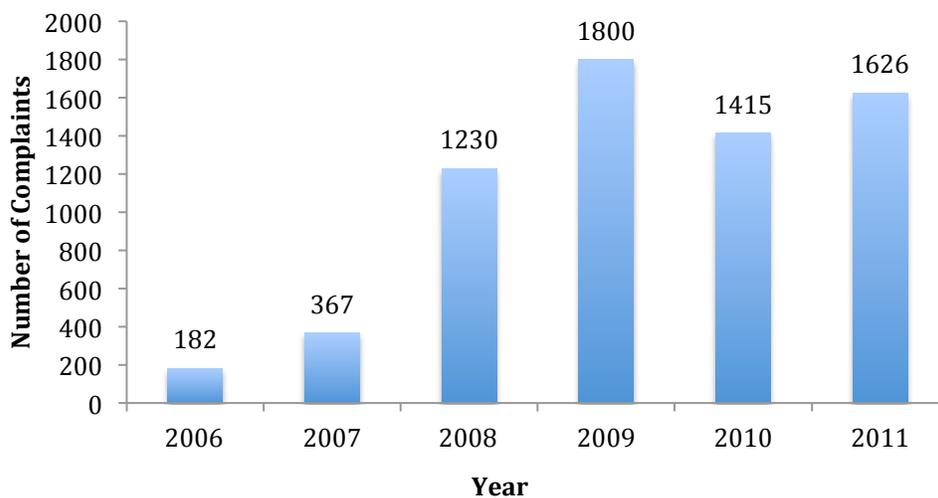
<sup>51</sup> "PGR e IMSS encabezan quejas ante CNDH." *Grupo Fórmula*. July 23, 2012.

<http://www.radioformula.com.mx/notas.asp?Idn=258482> (Accessed July 24, 2012).

torture, violation of physical or psychiatric integrity, forced disappearance, etc.), CNDH will push for the case to be solved through conciliation between the affected parties to address the damages at hand. If the authority accepts reconciliation, the complaint is considered closed and the involved parties will attempt to reach a satisfactory solution. At that point, the accused authority has 90 days to comply with the measures articulated and agreed upon in the reconciliation, which, if not obeyed, can result in the reopening of the case and a subsequent formal recommendation.<sup>52</sup> If the authority does not agree to reconciliation or the alleged human rights abuses are considered to be serious, CNDH issues a formal recommendation based on the allegations within the complaint.

With regard to military human rights violations, specifically, CNDH has registered a staggering increase in the number of complaints of alleged abuses since 2006. Although exact numbers vary somewhat across reporting agencies, a growing number of complaints against SEDENA were recorded after Calderón took office on December 1, 2006: 182 in 2006; 367 in 2007; 1,230 in 2008; 1,800 in 2009; 1,415 in 2010; 1,626 in 2011. (See Figure 3) As for the current year, SEDENA reported that there were 479 reports as of May 3, 2012.<sup>53</sup>

**Figure 3: Complaints Registered With CNDH Against SEDENA**



Source: Data reported by Reforma, “Encabeza SEDENA quejas ante CNDH en 2011,” December 22, 2011<sup>54</sup> and the Organization of American States (OAS), “IACHR Wraps Up Visit to Mexico,” Press Release, September 30, 2011.<sup>55</sup>

It should be noted that alleged military human rights violations represent a fraction of the total number of complaints in any given year, and that the overwhelming majority of abuses in Mexico are attributable to civilian authorities and law enforcement agencies. To be sure, in 2011, even as

<sup>52</sup> Ibid.

<sup>53</sup> SEDENA reports a different number of human rights abuses: 8 in 2006; 376 in 2007; 1,143 in 2008; 1,644 in 2009; 1,320 in 2010; 1,574 in 2011; and 479 through May 3, 2012. “Situation of Complaints Notified by the National Human Rights Commission in the Present Administration.” Secretary of National Defense. May 3, 2012.

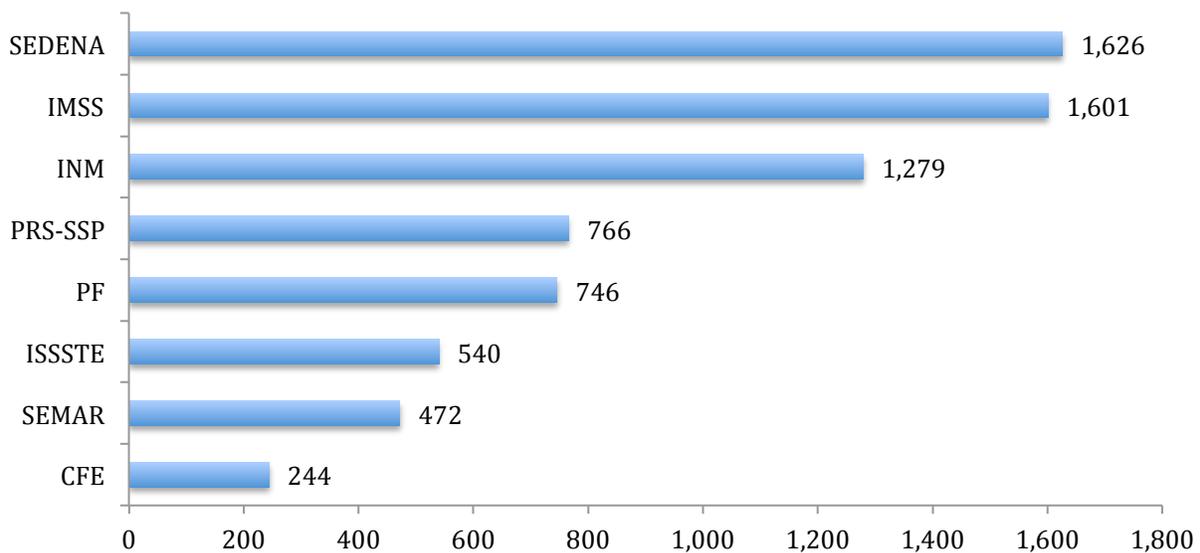
<sup>54</sup> [http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL\\_ABR-MAY\\_B.-GRAFICAS\\_DE\\_QUEJAS.pdf](http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL_ABR-MAY_B.-GRAFICAS_DE_QUEJAS.pdf) (Accessed July 1, 2012).

<sup>54</sup> <http://noticias.terra.com.mx/mexico/encabeza-sedena-quejas-ante-cndh-en-2011.ed2e1d1c73764310VgnVCM20000099f154d0RCRD.html>

<sup>55</sup> [http://www.oas.org/en/iachr/media\\_center/PReleases/2011/105.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/105.asp)

SEDENA reportedly held the largest number of complaints for a given agency, it accounted for only 6% of all complaints to CNDH.<sup>56</sup> However, CNDH reports that during the 12 years that it has been documenting human rights abuses, SEDENA is one of the top three institutions with the most filed complaints against it.<sup>57</sup> In 2011, SEDENA reportedly led the list with 1,626 complaints, while SEMAR had 472.<sup>58</sup> (See Figure 4). Arguably, what matters more than the number of complaints filed is the nature of the complaints that are lodged, which in many cases are quite serious in the case of the military.

**Figure 4: Agencies with the Greatest Number of Registered Complaints to CNDH in 2011**



Acronyms: Secretary of National Defense, (Secretaría de Defensa Nacional, SEDENA); Mexican Social Security Institute (Instituto Mexicano de Seguridad Social, IMSS); National Migration Institute (Instituto Nacional de Migración, INM); Prevention and Social Readaptation, Secretary of Public Security (Prevención y Readaptación Social, Secretaría de Seguridad Pública, PRS-SSP); Federal Police (Policía Federa, PF); Institute of Security and Social Services for State Workers (Instituto de Servicios y Seguro Social Estatal, ISSSTE); Secretary of the Navy (Secretaría de la Marina, SEMAR); Federal Electricity Commission (Comisión Federal de Electricidad, CFE). Source: Data reported by Reforma, “Encabeza SEDENA quejas ante CNDH en 2011,” December 22, 2011 and the Organization of American States (OAS), “IACHR Wraps Up Visit to Mexico,” Press Release, September 30, 2011.

The rise in number of complaints filed with CNDH against the Mexican military coincides with the increased deployment of troops throughout the country since Calderón took office. However, the Mexican government has been quick to point out the difference between the number of complaints lodged against SEDENA and the actual number of those cases that are turned into formal CNDH recommendations, which include only credible allegations of human rights abuses (as we explain

<sup>56</sup> “Encabeza Sedena quejas ante CNDH en 2011,” *Reforma*, December 22, 2011 and Comunicado de Presna, “Se presenta informe ante poder ejecutivo,” Comisión Nacional de Derechos Humanos. February 3, 2012. [http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2012/COM\\_2012\\_028.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2012/COM_2012_028.pdf)

<sup>57</sup> “PGR e IMSS encabezan quejas ante CNDH.” *Grupo Fórmula*. July 23, 2012. <http://www.radioformula.com.mx/notas.asp?Idn=258482> (Accessed July 24, 2012).

<sup>58</sup> Encabeza Sedena quejas ante CNDH en 2011,” *Reforma*, December 22, 2011.

below). As of May 3, 2012, of the 6,544 complaints against SEDENA that CNDH received since December 1, 2006, only about 100 (less than 2%) have resulted in CNDH recommendations.<sup>59</sup> Moreover, SEDENA reports that 5,661 complaints have been resolved, meaning that they have been settled through reconciliation or closed for other seemingly justifiable reasons. According to SEDENA:

- “3,197 [complaints] were concluded through juridical orientation for the complainer, because there were no Human Rights violations;
- 1,588 were concluded because there was no evidence to continue to review the complaint records;
- 265 were concluded because the complainer desisted;
- 209 [were concluded] because the case was solved through conciliation;
- 105 were [concluded] as a result of accumulation of records;
- 103 were concluded because the corresponding recommendation was dictated;
- 76 were concluded because the complaint records were solved during the process;
- 41 were concluded because the complainer did not show interest to continue the process;
- 72 were concluded because it was not [within the competence] of the National Commission to hear the complaint;
- 5 were concluded because [a] non-liability document was sent to the authority or public servant who was mentioned as liable...”<sup>60</sup>

Pointing to such data, the Mexican government has stressed that it is important not to exaggerate concerns about the number of complaints, because so few were actually based on verified, serious human rights abuses and because the majority of credible complaints were reconciled prior to requiring a recommendation by CNDH.

## B. Recommendations

When a complaint relates to a serious violation, or when a complaint is not successfully resolved because the authority initially rejected reconciliation or failed to comply with the terms proposed, the next step is a formal report or “recommendation” (recomendación) by CNDH. A formal recommendation serves as a way for the organization to credibly accuse an authority by delivering an extensive and thoroughly detailed account of the alleged human rights abuses in a particular case. It is important to underscore that a CNDH recommendation is neither confirmation of abuse nor a conviction, but a finding that calls for further investigation and formal sentencing upon determination of guilt by an appropriate judicial authority. The report, which ranges in length from as few as 15 pages to as many as 450 pages in some instances, explains the facts of the case and the accusations made, the evidence documented by the CNDH during its investigation, the allegations deemed credible, and recommendations for the designated agency to repair and remedy the situation

---

<sup>59</sup> “Complaints and Recommendations.” Secretary of National Defense. May 3, 2012. [http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL\\_ABRIL-MAYO\\_A.-SITUACION\\_DE\\_QUEJAS\\_Y\\_RECOMENDACIONES.pdf](http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL_ABRIL-MAYO_A.-SITUACION_DE_QUEJAS_Y_RECOMENDACIONES.pdf)

<sup>60</sup> English language summary of abuses provided by SEDENA. “Complaints and Recommendations.” Secretary of National Defense. May 3, 2012. [http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL\\_ABRIL-MAYO\\_A.-SITUACION\\_DE\\_QUEJAS\\_Y\\_RECOMENDACIONES.pdf](http://www.sedena.gob.mx/en/images/stories/D.H./2012/mayo/INGL_ABRIL-MAYO_A.-SITUACION_DE_QUEJAS_Y_RECOMENDACIONES.pdf)

at hand, as well as considerations to prevent future violations from recurring. Each report is given a chronologically assigned case number for the year in which it is rendered.

