

ATTACKS ON JUSTICE – MEXICO

Highlights

The December 2003 UNOHCHR assessment of the human rights situation in Mexico highlights the many flaws that exist in the Mexican judiciary and recommends an overhaul of the justice system, particularly with regard to criminal justice. The judiciary's independence is threatened by interference from the executive and legislature. In March 2004 President Fox proposed sweeping reform of the public security and criminal justice systems involving amendments to the Constitution and legislation as well as the introduction of new laws. The reform seeks to enshrine the autonomy of the Attorney General's Office (*Procuraduría General de la República*) in the Constitution and to substantially reorganize the inefficient and poorly supervised prosecution system. A new law on the Attorney General's Office entered into force on 28 December 2002. The reform also proposes to transform the predominantly inquisitorial criminal justice system into an adversarial one in order to enhance fair trial rights. Progress in judicial reform is slow in practice, with no substantial changes having been made since 2001. Lawyers who are committed to upholding human rights continue to face harassment and threats. A landmark decision by the Mexican Supreme Court, ruling that abductions and disappearances were not subject to statutes of limitations, paved the way for the Special Prosecutor for Past Social and Political Movements to charge former political and military officials with human rights abuses. However, so far no trials have taken place. According to the Special Prosecutor, his work is being significantly hampered by a lack of cooperation from other state bodies. Indigenous communities do not enjoy effective access to justice, not least because of linguistic difficulties.

BACKGROUND

The euphoria and high expectations following President Vicente Fox Quesada's election in 2000 yielded to disillusionment and deception, which manifested itself in poor election results for his party, the National Action Party (*Partido de Acción Nacional, PAN*), in the mid-term congressional elections in **July 2003**. This will make it difficult for the government to introduce important amendments to legislation.

The peace process with the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional, EZLN*) has remained stalled since the EZLN rejected the constitutional amendment on indigenous culture and rights on 29 April 2001 (see '*Attacks on Justice 2002*').

With respect for human rights and the rule of law being one of the major themes of his electoral campaign, on **26 April 2004** President Fox submitted a bill to Congress proposing amendments to the Constitution in order to enhance constitutional human

rights protection.¹ However, the government's attempts to improve the domestic human rights situation in practice appear to be stalled, with serious problems persisting in some areas, such as unlawful killings, forced disappearances, arbitrary detentions and the use of torture to extract confessions. The states of Chiapas, Guerrero and Oaxaca are particularly affected. Allegations of the torture and arbitrary detention of protestors during the Third Summit of Heads of State and Government of Latin America, the Caribbean and the European Union in Guadalajara in **May 2004** show that such abuses remain common, particularly but not exclusively at state level. The authorities' reaction, justifying the police action without investigating the allegations, indicates that impunity remains a serious threat to the rule of law.²

On **30 January 2004** María López Urbina was appointed special prosecutor to investigate the murders and abduction of women in Ciudad Juárez³, but most of these crimes remain uninvestigated: in **July 2004**, human rights organizations protested that the special prosecutor and the Attorney General's Office (*Procuraduría General de la República*) were denying the real extent of the problem, using overly optimistic numbers in their reports. On **30 May 2005**, Attorney General Daniel Cabeza de Vaca replaced María López Urbina with Mireille Rocatti Velázquez, a former president of the National Human Rights Commission and a well-known human rights activist.⁴

Given its weaknesses at state level, the judiciary can be misused to harass human rights defenders through the bringing of false charges and fabrication of evidence.⁵

On **27 June 2004**, in the largest protest in recent Mexican history, hundreds of thousands of Mexicans took to the streets of Mexico City to protest against increasing levels of violent crime and rampant kidnapping. The Fox government announced a ten-point plan, mainly based on increased cooperation between federal and state authorities, to curb the violence. Presented by President Fox on 29 March 2004, the reform of the public security and criminal justice system (see below) called for article 16 of the *Constitution* on the right to liberty and security to be amended. The proposed amendment, which sought to create a "special legal regime" for the investigation and prosecution of organized crime, was widely rejected. A plan by the Federal District authorities to tackle the problem with a zero-tolerance campaign led to the introduction of the "Civic Culture Law" (*Ley de Cultura Cívica*), which was adopted on **19 May 2004** and entered into force on **31 July 2004**. Human rights organizations oppose the application of the new law on the grounds that it is conducive to human rights violations. In particular, they criticize the law for its discriminatory approach towards the poor.

JUDICIARY

¹ See "Memorandum to the Mexican Federal Congress on Reforms to the Constitution and Criminal Justice System", <http://web.amnesty.org/library/Index/ENGAMR410322004?open&of=ENG-MEX>

² See "Allegations of Abuse Dismissed in Guadalajara: Reluctance to Investigate Human Rights Violations Perpetuates Impunity", [http://web.amnesty.org/library/pdf/AMR410342004ENGLISH/\\$File/AMR4103404.pdf](http://web.amnesty.org/library/pdf/AMR410342004ENGLISH/$File/AMR4103404.pdf)

³ See *Annual Report of the Inter-American Commission on Human Rights [IACHR] 2003*, <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm>

⁴ See <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm>

⁵ See Amnesty International, "Misuse of the Judicial System to Persecute Human Rights Defenders in Colombia and Mexico".

Judicial reforms

In its moves to cooperate with international human rights mechanisms, including in the area of judicial reform, in **April 2002** the Mexican Government signed a second agreement with the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) to implement the second phase of the Technical Cooperation Program, namely, the drafting of an “**Assessment of the Situation of Human Rights in Mexico**”⁶, on the one hand, and a **National Human Rights Program**, on the other.⁷ The UNOHCHR presented its assessment on **8 December 2003**, and President Fox promised to implement its general recommendations, which included overhauling the justice system and, in particular, the criminal justice system. On **10 December 2004**, the government presented its “National Human Rights Program” (*Programa Nacional de Derechos Humanos*).

To ensure the **independent administration of justice**, the assessment recommends removing jurisdictional organs such as the labour, administrative, agricultural and military courts from the ambit of the executive and including them within that of the judiciary (*Poder Judicial de la Federación*).⁸ It also highlights the fact that the independence of the **Federal Judicial Council** is compromised because in practice it is subordinate to the Supreme Court which has the authority to overturn the Council’s decisions by means of a qualified majority in plenary session. In addition, the President of the Supreme Court is a member of the Federal Judicial Council and the Supreme Court appoints three of the other members. The Council’s composition is further compromised by a lack of transparency in the procedures for appointing the three remaining members, with two of them appointed by the Senate and one by the President.

To bring the Mexican Government into line with its obligations under international law – namely, the 1985 *UN Standard Minimum Rules for the Administration of Juvenile Justice* and the 1989 *UN Convention on the Rights of the Child*, ratified in 1990 by Mexico – the assessment recommends the establishment of a **specialized juvenile justice system**. Furthermore, it reiterates the January 2002 recommendation by the Special Rapporteur on the Independence of Judges and Lawyers that the May 2000 *Law on the Protection of the Rights of Children and Juveniles (La Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes)*⁹ be fully implemented, since many states’ laws still allow children under the age of 12 to be considered subject to criminal law, despite the fact that this is forbidden under federal law. In the course of visiting different parts of the country, the National Human Rights Commission discovered that children as young as seven were in detention for robbery and illegal entry of houses.

In order to address the prevailing situation of **impunity** for persistent human rights violations committed by military forces¹⁰, the assessment recommended reforming the military justice system, under which soldiers are tried in secret and the outcomes of

⁶ See http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/index.htm

⁷ See “Attacks on Justice 2002” on the signing of Technical Cooperation Program between Fox government and UNOHCHR in December 2000, http://www.icj.org/news.php3?id_article=2688&lang=en

⁸ See [General Country Information](#) below on the structure of the judiciary and the special courts.

