



MEXICO: MEMORANDUM FOR THE PRESIDENT-ELECT

HUMAN RIGHTS RECOMMENDATIONS FOR THE NEXT GOVERNMENT

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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First published in 2018

by Amnesty International Ltd.

Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom.

Index: AMR 41/8911/2018

Original language: Spanish

amnesty.org



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In recent years, Mexico has been confronted with one of the most serious human rights crises to date, facing constant and complex challenges in order to guarantee that every person in the country can exercise their human rights. Despite certain institutional and legislative developments, there are still serious obstacles to overcome in relation to issues such as access to justice, enforced disappearances, the rights of Indigenous Peoples, the situation of violence against human rights defenders and journalists, gender-based violence against women and girls and against LGBTI people, the abuse suffered by migrants and refugees, the failed public security strategy, and the widespread use of torture and other ill-treatment, among many others.

Amnesty International believes that the new administration under the presidency of Andrés Manuel López Obrador could bring about substantial change in the country if the human rights agenda were immediately made the central focus of public policy and government decisions. Furthermore, if the progress made in recent years—above all in terms of legislation—could be guaranteed to become a reality for all, the new authorities would make a landmark contribution to improving the lives of millions of people.

Accordingly, in this document, Amnesty International has summarized some of our main findings and concerns regarding the situation of human rights in the country and has put forward specific recommendations relating thereto in the hope that this will be a useful tool in the plans of the new government.

SAFE SOCIETY AND RULE OF LAW

It has been more than ten years since Mexico handed over key aspects of public security throughout the country to the armed forces as a response to organized crime and illegal drug trafficking, authorising them to act as law enforcement officials, in clear violation of international law. In all these years, the armed forces have been able to act with considerable autonomy and without needing to coordinate with or directly report to the civil authority.¹

This public policy, from Amnesty International's perspective, has not managed to reduce crime or violence in the country. In fact, on the contrary, an increase in the key indicators of violence has been recorded. This is precisely the context in which crimes under international law and serious human rights violations have been committed, including torture and other ill-treatment, enforced disappearances and extrajudicial executions.²

Furthermore, Amnesty International has concluded that the police forces in Mexico do not, in general, have sufficient resources or technology to adequately perform their duties. Moreover, arbitrary detentions are ubiquitous and police violations of the guarantee of due process in the treatment of people and evidence are commonplace. In summary, numerous members of the country's police forces are responsible for crimes under international law and serious human rights violations.³ The consequence of this has been, as a rule, impunity for such acts.

Therefore, Amnesty International recommends that the new authorities do the following:

In relation to the policy on illegal drug control:

- Shift the focus of the policy on drug control in Mexico from militarization and the use of law enforcement to the protection of people's human rights, including the right to health, taking into account the devastating cost that current methods of drug control have on human rights.

In relation to the armed forces:

- Present a proposal to the Mexican Congress to repeal the Internal Security Law (*Ley de Seguridad Interior*).
- Put an end to the role of the armed forces in public security by ensuring their orderly withdrawal and through the appropriate reinforcement, training and supervision of the civilian police.

¹ Amnesty International. *Mexico: Amicus curiae brief in the Alvarado Espinoza case before the Inter-American Court of Human Rights*, 11 May 2018 (Index: AMR 41/8371/2018).

² Amnesty International. *Out of control: Torture and other ill-treatment in Mexico*, 4 September 2014 (Index: AMR 41/020/2014); *Treated with indolence: The State's response to disappearances in Mexico*, 14 January 2016 (Index: AMR 41/3150/2016); and *Surviving death: Police and military torture of women in Mexico*, 28 June 2016 (Index: AMR 41/4237/2016).

³ Amnesty International. *False suspicions: Arbitrary detentions by police in Mexico*, 13 July 2017, (Index: AMR 41/5340/2017).

- Request that Congress amend the legal framework in order to guarantee that all allegations of human rights violations and crimes under international law committed by members of the armed forces, irrespective of whether the victim is civilian or military, are investigated, tried and judged properly and exclusively by the civilian judicial authorities.