To be clear, although described as a “recommendation,” a CNDH report often contains multiple recommendations listed within each published case. For example, CNDH Recommendation 75/2010 was initially investigated after a number of complaints were leveled on behalf of four victims and includes seven recommendations and action items for SEDENA based on an accumulation of verified and credible complaints of human rights abuses.<sup>61</sup> Also, a single case can and almost always does document more than one abuse against a victim or victims. For example, as elaborated below, Recommendation 14/2011 documented the involvement of military personnel in illegal entry of a household, arbitrary detention, torture, physical and verbal abuse, and obstructing access to justice. It is important to note, too, that a recommendation issued in a given year refer to an abuse that occurred in a previous year. Finally, a CNDH recommendation can also be directed towards several institutions at once. For example, 49/2010 presents recommendations to both SEDENA and the Secretary of Public Security (Secretaría de Seguridad Pública, SSP), based on alleged instances of arbitrarily detention and torture in the case of three victims who were held *incomunicado*; each agency received separate recommendations within the report that were specific to their involvement in the violations.<sup>62</sup>

Given the above noted characteristics, the CNDH recommendations are highly detailed documents and contain substantial amounts of supporting information. When analyzed, these reports provide a useful illustration of the kind of the human rights violations accusations that have been leveled against military personnel. To begin, it is noteworthy that prior to the start of the Calderón administration, there were only 14 recommendations issued to both SEDENA and SEMAR by CNDH. Since Calderón took office in December 2006, there have been 118 such recommendations. The first recommendation under Calderón was issued on May 23, 2007, and the most recent recommendation came on July 11, 2012, just weeks before this report was filed. For the purposes of this study, the authors reviewed all 101 recommendations issued by CNDH for SEDENA and all 17 recommendations for SEMAR from May 2007 to July 2012. The authors identified the date of occurrence for each case, the geographical location of each case, 20 specific types of violations, and

---

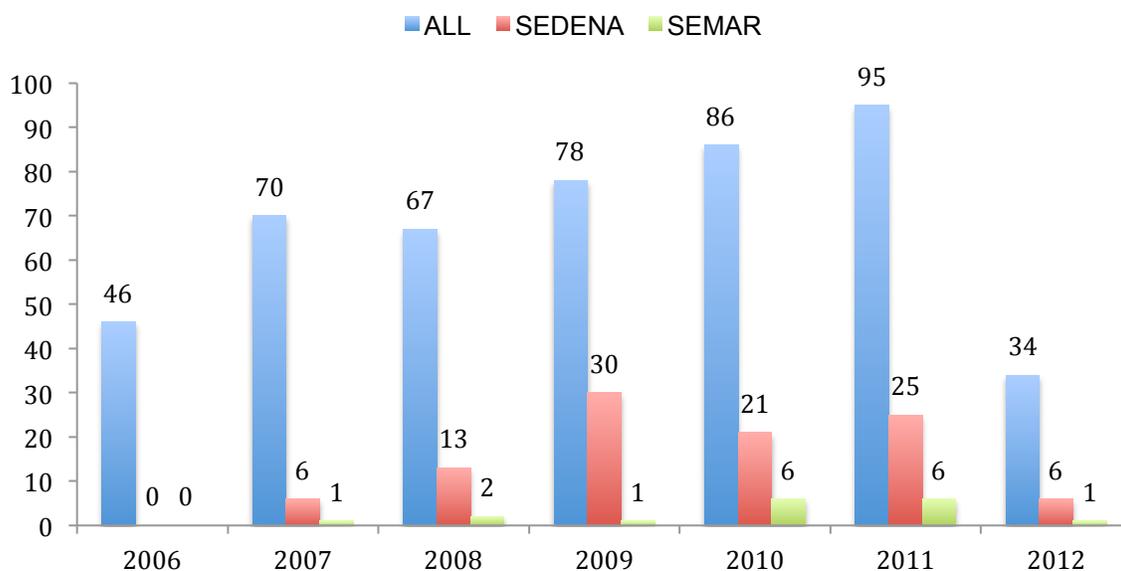
<sup>61</sup> Case 75/2010, titled "Case of V1, V2, V3, and V4's torture, and the cruel treatment of minors V5 and V6," deals with incidences that began just after midnight on March 26, 2008, in Zinapécuaro, Michoacán, when members of the Mexican Army detained V1, V2, and V4 at a bar, interrogated and beat them for information related to kidnapped persons before ultimately transporting them to a military base in Morelia, Michoacán. Meanwhile, V3 was captured and also transported to the same military installation after soldiers entered V3's house without orders, damaging personal materials in the process of apprehending the victim. A few hours later, members of the military, who were driving in V1's truck with V1 inside the vehicle, arrived at the home of V1 where they proceeded to interrogate and threaten V5 and V6. Afterwards, V1 was returned to the Morelia, Michoacán, where V1-V4 were held for four hours before appropriately passed to the control of the Investigation Agency of the Delegation of the Attorney General's Office of Michoacán (Agencia Investigadora de la Delegación de la Procuraduría General de la República.).

<sup>62</sup> Case 49/2010, titled "Case of arbitrary detention, illegal holding, being held *incomunicado*, and torture of V1, V2, and V3," deals with an incident that occurred on September 19, 2008, when members of the Mexican Army and Federal Preventative Police (Policía Federal Preventiva, PFP) detained V1, V2, and V3 in their respective homes in Ciudad Lerdo, Durango, between the hours of 1:00am and 5:00am and moved them to a military base, where they were interrogated and tortured for information related to weapons and drugs. At 7:00am the next day (September 20), more than 24 hours after arriving at the military base, V1, V2, and V3 were transported to the Federal Social Representative (Representante Social de la Federación) in Durango, Durango. CNDH found violations of the victims' access to justice, legal security, and personal integrity and security via means of arbitrary detention, illegal holding, being held *incomunicado*, torture, and delay in presentation of suspects to proper authority.

other pertinent factors.<sup>63</sup> All but four of these cases pertained to incidents that occurred prior to December 1, 2007, while the remaining 114 cases all occurred during the Calderón administration.

### Figure 5: CNDH Issued Recommendations During the Calderón Administration

(Through July 31, 2012)

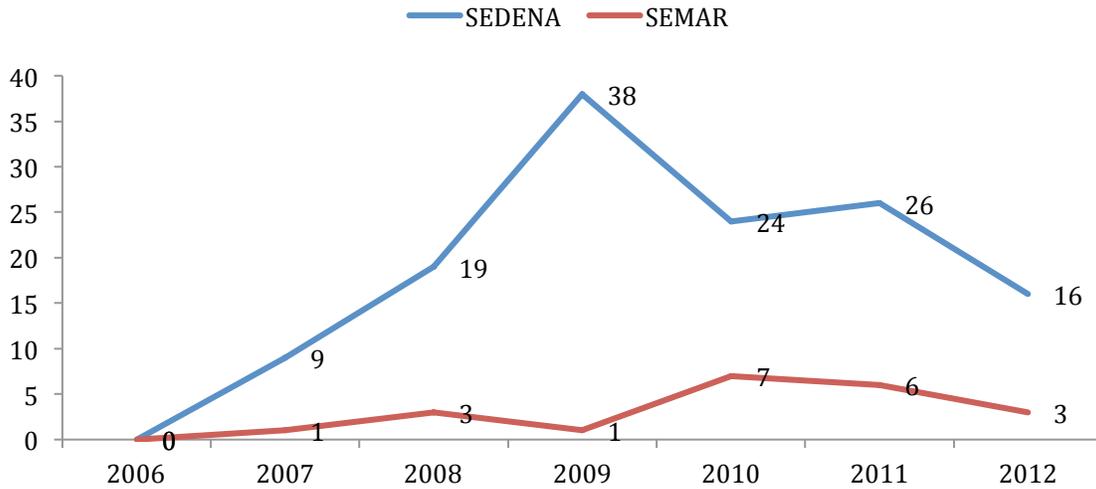


Source: CNDH.

Examining these CNDH recommendations offers useful insights. For one, the rise in recommendations issued to the military correlates closely with the number of complaints of alleged human rights violations, which also is connected to the surge of and gradual withdrawal of troops on the ground during Calderón’s term. As noted earlier, the number of complaints against SEDENA peaked in 2009, which is also true for the number of CNDH recommendations to SEDENA (Figure 5). While there were six recommendations to the military from 2004 to 2006 (although none during Calderón’s time in office), there were seven registered in 2007, 15 in 2008, 31 in 2009, 27 in 2010, and 31 in 2011. In 2009, 40% of the recommendations issued by CNDH were directed to the military, SEDENA accounting for 38% and SEMAR for 2%. (See Figure 6).

<sup>63</sup> The full dataset compiled for this report is available on the Justice in Mexico Project website: [www.justiceinmexico.org](http://www.justiceinmexico.org).

**Figure 6: Percentage of CNDH Recommendations Directed Towards Military**



Source: CNDH.

The proportion of CNDH recommendations made to the military by mid-2012 was less than half that registered in each of the previous two years, and represented only 21% of all recommendations. This trend may indicate that the scaling back of military involvement in key cities, such as Chihuahua, has helped to reduce the number of violations by military personnel. It may also reflect the fact that the military has actually attempted to prevent further violations, based on CNDH recommendations and scrutiny from human rights organizations. However, a less rosy view is that perhaps that military human rights violators have gotten better at concealing abuses. Regardless, that fewer complaints and recommendations have been made against the military since 2009 is a notable and important trend.

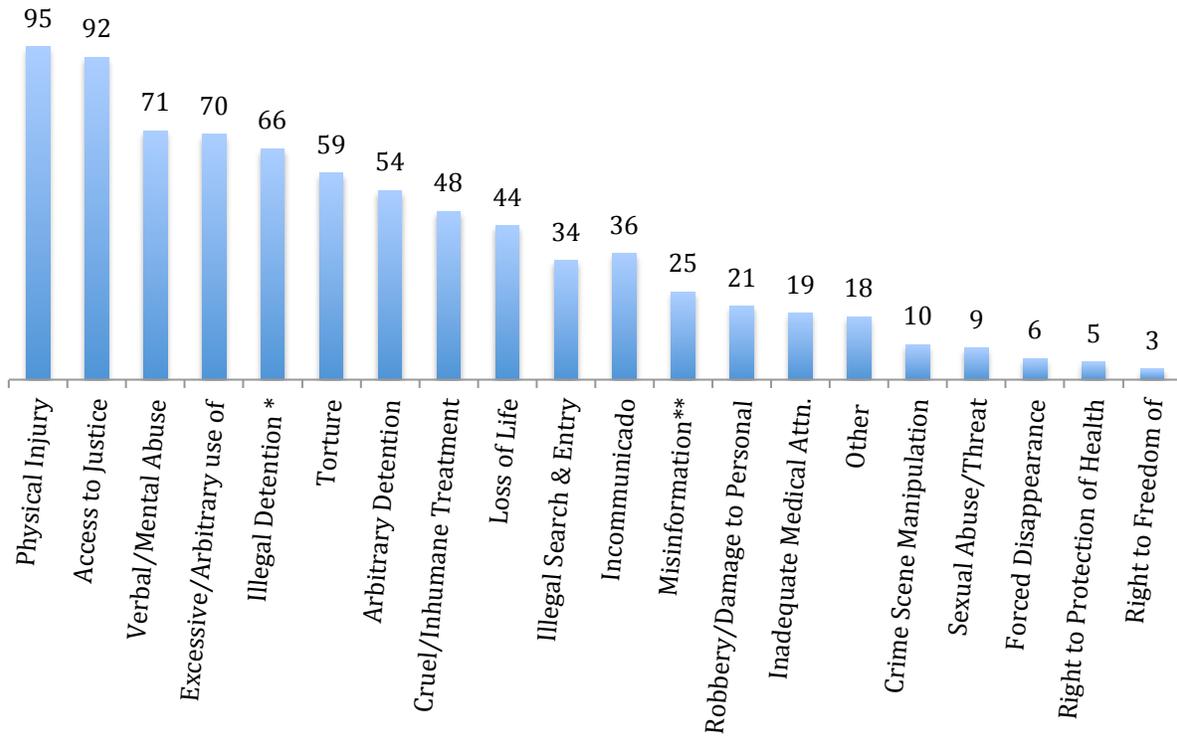
Looking more closely at other trends within the CNDH recommendations provides more specific information regarding the types of abuses occurring, where they are most prominent, and against whom. We consider some of these additional trends below.

**i. Types of Abuse Registered Since 2007**

Of the 118 recommendations registered to the military since Calderón took office, physical abuse is the most common abuse documented, followed by obstruction to access to justice, verbal/mental abuse, excessive or arbitrary use of force or public office, and illegal detention. Figure 7 lists the number of cases in which specific forms of abuse were documented by CNDH.

When the 20 most frequently cited abuses are broken down by year, we see that the number and type of abuses increased most substantially in 2008 and 2009 (See Table 1: Number of Cases Identifying Specific Types of Abuse (By Year)). This suggests that the large surge of troop deployments Calderón introduced after taking office led to a dramatic increase of human rights abuses in a short few years, perhaps because they were inadequately prepared for interacting with civilians in the public sphere.

**Figure 7: Type of Abuse Found in CNDH Recommendations to the Military Since 2005**



Source: CNDH. Total out of 118 reports issued by CNDH from May 2007 to July 2012.

**Table 1: Number of Cases Identifying Specific Types of Abuse (By Year)**

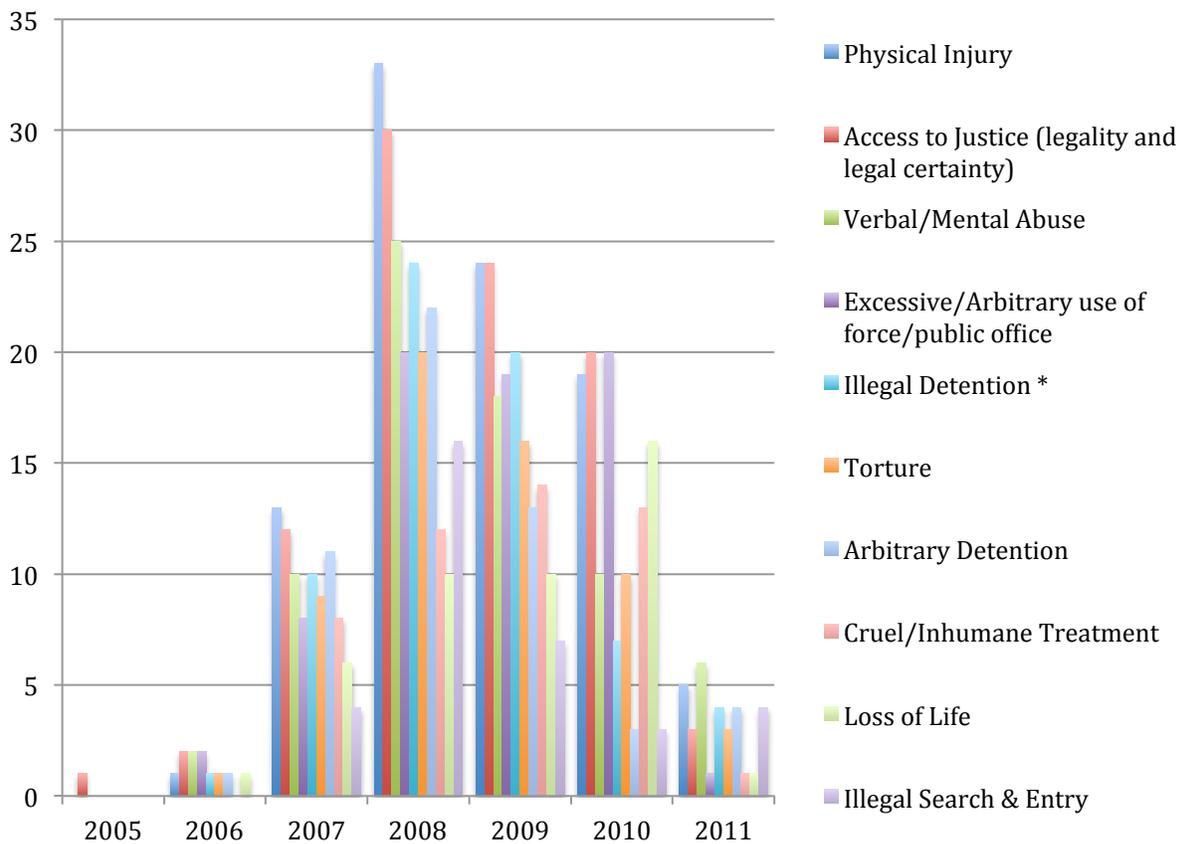
Type of Abuse	2005	2006	2007	2008	2009	2010	2011	Total
Physical Injury	0	1	13	33	24	19	5	95
Access to Justice	1	2	12	30	24	20	3	92
Verbal/Mental Abuse	0	2	10	25	18	10	6	71
Excessive/Arbitrary Use of Force/Public Office	0	2	10	20	19	20	1	70
Illegal Detention*	0	1	10	24	20	7	4	66
Torture	0	1	9	20	16	10	3	59
Arbitrary Detention	0	1	11	22	13	3	4	54
Cruel/Inhumane Treatment	0	0	8	12	14	13	1	48
Loss of Life	0	1	6	10	10	16	1	44
Illegal Search and Entry	0	0	4	16	7	3	4	34
Incommunicado	0	1	5	11	9	8	2	36
Misinformation**	0	1	5	5	4	9	1	25
Robbery/Damage to Personal Property	0	0	6	8	4	2	1	21
Inadequate Medical Attention	0	0	4	7	6	2	0	19
Other	1	2	3	5	2	3	2	18
Crime Scene Manipulation	0	0	0	3	0	7	0	10
Sexual Abuse/Threat	0	1	2	3	3	0	0	9
Forced Disappearance	0	0	1	1	2	2	0	6
Right to Protection of Health	0	0	2	2	1	0	0	5
Right to edom Freedom of Expression	0	0	1	1	1	0	0	3

(Cases in bold represent the year during which the highest number of that abuse occurred).