⁹ See <http://info4.juridicas.unam.mx/ijure/tcfed/194.htm?s=>

¹⁰ See, for example, Amnesty International, *Indigenous Women and Military Injustice*.

trials are rarely made public. Echoing the recommendations made by the Inter-American Commission of Human Rights (IACHR) in its 2000 Annual Report¹¹, it proposed restricting the military justice system to its proper sphere of competence, meaning cases that are strictly concerned with upholding military discipline. Cases involving civilians should be tried before ordinary courts. The assessment criticized the appointment of active or retired military officers to the Attorney General's Office as contrary to the civilian nature of the administration of justice.¹²

The UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, reiterated in **March 2003** the findings of his January 2002 mission report¹³, indicating that progress in implementing reforms had been slow.¹⁴ He further characterized the disparity between the federal and state justice systems as disturbing, even though there have been important changes in some state judiciaries. The Special Rapporteur also stressed that judicial corruption had yet to be tackled, with judges still reluctant to acknowledge the problem.¹⁵

On **29 March 2004**, President Fox proposed sweeping reform of the public security and criminal justice system, involving the amendment of several constitutional provisions and a Criminal Justice and Public Security Reform Bill. The reform also provided for the establishment of a **specialized juvenile criminal system**. On **31 March 2005**, the Senate approved amendments to article 18 of the Constitution to establish a comprehensive juvenile justice system (*Sistema Integral de justicia para adolescentes*). Resembling the President's proposals, the reform emphasizes the social rehabilitation of juvenile offenders and seeks to protect their human rights. As of **June 2005**, the bill is pending approval by the Federal Chamber of Deputies and has not yet become law.

While praising the proposed reform as an important step in addressing the issue of police and court reform, several Mexican NGOs have criticized the President for not drawing up his proposals with sufficient input from human rights groups and academics. Moreover, they have complained that the president's reform was presented independently of the National Human Rights Program that had been devised on the basis of the UN assessment, an important part of which was devoted to reform of the judiciary. In the opinion of critics, the reform was presented as an isolated initiative in order to give it fast-track treatment and, in terms of substance, the proposed legislative and constitutional reforms are less comprehensive than the recommendations contained in the assessment.

The Criminal Justice and Public Security Reform Bill

Constitutional amendments and a new ***Criminal Justice and Public Security Reform Bill*** are the result of the **29 March 2004** reform and have led to the amendment of eight existing laws and the introduction of six new laws. The President's reform proposals received a mixed reception, with many senators, judges and academics

¹¹ See <http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

¹² See "Attacks on Justice 2002" on the appointment of former military prosecutor General Rafael Macedo de la Concha to the post of Attorney General

¹³ See

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/c0120deaf3b91dd2c1256b76003fe19d/\\$File/G0210344.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/c0120deaf3b91dd2c1256b76003fe19d/$File/G0210344.pdf)

¹⁴ See "Attacks on Justice 2002".

¹⁵ See the Supreme Court's response to the Special Rapporteur's findings, May 2002.

being rather sceptical. Two parliamentarians from other parties submitted their own proposals, also calling for an accusatorial system. So, despite the criticism, there seems to be a consensus in favour of transforming the current semi-inquisitorial system into an accusatory system (see below under Access to Justice). It is unclear whether and when the President's ambitious reform proposals will be approved.

The *Criminal Justice and Public Security Reform Bill* proposes the creation of judges to supervise the enforcement of sentences. However, since it concerns only the criminal justice system, it does not address the broader issue of the enforcement of sentences resulting from civil proceedings. The bill seeks to reform the judiciary at federal level without addressing the situation of state judiciaries. Nevertheless, it sets standards for criminal procedure that could have a positive affect on not only federal courts but also state courts. Indeed, some states have been very active in reforming their judicial systems, as in the case of Nuevo León, where in **June 2004** the state legislature adopted a law introducing "oral judgments" for minor offences in order to speed up proceedings. Pursuant to this reform, the first 'oral judgment' took place on **18 February 2005**.

Independence

In contrast to the federal judiciary, state judiciaries remain subject to interference from both the state governments and legislatures. In particular, state executives and legislatures use the impeachment procedure, the so-called *juicio político*, to remove undesirable judges through a parliamentary vote. Reportedly, as some state judiciaries started becoming increasingly independent, such procedures came to be used more frequently in order to maintain executive and legislative influence (see Cases below).

The population has little confidence in the judiciary, especially as far as **corruption** is concerned. According to a survey published in **August 2004**, 58 per cent of all Mexicans believe they could bribe a judge.

Judicial transparency

The Mexican judiciary traditionally operates out of sight of public scrutiny, with only limited public access to court proceedings. This is slowly changing, however, both at federal and state level. On **30 April 2002**, Congress adopted the *Federal Law on Transparency and Access to Public Government Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental)*¹⁶. It requires both the **Supreme Court** and the **Federal Judicial Council (Consejo de la Judicatura Federal)** to adopt the rules and regulations required for its implementation. After initially appearing rather hesitant to do so, the Supreme Court became more publicly active from March 2004 onwards and, on **4 April 2004**, issued, together with the Federal Judicial Council, a body of rules and regulations establishing the procedures and criteria required for its implementation (*Reglamento de la Suprema Corte de Justicia de la Nación y del Consejo de la Judicatura Federal para la aplicación de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*).¹⁷ On **17 May 2005**, the Supreme Court announced several measures aimed at

¹⁶ See <http://www.funcionpublica.gob.mx/leyes/leyinfo/inicio.html>

¹⁷ See <http://www.ordenjuridico.gob.mx/Federal/PJ/SCJN/Reglamentos/REGLAMENTO DE LA SCJN Y CJF.pdf>

improving transparency, including the creation of a **working group** to discuss reforms required to improve communication and transparency, and the publication of sentences on the Internet. The Supreme Court's sessions are already public and there are plans to broadcast them on television.

The Federal Judicial Council is perceived to be less active, but there has been some progress with regard to the transparency of the federal judiciary as a whole. On **19 November 2004**, the Council issued an agreement allowing sentences to be published on the Internet.

At the state level, on **25 October 2004** the Judicial Council of the State of Mexico (*Consejo de la Judicatura del Estado de México*) approved a body of rules and regulations to implement the federal law on access to information (*Reglamento de Transparencia y Acceso a la Información Pública del Poder Judicial del Estado de México*,¹⁸), which entered into force on **30 October 2004**.

Judicial budgets

The debate on access to government information has just started and will continue, in particular with regard to the issue of personal data. There is still not much information available about administration of the judiciary by the Supreme Court and the Judicial Council. The report of the Federal Auditor's Office (*Auditoría Superior de la Federación*) on the 2003 budget, released on **11 May 2005**, severely criticized the federal judiciary for its budget handling and revealed several irregularities. In particular, the report identified shortcomings and irregularities in the Supreme Court's handling of trusts, including lack of documentation. There is no legal framework regulating the administration and operation of such trusts, illustrating the discretion the administration enjoys with regard to budget spending.

Code of ethics

After two years of work, in **August 2004** a plenary session of the Supreme Court adopted a ***Code of Ethics for the Federal Judiciary*** (*Código de Ética del Poder Judicial de la Federación*). The code establishes the type of conduct required to ensure the independence, impartiality and professionalism of judges. However, it does not provide for additional disciplinary measures or sanctions other than those already established in the 1995 *Organic Law on the Federal Judiciary* (*Ley Orgánica del Poder Judicial de la Federación*)

Non-execution of judicial decisions

Most federal court decisions are reportedly carried out without opposition, but some cases involving decisions against state governments have resulted in disputes between judges and governments over compliance with such decisions. During the period under review, most such problems concerned the head of the federal government and several of the governing bodies in the state of Quintana Roo.