In relation to the police:

- Present a proposal to Congress to adopt a law on the use of force in accordance with international human rights standards.
- Set up a national, standardized and uniform register of arrests, pursuant to international human rights law, in order to reduce the number of arbitrary detentions.
- Recognize the work of the police and guarantee the protection of all their labour rights. Furthermore, submit a proposal for the reform of article 123, section B, sub-section XII of the Constitution, which prevents police officers who were unfairly dismissed from their positions from being reinstated.
- Enhance the technical skills of police forces throughout the country, providing them with sufficient financial resources, tools, training and working conditions that ensure the discharge of their duties.

In relation to crimes under international law and serious human rights violations:

- Suspend without delay, with respect to international standards, any agent of the state—regardless of their rank—suspected of involvement in serious human rights violations until an impartial and independent investigation has been carried out.
- Ensure that no public official found guilty of said violations may be employed in other institutions of public security or justice.
- Adopt a missing persons register containing sufficient relevant information in which all incidents of enforced disappearance and disappearance committed by non-state actors—including those that took place in previous decades—is recorded, and which will serve as a tool for the guidance, evaluation and design of public policies and strategies relating to the disappearance of individuals.
- Ensure in practice the proper application of general laws on torture and other cruel, inhuman or degrading treatment or punishment and on enforced disappearance and disappearance committed by private individuals.
- Move forward diligently with the design of the National Programme to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the design of the National Register of Crimes of Torture, as set forth in applicable law, taking the opinions of civil society organisations into consideration.

STRENGTHENING THE JUSTICE SYSTEM

Amnesty International has witnessed the significant criminal justice system reforms that have enabled an adversarial system of criminal justice to be introduced in Mexico. However, the ability of such reforms to have a positive impact on the population's enjoyment of human rights is compromised by the shortcomings prevalent in criminal investigations, particularly with regard to crimes under international law and human rights violations, and the almost absolute impunity that persists in the country.⁴

In order to reverse this situation, the organisation recommends that the new authorities do the following:

In relation to the fight against impunity:

- Ensure that any amnesty law adopted, where applicable, conforms to international law and, in particular, does not benefit individuals suspected of criminal responsibility for crimes under international law—including crimes against humanity—or serious human rights violations.

⁴ Amnesty International. *Mexico: Reformed laws, unchanged reality*, 25 May 2018 (Index: AMR 41/8372/2018).

- Internally classify all crimes under international law that the Mexican state has committed to repress by means of the international instruments to which it is a state party, namely genocide, crimes against humanity and war crimes, which must always be tried by ordinary courts, excluding military courts.
- Present a proposal to Congress to repeal the eighth paragraph of article 21 of the Constitution, which seeks to unduly limit the jurisdiction of the International Criminal Court.

In relation to the strengthening of institutions:

- Create an international mechanism against impunity in order to independently investigate crimes under international law and human rights violations committed in Mexico.
- Ensure that the new Federal Attorney General's Office is truly independent and that it has the necessary legal authority and capacity, suitable staff and sufficient resources to properly perform its duties.
- Ensure that official forensic services are independent of prosecutors' and attorney generals' offices and that they have the operational, financial and material resources to carry out their work.

In relation to arbitrary detentions:

- Request that Congress abolish provisions in the Constitution and legislation that provide for *arraigo* detention and mandatory preventive detention, leaving the decision to adopt the latter precautionary measure to the discretion of the judicial authorities in each case.
- Remove provisions from the National Code of Criminal Procedure that allow the police to detain individuals after a crime has been committed solely on the basis of witness testimony and without a warrant (*flagrancia por señalamiento*), since this lends itself to abuse.