\*Illegal detention refers to suspects that are not immediately passed to proper authority

\*\*Inaccurate/delayed reporting of facts/evidence

**Figure 8: Number of Recommendations to the Military for the 10 Most Frequent Types of Abuse (By Year)**



At the same time, it is interesting to note the spike in cases involving the loss of life in 2010, an abuse that occurred in 67% of the cases documented for that year (16 cases of 24 total). Also, cases involving torture were documented in 56% of the cases that occurred in 2008 (20 of 36), 52% of the cases from 2009 (16 of 31), and 42% in 2010 (10 of 24). Thus, while the frequency with which torture, an egregious violation of human rights, occurs has decreased since its initial spike in 2008 cases, it is still involved in half of all recommendations CNDH issues to the military (59 of 118). Thus, as the proximity with which troops interact with the public has increased over the past *sexenio*, so too has problem of physical abuse, whether loss of life, torture, or physical injury, the latter of which was present to some extent in 95 of 118 CNDH recommendations, representing 81% of cases.

It is important to note the difference in data between illegal and arbitrary detentions, as documented in the CNDH recommendations. Illegal detentions refer to the failure to immediately pass a suspect (or in this context victim in an alleged abuse case) to the proper authority for processing after he or she has been apprehended. As outlined in the Mexican Constitution, International Civil and Political Rights Agreement, the American Convention on Human Rights, the Universal Declaration of Human Rights, the American Declaration of Rights and Duties of Man, and the Basic Principles on the Independence of the Judiciary, “public servants are charged with following the law of putting

detained persons at the proper disposition of competent authorities without any delay,” as stated throughout CNDH recommendations.

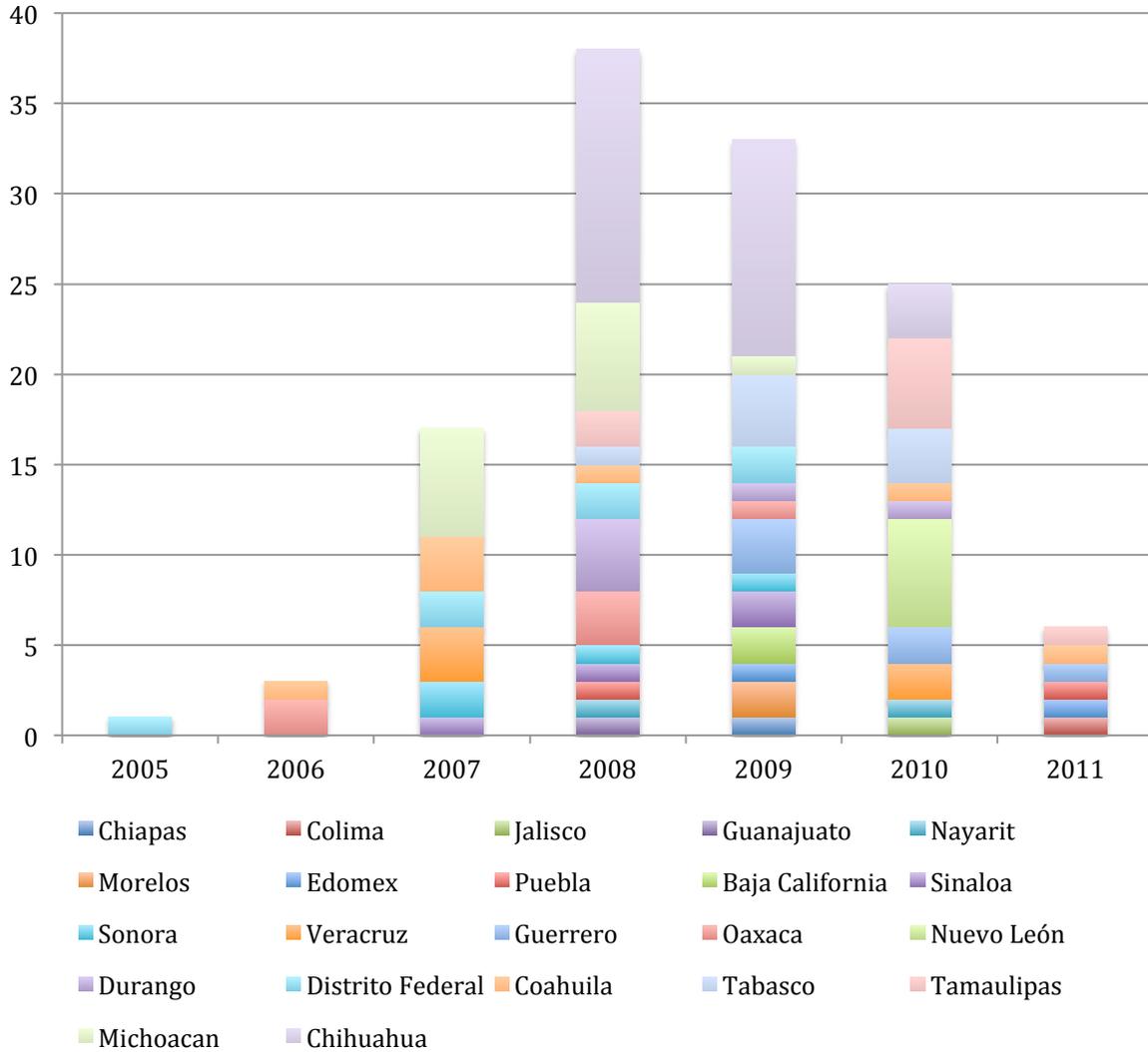
Additionally, CNDH also emphasizes in its reports that detained persons caught *in flagrante* (en flagrancia) should be immediately turned over to ministerial authorities and not sent to military installations for detention and holding. There have been 66 instances of illegal detentions of victims documented in CNDH’s recommendations. While some of these cases are in reference to detentions lasting a few hours, in other cases it is days before the victim is properly turned over to the Attorney General’s Office (Procuraduría General de la República), the Public Prosecutors (Ministerio Público), or other competent authorities. Arbitrary detentions, on the other hand, refer to cases when victims are initially detained by an authority without proper documentation, reason, or credible suspicion. A person can be detained if caught in the act of committing a crime or even if authorities detect enough suspicious activity. Despite the military claiming it has reasonable suspicion or evidence to detain an individual, the CNDH can and has discredited this assertion and thus found SEDENA or SEMAR in violation of arbitrary detention. This type of abuse occurred in 54 of all cases leveled against SEDENA.

Looking at the breakdown of these two types of abuses, the authors found that in 16 cases issued over the past six years there was documentation of illegal detention, but not arbitrary detention. This discrepancy lies in the fact that the military legally detained individuals in these cases with proper reason—whether caught in the act, with proper order for arrest, or reasonable suspicion—yet the suspects were not properly passed to authorities, as required by international and domestic law. Looking deeper, torture was documented in 11 of these 16 cases, which is a clear cause for concern given that in 68% of cases where suspects are legally apprehended, but illegally detained, they are subject to torture. Moreover, torture was documented in 30 of the 66 cases where an individual was not immediately handed over from military control to the proper authority, regardless of whether the suspect was legally or arbitrarily detained, which represents 45% of the cases. Such data supports the CNDH’s recommendations that the military follow protocol and immediately turn any apprehended person over to the proper authority; otherwise they face a serious risk of being tortured while under military control.

## **II. Location of Abuses**

Within each recommendation, CNDH cites the geographic location of where the abuse(s) occurred. A case could cover more than one city, and in a few instances, cross state lines if the victim is transported, for example, from the place of apprehension to a military base and then to a federal authority’s office, or in some cases to a military hospital. Removing the cities from the analysis and just looking at the state level, we see that abuses were documented in 21 states and the Federal District, although all of the cases in the D.F. involved instances of individuals filing claims against the Central Military Hospital located in Mexico City, and not in relation to incidences of abuses occurring when members of the military perform public security duties (i.e. search and seizure, apprehension, detention). Regardless, of the 22 entities where violations occurred, Chihuahua led with 29 cases, which far surpassed Michoacán, which followed with 13 cases. Tabasco and Tamaulipas had eight complaints each, Coahuila and the Federal District each had seven, while Durango, Guerrero, Nuevo León, and Oaxaca registered six each, and Veracruz with five.

**Figure 9: Abuses by the Military by State Per Year as Documented in CNDH Recommendations**

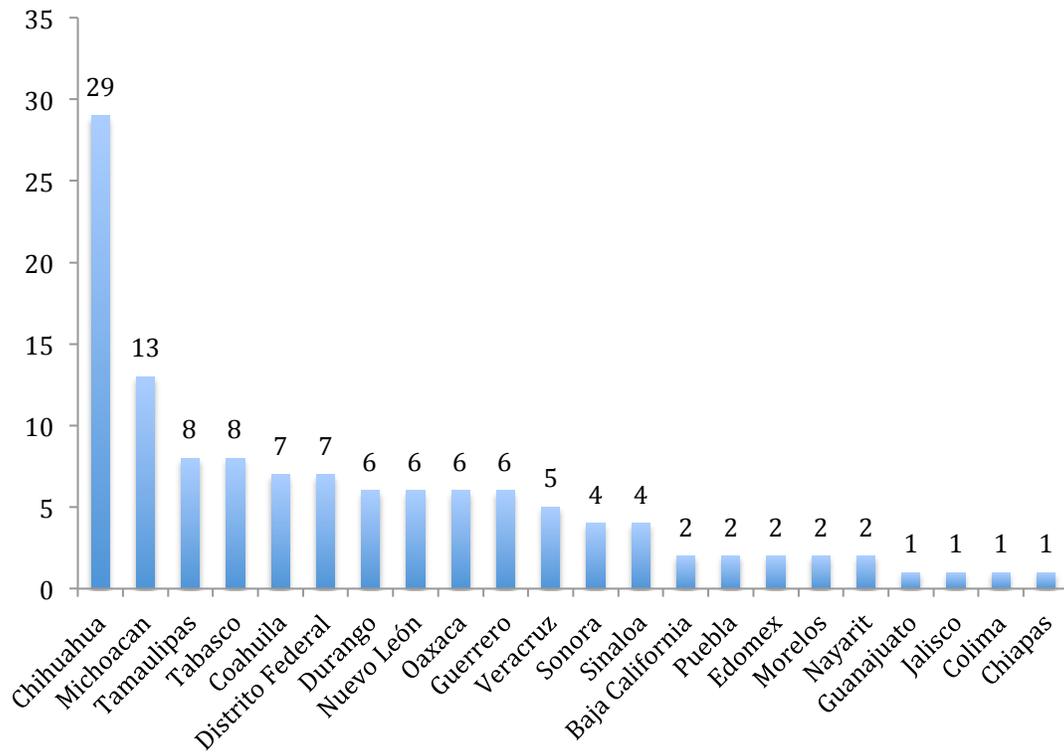


Source: CNDH.

