

COHA's Report on Mexico's Prison System: Yet Another Blemished Aspect of Fox's Failed Presidency

Mexico's prison system has reached a breaking point, and the Fox administration's continued "band-aid response" has set the country on a path towards crisis. With the country's level of violent crime reaching explosive levels, the failings of the criminal justice system can no longer be overlooked. If Fox, and his eventual successor, are ever to succeed in checking an expanding crime wave, they will first need to confront a penal system that currently is confronting a crisis of unprecedented proportions.

Like other Latin American countries, Mexico, for good reason, prefers to keep its prison system hidden from public view. With 191 inmates per 100,000 members of the general population, Mexico's penal facilities are running at over 125% of capacity. These tenebrous statistics suggest that justice in the country is not only often skewed, but that poor and marginalized Mexicans bear the brunt of the system's excesses. Literally bursting at the seams with what should be five-person cells, today each of these units actually house more than 20 inmates. As a result, Mexican prisons are natural breeding grounds for civic abuses, ranging from sexual outrages to ethnic discrimination. Clearly President Fox has not looked at this problem with any sense of urgency, projecting his prison strategy as merely one more aspect of his failed presidency.

Not all inmates suffer, however: *narcos* have effectively taken control at maximum security facilities, caricaturing the role of governance. The government has practically given *narco* leaders a *de facto* office from which they can conduct their business, allowing them to be equipped with any technology or device they desire to expedite their clandestine activities. Prison administrators, usually complicit in this outright system of corruption, claim it helps maintain order, yet in reality it only ensures impunity and offers no solution to the country's epic crime containment problems.

In the face of this widening crisis, Mexican officials have only given lip service to the problem with empty reports and meaningless reforms. As a whole, the government's approach to the crime problem has largely been viewed as a failure, and it is in the realm of the penal system where Fox has displayed a marked lack of political courage and constant vision in the face of a daunting challenge.

Complete Report on the Mexican Prison System

The Wretched Plight of Mexico's Crippled Prison System

Mexico, like a number of other Latin American countries, has attracted the scrutiny of the foreign press regarding a part of its deeply diseased social system that it normally prefers to keep under wraps, hidden away in the recesses of its national life. The country's notorious prison crisis now has reached monumental breadth. This is an inevitable reality for a penal system whose overpopulation exceeds 125% of capacity in most of its facilities, and where human rights are chronically abused. The situation is exacerbated by the fact that the usual correction facility staff is patently underpaid and prone to chronic venality. With near-anarchy in the ascendancy in this set-up, the defining characteristics within the average detention facility are repeated abuses. Yet, the authorities are spending more time dissembling on the grievous conditions to be found there than trying to reform them. Meanwhile, for the poor and marginalized detainees – most of who are awaiting to be tried – they remain indefinitely incarcerated, and justice remains a distant fantasy. The Mexican penal system is on the brink of a Chernobyl-esque meltdown, which policymakers, headed by Fox, can no longer afford to ignore. If the system is not quickly and comprehensively overhauled, it is highly unlikely that any solution will be found to the country's ominous current crime wave, which could bring on a massive social detonation.

Justice Undone

The current crisis in the Mexican penal system has sprung from a collapsed

criminal justice arrangement, which today fails to minimally meet society's need every step of the way, from corrupt grassroots police procedures and a hugely fractured ineffectual judiciary, to nightmarish correctional facilities. Each phase in this ruinous progression is plagued with particular difficulties that have helped to bring on the present crisis. The police are infamous in Mexico for being synonymous with brutality, corruption and incompetence, and have been so for decades. Public opinion polls by the National Survey on Political Culture and Citizen Practices (ENCUP), have reported that 77.4% of the population deeply distrusts the police. This sentiment is not unfounded. The State of Mexico has reported that nearly 90% of all kidnapping rings had direct links to one or more current or former police officers who were found to be involved in the abductions. According to a former head of public security, the National System of Security only documents the fingerprints of 10% of police officers, and it is uncertain if the prints are even matched to the correct names, an omission which all but guarantees that corruption in the ranks through to the top will continue unchecked.