In relation to the investigation of serious human rights violations:

- Ensure the prompt, impartial, independent and effective investigation of crimes under international law and human rights violations and abuses, including torture and other ill-treatment, enforced disappearance and extrajudicial execution. Individuals with command responsibility who could be held criminally responsible in accordance with international obligations should be included in such investigations.
- Freely allow the relatives of disappeared persons to participate in the investigations, providing them with current and accurate information about the missing persons and allowing them to contribute information, suggest lines of investigation and ask for evidence. Under no circumstances should the authorities be allowed to shift the burden of investigating the case onto the family.
- Guarantee that the National Search Commission will have technical independence and freedom of management, providing the committee with sufficient human and material resources to achieve its aims.
- Amend the Standard Nationalized Protocol for the Investigation of Torture to ensure that it complies with international human rights legislation and standards and to guarantee that it shall no longer be an obstacle to investigations of torture and ill-treatment.

GENDER-BASED VIOLENCE AGAINST WOMEN AND CHILDREN

In Mexico, gender-based violence against women and children is widespread. Investigation into such cases is sorely lacking and these acts of violence usually go unpunished. This type of violence includes gender-based killings, known as "femicides" in national criminal law. Staff at the country's prosecutors' offices do not have the necessary training to identify whether a crime could be connected to gender, and often investigations are affected by gender stereotypes and prejudices.

As a response to gender-based violence against women and children, the National Commission for the Prevention and Eradication of Violence against Women activated the Gender-based Violence Alert (AVG), provided for in the General Law on Women's Access to a Life Free of Violence, in twelve states. Nevertheless, the

implementation of the AVG has highlighted the challenges faced by authorities in adopting coordinated and effective measures to fulfil their due diligence obligation to prevent, attend to, investigate, punish and redress gender-based violence against women. Among these obstacles are the design of general, virtually standardized interventions that do not take the local context into account; the absence of detailed work plans relating to said interventions; the lack of institutional capacities at the state and municipal levels; and the absence of accountability mechanisms.⁵

Therefore, the organisation recommends that the new authorities do the following:

- Design and implement a public policy aimed at preventing violence against women and children, including any form of discrimination.
- Carry out comprehensive, independent and impartial investigations into gender-based killings of women and children, ensuring that individuals suspected of being criminally responsible are brought to justice at a fair trial, and guaranteeing that the victims and their families receive full compensation for damages.
- Assess the impact of the Gender-based Violence Alert mechanism and use the conclusions gathered to remove the obstacles hindering the effectiveness of the AVGs, setting specific and reasonable timeframes for completing each phase, establishing clear procedures for monitoring and evaluating the measures, and ensuring the participation of the victims and civil society organisations throughout the process.

HUMAN RIGHTS DEFENDERS

Amnesty International has documented the situation faced by human rights defenders in Mexico. These individuals are frequently threatened, kept under illegal surveillance and attacked because of their actions promoting and defending human rights. In extreme cases, which are ever on the increase, human rights defenders have been killed for the work they do.⁶

Amnesty International is especially concerned about the situation of defenders of territory, the environment and human rights linked to access to land, since these individuals form one of the groups at particular risk due to their activity.

Therefore, the organisation recommends the following:

- Implement a comprehensive public policy for the protection of human rights defenders, in consultation with the defenders themselves, so that measures can be taken to combat the structural causes that increase the risks to and attacks against these individuals, such as impunity, stigmatisation and discrimination.
- Strengthen the Mechanism for the Protection of Human Rights Defenders and Journalists so that it provides appropriate and effective protection, making sure that the necessary resources are available and ensuring the collaboration and cooperation of federal, state and municipal authorities.
- Ensure that no illegal surveillance of any kind is performed on human rights defenders, their organisations or their families, and that any such surveillance is duly banned and penalized in accordance with the law.

MIGRANTS AND REFUGEES

Mexico has an important history as a country of origin and country of transit for migrants, and over the last few years has also become a destination country for people fleeing widespread violence or persecution in their countries of origin, mainly Honduras, El Salvador, Venezuela and Guatemala. However, thousands of people are

⁵ Amnesty International. *Mexico: Submission to the Committee on the Elimination of Discrimination against Women, 2018*, 28 June 2018 (Index: AMR 41/8465/2018).