Such data represents how largely concentrated the instances of human rights abuses are, as only 13 states and districts accounted for 92% of all violations, and just under two thirds (61%) occurred in only 6 states. Considering Chihuahua and Michoacán, the two states that account for 36% of all human rights abuse cases reported by CNDH (29 and 13 cases, respectively), it is clear that the surge in troop deployment to these areas clearly brought an increase in documented abuses. In 2008, in Ciudad Juárez, Chihuahua, for example, the federal government introduced over 3,000 soldiers in a short amount of time as part of the Operation Joint Chihuahua security plan to swiftly and firmly curtail the rising levels of crime and violence in what was then known as the “Homicide Capital of the World.” The number of violations of human rights in Chihuahua increased from zero in 2007 to 14 in 2008. Such increases lend weight to the argument that the sudden deployment of troops into

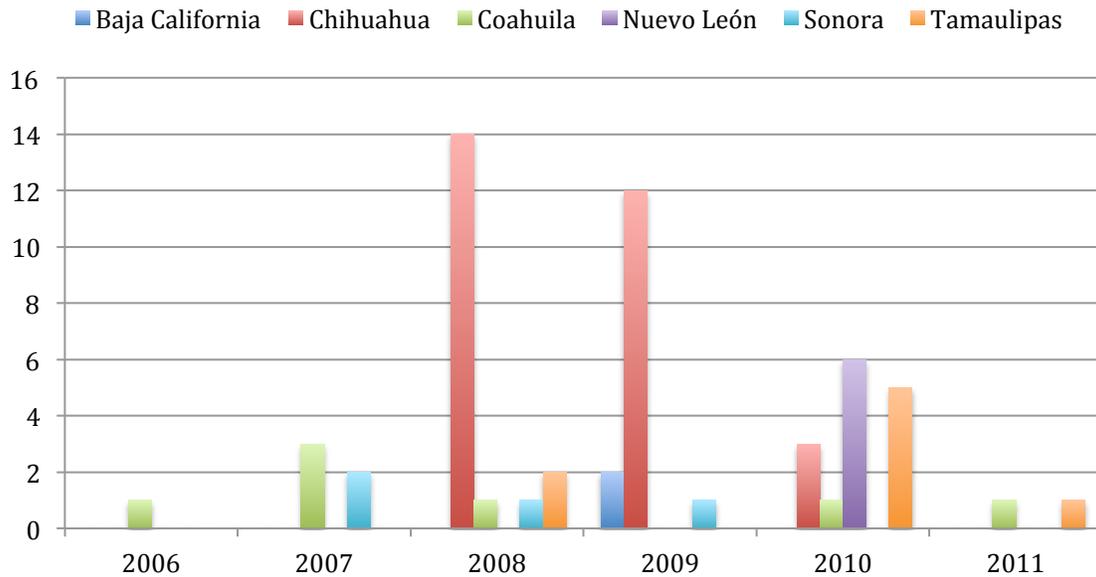
local security dynamics exacerbates human rights abuses in that area. It is also worth noting that the six states on the U.S.-Mexico border (Baja California, Chihuahua, Coahuila, Nuevo León, Sonora, and Tamaulipas) were involved in just under half of all recommendations, accounting for 56 of 118 recommendations issued to the military since 2007 (See Figure 11). Given the large troop deployments to the border in recent years, such numbers are not necessarily surprising, but other states (such as Michoacán and the state of Mexico) have also had large deployments without similar increases in confirmed abuses.

**Figure 10: Location of Abuses Documented in CNDH Recommendations by State Since 2005**



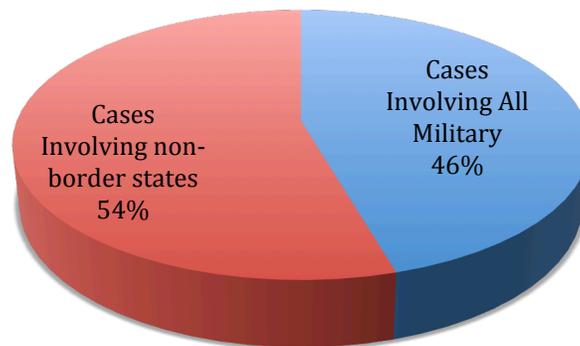
Source: CNDH.

**Figure 11: Documented Abuses in Border States per Year**



Source: CNDH.

**Figure 12: CNDH Recommendations to SEDENA Involving Border States Versus Non-Border States**



Source: CNDH.

### III. Victims

The data included in CNDH recommendations, while extremely detailed in some respects, is a bit more protective of the information provided when it comes to identifying victims involved in cases. Recommendations issued between 2007 and 2009 actually name the victims and often include descriptive information like age, sex, and in some cases profession. However, it is still difficult to discern exact data during those years given that a number of the recommendations lump large cases of complaints into one, so one recommendation may involve more than 50 victims. In 2010, it appears CNDH changed its method for reporting cases of violations, likely to protect victims and

their families from further attacks. Thus, details about victims are much harder to glean from recommendations made after 2010, given that CNDH refers to victims simply as V (e.g., V1, V2, V3, etc.). On occasion, specific information is identified, such as gender-based familiar relations (e.g., V1, the wife of V2, was apprehended by members of SEDENA) or age if the case involves a minor.

Given the obstacles to gathering more detailed information about victims, the following analysis of these factors must be considered incomplete. Nevertheless, the information the authors were able to gather from available recommendations is still telling. Data broken down by type, location, and population provide important snapshots of the human rights abuses at hand in Mexico. While the data collected from the CNDH recommendations may lack specific details about victims, it nevertheless provides a look at certain trends and highlights of the violations. Out of the 516 victims involved in cases recommended to SEDENA,<sup>64</sup> roughly 10% (51) were women and 7% (35) were minors. This is likely because the population targeted by SEDENA in its public security efforts, and consequentially more likely to be abused, are males above the age of 18. That said, the reports offer a glimpse of abuses affecting certain special populations, including journalists (6), college students (2), an indigenous person (1), and a minor with special needs (1). Military personnel accounted for roughly 1.5% (8) of victims, while at least 5% (25) were the police officers cited at the outset of this report.

### C. Compliance

Following the publication of a case, the accused authority ought to comply with the list of recommendations within that case. Thus, CNDH may issue nine recommendations specifically to SEDENA within a given case, and SEDENA is expected to follow them. These generally include directions to repair damages, immediately cease the action(s) that led to the violations at hand, collaborate in any investigations and judicial proceedings that may unfold, and always present CNDH evidence of compliance.

Up until June 2011, a major critique of CNDH by human rights advocacy organizations was the institution's ineffectiveness in following up with its recommendations and ensuring compliance. However, the institution was never properly equipped with the necessary authority and mechanisms to ensure compliance. As Human Rights Watch explains, "CNDH officials, however, insist that they can only follow up to ensure implementation of their recommendations if the government authorities accept them. Consequently, when recommendations are rejected, the CNDH often stops working on them, thereby abandoning the cases and leaving the victims without access to remedies in which they are entitled."<sup>65</sup> Thus, following the release of a recommendation, the accused authority was under no pressure other than the public's awareness of the allegations to comply with the recommended reforms given that the CNDH itself would not pursue the case.

---

<sup>64</sup> It is important to note that in two cases published in 2007, the number of victims recorded was much higher than what TBI tallied, which was intentionally done to eliminate inadvertent counting of victims that were specifically abused by other agencies referenced in the recommendation that were not abused by SEDENA. Thus, cases like 15/2007 and 38/2007 that cite 50 and 58 victims, respectively, are actually indicative of the number of victims SEDENA had a specific connection to and do not include the dozens of other victims referenced in the report for agencies like the Interior Ministry (Secretaría de Gobernación, Segob) or Secretary of Public Security (Secretaría de Seguridad Pública, SSP).

<sup>65</sup> Human Rights Watch. "Mexico's National Human Rights Commission: A Critical Assessment." Vol. 20, No. 1(B). February 2008. [http://www.hrw.org/sites/default/files/reports/mexico0208\\_1.pdf](http://www.hrw.org/sites/default/files/reports/mexico0208_1.pdf)

In June 2011, however, this changed when Calderón signed into law an amendment to the constitution that granted power to the CNDH to force authorities to answer summons by Congress to defend decisions to not comply with the recommendations.<sup>66</sup> This gives the CNDH significantly more power in the recommendation and compliance process as accused authorities must now defend themselves if they choose to not comply with CNDH's recommendations. Nevertheless, the 2011 amendment is still limiting in that CNDH's power seemingly ends after an authority presents its case before the appropriate government body hearing the justification. Additionally, as of March 2012, CNDH noted that the amendment's changes had yet to take full effect. "We hope that the Constitutional changes are the priority of the next party in power," said Raúl Plascencia Villanueva, head of the CNDH, referencing the July 2012 elections.<sup>67</sup> It is not entirely clear if any institution accused of non-compliance has actually been called upon to defend its inaction since the amendment passed last year. However, the general director of Complaints and Appeals, Iván de la Selva, did mention in February 2012 that despite SEDENA being one of the top agencies with the most complaints lodged against it, "it is the institution that most often complies with recommendations."<sup>68</sup>

Looking at the process of filing a complaint, the potential recommendation, and follow up in the compliance stage, it is clear what a central role CNDH plays in investigating, documenting, and, perhaps more so in the future, remedying abuses. It is clear that the number of both complaints and recommendations—including data gleaned from within the recommendations—peaked in 2009 and have since seemed to level out after an initial decline. Despite the potential progress this indicates in curbing human rights violations—whether the military has somewhat scaled back in its abuses or if they are just being better concealed—a real concern is that the protections and actual efforts on a structural level to decrease abuses are still relatively weak.

#### **IV. CURBING MILITARY HUMAN RIGHTS ABUSES**

Under multiple treaties and conventions ratified under the United Nations and the frameworks of the Inter-American System, Mexico not only has an obligation to protect human rights, but to actively prosecute and punish abuses. These include, but are not limited to, the International Covenant on Civil and Political Rights (active since 1981), the American Convention on Human Rights (active since 1981), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (active since 1987), the Inter-American Convention to Prevent and Punish Torture (1987), and the International Convention for the Protection of All Persons from Enforced Disappearance (ratified March 2008) (See Table 2). The cases noted above are germane to these agreements in several ways, since these treaties prohibit unlawful killings, torture, and other abuses, and also outline the rights of victims and the proper investigative and trial procedures required to address violations.

---

<sup>66</sup> Justice in Mexico Project. "June 2011 News Report." Trans-Border Institute. June 2011.

<http://justiceinmexico.files.wordpress.com/2011/02/2011-06-june-news-report4.pdf>

<sup>67</sup> Notimex. "CNDH: Servidores que violan garantías violan la Constitución." Noticias Televisa. March 10, 2012.

<http://noticierotelevisa.esmas.com/nacional/415364/cndh-servidores-violan-garantias-violan-constitucion/>

<sup>68</sup> See: <http://www.el-mexicano.com.mx/informacion/noticias/1/3/estatal/2012/02/15/547113/no-se-atienen-10-por-ciento-de-las-recomendaciones-de-la-cndh.aspx>; and

[http://www.afntijuana.info/informacion\\_general/7327\\_sedena\\_recibe\\_recomendaciones\\_cndh](http://www.afntijuana.info/informacion_general/7327_sedena_recibe_recomendaciones_cndh)

**Table 2: International Treaties and Agreements that Mexico Has Signed With Regard to Human Rights**

Treaty/Agreement	Section	Document Text
American Convention on Human Rights	Article 5	“Every person has the right to have his physical, mental and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment
American Convention on Human Rights	Article 25	“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights . . .”
American Convention on Human Rights	Article 8	“Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.”
International Covenant on Civil and Political Rights	Part II, Article 7	“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
International Covenant on Civil and Political Rights	Part II, Articles 2.3a and 2.3b	“Any person whose rights or freedoms...are violated shall have an effective remedy” and shall have his or her “right thereto determined by competent judicial, administrative, or legislative authorities.”
Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment	Article 2	“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”
International Convention for the Protection of All Persons from Enforced Disappearance	Article 1	“No one shall be subjected to enforced disappearance. No exceptional circumstances whatsoever... may be invoked as a justification for enforced disappearance.”

For example, Article 5 of the American Convention on Human Rights (ACHR) states, “Every person has the right to have his physical, mental and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”<sup>69</sup> This sentiment is echoed in Part II, Article 7 of the International Covenant on Civil and Political Rights.<sup>70</sup> Under Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>71</sup> Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance states, “No one shall be subjected to enforced disappearance. No

<sup>69</sup> Department of International Law. "American Convention on Human Rights Pact of San Jose, Costa Rica." OAS - Organization of American States: Democracy for peace, security, and development. <http://www.oas.org/juridico/English/treaties/b-32.html> (accessed March 1, 2011).

<sup>70</sup> Office of the United Nations High Commissioner for Human Rights. "International Covenant on Civil and Political Rights." OHCHR Homepage. <http://www2.ohchr.org/english/law/ccpr.htm> (accessed March 1, 2011).

<sup>71</sup> Office of the United Nations High Commissioner for Human Rights . "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." OHCHR Homepage. <http://www2.ohchr.org/english/law/cat.htm> (accessed March 1, 2011).

exceptional circumstances whatsoever... may be invoked as a justification for enforced disappearance.”<sup>72</sup>

Still, while these treaties outline the Mexican government’s obligations to protect basic human rights, the actual enforcement of these protections has been constrained by several factors. First, long-standing norms of deference to military justice meant that, until recently, cases of alleged human rights abuses involving military personnel were not subject to civilian jurisdiction. The military’s autonomy and broad discretion over its internal affairs allowed many abuses to go unaddressed or unpunished. Second, for many years, civilian authorities have been constrained in their ability to compel the military to address abuses, due in large part to the limitations of Mexico’s autonomous national human rights commission. Third, during the Calderón administration, authorities were slow to acknowledge abuses and reluctant to subvert Mexican constitutional law to obligations determined by the above noted international human rights treaties. We consider each of these issues below.

### **A. Deference to Military Justice**

As noted earlier, Mexico’s military has long had substantial discretion over its internal affairs. Until recently, this discretion included jurisdiction over all criminal cases and alleged human rights violations involving military personnel. This led predictably to both human rights violations by the military and impunity for perpetrators of these abuses. In 1998, the United Nations Special Rapporteur on Torture determined that Mexican military personnel were “generally protected by military justice” and called for civilian jurisdiction over “cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment.”<sup>73</sup> This assessment was subsequently confirmed by multiple binding judgments issued by the Inter-American Court stating that crimes against civilians must be tried outside of military courts.

However, the Mexican Military Code of Justice assigns the military jurisdiction over “Faults under common or federal law . . . when committed by military personnel in active service or in connection with acts of service.”<sup>74</sup> The Military Judiciary has historically relied upon a loose interpretation of this language to assert jurisdiction over cases such as rape and torture perpetrated by military personnel on civilians.<sup>75</sup> Reliance on military jurisdiction to handle civilian grievances is problematic for a number of reasons. Cases handled by Mexico’s Military Prosecutor (Ministerio Público Militar) are typically handled in court behind closed doors, and military officials frequently fail to disclose details of investigations, charges, and results to victims and their families.<sup>76</sup> Predictably, the redress of abuses by military justice therefore often suffers from a lack of transparency and inadequate investigations, resulting a high degree of impunity for perpetrators and little justice for victims.