¹⁸ See http://www.edomexico.gob.mx/legistel/cnt/Rglest_TranspaJudicial.htm

Cases

On **29 September, 2003**, the Congress of Yucatán State opened impeachment proceedings against five out of the six judges on the State Supreme Court (*Tribunal Superior de Justicia del Estado de Yucatán*) in connection with their conviction on 17 October 2000 of Armando Medina Millet, who was sentenced to a 20-year prison term for the murder of his wife in 1995. During his election campaign, the State Governor had promised to free Medina, repeatedly criticizing the state judiciary and, in particular, the judges involved in the case. The impeachment proceedings are still pending

Removed in 2001 for allegedly committing grave offences (*faltas graves*) against the State Constitution in the course of their duties, nine judges from the Supreme Court of the Baja California State (*Tribunal Superior de Justicia del Estado*) were reinstated pursuant to a decision by a federal court in **February 2005**.

In **March 2005**, the senior judge from the Guanajuato State judiciary, Héctor Manuel Ramírez Sanchez, decided to withdraw from his ratification process by Congress after being subjected to political pressure. He had been a member of the judiciary for 15 years and his work was widely appreciated.

LEGAL PROFESSION

The public security and criminal justice system reform presented in **March 2004** included an **amendment to article 17 of the Constitution** mandating federal and state legislation to guarantee lawyers the freedom to perform their duties and also to ensure their competence and integrity.

The purpose of the changes is to compel states to adopt implementing legislation and regulations to guarantee and control lawyers' professional skills and the quality of their work. However, because the reform stops short of putting forward more detailed proposals to improve control over the quality of lawyers' work, scholars doubt whether the constitutional amendment is sufficient to address the absence of a supervisory mechanism and guarantee due diligence by lawyers in the exercise of their profession.

The significant increase in the number of law schools throughout Mexico during recent years has not been matched by any reported increase in the overall quality of legal education, as many of these schools are poorly supervised and lack appropriate libraries and teaching staff. After obtaining a law degree, Mexican lawyers are able to start representing clients without any professional oversight.

Although lawyers are generally able to exercise their functions free from intimidation, those working in the field of human rights continue to be threatened and harassed by both state and private actors, as do human rights defenders in general. Most such cases remain uninvestigated, reinforcing the general climate of impunity.

Cases

Attacks on lawyers

Since becoming President of the Chiapas State Human Rights Commission in June 2001, lawyer **Pedro Raúl López** has been repeatedly threatened and attacked, allegedly due to his investigations into human rights abuses committed by state officials. On **14 January 2002**, after he had received threatening phone calls in the preceding months, unidentified individuals shot at his house.

In another incident on **17 October 2002**, unidentified individuals intercepted his car and beat him up, warning him not to carry on sending recommendations to the state government. On **17 August 2004**, the Chiapas Congress suspended him from his post in connection with allegations that he obstructed investigations into the Commission's finances. On the same day, his son-in-law was briefly detained by state police inquiring about Mr López's whereabouts, and his daughter was stopped in the street by unidentified individuals who searched her bag. The state police are also reported to have kept his house and his office under surveillance on that day.

Allegedly as a result of a land dispute between indigenous communities, 26 indigenous Mexicans were killed in the Agua Fría region of Oaxaca in **May 2002**. Public outrage over the government's failure to effectively deal with the violence surrounding indigenous communities' disputes resulted in the detention without charge of 26 indigenous people which were reportedly tortured to extract confessions. Two lawyers and members of Christian Action for the Abolition of Torture (*Acción Cristiana para la Abolición de la Tortura, ACAT*), **Samuel Alfonso Castellanos Piñón** and **Beatriz Casas Arrellanes**, took up their case in **October 2002**. Following challenges made by the latter with regard to the legality of the detentions and the reports of torture, 16 of the detainees were released and the remaining ten were granted an appeal in **February 2003**. In **March 2003**, the two lawyers, together with colleagues working with them on the case, **José Raymundo Díaz Taboada**, **Graciela Clavo Navarette** and **Mayra Irasema Jarquín Luján**, received anonymous letters threatening them with death for representing the individuals accused of the killings.

On **8 April 2003**, the Inter-American Commission on Human Rights took precautionary measures in support of them, and on **11 April** the ICJ wrote to the Mexican government on their behalf, reminding the government of its obligations under international law to investigate any threats against lawyers.¹⁹ Another letter threatening the lawyers with death if they continued their work arrived in their office on **24 November 2003**.

An unknown assailant murdered lawyer **Griselda Tirado Evangelio**, a member of an indigenous rights association, in Puebla on **6 August 2003**. Griselda Tirado had represented indigenous people involved in litigation relating to agrarian disputes in their communities. The local Public Prosecutor's Office reportedly failed to investigate the crime scene quickly enough, with the result that important information about the murder was lost. There is no information on any criminal proceedings.

Luz María Lluvias Flores, a lawyer from the "*José María Morelos y Pavón*" Human Rights Centre in Guerrero, was physically threatened following her representations on

¹⁹ See http://www.icj.org/news.php3?id_article=2792&lag=en

behalf of three citizens allegedly attacked by the alderman (*regidor del ayuntamiento*) of their town, his son and bodyguards. She was summoned to the local office of the State Public Prosecutor on **12 November 2003**, where she was threatened by the alderman and told not to involve herself in the case any more. The alderman's son and bodyguards are reported to have kept the Human Rights Centre's office under surveillance since **11 November**, and on 18 November they verbally threatened the Centre's President.

On **11 August 2004**, police from the municipality of Cintalapa, Chiapas, detained lawyers **Heriberto Gómez Coelle** and **Maria del Carmen Grajales Castillejos**, who were representing four individuals accused of murdering a teacher on 9 December 2003. Allegedly, three of their clients were tortured in order to secure confessions. Charged with attempting to make false statements, both were eventually released on bail.

The Digna Ochoa case

Implementing a federal court order of **25 February 2005**, the Public Prosecutor for the Federal District of Mexico reopened the case of lawyer **Digna Ochoa**. On **19 July 2004**, his office had closed the investigation into the death of Digna Ochoa, concluding that she had committed suicide and sought to make her death look like homicide. Found shot dead in her office on 19 October 2001, Digna Ochoa had been repeatedly threatened and harassed since 1999 in connection with her work as the head of the legal division of the Miguel Agustín Pro Juárez Human Rights Centre (*Centro PRODH*).²⁰ In 2003, an international team of experts appointed by the IACHR reportedly identified several shortcomings in the criminal investigation, such as the failure to explore all possible lines of investigation and irregularities in the handling of evidence, including the discovery of conclusive new evidence 18 months after her death.

On **20 April 2004**, the Inter-American Court of Human Rights requested the Mexican State to extend the provisional measures taken to guarantee the safety of lawyers **Bárbara Zamora López, Pilar Noriega García** and **Leonel Rivero Rodríguez**. The Court had issued the request for the first time on 25 October 2001. The three lawyers had worked closely with Digna Ochoa and been repeatedly threatened. Leonel Rivero has been continually threatened from 2003 onwards, most recently on **15 and 16 March 2005** when he received threatening phone calls. None of these threats has been properly investigated.

PROSECUTORS

Inadequate training schemes and a lack of supervision result in an inefficient and unprofessional prosecution system that is prone to corruption. Inefficiency is further fostered by the lack of coordination between the Public Prosecutor's Office (*Ministerio Público*) and the police. The *Criminal Justice and Public Security Reform Bill*, presented in **March 2004** and the new *Organic Law on the Attorney General's Office* of **28 December 2002** (*Ley Orgánica de la Procuraduría General de la*

²⁰ See "Attacks on Justice 2002".

República)²¹, abrogating the 1996 *Organic Law on the Attorney General's Office*, seek to address the flaws in the country's prosecution system by substantially transforming it.