In a study conducted by the Center for U.S. Mexican Studies at the University of California, San Diego, 60% of criminals who eventually were prosecuted, were arrested while perpetrating the crime, which means that in most cases the authorities did not even carry out further investigations, subsequently identifying only a small number of those responsible for individual crimes. The Federal Preventive Police, the branch responsible for dealing with such crimes, is among the Mexican agencies most susceptible to taking bribes and prone to utilize torture, according to the Prisons in Crisis project sponsored by the Woodrow Wilson Center for International Scholars in Washington, D.C. Persistent irregularities in pre-trial procedures, including haphazard, if not incoherent arrest and detention techniques, often lead to dubious confessions which are extracted as a result of threats, torture and other illegal procedures.

In addition to the police's abuse of power, corruption, and alarming incapacity to effectively investigate crime, the judicial system has consistently fumbled when it comes to processing the accused and delivering justice. One significant flaw has been the system's proclivity to concentrate on crimes that lack complexity and gravity, such as petty theft and simple assault, which has fostered a climate of impunity regarding more serious crimes. Courts today are extending longer and harsher prison sentences for misdemeanors, and rigging the system so that society's most marginalized suffer the brunt of hard prison time – thus also exacerbating the problems of prison overpopulation. Meanwhile, Mexico's more powerful criminals routinely escape dire punishment. Due to the widespread usage of dubious investigation tactics, of the 65% of detainees who enter a guilty plea, only 50% have freely confessed to committing the crime. The remaining confessions were obtained through torture, threats and the advice of lawyers and government officials. In addition, 8 out of 10 prosecuted defendants say that they never had an

opportunity to speak with the judge before entering their plea. All these problems compound the crisis which exists at the core of the justice system's final destination for the accused: a prison system that is busting at the seams, and rampant with abuses of basic civic guarantees.

Prison Overpopulation

The Mexican penitentiary infrastructure is comprised of 457 prison centers – 6 federal, 370 state (with an additional 10 in the federal district), and 71 municipal facilities. The majority of these installations are considered medium security; with three of the six federal prisons considered to be of maximum security. According to United Nations figures, as of April 2005, the Mexican prison population totaled 201,931, a rate of 191 prisoners per every 100,000 citizens of the national population. As the official capacity of the prison system is approximately 152,000, the occupancy level averages a staggering 125.6%. Stultifying tightness of space is the norm, with five-person cells often each housing more than 20 inmates. Even so, this congested prison system is an enormous drain on the state's resources. Without including the prison staff's salary and maintenance expenses, the daily cost to merely feed and clothe each prisoner is \$7, even though the prison system has been woefully incapable of fulfilling even minimal national or international norms.

Although each prisoner has been accused of a crime within the system, not all have been formally charged in a court of law. In fact, only 58% of inmates have actually been sentenced; this means that 42% of the prison population is being held under pretrial detention, a legal limbo which can last for years before a court appearance is granted.

Behind the Bars

A majority of both the guards and prisoners come from poor socioeconomic backgrounds. After an all but certain unjust court process, or perhaps only awaiting one, the prisoner's future becomes darker, as the penal system is rife with abuses. For example, to complicate the overcrowding of facilities, 228 of the prisons are coed; a fact which undoubtedly increases rights violations. According to a recent study by the *Comisión Nacional de Derechos Humanos* (CNDH), "women in the states of Guerrero, Hidalgo, Oaxaca, Jalisco and Veracruz suffer from frequent insults from male personnel or male inmates...the women live in a very grave situation, the violation of their rights is systematic and routine." Not only is it difficult for the system to provide ample space and security for both male and female inmates, but prisoners are also denied even basic necessities like mattresses and blankets, and consequently, much of the responsibility for the care of inmates falls on the shoulders of their families.

An investigation by the *Centro de Investigación y Docencia Económicas* (CIDE) in 2002, found that prisons provided only 59% of mattresses, and that

families had to provide (usually through some sort of bribe) more than half of the sheets and blankets, as well as medicine, food, and clothing. In matters of hygiene, the situation becomes even bleaker. The majority of prisons do not provide inmates with soap, tooth paste, or toothbrushes, and other sanitary products are very scarce, according to representatives of the Prisons in Crisis project. These facts directly conflict with the UN's standard that "prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness."

Warehouse for the Marginalized

The collapsed penal infrastructure is a most misguided means of administering justice. Indeed, it seems only prepared to ensure that prisoners are punished for being poor or belonging to a marginalized social group. Inmates from indigenous communities, who in many cases do not speak Spanish, bear the brunt of discrimination and abuse. A prime example of this occurred last year, when 196 indigenous inmates had to be transferred to the state of Nayarit, after overcrowding in a Sierra Huichola prison (located near their home communities and therefore of greater convenience) got out of hand. At Nayarit, the indigenous prisoners were separated from the rest of the inmates, sharing cells approximately 9 by 13 feet in size, and housing up to nine people. This cynical decision, according to penal director Jorge Armando Verdín, was "to give them a space so that they can practice their traditional way of life.