---

<sup>72</sup> Office of the United Nations High Commissioner for Human Rights. "International Convention for the Protection of All Persons from Enforced Disappearance." OHCHR Homepage. <http://www2.ohchr.org/english/law/disappearance-convention.htm> (accessed March 1, 2011).

<sup>73</sup> Human Rights Watch. “Mexico’s National Human Rights Commission,” 61-62.

<sup>74</sup> Universidad Nacional Autónoma de México: Instituto de Investigaciones Jurídicas. “Codigo de Justicia Militar.” <http://info4.juridicas.unam.mx/ijure/fed/3/58.htm?s> (accessed April 2, 2012.)

<sup>75</sup> Taraciuk, “Uniform Impunity,” 5.

<sup>76</sup> Steinberg, Nik. “Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico’s ‘War on Drugs.’”

Human rights advocates have long insisted that military jurisdiction over cases of alleged human rights abuses constitutes a violation of the terms of Mexico's international obligations, including the American Convention on Human Rights (ACHR). Article 25 of the ACHR states, "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights . . ." <sup>77</sup> A victim's right to redress is echoed in Part II, Articles 2.3(a) and 2.3(b) of the International Covenant on Civil and Political Rights, which provide for an "effective remedy" and his or her "right thereto determined by competent judicial, administrative, or legislative authorities." <sup>78</sup> Finally, requirements for transparent legal proceedings are stated in Article 8 of the ACHR, "Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice." <sup>79</sup> Moreover, Article 13 of the Mexican Constitution states, "Military tribunals shall in no case extend jurisdiction over persons who do not belong to the army. Whenever a civilian is involved in a military crime or violation, the respective civil authority shall deal with the case." <sup>80</sup>

Despite these guidelines, until landmark reforms and court rulings in 2011 (discussed below in greater detail), Mexican authorities referred cases involving alleged human rights violations to military courts. <sup>81</sup> Mexico's Supreme Court had upheld military jurisdiction in 2005 when it confirmed the Code of Military Justice's broad interpretation of "military discipline" to include all active-duty soldiers, even if the crime is not committed in the line of duty. In case number 148/2005, the court ruled in order to define a crime as subject to military discipline, "it is sufficient that the subject that carries out [the crime] be an active-duty military official or soldier." <sup>82</sup> As a result, throughout most of the Calderón administration, human rights violations allegedly committed by members of the military have been subject to investigation and trial by military tribunal. Indeed, a report by Human Rights Watch found that only 29 Mexican military personnel had been convicted in the more than 3,670 human rights investigations that took place from 2007 to November 2011. <sup>83</sup>

## B. The Limits of Mexico's National Human Rights Commission

Civilian authorities have been relatively limited in their ability to protect against military human rights abuses. Mexico's National Human Rights Commission (Comisión Nacional de Derechos

---

<sup>77</sup> Department of International Law. "American Convention on Human Rights Pact of San Jose, Costa Rica."

<sup>78</sup> UNHCHR, "ICCPR".

<sup>79</sup> Department of International Law. "American Convention on Human Rights Pact of San Jose, Costa Rica."

<sup>80</sup> Amnesty International. "Mexico: New Reports of Human Rights Violations by the Military." London: Amnesty International Publications, 2009, 19.

<sup>81</sup> One exception to this was the 2006 Castaños Case, in which soldiers threatened, beat, and sexually abused 14 female employees of a nightclub and seven police officers. The case was settled in civilian court because the soldiers were off-duty. The judge found four soldiers guilty, three of whom are still being held in state prison. This case highlights the uneven application of law to the military being charged in civilian court versus military court. Information on the Castaños Case can be found at: Human Rights Watch, "Uniform Impunity," For a more detailed account of the abuses, see Comisión Nacional de los Derechos Humanos México. "Recomendaciones de 1990 a 2012." Accessed June 14, 2012. [http://www.cndh.org.mx/node/32 Recomendación 37/2007](http://www.cndh.org.mx/node/32_Recomendación_37/2007); Noriega, Sofia. "México: 17 militares violadores siguen sin castigo. Caso Castaños a punto de ir ante la CIDH." Radio Informaremos. July 17, 2011. <http://radioinformaremosmexico.wordpress.com/2011/07/17/mexico-17-militares-violadores-siguen-sin-castigo-caso-castanos-a-punto-de-ir-ante-la-cidh/>

<sup>82</sup> Bricker, Kristin. "Military Justice and Impunity in Mexico's Drug War." SSR Issue Papers: No. 3. The Centre for International Governance Innovation. September 2011. [http://mafiaandco.files.wordpress.com/2011/09/military-justice-and-impunity-in-mexico\\_s-drug-war.pdf](http://mafiaandco.files.wordpress.com/2011/09/military-justice-and-impunity-in-mexico_s-drug-war.pdf)

<sup>83</sup> Human Rights Watch, *Neither Rights, Nor Security: Killings, Torture And Disappearances In Mexico's "War On Drugs"* 161-205 (2011). <http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0>

Humanos, CNDH) was initially established in 1990 as part of the Ministry of the Interior (Secretaría de Gobernación, SEGOB), with a mandate to promote human rights within the Mexican legal system. In 1999, CNDH was separated from the interior ministry, becoming an autonomous agency and one of the world's largest national human rights commissions.<sup>84</sup> Today, CNDH has a mandate "to handle complaints against acts or omissions of an administrative nature in violation of Human Rights, by any authority or public servant, with the exception of the Federal Judiciary, and to formulate public non-binding recommendations and complaints and grievances to the appropriate authorities."<sup>85</sup> In the case of serious human rights abuses, CNDH investigates and documents their findings through special reports, and makes public recommendations to government agencies regarding the policies and actions needed to address human rights abuses. CNDH's most direct impact on government policy results from "conciliations," or signed agreements by government agencies agreeing to undertake its recommendations.<sup>86</sup>

While CNDH has many virtues, it also has significant limitations.<sup>87</sup> First is the question of CNDH's view of its own jurisdiction, which some human rights advocates perceive to be excessively modest. This is in part because CNDH refused to recognize Mexico's international treaty obligations as a part of Mexican law, which placed many human rights cases outside of its mandate to safeguard rights "protected by the Mexican legal system."<sup>88</sup> With regard specifically to military human rights abuses, the CNDH has often opted not to direct its complaints and referrals to an appropriate civilian authority, instead directing them to the military itself. Indeed, a 2008 report by Human Rights Watch noted that, even amid concerns about improper investigative procedures by the Military Prosecutor's Office, "the CNDH has routinely turned military abuse cases over to military prosecutors, virtually ensuring there would be no effective remedy for the victims or their families."<sup>89</sup>

Once recommendations have been made, CNDH has relatively limited ability to compel the military or other agencies to take action. As noted above, the CNDH made 25 recommendations to SEDENA in 2011, six to both the Mexican Navy (Secretaría de Marina-Armada or SEMAR) and the Attorney General (Procuraduría General de la República or PGR) and 15 to the Secretariat of Public Security (Secretaría de Seguridad Pública or SSP).<sup>90</sup> While each recommendation was acknowledged by the agency in question, the non-binding nature of CNDH recommendations means that no

---

<sup>84</sup> Since 1999, CNDH members have been appointed by the Mexican Senate after consultation with civil society Human Rights Watch.

<sup>85</sup> "Atribuciones," Comisión Nacional de Derechos Humanos website, <http://www.cndh.org.mx/node/67>. Authors' translation. (Accessed July 1, 2012).

<sup>86</sup> Taraciuk, Tamara and Daniel Wilkinson. "Mexico's National Human Rights Commission: A Critical Assessment." Human Rights Watch. February 2008. 13-14; Comisión Nacional de los Derechos Humanos, *Recomendación 70/2009*; Ibid. *Recomendación 71/2009*; Ibid. *Recomendación 75/2009*. For more information on CNDH's methodology, go to [www.cndh.org.mx](http://www.cndh.org.mx). <http://www.cndh.org.mx/recomen/recomen.asp> (accessed April 29, 2010); Ibid. *Recomendación 71/2009*; Ibid. *Recomendación 75/2009*. For more information on CNDH's methodology, go to [www.cndh.org.mx](http://www.cndh.org.mx).

<sup>87</sup> In February 2008, Human Rights Watch (HRW) issued a report documenting the CNDH's institutional and procedural shortcomings. Human Rights Watch. "Mexico's National Human Rights Commission: A Critical Assessment," 10,12.

<sup>88</sup> See La Cámara de Diputados del H. Congreso de la Unión. "Constitución política de los Estados Unidos Mexicanos." February 9, 2012. <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>, art. 102 b; Law on the CNDH, art. 2 in Human Rights Watch. "Mexico's National Human Rights Commission: A Critical Assessment," 60.

<sup>89</sup> Human Rights Watch. "Mexico's National Human Rights Commission," 61.

<sup>90</sup> Bureau of Democracy, Human Rights and Labor. "Country Reports on Human Rights Practices 2011: Mexico." U.S. Department of State. Accessed June 21, 2012.

particular action must be taken to address the issues raised within. Moreover, CNDH has limited capacity to follow up and monitor agency responses to each recommendation.<sup>91</sup>

### C. Calderón's Response to Military Human Rights Abuses

In recent years, Mexican authorities have been averse to claims regarding military human rights abuses in the drug war, and to the assertion that Mexico's international treaty obligations supersede the country's constitution. At the outside of his term, Calderón was initially reluctant to acknowledge and address human rights abuses by the Mexican military. As noted above, a significant increase in alleged human rights by the military occurred in the first year of Calderón's term in office, along with the government's massive deployment of troops. This number greatly increased in 2008 and peaked in 2009. Yet, in August 2009, Calderón challenged human rights advocates to prove "any case, just one case, where the proper authority has not acted in a correct way, that the competent authorities have not punished anyone who has abused their authority, whether they be police officers or they be soldiers or anyone else."<sup>92</sup>

Calderón proposed a bill in October 2010 that would amend the Military Code of Justice to transfer certain cases of alleged military human rights abuses to civilian courts.<sup>93</sup> On introducing the measure, Calderón asserted that his bill would harmonize Mexico's domestic laws with its international treaty obligations.<sup>94</sup> However, human rights advocates disagreed, since only three types of abuse — rape, forced disappearance, and torture— would be subject to civilian jurisdiction. Moreover, if passed, these crimes would still be investigated and tried by military prosecutors, who would gather the evidence to be presented in civilian courts under Mexico's inquisitorial system of criminal justice.<sup>95</sup> Multiple rulings by the Inter-American Court of Human Rights (IACHR), including one issued in December 2010, have indicated that human rights abuse cases involving Mexican military personnel should be handled by civilian courts.<sup>96</sup> In short, the administration's bill fell short of meeting Mexico's international obligations, and would therefore require further modification after subsequent Congressional reforms and Supreme Court decisions discussed below.

---

<sup>91</sup> Human Rights Watch. "Mexico's National Human Rights Commission".

<sup>92</sup> Human Rights Watch. "Mexico: Calderón Denies Military Impunity."

<http://www.hrw.org/en/news/2009/08/10/mexico-calderon-denies-military-impunity> (accessed February 1, 2011).

<sup>93</sup> Justice in Mexico. "Mexican Senate Committees Approve Judicial Reform to Try Soldiers in Civilian Courts." Justice in Mexico Project. April 30, 2012. <http://justiceinmexico.org/2012/04/30/mexican-senate-committees-approve-judicial-reform-to-try-soldiers-in-civilian-courts/>

<sup>94</sup> Archibold, Randal C. "Calderón Proposes Mexico Human Rights Changes." *The New York Times*. October 19, 2010. [http://www.nytimes.com/2010/10/20/world/americas/20mexico.html?\\_r=1](http://www.nytimes.com/2010/10/20/world/americas/20mexico.html?_r=1) (accessed March 14, 2011).

<sup>95</sup> Military prosecutors would also assume new responsibility for witness protection, as well. Washington Office on Latin America. "13 Mexican Organizations Agree That the Proposed Military Jurisdiction Reform in Mexico is Not Sufficient." Washington Office on Latin America. <http://www.wola.org/node/2006> (accessed March 13, 2011).

<sup>96</sup> The December 2010 ruling underscored this point when the Inter-American Court found that the Mexican government had violated the rights of Rodolfo Montiel and Teodoro Cabrera, environmental activists from Petatlán, Guerrero, by failing to investigate allegations of arbitrary detention and torture committed against them by the Mexican Army in 1999. Gómez Durán, Thelma. "CIDH falla a favor de campesinos ecologistas." *El Universal* Dec. 20, 2010; Human Rights Watch. "Mexico: Ruling Calls for Military Justice Overhaul." *Human Rights Watch*. December 21, 2010. <http://www.hrw.org/en/news/2010/12/21/mexico-ruling-calls-military-justice-overhaul>; Amnesty International. "Document – Mexico Must Comply with the New Rulings by the Inter-American Court of Human Rights." *Amnesty International*. October 5, 2010. <http://www.amnesty.org/en/library/asset/AMR41/076/2010/en/a0b7c856-a3f1-4cd1-a973-f2071009b4df/amr410762010en.html>

#### D. Constitutional Reforms and Supreme Court Rulings

In 2011, there were two significant developments that human rights experts and advocates believe will substantially strengthen protections against military abuses. First, in March 2011, the Mexican Chamber of Deputies and Senate approved reforms to 11 articles of the Mexican Constitution, which were signed into law by Calderón three months later.<sup>97</sup> Prior to this reform, the Supreme Court had ruled that international law superseded federal and state law, but not the Mexican Constitution. The reform reversed this interpretation and introduced other important protections as follows:

- All human rights obligations established under international treaties ratified by the Senate are now constitutionally binding within Mexico;
- Authorities are required to prevent, investigate, punish, and remedy human rights violations;
- CNDH is granted the authority to challenge the constitutionality of federal and local laws that may violate human rights established by the Mexican constitution and treaties to which it is a signatory
- Foreigners have the right to present grievances of human rights abuses prior to being deported.