Legal reforms

Organic Law on the Attorney General's Office

According to article 4 of the new *Organic Law on the Attorney General's Office* (*Ley Orgánica de la Procuraduría General de la República*), the tasks of the Public Prosecutor's Office (*Ministerio Público*) include investigating and prosecuting federal offences, representing the federal state in constitutional litigation and intervening in extradition cases. Although part of the Public Prosecutor's Office (see [General Country Information](#) below), the Attorney General's Office exercises different functions, as laid down in article 5 of the new law, including overseeing human rights within its sphere of competence, participating in the national system of democratic planning and public security, commenting on the constitutionality of draft laws and reaching agreements with private or public institutions to ensure that indigenous people involved in judicial proceedings are assisted by an interpreter. The Attorney General (*Procurador General de la República*) heads both the Public Prosecutor's Office and the Attorney General's Office.

In order to assist the administration of the Public Prosecutor's Office in meeting current challenges, in particular the rise in organized crime, the new law establishes a system of specialization and functional and territorial decentralization of the Attorney General's Office. In particular, the law allows for the creation, within the Attorney General's Office, of either administrative units specializing in the investigation and prosecution of certain types of offences (article 11) or special prosecution units (*fiscalías especiales*) to focus on and prosecute particular crimes.

As stipulated in the new law, on **25 June 2003** President Fox issued a body of rules and regulations (*Reglamento de la Ley Orgánica de la Procuraduría General de la República*) to enable it to be fully implemented.²²

The Criminal Justice and Public Security Reform Bill

The *Criminal Justice and Public Security Reform Bill* proposes the creation of a **new federal police force** by merging the two federal police forces, the preventive police (*Policía Federal Preventiva, PFP*) and the judicial police (*Agencia Federal de Investigaciones, AFI*), into a single federal police force by means of the proposed *Organic Law on the Federal Police* (*Ley Orgánica de la Policía Federal*). Such a re-organization is justified by the need to improve the management and supervision of police forces. The current judicial police are in charge of investigations and, as auxiliaries of the Public Prosecutor's Office, act under its authority and command. The new Federal Police would no longer be under the structural command of the Public Prosecutor's Office but under a new Interior Ministry (*Secretaría del Interior*). Scholars point out that separating the two institutions hardly seems an appropriate

²¹ See <http://info4.juridicas.unam.mx/ijure/fed/166/default.htm?s=>

²² See <http://cgservicios.df.gob.mx/prontuario/vigente/169.htm>

way of resolving coordination problems which are operational concerns rather than legal ones. Human rights organizations fear that public prosecutors would be dependent on the new ministry as far as the investigation of crimes is concerned and that the militarization from which police forces currently suffer would simply be transferred to the new force.

The *Criminal Justice and Public Security Reform Bill* also seeks to reorganize the current Attorney General's Office (*Procuraduría General de la República*) and to rename it the **Federal Public Prosecutor General's Office** (*Fiscalía General de la Federación*), to be headed by a Federal Prosecutor General (*Fiscal General de la Federación*), in order to highlight its independent and autonomous nature. The change of name is mainly of a cosmetic nature, made necessary by the bad reputation of the current office. The bill distinguishes between *administrative* and *prosecution* staff. In order to distinguish clearly between those in charge of investigating and prosecuting federal offences and those overseeing the constitutional and legal order, the bill specifies two roles: **public prosecutors** (*fiscales*), whose task is to investigate and prosecute federal offences and specific offences such as environmental ones, and **procurators** (*procuradores*), who would oversee the observance of constitutional and legal order.²³ In addition, the reform creates a new position: the **Federal Advocate General** (*Abogado General de la Federación*)²⁴ to represent the federal state in all proceedings to which it is a party. Hitherto the Attorney General has played this role. The Advocate General's position would be directly dependent on the President since he/she can be appointed and removed at the discretion of the latter. This clear delimiting of functions, together with the articles in the bill distinguishing between the duties of the Federal Public Prosecutor General's Office and the Public Prosecutor's Office (*Ministerio Público*), should improve the management and supervision of investigations and court proceedings. The bill retains the system of specialization and functional and territorial decentralization introduced in the 2002 *Organic Law on the Attorney General's Office*. Scholars have expressed several concerns about the proposed model, in particular with regard to the body's internal coordination and mechanisms to professionalize and supervise public officials.

In tandem with the constitutional amendments package, the **Federal Public Prosecutor General's Office** would be established as an autonomous body with budgetary and administrative autonomy under article 102 of the Constitution. By removing it from the executive sphere, it is hoped that its independence will be enhanced, thereby ensuring that investigations are impartial.

Special General Prosecutor for Past Social and Political Movements (*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado*)

In **January 2002**, **Ignacio Carrillo Prieto** was appointed head of the Special Prosecutor's Office for Past Social and Political Movements (*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado*, *FEMOSPP*). Insufficient resources, a lack of military cooperation and inadequate access to government documents have hampered the work of the Special Prosecutor's Office, which has so far not fulfilled its mandate to investigate past human rights abuses, establish the truth and bring the

²³ See article 4 of the proposed *Law on the Federal Public Prosecutor General's Office*.

²⁴ See proposed amendment to article 102 of the Constitution.

perpetrators to justice. After three years of work, there has yet to be a final judgment in any case.²⁵ On **27 April 2005**, the Special Prosecutor complained publicly that members of the Attorney General's Office were hindering his work by failing to prosecute and seize suspects. In addition, he complained that judges from the lower courts who had released suspects were simply following orders. On **5 November 2003**, the Supreme Court ruled that statutes of limitations did not apply to abduction cases as long as the victims' bodies were still missing. This ruling has enabled the Special Prosecutor to obtain the first arrest warrants against former police and secret service officials. However, many of them are fugitives.²⁶

Cases

On **23 July 2004**, Special Prosecutor Ignacio Carrillo Prieto, charged former **President Luis Echeverría** (1970-76) and 11 other high-level officials with genocide for the massacre of Mexican students on 10 June 1971 in Mexico City. After a lower court threw out the indictment in less than 24 hours on the grounds that the crime was covered by the 30-year statute of limitation and could no longer be prosecuted, the Special Prosecutor appealed to the Supreme Court. On **23 February 2005**, the Supreme Court partially upheld this decision, ruling that, in line with the interpretative declaration filed by Mexico upon ratification on 15 March 2002, the *International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* was not applicable retroactively and thus did not apply to the crimes in question.

Eventually, on **15 June 2005**, the Supreme Court decided that, as established in article 114 of the Constitution on the immunity of public officials, the 30-year statute of limitation had started to run only after the public officials had left office and did no longer enjoy immunity. Consequently, since they had left office on 1 December 1976, former President Echeverría and former Minister for Internal Affairs Mario Moya Palencia could still be tried for genocide, while the crimes of the nine other accused were prescribed because they had never enjoyed immunity. The Supreme Court sent the case file back to the lower court, which now has to determine whether the events in question constitute genocide. The Supreme Court's ruling paves the way for Echeverría to be tried for other crimes committed while he was in power. For example, the Special Prosecutor's Office announced that it was going to charge him in connection with the deaths of students during a police crackdown on a demonstration in 1968 when he was Minister of the Interior. The former President's party, the PRI, said that the Supreme Court decision was politically motivated with a view to influencing the then forthcoming elections in the states of Mexico and Nayarit on 3 July 2005.