Such mistreatment of the indigenous is endemic to the criminal justice system. Out of the approximately 7,039 indigenous prisoners – highly concentrated in the states of Oaxaca, Veracruz, and Chiapas – one-third have been implicated on a variety of drug-related offenses, charges which likely should have instead been directed at the organized crime groups which overwhelmingly have targeted anonymous indigenous Mexicans to serve as mules for the drug trade.

While such dismal conditions are the norm, there is also a flip side to the system's corruption, as quite a few high profile prisoners (in many cases *narcotraficantes* or drug traffickers) enjoy special privileges, even to the extent that they are still able to continue almost unimpaired to engage in their normal quota of illicit activities from the confines of their jail cells.

The Inmates Running the Asylum

In January of 2001, with all the drama of a Mexican telenovela, the infamous Sinaloa cartel leader, Joaquín "El Chapo" Guzmán-Loera, escaped from Puente Grande, a Mexican maximum security prison in the state of Jalisco, where he was serving a twenty-year sentence for criminal association and bribery. Reportedly, 78 people were involved in plotting his escape, which made inventive use of a prison laundry cart. He is currently on America's

Most Wanted List, but as of yet authorities on both sides of the border have been unable to track him down. Like any good soap, the plot thickened with the death on December 31, 2004, of El Chapo's younger brother, Arturo Guzmán Loera, inside La Palma (another maximum security penitentiary, 25 kilometers outside of Toluca). He was allegedly murdered by a hit man acting on the orders of rival (and also imprisoned) Gulf Cartel leader, Osiel Cardenas Guillen. The fact that a hit man was able to "slip" through prison security to kill Guzmán was testament to the conspiratorial relationship between the prison guards and the criminal underworld, and the fact that ultimately, no one could be protected if unlimited funds were available.

Yet, long before this incident drew the international press' attention, cartel leaders had a history of easily buying-off prison guards and officials so that they could have access to cell phones, prostitutes, fine meals, plasma TVs, and various narcotics, for their personal use, according to the undersecretary for Public Safety, Miguel Angel Yunes. In an interview with the Mexico City daily *La Jornada*, Bernal Guerrero, the head of the Mexican National Commission on Human Rights, commented that such "privileges" serve to keep future problems in check. "We believe that there are no riots inside because the prisoners with power can gain special privileges, and they, being satisfied with the facilities that allow them to keep operating, do not create circles of tension in the prisons." Yet, Guerrero also acknowledged that such privileges could lead to problems as well.

As the controversy surrounding the murder of "El Chapo's" brother grew, word spread quickly that the *narcos* had control of the prison. Fox's government responded forcefully, by sending in hundreds of Mexican Army troops, supported by 18 tanks, as well as a force of several hundred Federal Preventive Police to search the prison. The crisis led hundreds of "family members" to stage a massive protest outside the facility, creating an embarrassing scandal for the administration. But many later admitted to having no direct connection to the inmates, and that their only motivation was the money they were offered to participate by *narco* leaders.

The Fox government complemented the military push with calls for increased investigations and reforms through the Ministry of Public Security in January of 2005. Ramón Martín Huerta, the Secretary of the Ministry at that time, ordered an in-depth evaluation of the federal penitentiary centers, particularly La Palma. Over 700 government agents thoroughly searched the prison, including 461 cells, and confiscated 27 cell phones and other electronic devices, a variety of sharp objects, small amounts of cocaine, over a ton of food, and unauthorized clothing, among other items. In hopes of a quick fix, new restrictions were implemented, such as controlling the number and length of phone calls, visits to the prison and prisoner purchases. However, both the

guards' enforcement of the new regulations, and the *narcos* adherence to them, remains doubtful.

Reforms Needed

The Mexican penal system is hard pressed on all sides, from overcrowding and corruption on the inside, to critical international scrutiny on the outside. It is only a matter of time before the system's decaying walls succumb to the mounting internal and external pressure, creating a national security crisis. Reforming the penal system is probably one of the most difficult challenges facing Mexico. With minimal financial resources, an abundance of ill-trained and/or corrupt officials, as well as an inefficient judicial system, along with an already severely limited jail space, the prospects for change are daunting.

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