Human rights activists have praised the reform as a major step forward in Mexican human rights law. Navi Pillay, United Nations High Commissioner, said that these reforms would “lay the groundwork for further promotion and protection of human rights.”<sup>98</sup> A U.N. representative added that this was the first time that a reform in Mexico recognized all of the human rights laid out by international treaties ratified by the country, thereby enabling the country to “cope with the challenges that it is facing today.”<sup>99</sup>

In addition to the constitutional reform, on July 12, 2011, Mexico’s highest court issued a landmark ruling that further bolstered civilian oversight of human rights cases involving the military. Specifically, the Mexican Supreme Court ruled that alleged human rights abuses by members of the military should be tried in civilian courts.<sup>100</sup> The court’s ruling effectively supported past judgments by the Inter-American Court, which found that the Mexican Military Code of Justice should be reformed to comply with “international standards,” including the removal from military jurisdiction of all human rights cases involving civilians.<sup>101</sup> While the Supreme Court ruling was not automatically retroactive in cases previously tried under military jurisdiction, it opened the door for

---

<sup>97</sup> Justice in Mexico. “President Calderón Signs an Amendment to the Constitution for Human Rights Reform.” *Justice in Mexico News Report*. June 9, 2011. <http://justiceinmexico.org/2011/06/09/president-Calderón-signs-an-amendment-to-the-constitution-for-human-rights-reform/>

<sup>98</sup> Associated Press. “México promulga mayor reforma constitucional en DDHH.” *América Latina AP*. June 9, 2011.

<sup>99</sup> Lorena López, “México somete a los criminales respetando sus derechos humanos: Calderón.” *Milenio*. June 9, 2011; “Una reforma en México eleva a rango constitucional los derechos humanos,”; CNN México. June 9, 2011.

<sup>100</sup> The case reviewed by Mexico’s Supreme Court involved the disappearance of Rosendo Radilla by military personnel in 1974 in the course of Mexico’s “dirty war.”

<sup>101</sup> Justice in Mexico. “Supreme Court Rules that Military Human Rights Violations Under Civilian Jurisdiction.” Justice in Mexico Project. July 15, 2011. <http://justiceinmexico.org/2011/07/15/supreme-court-rules-that-military-human-rights-violations-now-under-civilian-jurisdiction/>; Human Rights Watch. “Mexico: Ruling Affirms Obligation for Military Justice Reform.” *Human Rights Watch*. July 6, 2011. <http://www.hrw.org/news/2011/07/06/mexico-ruling-affirms-obligation-military-justice-reform>; Amnesty International. “An historic step for justice in Mexico.” *Amnesty International*. July 14, 2011. <http://www.amnesty.org/en/library/asset/AMR41/047/2011/en/90e8bf60-2587-47b0-b335-4a2d32997279/amr410472011en.pdf>

past victims to file to transfer their case to a new civilian court.<sup>102</sup> Immediately following the Supreme Court's ruling, the military offered compensation to several families in exchange for not pursuing trials in civilian courts.<sup>103</sup>

## VI. PENDING REFORMS AND FUTURE CONCERNS

It still remains unclear whether recent legislation and court decisions will significantly curb military violations, and further efforts are needed to assert civilian oversight over such abuses. Human rights groups are concerned that the current administration has not moved quickly or assertively enough to adjust to recent reforms and rulings to adequately address human rights abuses. Also, as the Calderón administration comes to a close, there is some uncertainty about the direction of the overall war on drugs, the prospect of future reforms to bolster human rights, and what lies ahead under the next administration. We consider these issues below.

### A. Continued Concerns from Human Rights Groups

In light of these concerns, human rights groups have continued to pressure for further action. In early November 2011, Ken Roth, director of Human Rights Watch, traveled to Mexico City to present a major report to Calderón, the Mexican Congress, and the Supreme Court. The report, titled *Neither Rights Nor Security*, details 170 credible cases of torture in five states, including cases of abuse by the military. Human Rights Watch criticized the subsequent failure on the part of prosecutors, police, and other officials to properly prevent, investigate, and punish such abuses. Moreover, later that month, human rights lawyer Netzai Sandoval filed a complaint with the International Criminal Court, requesting an investigation into the military's treatment of civilians under the Calderón Administration. Sandoval and the 23,000 signatories to the complaint asked the ICC to determine whether the president, as well as other top officials, are guilty of war crimes and crimes against humanity as a result of the widespread human rights abuses that have occurred.<sup>104</sup> It is unlikely that the ICC will decide to pursue the case. Still, this action placed additional pressure on Calderón because of the negative publicity resulting from this request. In response to the news of the ICC petition, the Interior Ministry released a statement saying, "Mexico, as never before, has implemented, in a systematic and growing way, a public policy to strengthen the rule of law and promote and respect human rights."<sup>105</sup>

The following month, on December 9, 2011, at a conference to present the National Human Rights Award, Calderón introduced a "7 Point Plan." According to Calderón, this plan represents a "new

---

<sup>102</sup> Bricker, Kristin. "Military Justice and Impunity in Mexico's Drug War," [http://www.wola.org/commentary/mexico\\_s\\_supreme\\_court\\_decides\\_to\\_end\\_military\\_jurisdiction\\_for\\_soldiers\\_who\\_commit\\_human](http://www.wola.org/commentary/mexico_s_supreme_court_decides_to_end_military_jurisdiction_for_soldiers_who_commit_human)

<sup>103</sup> SEDENA offered victims' families a total of 1,794,519 Mexican pesos in exchange for not pursuing further legal action in civilian courts. Despite still not having their cases go to trial, the majority of the families accepted the financial compensation. Justice in Mexico. "Mexicans React to Supreme Court Decisions on Military Rights Violations." Justice in Mexico Project. July 22, 2011. <http://justiceinmexico.org/2011/07/22/mexicans-react-to-supreme-court-decision-on-military-human-rights-violations/>

<sup>104</sup> Guardian. "Activists accuse Mexican president of war crimes in drug crackdown." Guardian. November 26, 2011. <http://www.guardian.co.uk/world/2011/nov/26/mexican-president-war-crimes-drug>

<sup>105</sup> <http://www.reuters.com/article/2011/11/26/us-mexico-icc-idUSTRE7AO0TA20111126>

stage” in the administration’s security strategy, and “will focus on the protection of human rights and on improving the frame in which people are defended and protected.”<sup>106</sup> The Mexican Government’s official website lists the following components:

1. “To ensure that the participation of the military, federal police, and attorney general in the security battle is conducted in accordance with the law and respect of human rights.
2. To appropriately attend to the victims of violence, particularly with the search for the missing.
3. To maintain and strengthen political collaboration with the National Commission of Human Rights (Comisión Nacional de Derechos Humanos, CNDH) and to be open to criticism from international bodies.
4. To comply with the sentences and resolutions issued by the Inter-American Court of Human Rights.
5. To intensify the body of training of public servants in human rights.
6. To protect the defenders of human rights, journalists, activists, governmental candidates, and the constitutional authorities.
7. To modernize judicial procedures, particularly, the military jurisdictions, so that the Armed Forces that commit violations of human rights are judged by civilian tribunals.”<sup>107</sup>

Although the plan lacks a concrete proposal for implementation, it is a public commitment to action, and refers to the 2011 Supreme Court ruling, as well as previous international rulings with which Mexico is obligated to comply. Perhaps most important, the plan is an admission of the need for improvement in the country’s efforts to protect human rights. Still, the plan came very late in the Calderón administration, and it is unclear whether what additional acknowledgement and action will be taken with regard to military abuses that have occurred in the course of the drug war.

## B. Revising the Military Code of Justice

As the Washington Office on Latin America (WOLA) noted following the July 2011 high court ruling, supporting legislation is still needed to revise the Military Code of Justice to bring it in line with the constitution. “The Mexican Congress now is charged with the task of approving a reform that fully complies with the Supreme Court’s judgment.”<sup>108</sup> Calderón’s original revisions of the military code focused narrowly on certain crimes, and the initiative has not yet been amended and approved in Congress to ensure that the relevant civilian authorities would handle human rights accusations in all cases.<sup>109</sup> Such a revision would ideally eliminate the ambiguity that has permitted military jurisdiction to prevail, effectively supporting the Supreme Court’s ruling in support of the IACHR judgment.

---

<sup>106</sup> Téllez Cortés, Cecilia. “Militares que violen derechos deben ser juzgados por tribunals civiles: FCH.” *La Crónica de Hoy*. December 10, 2011. [http://www.cronica.com.mx/nota.php?id\\_notas=621408](http://www.cronica.com.mx/nota.php?id_notas=621408)

<sup>107</sup> “Entrega del premio nacional de derechos humanos.” Presidencia de la República. December 9, 2011. <http://www.presidencia.gob.mx/2011/12/entrega-del-premio-nacional-de-derechos-humanos/>

<sup>108</sup> WOLA, “Mexico’s Supreme Court Decides to End Military Jurisdiction for Soldiers Who Commit Human Rights Violations,” Washington Office on Latin America, July 13, 2011. [http://www.wola.org/commentary/mexico\\_s\\_supreme\\_court\\_decides\\_to\\_end\\_military\\_jurisdiction\\_for\\_soldiers\\_who\\_commit\\_human](http://www.wola.org/commentary/mexico_s_supreme_court_decides_to_end_military_jurisdiction_for_soldiers_who_commit_human) (Accessed June 14, 2012).

<sup>109</sup> Senados René Arce Círiga, Carlos Sotelo García, José Luis García Zalvidea, y ..., “Primer Periodo Ordinario: Iniciativas,” *Gaceta del Senado* 168 (2010): accessed June 14, 2012, <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=5834&lg=61>

Upon the release of this report in July 2012, the prospects for any reform of the military code remained uncertain. As of April 2012, three Senate committees –the Governance Commission (Comisión de Gobernación), the Justice Commission (Comisión de Justicia), and the Primary Commission of Legislative Studies (Comisión de Estudios Legislativos Primera) had approved a revised version of the president’s bill.<sup>110</sup> It was due to go to the full Senate later that month, but was again stalled during the proceedings and failed to come to a vote before the close of the legislative session.<sup>111</sup> In late-June 2012, Calderón reportedly indicated to the Inter-American Court of Human Rights in a private session that he would seek to hold a special session of Congress to approve the reform before the next regular legislative session begins in September 2012.<sup>112</sup>

Administration officials reportedly expressed concern that failure to approve the legislation in a special legislative session could be a major setback, since the incoming legislature could ignore the committees’ recommendations. In July 2012, in addition to electing a new president, Mexico held simultaneous congressional elections and —because of prohibitions on immediate re-election— an entirely new group of legislators will take office in September. In the new legislative session, both the PAN and the PRI will see a reduction in their share of legislators, while the leftist Party of the Democratic Revolution (Partido de la Revolución Democrática, PRD) will gain a significant number of seats. Calderón will have three months to work with the new legislature to pass further reforms, and the PRD’s support for reining in military abuses could help ensure that the measure is approved.

### C. Recognition of Military Abuses in the Drug War

While there have been positive demonstrations of support for Calderón’s 7 Point Plan, so far the Mexican government has been reluctant to acknowledge military abuses resulting from recent counter-drug efforts. Indeed, the government has recognized abuses in only two instances that stem directly from the IACHR’s recommendation. First, on November 14, 2011 the Mexican government accepted and acknowledged the Inter-American Court’s ruling in the case involving activist and former mayor Rosendo Radilla Pacheco, the same case reviewed by the Supreme Court and upheld in the ruling of July 2011. The activist and former mayor, who was forcibly disappeared by the state in 1974, was last seen at a military barracks where he was tortured.<sup>113</sup> Attorney Juan Marcos Gutiérrez, representing the Interior Ministry, accepted the IACHR’s decision that the Mexican government played a role in Radilla’s disappearance. While the government’s decision to formally accept charges of guilt and wrongdoing in the aforementioned cases is commendable, the Inter-American Court’s judgment also included an order to “ensure the case was transferred to the civilian authorities for full and impartial investigation.” Unfortunately, the case is still under military jurisdiction.<sup>114</sup> The slow pace of efforts to reassign the Radilla case, the catalyst for Mexico’s most

---

<sup>110</sup> Justice in Mexico. “Mexican Senate Committees Approve Judicial Reform to Try Soldiers in Civilian Courts.”; Villamil, Jernaro and Gloria Leticia Diaz. “Avalan en Comisiones Reformas para Acotar Fuero Militar.” *Proceso*. April 19, 2012. <http://www.proceso.com.mx/?p=304857>

<sup>111</sup> Becerril, Andrea and Victor Ballina. “Presiones de Altos Mandos Impidieron Eliminar el Fuero Militar: Rosario Ibarra.” *La Jornada*, April 27, 2012. <http://www.jornada.unam.mx/2012/04/27/politica/013n1pol>

<sup>112</sup> Gloria Leticia Díaz, “Ofrece Calderón a la CoIDH desatorar reformas al Código Militar y abrir caso Radilla,” *Proceso*, June 25, 2012. <http://www.proceso.com.mx/?p=312155>

<sup>113</sup> Rueda, Manuel and Sara Webb. “Mexican group asks ICC to probe president, officials.” Reuters. November 25, 2011. <http://www.reuters.com/article/2011/11/26/us-mexico-icc-idUSTRE7AO0TA20111126>

<sup>114</sup> Amnesty International. “Shielding the Guilty: Military Justice in Mexico.” *Amnesty International*. April 2011. <http://www.amnesty.org/en/library/asset/AMR41/010/2011/en/77bd9bd0-0282-43ce-acc4-4c3ba56d8570/amr410102011en.pdf>

significant human rights reform in recent history, raises some concern about the current administration's commitment to move forcefully to address past abuses.