⁶ Amnesty International. *Amnesty International Report 2017/18 - The State of the World's Human Rights: Mexico*, 22 February 2018 (Index: POL 10/6700/2018).

illegally deported to countries where their lives are in danger without being able to enjoy their right to request asylum in Mexico.⁷

Therefore, the organisation recommends the following:

- In accordance with Mexican law, guarantee that no children are separated from their families or detained as a result of migration.
- Guarantee the rights of refugees and asylum seekers, including the prohibition of refoulement. Investigate reports of practices in violation of said rights and, if such practices are confirmed, ensure that they are met with the corresponding sanctions.
- Shift the focus of responses to irregular migration, characterized by a narrow, security-based view that encourages repression and deterrence, to an emphasis based on human rights, acknowledging that migrants are not criminals.
- Guarantee that no police forces of any kind will be in charge of implementing the migration policy; rather, this will be undertaken by officials who are able to identify the needs of each person and guarantee their access to asylum proceedings when international protection is required.

RIGHTS OF INDIGENOUS PEOPLES

Many Indigenous Peoples in Mexico continue to suffer the effects of historical processes of multiple discrimination. Problems of limited access to justice, health, education, housing and land and other natural assets continue to exist. The increase in extractive industry and other economic enterprises directly impacts the rights of Indigenous Peoples, especially rights relating to land, territory and the environment.

In light of this situation, Amnesty International recommends the following:

- Recognize and guarantee the human rights of Indigenous Peoples, particularly their right to territory; economic, social and cultural rights, including the right to a healthy environment; and the right to consultation and free, prior and informed consent.
- Ensure that extractive projects and economic development projects, as well as all climate change adaptation and mitigation measures, fulfil Mexico's obligations under ILO Convention No. 169 and pursuant to the case law of the Inter-American Court of Human Rights and the UN Declaration on the Rights of Indigenous Peoples.
- Ensure that companies respect human rights by establishing a regulatory framework that obliges them to take measures to avoid human rights violations caused by their activities, to be held accountable and to redress any human rights abuses.

FOREIGN POLICY IN RELATION TO HUMAN RIGHTS

Amnesty International values Mexico's participation in various regional and universal human rights mechanisms and the contribution that this collaboration can make to the situation of human rights in the country. In view of this, the organisation believes that Mexico could benefit from joining various initiatives and mechanisms.

Therefore, Amnesty International recommends that the new authorities do the following:

- Position the human rights agenda as the mainstay of foreign policy and, consequently, engage in diplomatic efforts to promote respect for human rights around the world and, particularly, in the Americas.

⁷ Amnesty International, *Overlooked, under-protected: Mexico's deadly refoulement of Central Americans seeking asylum*, 23 January 2018 (Index: AMR 41/7602/2018).

- Open Mexico up to international scrutiny regarding the situation of human rights, in particular by cooperating with UN and OAS mechanisms and procedures.
- Comply fully with the judgements of the Inter-American Court on Human Rights and with the binding decisions of other international mechanisms on human rights, as well as with any recommendations they may make.
- Become a party to the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) and implement it internally.
- Become a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, promptly and without formulating reservations, and implement it internally.
- Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, without formulating reservations, and implement it internally.
- Become a party to the Protocol Additional (II) to the Geneva Conventions of 1949, relating to the protection of victims of non-international armed conflicts (1977), promptly and without formulating reservations, and implement it internally.
- Ratify International Labour Organisation Convention No. 189 on domestic workers and implement it internally.
- Become a party to the Inter-American Convention on Protecting the Human Rights of Older Persons, without formulating reservations, and implement it internally.
- Condemn the 'interpretative declaration' formulated by Mexico upon ratifying the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, which relates to the temporal scope of the aforementioned instrument.
- Recognize the competence of the UN Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of disappearance, or from other states parties, by virtue of articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearances.

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IS A GLOBAL MOVEMENT
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WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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This memorandum, addressed to Andrés Manuel López Obrador, president-elect of Mexico, aims to present Amnesty International's main findings, concerns and recommendations in order to confront the serious human rights crisis faced by the country. Considering the continuing and complex challenges that this involves, Amnesty International believes that the new administration could bring about substantial change if the human rights agenda were immediately made the central focus of public policy and government decisions.