Attorney General Rafael Macedo de la Concha faced strong public criticism during **2004** for prosecuting the Mayor of Mexico City, Andrés Manuel López Obrador for contempt of court on the grounds that in 2001 he had failed to comply with an injunction preventing the construction of a hospital access road. President Fox pointed

²⁵ See "Demandarán al gobierno por obstruir la justicia en el caso de la guerra sucia", *La Jornada*, 19 March 2005, <http://www.jornada.unam.mx/2005/mar05/050319/014n1pol.php>; <http://www.hrw.org/reports/2003/mexico0703/>

²⁶ For a thorough analysis of the Special Prosecutor's work, see International Centre for Transitional Justice, "A Promise Unfulfilled? The Special Prosecutor's Office in Mexico".

to the investigation as proof that no one was above the law, but Obrador's supporters criticized the investigation for being politically motivated and designed to prevent the popular leftist politician from running for the presidency in 2006. Following massive street protests in response to Congress's decision on **7 April 2005** to lift Obrador's immunity, the Attorney General resigned on **27 April**, allegedly under pressure from the President, in order to resolve the political crisis caused by the prosecution. Three days later, the newly-appointed Attorney General, Francisco Daniel Cabeza de Vaca, announced the closure of the case against Obrador at the request of the President. Commentators pointed out that, although the closure of the case resolved the country's political crisis, it also showed that the executive controlled the Attorney General's Office.

ACCESS TO JUSTICE

Legal reforms

Assessment of the Situation of Human Rights in Mexico

To guarantee a fair trial for both the accused and the victim of a crime, usually represented by the Public Prosecutor's Office, the "**2003 Assessment of the Situation of Human Rights in Mexico**" recommends abandoning the predominantly inquisitorial criminal system in favour of an adversarial system, which means abandoning written procedure in favour of one based on oral argument. The assessment recommends a radical reform of the criminal justice system to remove the 'para-judicial' powers the Public Prosecutor's Office has in relation to the collection and appraisal of evidence, testimonies and confessions. It calls on Mexico to amend its Constitution to guarantee the protection of human rights, especially the principle of presumption of innocence.

As regards the problem of confessions obtained under torture²⁷, the assessment recommends taking measures to investigate all allegations of torture in prison and ensuring that no confession obtained under torture can be used as evidence in a trial to the extent that only confessions made before a judge and in the presence of the accused's lawyer should be admitted as having evidentiary value. In addition to these proposals, the assessment calls for the adoption of legislation outlawing the use of confessions obtained as a result of physical or psychological pressure and placing the burden of proof that this is not the case on the Public Prosecutor's Office. On **31 March 2005**, Mexico ratified the *Optional Protocol to the UN Convention against Torture*, which provides for the establishment of domestic visiting bodies to prevent torture.

The 2004 reform of the public security and criminal justice system

The March 2004 *Criminal Justice and Public Security Reform Bill* (see Judiciary above) seeks to overhaul the current criminal justice system. Like the human rights assessment, the bill recommends transforming the current semi-inquisitorial system based on written procedures into an accusatory, adversarial and oral system by

²⁷ See Amnesty International, "*Unfair Trial, Unsafe Convictions*", <http://web.amnesty.org/library/Index/ENGAMR410072003?open&of=ENG-376>

adopting a new *Federal Code of Criminal Procedure*. The reform makes important amendments to article 20 of the Constitution on **fair trial rights**, notably introducing the right to be represented by a lawyer who is legally authorized to practice (*un abogado certificado en términos de la ley*). This amendment seeks to remove the possibility of being represented by a so-called ‘person of confidence’ instead of a defence lawyer. These so-called “persons of confidence”, not being lawyers, often fail to adequately defend their clients’ interests.

The explicit recognition of the **principle of presumption of innocence** is another important amendment to article 20 of the Constitution. However, human rights organizations protest that at the same time the proposed amendment contains important exceptions to the right to liberty. These exceptions, which can result in **preventive custody** in certain circumstances, undermine and distort the essence of the principle of presumption of innocence. First of all, preventive custody can be ordered in the case of serious crimes, as determined by law, and the reform proposes extending the list of serious crimes. Secondly, the reform provides for preventive custody in cases where those suspected of having committed an ordinary offence cannot guarantee payment of reparations. Human rights organizations have criticized this exception as being a discriminatory measure that infringes the right to equal treatment. Finally, a judge can order preventive custody on a discretionary basis. Since the reform does not provide any criteria for regulating judges’ discretionary powers, this provision has been criticized for undermining people’s legal security. Human rights organizations fear that, in the light of Mexico’s deteriorating public security situation, this reform may lead to an increase in preventive custody and pre-trial detention.

In **2004, 42.7 per cent** of all detainees were reportedly awaiting the end of an investigation or trial. The widespread use of pre-trial detention in Mexico is seen as discriminatory and contrary to international and constitutional legal standards.²⁸

The March 2004 reform provides for legal and constitutional amendments to guarantee that all statements by an indicted person are made before a judge and in the presence of defence counsel. The proposed *Federal Code of Criminal Procedure* provides for alternatives to criminal proceedings, such as conciliation in the case of less serious offences (articles 260-279 of the proposed Code) and the possibility of an abbreviated process if both defence counsel and prosecutor reach agreement on the sentence to be imposed with the victim’s consent and the judge’s approval (articles 489-492 of the proposed Code). The bill proposes creating a judge whose role would be to oversee the pre-trial process to ensure due process and balance between the parties.

Indigenous people

In his **December 2003** report on Mexico,²⁹ the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, pointed out that the enforcement and dispensation of justice illustrates indigenous people’s vulnerability: most indigenous people mistrust the judiciary,

²⁸ See Open Society Justice Initiative, November 2004, “*Myths of Pre-trial Detention in Mexico*”, http://www.justiceinitiative.org/db/resource2?res_id=102330

²⁹ See [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2004.80.Add.2.EN?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2004.80.Add.2.EN?Opendocument)

feeling discriminated against and harassed by both judges and prosecutors who speak only Spanish and are not familiar with indigenous legal customs. The right to a fair trial for many indigenous defendants, some of whom do not speak Spanish, is denied due to the lack of interpreters, since few authorized interpreters working for the judicial system have some knowledge of indigenous languages. Courts do not always enforce the law regarding the provision of translation services during criminal proceedings. Envisaged as an amendment to articles 27 to 31 of the *Federal Code of Criminal Procedure*, the *Criminal Justice and Public Security Reform Bill* establishes that interpreters are to be made available, at no expense to those concerned, to assist defendants and other people involved in criminal proceedings if they do not speak Spanish. Interpreters must be familiar with the practices and customs of indigenous communities in such circumstances. Scholars are critical that neither this reform nor any other draft bill makes a real effort to establish a genuine indigenous justice system.

LEGAL REFORMS DURING THE PERIOD

- April 2002:** *Federal Law on Transparency and Access to Public Government Information*, guarantees the right of access to information and protects personal data in the possession of all state bodies, adopted.
- December 2002:** *Organic Law on the Attorney General's Office*, deals with specialization and decentralization of the office, adopted.
- 19 May 2004:** *Civic Culture Law*, adopted by the Federal District legislature, criticized for undermining human rights.
- March 2004:** President Fox presented a sweeping **reform of the public security and criminal justice system** to Congress, involving several constitutional amendments, the amendment of eight existing laws and the introduction of six new laws.
- 26 April 2004:** Presidential initiative proposing **constitutional amendments to enhance human rights** sent to Congress.
- 31 March 2005:** **Amendments to article 18 of the Constitution**, providing for a comprehensive juvenile justice system, approved by the Senate on **31 March 2005**; approval by the Federal Chamber of Deputies pending.

II. General Country Information

a. *Legal system overview*

1. Rule of law and independence of the judiciary

The national Constitution (*Constitución Política de los Estados Unidos Mexicanos*), adopted in 1917 and repeatedly amended, most recently on **2 August 2004**, establishes Mexico as a democratic, representative and federal republic (article 40).

Mexico is politically divided into 31 states and one Federal District (*Distrito Federal*), the latter being Mexico City, the capital of the country and the seat of government. The Constitution sets out the distribution of competences between the federal state and the states. In addition to the federal Constitution, each Mexican state has its own constitution and executive, legislative and judicial system.