Second, on December 15, 2011, the Mexican government, represented by Interior Minister Alejandro Poiré and Attorney General Marisela Morales, also formally accepted and acknowledged the state's role in the torture and rape of Valentina Rosendo Cantú, an indigenous woman who was attacked by members of the Mexican military in 2002 at the age of 17.<sup>115</sup> A similar case involving Inés Fernández Ortega, a then-25-year-old indigenous woman also raped by Mexican soldiers in 2002, is expected to follow Rosendo Cantú's case with a formal acknowledgement to come. After years of struggle for justice, both women's cases had been heard by the Inter-American Court in early 2010. On issuing its ruling in August 2010, IACHR had "ordered a full investigation by civilian authorities, reparations for the victims, and reforms to the military justice system," reports Amnesty International.<sup>116</sup>

Despite these acknowledgements, the Calderón administration has focused exclusively on Inter-American Court Rulings that pre-date the president's time in office, and therefore fail to implicate him or the military while under his command, in any wrongdoing. Moreover, the president has repeatedly deflected accusations that his military-centered security strategy has resulted in human rights abuses. During his meeting with Human Rights Director Ken Roth in November 2011, Calderón "reiterated that the main threat to Mexicans' human rights are criminals," not the military. According to the president, "The ethical and legal obligation of the government, by using all available means, under the principle of correspondence, is to strengthen the presence of the authorities in those communities that see the most rival criminal activity."<sup>117</sup> However, as Patrick Corcoran observed in the *Christian Science Monitor*, "The most obvious flaw with Calderón's logic is that he is comparing apples to oranges—the criminal gangs are more abusive precisely because they are criminal gangs. If the best the government can do to address the issues raised by the HRW report is to say that the criminals are worse, it's hard to imagine a more damning indictment."<sup>118</sup>

Moreover, there are some doubts about the commitment of the Calderón administration to acknowledge and address human rights abuses, and to take responsibility for those that have occurred since 2007. On January 21, 2012, Human Rights Watch published its annual "World Report", which reiterated the accusations presented in detail in its November 2011 report, "Neither

---

<sup>115</sup> An excerpt from the announcement reads, "En el caso de la señora Valentina Rosendo Cantú, la Corte Interamericana de Derechos Humanos determinó que nuestro país incumplió la obligación de garantizar, sin discriminación, el derecho de acceso a la justicia. Y la misma Corte, por tanto, declaró que "el Estado deberá conducir en el fuero ordinario, eficazmente y dentro de un plazo razonable, la investigación y, en su caso, el proceso penal que tramite en relación con el delito infringido de la señora Rosendo Cantú, con el fin de determinar las responsabilidades penales y aplicar las sanciones y demás consecuencias que la ley prevea." En este sentido, la Procuraduría General de la República que tengo el honor de dirigir, decidió en completa concordancia con la sentencia de la Corte Interamericana, atraer la investigación en el presente caso."

To read the full text on the speech, click here: <http://www.presidencia.gob.mx/2011/12/mensaje-de-la-procuradora-general-de-la-republica-en-el-acto-de-reconocimiento-publico-de-responsabilidad-del-estado-mexicano-en-la-resolucion-del-caso-valentina-rosendo-cantu/>

<sup>116</sup> Amnesty International. "Justice for Inés Fernández Ortega and Valentina Rosendo Cantú." *Amnesty International*.

March 8, 2012. <http://action.amnesty.org.uk/ea-action/action?ea.client.id=1194&ea.campaign.id=12435>

<sup>117</sup> "Reunión con directivos de la organización Human Rights Watch." Presidencia de la República. November 11, 2011. <http://www.presidencia.gob.mx/2011/11/reunion-con-directivos-de-la-organizacion-human-rights-watch/>

<sup>118</sup> Corcoran, Patrick. "Mexico gives muddled response to criticism of human rights violations amid drug war." Page 2. *Christian Science Monitor*. November 21, 2011. <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/1121/Mexico-gives-muddled-response-to-criticism-of-human-rights-violations-amid-drug-war/>

Rights nor Security: Killings, Torture, and Disappearances in Mexico's 'War on Drugs.' The Mexican Interior Ministry responded on January 28, 2012 that HRW's claims "do not reflect the real status in Mexico."<sup>119</sup> Rather than sidestepping criticisms, the Calderón Administration should examine the evidence and determine which circumstances warrant investigation, prosecutorial action, and changes in strategy.

#### **D. The Incoming Peña Nieto Administration**

One thing that seems certain is that there will be a continued role for the military in counter-drug operations for some time to come. While establishment of a vetted and well-trained Federal Police Force with greater powers of investigation is underway, this force is not yet capable of supplanting current military operations throughout the country. Thus, many Mexican authorities view the military's involvement as a necessary measure to break down organized crime—perceived as a national security threat—into a domestic public security problem.<sup>120</sup>

However, in the lead-up to the 2012 presidential elections, some Mexican U.S. authorities held concerns that a change in government could disrupt this strategy, undoing recent efforts to combat organized crime.

For months prior to the election, PRI candidate Enrique Peña Nieto held a solid lead in the polls over his main rivals, Party of the Democratic Revolution (Partido de la Revolución Democrática, PRD) candidate Andrés Manuel López Obrador and PAN candidate Josefina Vázquez Mota. Calderón openly expressed concern about the possibility of a return to power by the PRI, indicating that this may favor "past arrangements," an allusion to the former-ruling party's history of corruption and complicity with drug traffickers.<sup>121</sup> Yet, as detailed in a recent Congressional Research Service report, all of Mexico's 2012 presidential candidates at least nominally agreed that a continued role for the Mexican military would be necessary to resolve Mexico's current security challenges:

The presidential candidates... backed similar anticrime approaches, albeit with a greater emphasis on reducing violence and combating street crime (such as kidnapping and extortion). As an example, All of the presidential candidates... pledged to continue the fight against organized crime and said that maintaining some form of military-led counterdrug strategy will be necessary, at least in the short term, despite concerns that some military officers engaged in anticrime efforts have committed human rights abuses. While López Obrador initially pledged to withdraw military troops from anticrime efforts within six months of taking office, he [subsequently] said that he would gradually withdraw troops as federal police forces are stood up, a position similar to that of President Calderón.<sup>122</sup>

Moreover, after PRI candidate Enrique Peña Nieto was declared the victor in Mexico's July 1 elections, the president-elect affirmed the continued role of the military. Peña Nieto had criticized Calderón's counter-narco strategy during the campaign, proclaiming in November 2011 that the

---

<sup>119</sup> Justice in Mexico Project. "Mexico Denies Human Rights Watch Allegations." January 28, 2012. <http://justiceinmexico.org/2012/01/28/mexico-denies-human-rights-watch-allegations>

<sup>120</sup> Shirk, David A. "Justice Reform in Mexico: Change & Challenges in the Judicial Sector." In *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crimes*, edited by Eric L. Olson, David A. Shirk and Andrew Selee, 205-246. Washington, D.C.: Woodrow Wilson International Center for Scholars, Mexico Institute & San Diego, CA: University of San Diego Trans-Border Institute, October 2010, 229-230.

<sup>121</sup> Translated by Throssell, Liz. "Mexico's drugs war: Lessons and challenges." *BBC News*. December 31, 2011. <http://www.bbc.co.uk/news/world-latin-america-16337488>

<sup>122</sup> Seelke, Clare Ribando. "Mexico's 2012 Elections." Congressional Research Service. May 23, 2012.

“military should be returned to their barracks and stop fighting crime.”<sup>123</sup> However, after his victory, Peña Nieto revised his position on the use of the military. In an interview with *The Washington Post*, he explained that he intends to “adjust”, rather than change, his predecessor’s strategy. “When we have better control of Mexican territory and a stronger civilian police force then I say we can think about having the army go back to the barracks. But before that we have to consolidate our security force.”<sup>124</sup> In an interview with *El Universal*, Peña Nieto stated, “I will keep the presence of the Mexican Army and Navy and Federal Police in those states of the Republic where crime has increased.”<sup>125</sup> Although overall violence is down throughout the country, it has surged in many new areas throughout the country, which could lead to a greater geographic deployment of the military throughout the country.

Peña Nieto has professed a commitment to uphold and preserve the human rights of Mexican citizens “first of all, through the real, objective application of [human rights] protocols to agencies that are dedicated to public security.”<sup>126</sup> However, the crux of the human rights issue hinges on whether the civilian court system will achieve unequivocal jurisdiction over cases of human rights abuse that involve the military and civilians. Peña Nieto has not specified his stance on this critical question. As discussed above, the armed forces have interpreted their Military Code of Justice to have very different implications for judicial processes than those delineated in the Mexican Constitution, or those expressed in the rulings by the IACHR and upheld by the Mexican Supreme Court in July 2011. When Peña Nieto takes office in December 2012, it will be important to evaluate how the incoming president will handle pending cases before the Inter-American Commission on Human Rights. One of the most notable cases involves the 2006 rape of 11 women by police forces in Atenco in the state of Mexico that was brought before the commission in November.<sup>127</sup> Since he was the sitting governor of the state of Mexico when this incident occurred, Peña Nieto’s handling of this case as president will be an important indicator of the new administration’s approach human rights.

---

<sup>123</sup> CNN Mexico. “El Ejército debe regresar a los cuarteles dice Peña Nieto en EU.” November 14, 2011. <http://blogs.cnnmexico.com/ultimas-noticias/2011/11/14/el-ejercito-debe-regresar-a-los-cuarteles-dice-pena-nieto-en-eu/>

<sup>124</sup> Nicholas Casey, “Mexico’s New President Vows to Continue Fight Against Drug Gangs,” *Wall Street Journal*, July 4, 2012. <http://online.wsj.com/article/SB10001424052702304708604577505411765045648.html>

<sup>125</sup> Hernández, J. Jaime. “Peña Nieto defiende su victoria.” *El Universal*. July 3, 2012. <http://www.eluniversal.com.mx/notas/857225.html>

<sup>126</sup> In an interview with *The Washington Post*, Peña Nieto indicated, “I am committed to a policy of respect for human rights, as a matter of following our national constitution... It is a constitution that establishes the respect for individual rights. And my commitment is to act in favor of this objective, first of all, through the real, objective application of these protocols to agencies that are dedicated to public security... In those cases where a violation has been indication [that an abuse has been committed], these are isolated cases, and they will have to be processed before the relevant authorities to determine any responsibility that there may be for excesses or abuses of human rights.” Interview, “Mexico’s president-elect Enrique Peña Nieto on human rights,” *The Washington Post*, July 6, 2012. Comments from video recording as translated by the authors. [http://www.washingtonpost.com/world/mexicos-president-elect-enrique-pena-nieto-on-human-rights/2012/07/06/gJQA90eiRW\\_video.html](http://www.washingtonpost.com/world/mexicos-president-elect-enrique-pena-nieto-on-human-rights/2012/07/06/gJQA90eiRW_video.html) (Accessed July 24, 2012).

<sup>127</sup> “Mexico: IACHR admits case of 11 women victimized by physical and verbal violence.” The International Service for Peace Blog. November 26, 2011. <http://sipazen.wordpress.com/2011/11/26/mexico-iachr-admits-case-of-11-women-victimized-by-physical-and-verbal-violence/>; García Martínez, Anayeli. “Admite la CIDH caso de mujeres ultrajadas en Atenco.” Proceso. November 8, 2011. <http://www.proceso.com.mx/?p=287474>

## E. The Role of the United States and the Mérida Initiative

Ongoing concerns about human rights abuses in Mexico raise questions about what can be done to address these issues under the framework of the Mérida Initiative, a multi-year U.S.-Mexico collaboration initiative launched in 2007. As Calderón declared, “It is indispensable... that the brunt of the battle against organized crime be fully assumed as a shared responsibility between the United States and Mexico.”<sup>128</sup> Thus, through the Mérida Initiative, the United States has allocated over \$1.6 billion in assistance to Mexico to bolster the fight against the shared threat of trans-national organized crime. By order of the U.S. Congress, 15% of the funds disbursed are conditioned on satisfactory reports of Mexico’s improvements in human rights protections from the U.S. Department of State, which is charged with coordinating U.S. efforts for the Mérida Initiative.<sup>129</sup>

In 2009, the U.S. State Department approved the release all conditional Mérida funding. The State Department openly admitted that it was unable to verify Mexico’s compliance with the stipulations, but indicated that substantial evidence showed that Mexico had made appropriate steps to improve the “improve police transparency and accountability, consult with Mexican human rights organizations and civil society on the Mérida Initiative, investigate and prosecute allegations of human rights abuses by security forces, and prohibit the use of torture.”<sup>130</sup> In 2010, however, facing dissent from major human right groups, the State Department recommended withholding portions of the conditional funds pending further reform in Mexico, including legislative recognition of the legitimacy of international human rights obligations on par with the Constitution.<sup>131</sup>

State Department decisions on these matters are informed by the Bureau of Democracy, Human Rights, and Labor (DRL), which examines country conditions, alleged abuses, and the views of organizations and multilateral institutions committed to human rights.<sup>132</sup> DRL issues annual reports of the state of human rights in countries across the world as “promoting freedom and democracy and protecting human rights around the world are central to U.S. foreign policy.”<sup>133</sup> DRL thus informs and supports the Merida Initiative’s release of conditional funds. As Assistant Secretary of

---

<sup>128</sup> Zemi Communications, “Mexico: Politics and Policy,” *Zemi Communications*, under “Archived Mexico Newsletters,” no. 192 (March 22, 2009), <http://www.zemi.com/articles/pdf/zemi-mexico-newsletter-03-22-10.pdf> (accessed April 30, 2010).

<sup>129</sup> In order for funds to be released to the Mexican government, the following conditions apply under the Mérida Initiative: improving transparency and accountability of federal police forces; establishing a mechanism for regular consultations among relevant Mexican government authorities, Mexican human rights organizations, and other relevant Mexican civil society organizations, to make consultations concerning implementation of the Mérida Initiative in accordance with Mexican and international law; ensuring that civilian prosecutors and judicial authorities are investigating and prosecuting, in accordance with Mexican and international law, members of the federal police and military forces who have been credibly alleged to have committed violations of human rights, and the federal police and military forces are fully cooperating with the investigations; and enforcing the prohibition, in accordance with Mexican and international law, on the use of testimony obtained through torture or other ill treatment. Beittel, June S. and Clare Ribando Seelke. “Mérida Initiative for Mexico and Central America: Funding and Policy Issues.”

<sup>130</sup> Human Rights Watch, “Mexico: US State Department Should Insist on Rights Compliance,” *Human Rights Watch*, September 10, 2009, <http://www.hrw.org/en/news/2009/09/10/mexico-us-state-department-should-insist-rights-compliance> (accessed April 30, 2010).