The President of the Republic is head of both the State and government and is elected by direct popular vote for a non-renewable period of six years. The President has broad powers of appointment and removal, fiscal powers, control of the military, and the power to introduce and veto legislation. Although the Constitution provides for the separation of powers (article 49), in reality the presidency is by far the most important political state office in Mexico due to both constitutional provisions and a well-institutionalized tradition of near-absolute power. In July 2000, the Revolutionary Institutional Party (*Partido Revolucionario Institucional, PRI*) lost the presidential elections after 71 years in power to the Alliance for Change (*Alianza por el Cambio* – PAN – and the Green Party) candidate, Vicente Fox Quesada.

Legislative power is exercised by Congress. It is composed of two chambers, a 500-seat Federal Chamber of Deputies (*Cámara Federal de Diputados*) and a 128-seat Senate (*Cámara de Senadores*). Deputies serve for a non-renewable three-year term: 300 deputies are directly elected by popular vote, the remaining 200 seats being allocated on the basis of each party's popular vote. In the Senate, each of the 32 political bodies within the federation is represented by three members, two of whom are elected by a relative majority, with the third seat being given to the second most voted-for party. The 32 remaining seats are elected from national lists by proportional representation. The senatorial term is six years. Senators and deputies may not serve two consecutive terms.

The Federal Supreme Court (*Suprema Corte de Justicia de la Nación*) participates in the law-making process by proposing amendments and bills, often after having sought contributions from different sectors of civil society.

The National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*), Mexico's ombudsman's office, continues to carry out its mandate to protect human rights by making non-binding recommendations. Following the 1999 amendment to the Constitution, the procedures for appointing the Commission's members were amended. Its Advisory Council is made up of ten members elected by

two-thirds of the votes of the Senate. Every year the two longest-serving members are replaced, unless confirmed in their positions. The Commission's chairperson serves a five-year term, which may be renewed only once. The chairperson is elected in the same way as the members of the Council.

According to the Constitution (article 102B), the Commission enjoys budgetary and administrative autonomy as well as judicial personality. The Commission's budget is authorized by Congress and is part of budgetary expenditure. Some Mexican NGOs have pointed out that, as in the past, the executive continues to control the Commission's budget.

The Commission presents a periodic report to parliament. However, its findings and recommendations are non-binding.

On 28 October 2004, the Senate re-elected the incumbent President of the National Human Rights Commission, José Luis Soberanes, for a second term. Human rights organizations criticized the fact that other candidates were not properly considered and that there was no effective consultation process with civil society organizations. The lack of civil society input helps undermine the Commission's legitimacy.

2. Sources of law

The order of precedence of sources of law in the civil tradition, to which Mexico's legal system belongs, is as follows: the Constitution, signed and ratified international treaties and covenants, legislation, regulations and custom.

b. The judiciary

1. Judicial structure

The main sources of law regarding operation of the federal judiciary (*Poder Judicial de la Federación*) are the federal Constitution (Title 3, Chapter IV) and the 1996 *Law on the Judiciary (Ley Orgánica del Poder Judicial de la Federación)*.

The federal judiciary consists of the Federal Supreme Court (*Suprema Corte de Justicia de la Nación*), the Electoral Court, the circuit courts (*Tribunales Colegiados de Circuito*), the single-judge circuit courts (*Tribunales Unitarios del Circuito*), the district courts (*Juzgados de Distrito*) and the Federal Council of the Judiciary (*Consejo de la Judicatura Federal*) (article 94). Offences that fall to federal jurisdiction include those relating to organized crime and drug-trafficking and offences that may constitute human rights violations if they are committed by federal state agents either by action, omission or acquiescence. The state judiciary has jurisdiction over murder, robbery, kidnapping and other ordinary criminal offences.

The Federal Supreme Court, the highest court in Mexico, is composed of 11 judges (*ministros*) and operates either in plenary session or as two chambers (*salas*). When in plenary session, it has jurisdiction over constitutional disputes between the different political bodies within Mexico and petitions of unconstitutionality, and can review decisions taken by lower courts on constitutional matters and on petitions of *amparo*

(petitions seeking the safeguarding of constitutional rights). The Federal Supreme Court in plenary session also elects a President from among its members for a non-renewable period of four years. For a law or treaty to be declared unconstitutional by the Federal Supreme Court, the agreement of eight of its 11 members is required. Actions that challenge the compatibility of legislation with the Constitution may only be brought before the Federal Supreme Court by qualified parties, i.e. the Federal Attorney or members of federal or state legislative bodies, but not by regular citizens. The need to secure a qualified majority in order to obtain a favourable decision and the existing constraints on the right of petition means that as a system of constitutional review it is limited.

As for the state judiciaries, article 116 of the Constitution, Section III, states that they are made up of the courts established in the state Constitutions, which must guarantee their independence. State judiciaries have jurisdiction over murder, robbery, kidnapping, other ordinary criminal offences and offences that may constitute human rights violations as long as such crimes are committed by state agents either by action, omission or acquiescence.

2. Special courts

There are several judicial bodies that do not form part of the regular federal court structure. The most important of these are the tax courts, labour courts, agricultural courts and military courts. In these courts the executive acts simultaneously as judge and interested party. As a result, impartiality may be impaired, as the executive itself settles any conflicts arising from its own decisions or omissions. The labour courts (*Juntas Federales de Conciliación y Arbitraje*) have jurisdiction over alleged breaches of labour law, disputes in the context of collective bargaining and issues related to strikes. Although Mexican law recognizes most labour rights for workers, the labour courts have not been fully independent or impartial. The system previously operated as a political tool of the PRI. The fact that there are restrictions on freedom of association and that power has been given to non-representative workers' organizations is another issue that has affected the impartiality of the judiciary because trade union members themselves participate in the labour courts. Labour courts have generally lacked impartiality when dealing with cases of unlawful dismissal.

The shortcomings of the Mexican labour law system have become all the more evident in the light of the increasing number of *maquiladoras* (companies set up in Mexico looking for cheap labour and access to US markets in the context of NAFTA – the North American Free Trade Agreement) operating in the country. Such companies have tended not to respect minimum international labour standards. The new government has said that it intends to incorporate the labour courts into the regular federal court structure. Although this pledge has not yet been fulfilled, some improvement has been noted in the impartiality of labour courts and the number of unions not controlled by the PRI has grown.

3. Military courts

Military justice is dispensed by the Military Supreme Court, the Ordinary Courts Martial and the Special Courts Martial. Prosecutions are conducted by the Military

Public Prosecutor's Office with the assistance of the Judicial Military Police. The latter two bodies operate under the authority of the General Prosecutor of Military Justice. The Ministry of Defence appoints all members of the military judiciary.

The *Military Code of Justice* stipulates that military courts have jurisdiction over ordinary offences committed by military officials "while on duty or for reasons related to their own duty". This imprecise formulation has allowed military courts to try not only offences related to legitimate military functions, but also any other ordinary offence committed by a military official. If a member of the military commits an offence and is arrested by the civilian authorities, the military agent has the right to ask for the case to be transferred immediately to the military justice system.

The use of military courts is one of the main reasons why impunity exists with regard to human rights violations and ordinary offences committed by members of the military. Civilians are not permitted to participate in military trials and the military judiciary is dependent on the federal executive, meaning that the military justice system contravenes international standards regarding impartiality and the independence of the judiciary.

Military justice has also been used as a means of taking political reprisals. In 1993, General Gallardo was sentenced to more than 20 years in prison, ostensibly for offences against military discipline. He was reportedly sentenced in retaliation for his criticism of human rights abuses committed by the army and for proposing that an ombudsman's office be set up to investigate human rights violations. Amnesty International considered General Gallardo to be a prisoner of conscience and asked the government to release him. In 1996, the IACHR also requested his immediate release. He was eventually released on 7 February 2002 after President Fox decided to reduce his sentence to the amount of time already served. The decision was announced only days before the Mexican Government was due to appear before the Inter-American Court of Human Rights to discuss the case and explain why it had failed to implement the recommendations of the IACHR. The Court cancelled the hearing and ordered Mexico to continue to take all necessary measures to protect the life and safety of General Gallardo. However, reducing the sentence in this way to bring about his release means that his conviction remains upheld. Thus, under the military justice system, the General is still a criminal. He reportedly received death threats in 2004 after publicly criticizing the appointment of army members to civilian positions.

4. The Federal Judicial Council

The Federal Judicial Council (*Consejo de la Judicatura Federal*) consists of seven members, including the President of the Federal Supreme Court, two circuit court judges and one district court judge also chosen by the Supreme Court, two members designated by the Senate and one by the President. It is mandated to administer, monitor, discipline and enforce the judicial career system of the federal judiciary, except for judges from the Federal Supreme Court and the Electoral Court.

c. Judicial actors

c.1. Judges

Qualifications, appointment and training

The President has wide-ranging powers with regard to the appointment of Supreme Court judges. The President submits a list of three candidates to the Senate for every vacant seat on the Supreme Court. The Senate, having previously conducted hearings with the proposed nominees, selects the justices. Two-thirds of the Senate must agree on the names within 30 days. If they cannot reach agreement, the President appoints the justices from among those on the list he has submitted. Supreme Court judges serve a non-renewable 15-year term.

The Federal Judicial Council appoints judges to the lower courts. Appointments made by the Federal Judicial Council have to be based on objective criteria and comply with the law. Judges sitting in the circuit courts and district judges are admitted and promoted by means of an internal exam. The exams are organized by the Federal Judicial Institute (*Instituto de la Judicatura Federal*) on the basis of criteria it sets itself and with preference being given to those candidates who are currently sitting in a court that is one step lower down the hierarchy.

In the Federal District (Mexico City), the Head of Government of the District submits a proposal to the Federal District Legislative Assembly with regard to the appointment of judges to the Federal District Supreme Court. Once approved, judges remain in post for six years. The Federal District's Judicial Council appoints the first instance judges.

At the state level, judges are generally appointed to the State Supreme Court for a six-year period by the State Governor with the approval of the State Supreme Court. Although the Constitution provides for a Federal Judicial Council and a Judicial Council for the Federal District, there is no similar provision with regard to the judiciaries at state level. Not all states have a judicial council within their judiciaries, which has allowed State Supreme Courts to retain administrative and monitoring powers.

Security of tenure

Since 1984, the federal government as well as local governments have been investing in improvements to the federal judiciary. They have raised salaries, restored facilities and increased the number of courts. At the state level, the situation is less positive - pay is low, basic equipment is lacking and workloads are large - the result being that legal proceedings may take up to five years to complete. The budget for both the federal and state judiciary needs to be increased in order to retain judges on better pay and reduce the incentive for corruption.

At federal level, only the justices sitting on the Federal Supreme Court enjoy security of tenure. As far as lower court judges are concerned, article 97 of the Constitution stipulates that they are to remain in post for a period of six years, which coincides with the Federal Government term. If, after six years, lower court judges are re-elected or promoted to more senior positions, they are no longer subject to removal

except in circumstances, and by means of a procedure, determined in law. They therefore only effectively enjoy security of tenure if promoted to a higher court or confirmed in their posts. The IACHR has pointed out that a constitutional structure that provides for a six-year term subject to ratification in the case of certain judges undermines the independence of the judiciary in relation to the executive. The requirement for lower court judges to be ratified compromises their independence and lays them open to political pressure. As a result, the membership of the judiciary typically changes whenever a new government comes to power, resulting in an absence of continuity in the administration of justice and pressure on judges during the first six years not to hand down rulings that upset the ratifying authorities.

Discipline, suspension and removal

The Federal Judicial Council exercises disciplinary control over the federal judiciary, except with regard to the Federal Supreme Court and the Electoral Courts. However, it lacks the required independence to monitor the actions of judges, as four of its seven members, including the President, are themselves members of the judiciary under review.

Federal Supreme Court justices, circuit judges and district judges, as well as the justices sitting in the Federal District's Supreme Court, may be removed only pursuant to the provisions of the Constitution relating to the obligations incumbent on civil servants. Article 109 states that impeachment proceedings, known as a political trial (*juicio político*), may be carried out in cases in which civil servants have committed acts or omissions in the course of duty that are detrimental to the law, honour, loyalty, impartiality or efficiency. Criminal offences, however, are punishable under criminal law. For a political trial to proceed, the Chamber of Deputies must act as the accusing party, and the Senate as a court of judgment, with any appropriate penalty being imposed by agreement of two-thirds of the senators present at the session. Congressional declarations and decisions cannot be challenged. Criminal proceedings against Federal Supreme Court judges for offences committed while in office may be opened once a majority of the members of the Chamber of Deputies has agreed that there are grounds to proceed against the accused, in which case the accused is removed from the post in question.

c.2. Prosecutors

Status and conditions of service

The Mexican prosecution system is regulated by the 2002 *Organic Law on the Attorney General's Office (Ley Orgánica de la Procuraduría General de la República)*. It is based on Mexico's federated system. At the federal level, the Federal Public Prosecutor's Office (*Ministerio Público Federal*) exercises prosecution functions. The Attorney General (*Procurador General de la República*) is the head of the Federal Public Prosecutor's Office. His office (*Procuraduría General de la República*) forms part of the latter and is mandated to prosecute all criminal offences before the courts (article 102A of the Constitution).

Former Military Prosecutor, General Rafael Macedo de la Concha, was appointed to the position of Attorney General in November 2000. A number of Mexican NGOs have criticized this appointment as Macedo has a poor record when it comes to prosecuting members of the military involved in human rights violations. He appointed more than two hundred members of the military at different levels of the hierarchy as well as two dozens or so to positions of influence. This policy has confirmed fears about the militarization of the Federal Public Prosecutor's Office.

The prosecution service in the 31 states and the Federal District is provided by 31 State Public Prosecutor's Offices (*Procuradurias Generales de Justicia de los Estados, PGJ*) and the Federal District Public Prosecutor's Office (*Procuraduría General de Justicia del Distrito Federal, PGJDF*) respectively. They come under the direction of the respective State Public Prosecutor and are all assisted by sectional judicial police.

The Attorney General's Office is in charge of the Public Prosecutor's Office, which forms part of the federal executive and depends on it for financial and personnel resources. The President not only appoints the Attorney General with the approval of the Senate, but also has the power to remove him or her. The fact that the Public Prosecutor's Office is not independent of the executive has been a recurring issue in discussions about reform of the Mexican judiciary. The presidential bill introduced in March 2004 is seeking to change this structure (see [Recent Developments](#)).

Role in criminal proceedings

Mexican prosecutors conduct pre-trial investigation proceedings (*averiguación previa*), in which they are expected to investigate crimes and identify suspects by collecting evidence and interviewing suspects, witnesses and victims in an impartial and objective way so that all the elements of a crime can be brought together. Once this phase is complete, the case is referred to a judge, who is able to issue an arrest warrant simply by confirming that a crime has "probably" been committed and that it can probably be attributed to the person in question. If the defendant was caught *in flagrante delicto*, the judge only has to certify that the arrest was carried out in compliance with the law. In either case, the suspect must make a declaration to a judge, known as a preparatory declaration (*declaración preparatoria*). The judge decides whether or not to proceed on the basis of this declaration. If the case goes forward, the Public Prosecutor's Office will continue to gather information. Judicial police officers may also carry out investigations under orders from the Public Prosecutor's Office. Only statements made before a judge or prosecutor can be considered during a trial. Prosecutors have sole power to conduct investigations and prosecutions, meaning that neither victims nor judges may open investigations.