<sup>131</sup> Approximately \$26 million was later released in 2011 based on newly established priorities for the Mérida Initiative: disrupting organized criminal groups, promoting justice sector reform, building a 21<sup>st</sup> century border, and building strong and resilient communities. Finklea, Kristin M. and Ribando Seelke, Clare. “U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond.” Congressional Research Service. August 15, 2011. <http://www.fas.org/sgp/crs/row/R41349.pdf>

<sup>132</sup> U.S. Department of State. “Human Rights.” Accessed June 21, 2012. <http://www.state.gov/j/drl/hr/>

<sup>133</sup> Bureau of Democracy, Human Rights, and Labor. Accessed June 21, 2012. <http://www.state.gov/j/drl/index.htm>

State for DRL states, “we have made a part of the Mérida funding conditional on where we stand, and we’re in the process of reviewing that<sup>134</sup>.” However, DRL’s precise role and influence with regard to the overall framework of the Mérida Initiative is unclear. DRL is not formally charged with a specific role in evaluating human rights in relation to the Mérida Initiative, and is not regularly included in high-level consultations between the two countries regarding collaborative efforts through the program. This draws into question what measures are being taken to ensure that cooperation through the Mérida Initiative incorporates human rights protections into the overall framework of the program.

The Obama Administration has expressed its commitment to promoting and respecting human rights worldwide. Secretary of State Hillary Clinton declared that the administration’s “human rights agenda for the twenty-first century is to make human rights a human reality” ensuring freedom from torture, discrimination, and “want of equality in law and in fact”.<sup>135</sup> On March 3, 2011, members of the U.S. House of Representatives addressed a letter to Secretary of State Hilary Clinton urging the Obama Administration to “convey to Mexico our concerns regarding its system of military jurisdiction, as well as the importance we place on compliance with the human rights requirements established by the U.S. Congress.”<sup>136</sup> The United States is in a powerful position to support Mexico’s efforts to combat drug trafficking organizations, but it also has an obligation to make sure that human rights are respected in the process. If the war on drugs is a joint task, then protecting against human rights violations and other unintended consequences also shared responsibility.

## VI. CONCLUSIONS AND RECOMMENDATIONS

The historical autonomy enjoyed by the Mexican military, coupled with high levels of public confidence, create an environment of impunity that has been perpetuated by the Mexican government and SEDENA’s unwillingness to enact judicial reform.<sup>137</sup> Governmental pressure for “results” in order to justify current tactics in the war on drugs may influence the military’s use of baseless arrests and torture tactics to obtain forced confessions. Military personnel are trained for armed combat, not civilian interaction.<sup>138</sup> As Mexico scholar George Grayson notes, the military is “taught to employ force and subdue an enemy. While encouraged to acquire diplomatic skills, repression is emphasized.”<sup>139</sup> In environments of high pressure and violent attacks from drug cartels,

---

<sup>134</sup> Posner, Michael. “Transcript: Assistant Secretary Posner Answers Questions on the 2011 Human Rights Report.” Human Rights. May 24, 2012. <http://www.humanrights.gov/2012/05/25/transcript-assistant-secretary-posner-answering-questions-about-the-2011-human-rights-report/>

<sup>135</sup> U.S. Department of State, “Remarks on the Human Rights Agenda for the 21<sup>st</sup> Century,” by Secretary of State Hillary Rodham Clinton, Georgetown University, Washington, DC, December 14, 2009, <http://www.state.gov/secretary/rm/2009a/12/133544.htm> (accessed April 30, 2010).

<sup>136</sup> Meyer, Maureen. “Members of US Congress Urge Secretary Clinton to Raise Human Rights Concerns with Mexico.” Washington Office on Latin America. March 3, 2011. [http://www.wola.org/news/members\\_of\\_us\\_congress\\_urge\\_secretary\\_clinton\\_to\\_raise\\_human\\_rights\\_concerns\\_with\\_mexico](http://www.wola.org/news/members_of_us_congress_urge_secretary_clinton_to_raise_human_rights_concerns_with_mexico)

<sup>137</sup> Astorga, Luis and David A. Shirk. “Drug Trafficking Organizations and Counter-Drug Strategies in the U.S.-Mexican Context.” In *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crimes*, edited by Eric L. Olson, David A. Shirk and Andrew Selee, 31-61. Washington, D.C.: Woodrow Wilson International Center for Scholars, Mexico Institute & San Diego, CA: University of San Diego Trans-Border Institute, October 2010, 48.

<sup>138</sup> Withers, George, Lucila Santos and Adam Isacson, “Preach What You Practice: The Separation of Military and Police Roles in the Americas.” Washington, D.C.: Washington Office on Latin America, November 2010, 17.

<sup>139</sup> Grayson, George W. “*Mexico: Narco-Violence and a Failed State?*” 162.

it is possible that this gap in training undermines the military's ability or desire to distinguish between criminals and civilians, perpetuating indiscriminate arrests and detention.

The rapid expansion of the Mexican military's involvement in domestic security and counter-drug operations in recent decades has raised serious concerns over the effectiveness of those efforts and the risks that they pose for Mexico's domestic population. After significantly expanding the scope and intensity of the military's role in counter-drug efforts since Calderón took office in 2006, the Mexican government has only recently committed to abide by its human rights obligations under multiple treaties and accords. The constitutional amendments and Supreme Court rulings of 2011 constituted a landmark shift in Mexico's posture toward human rights, and specifically the question of military autonomy. However, some important reforms are still needed to deal with the specific question of military autonomy from civilian jurisdiction, including revisions to Mexico's code of military justice. Moreover, the current administration has been reluctant to acknowledge and address the potentially negative effects of the military's involvement in domestic security matters, including numerous credible cases of abuses that have occurred since Calderón took office.

The current sense of impunity within the armed forces will only begin to abate when military personnel are held accountable for their participation in human rights violations. Ongoing human rights violations, wrongful imprisonments, and allegations that have not been properly investigated or tried must be addressed, in accordance with the Supreme Court ruling designating civilian court jurisdiction over such cases. The most viable method by which to decrease incidents of civilian abuse by the military is to administer legitimate punishment for such transgressions, in accordance with the domestic and legal framework to which Mexico is bound. Military support for civil court jurisdiction over crimes against civilians will create uncomfortable results as personnel are charged and convicted under public proceedings. However, the endorsement of such accountability will earn commendations from civil society and international watchdog groups, and bring justice to victims and their families. Furthermore, likelihood of future abuse will decrease when the threat of punishment is seen to be real. Changing the incentives and consequences for abuse will ultimately decrease its occurrence, and lower the risk of embarrassment and imprisonment for military personnel.

Hence, the authors conclude this report by offering several recommendations that seek to address these concerns, and support long-standing proposals from human rights groups from both Mexico and the United States.

#### **A. Reduce Overall Reliance on Military Deployments in Mexico's Counter-Drug Efforts**

A careful review of alleged human rights abuses in Mexico suggests that the large-scale deployment of troops has indeed contributed to a dramatic increase in abuses, especially in highly urbanized northern border zones where such deployments were concentrated during much of the Calderón administration. Future considerations as to how to improve Mexico's security situation should take into consideration the negative consequences that large-scale troop deployments have for human rights protections. While this report focuses solely on military human rights, it is important to recognize that the vast majority of human rights abuses in Mexico stem from abuses by civilian law enforcement authorities that frequently lack adequate training and oversight. While it is clear that Mexico's civilian law enforcement authorities have significant liabilities—including corruption and significant human rights abuses—it is also clear that trading one form of abuse for another is not an acceptable solution. Instead, greater efforts should be placed on the professionalization of police

and other judicial sector personnel, as part of the overall effort to reform the administration of justice in Mexico.<sup>140</sup>

### **B. Invest in Greater Human Rights Training for Military and Judicial Sector Personnel**

Given that the military is likely to play a continued role in domestic security operations in the near term, some effort should be made to sensitize officers and enlisted personnel to human rights issues and best practices for dealing with the civilian population. In preparation for service, future army officers undergo two modules on human rights training at the Heroic Military College, including education on the Geneva Convention and the National Human Rights Commission.<sup>141</sup> However, this curriculum is not effective in preventing human rights abuses among deployed personnel without the accompanying threat of deliverable consequences in the case of abuse. Mexico's military should train its soldiers on proper civilian interaction protocol, as well as legal arrest and detention methods. Such resource investment on the front-end would greatly decrease the military's need to protect its personnel from potential charges incurred once abuse has taken place. Additionally, training for judicial sector personnel, including police is also needed.

### **C. Implement Reforms to Transfer All Military Abuse Cases to Civilian Jurisdiction**

The recent actions by the Mexican Congress and Supreme Court must be recognized and applauded. The 2011 reforms and Supreme Court rulings in support of earlier IACHR mandates provide a much stronger foundation to protect against human rights violations. However, in order for these measures to be effective against military abuses, further legislative measures are needed to revise the Military Judicial Code. While some progress was made in the Spring 2012 legislative session, it is critical that such a revision be completed by Congress either by special session or during the coming legislative session.

### **D. Bolster the CNDH to Fulfill Its New Responsibilities**

Continuing to strengthen the CNDH and mandating compliance to human right norms established within the country and by international law will help to bolster the accountability Mexican government agencies. Despite the fact that the Mexican Supreme Court's ruling provided legal guidance for case referrals involving civilian human rights abuses, the CNDH has not issued conclusive recommendations that these cases be heard solely within civilian courts.<sup>142</sup> While further modifications to the Military Judicial Code are needed, as noted above, the new legal landscape provided by recent constitutional amendments and court rulings provides a new foundation for CNDH to refer cases of military abuse to civilian authorities. A next step in the evolution of human rights protections in Mexico would be to grant authority to CNDH to prosecute violations in certain cases before the federal judiciary.

---

<sup>140</sup> On October 14, 2011, the Supreme Court and the Inter-American Commission on Human Rights signed an agreement to provide ongoing legal training and education regarding treaty obligations for Mexico's Federal judges. This is an important illustration of the kind of efforts needed to strengthen domestic legal structures, and should be encouraged for other judicial sector personnel as Mexico continues to implement reforms throughout its legal system. Suprema Corte de Justicia de la Nación. "Press Release, No. 178/2011 Suscribe la SCJN, En Washington, Acuerdo de cooperación con la Secretaría General de la OEA por medio de la CIDH." October 14, 2011. <http://www.supremacorte.gob.mx/saladeprensa/noticias/Paginas/14-Oct-2011.aspx>

<sup>141</sup> Camp, "Armed Forces," 322.

<sup>142</sup> Comisión Nacional de los Derechos Humanos México. "Recomendaciones de 1990 a 2012." <http://www.cndh.org.mx/node/32> (Accessed June 14, 2012).

### **E. Strengthen Civil Society to Combat Abuses and Improve Security**

Human rights organizations engage in constant monitoring and advocacy to combat abuses in Mexico. The research and reporting performed by local and international organizations is critical to exposing human rights abuses at the international level.<sup>143</sup> Exposing abuse is one of the methods by which international bodies such as the IACHR become aware of such violations. Working closely with and providing support for these organizations helps ensure that cases of alleged human rights violations can be identified, scrutinized, and championed effectively. The U.S. and Mexican governments should support the work of non-governmental organizations and human rights advocacy groups. However, since such organizations must also operate independently and autonomously from authorities, direct government funding is not necessarily a viable option in many cases. That said, providing timely responses to requests for information and opening official lines of communication with such organizations helps to advance more constructive dialogue. In addition, international foundations and donors should support the work of civic organizations working to promote human rights in Mexico.

### **F. Reframe U.S.-Mexico Collaboration to Better Protect Human Rights**

Given recent commitments by both the Mexican and U.S. federal governments to prioritize the protection of human rights, efforts should be made to institutionalize these commitments in the joint fight against organized crime. Both countries share an interest in protecting human rights, so it is important that efforts to do so are founded upon mutual respect, rather than finger pointing and recrimination. To this end, both countries have designated agencies for the protection of human rights —CNDH and DRL— that should be working together. Moreover, these agencies should be more directly involved in the coordination of the Mérida Initiative, offering regular advice and assistance to other agencies to ensure that human rights protections remain a high priority and not an afterthought. At the same time, Mérida Initiative-funded programs should specifically emphasize and support measures that will help to protect basic guarantees for human rights. Such measures include technical and administrative training for prosecutors, public defenders, and court personnel to ensure the success of recent reforms to Mexico's judicial system that are helping to improve transparency, accountability, and access to justice.

---

<sup>143</sup> As cited throughout this report, Human Rights Watch, Amnesty International, and WOLA have been particularly active in monitoring Mexico's situation, and in condemning the disbursement of Mérida funds without sufficient human rights improvements.

## **ACKNOWLEDGEMENTS:**

This report would not be possible without the sponsorship of the Justice in Mexico Project ([www.justiceinmexico.org](http://www.justiceinmexico.org)) by the William and Flora Hewlett Foundation and the John D. and Catherine T. MacArthur Foundation. Some portions of this report were developed through the University of San Diego's Masters in International Relations Program as a collaborative capstone project with the National Defense Intelligence College, now known as the Defense Intelligence University. Other portions were developed as part of a research paper written for the Master in Pacific International Relations program at the University of California, San Diego. The authors are very grateful for the tremendous support provided for this report, including research and written contributions from Cory Molzahn and Chelsea Jensen, as well as research assistance from Nicholas Kelly, Gordon Nash, Katharine Petrich, Margaret Serrano, and Dan Zuzuárregui. The authors also received invaluable input from Ami Carpenter, Janice Deaton, Emily Edmonds-Poli, David Gaddis Smith, Milburn Line, Maureen Meyer, Eric Olson, Richard Owens, Miguel Sarre, and Randy Willoughby. Finally, the authors appreciate the tremendous support of Stephanie Borrowdale, Vivien Francis, Diana García, and Octavio Rodríguez. The authors bear sole responsibility for any errors of fact or omission.



[www.justiceinmexico.org](http://www.justiceinmexico.org)