Since 1993, amendments made to the Constitution as well as to the *Code of Criminal Procedure*, which covers most of the duties of the Public Prosecutor's Office³⁰, have given broad powers to prosecutors to fight the high levels of criminality in Mexico. Prosecutors are able to arrest individuals who are suspected of having committed an offence during the pre-trial investigation stage. They can order arrests to be made without a court order in "urgent" and "serious" cases and in order to "prevent the

³⁰ See "*Attacks on Justice 2000*".

suspect from evading justice”. The situation regarding people caught *in flagrante delicto*, where arrests may be made without a court order, has been widened. A person suspected of committing a crime may be detained within 72 hours of the offence being committed. Moreover, in flagrant and urgent cases, prosecutors can hold suspects for 48 hours (96 hours in the case of organized crime) before bringing them before a judge. Suspects may not see their lawyer during this period.

According to the Constitution, a decision not to prosecute an offence may be judicially challenged in the manner determined by law. However, the legislation required to implement this provision has not been enacted. Attempts have been made to enforce it by pursuing the procedure of *amparo* in the ordinary courts, resulting in conflicting jurisprudence on the matter.³¹ While certain courts have endorsed the use of *amparo* procedures to protect victims’ rights and have willingly granted petitions ordering prosecutors to reopen investigations, others have decided differently. This conflicting jurisprudence was settled by a Federal Supreme Court decision which took the view that *amparo* petitions were appropriate. However, it has been reported that prosecutors now tend to avoid making any formal decision with regard to prosecution, delaying the process by giving administrative excuses, in particular when victims are pushing for progress to be made in the investigation. This approach results in the slowing down of investigations.

The system that regulates the Public Prosecutor’s Office has been the subject of criticism. Prosecutors have the power not only to search for evidence but also to decide the judicial weight to be accorded to such evidence. According to some experts, prosecutors act as *de facto* judges in the Mexican system, since their findings are taken as evidence without subjecting them to further evaluation. The fact that the main objective of prosecutors is to accuse and not to judge impartially makes judicial control essential. Prosecutors obtain and assess evidence, bring charges and also have the power to incarcerate people in a broad spectrum of cases. The fact that they have wide-ranging powers to arrest and detain suspects before presenting them to a judge leaves suspects at risk of being subjected to human rights violations in the search for evidence.

d. Access to Justice

1. Access to justice

The quality of the administration of justice in federal courts and state courts varies a great deal, mainly due to disparities in the availability of resources. This situation is especially problematic because access to justice for the vast majority of Mexicans is through the state courts.

Detainees have been subjected to torture and other forms of ill-treatment while in prolonged arbitrary detention. Studies have shown that the length of arbitrary detention has been determined by the time needed for the suspect’s wounds to heal. Legislation and some jurisprudence state that evidence obtained as a result of committing human rights violations, though potentially implying criminal

³¹ Regarding *amparo*, see below under [Access to Justice](#).

responsibility on the part of a state official, may be considered during trials, although evidence obtained under torture is not admissible. Some judges attach great credibility to the initial statement made by a suspect and in many cases do not pay attention to allegations that the statement may have been obtained under torture, giving greater judicial weight to statements made before prosecutors or police officers and without the presence of the suspect's defence lawyer than to statements made directly by the accused in their presence.

The *amparo* procedure (*juicio de amparo* – a petition seeking protection for fundamental rights), first developed in the nineteenth century, is regulated in articles 103 and 107 of the Federal Constitution. These constitutional provisions are further developed by the *Amparo Law Regulating Articles 103 and 107 of the Constitution (Ley de Amparo Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos)*. The purpose of *amparo* is to protect individual rights from the actions of the State or to remedy violations that have already been committed. For *amparo* proceedings to go ahead, all ordinary remedies must be exhausted. However, the *Amparo Law* provides for an exception: if the act in question could result in loss of life, deportation or exile or any other act contrary to article 22 of the Constitution. In criminal matters, these exceptions have been broadened by judicial interpretation to include violations of the right to liberty and security of the person, the right to privacy and fair trial guarantees (articles 16, 19 and 20 of the Constitution). Although *amparo* does not challenge the general constitutionality of a law, it may prevent application of that law in a particular situation affecting an individual.

The Federal Supreme Court has drafted a bill to reform the *amparo* system. Such an amendment would be welcome as, according to some Mexican NGOs, *amparo* has become neither effective nor accessible. The bill would broaden the circumstances to which *amparo* applies to include, for example, the protection of individual and collective human rights recognized in international instruments. It would also broaden the concept of authority when dealing with violations of individual guarantees by state agents. Finally, it would allow the constitutionality of any law to be reviewed. The UN Human Rights Assessment also recommends that the *amparo* legislation be amended to expand its sphere of protection. However, so far no steps have been taken in this direction.

2. Fair trial

For many indigenous defendants, some of whom do not speak Spanish, the right to a fair trial is denied. Although the law guarantees that translation services are to be made available at all stages of criminal proceedings, the courts do not generally enforce this rule. Therefore indigenous peoples may be convicted without understanding why.

The chairperson of the UN Working Group on Indigenous Populations, Irene Erica Daes, has suggested that the judiciary is viewed with mistrust by indigenous groups. In Oaxaca, the largest number of violations of the right to a fair trial is committed against indigenous persons. A study carried out by the Centre for Indigenous Rights and Culture in the prisons of Oaxaca found that the defence provided by court-appointed lawyers was deficient. In many cases the prisoners did not even know that

they had a defence lawyer. Furthermore, the study pointed out that many indigenous people who had been sentenced did not exhaust the appeals available to them because they could not afford to do so. Judges and prosecutors often discriminate against indigenous populations, for instance, by failing to take into account in their decisions any testimony and documentation presented by indigenous authorities in favour of indigenous prisoners. Some of the most serious problems facing indigenous people with regard of securing justice include: the lack of translators of indigenous languages, the offensive treatment given to existing interpreters by judges and their staff, threats made against interpreters by the judicial police, ignorance of the legislation regarding the provision of indigenous interpreters within the court system, interpreters not being paid, lack of awareness on the part of indigenous people of what constitutes an offence under Mexican law and the inhumane treatment of prisoners by prison staff.

3. Legal aid

The public defence system is seriously deficient owing to a lack of resources. Too few defence lawyers are employed and many lack the necessary training. Public defenders are poorly paid, receiving some US\$12,000 per year. The public defence system has also attracted criticism over allegations of corruption. It has been reported that, in some cases, the defendant's lawyer has been more interested in helping the prosecution than his or her client. Those who need court-appointed defence attorneys are at the bottom of the socio-economic ladder and usually receive harsher punishment. The Federal District Human Rights Commission (HRCFD) acknowledged the deficiencies of this system and confirmed (recommendation 3/96) that public defenders often only formally act as counsel, solely complying with procedural requirements, such as signing statements, without even being present during trial proceedings. Thus, even when the judicial record contains the signature of a defender attesting to have witnessed what happened during the trial, an adequate defence may still have been lacking.

Article 20 of the Constitution was amended in September 2000 to expand the rights of victims, including giving them the right to appoint a lawyer to serve as co-counsel (*co-ayudantes*) with the prosecutor. The purpose of this reform was to ensure proper investigation and prosecution of crimes, thereby contributing to the fulfilment of the victim's right to have offenders punished and to receive reparation. The victim or victim's family may ask to be allowed to appoint a legal representative or to be considered themselves as co-counsel to the public prosecutor in the investigation and evidence-gathering proceedings. However, it is not compulsory for the Public Prosecutor's Office to take account of any evidence collected by them.