



The Law Society
of England and Wales

**Report on the independence of lawyers in Mexico
and compliance with the Inter-American system**

Human Rights Committee

international
opportunities

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I. The Law Society of England and Wales

The Law Society of England and Wales was founded in 1825 as a professional body to represent practising and training solicitors. The Society gained its first Royal Charter in 1831, and fourteen years later was recognised as an independent, private body by the Crown. Currently the Law Society regulates and represents over 138,000 solicitors in England and Wales from its Head Office in London and through a network of regional offices, including a European Office in Brussels.

The International Department of the Law Society connects the Society with similar professional lawyers' associations and civil society organisations across the world. In particular, the International Department aims to bring communities of lawyers closer together and forge partnerships in areas of mutual interest. The Department is divided into regional teams, each of which develops cooperation and manages relationships with local partners.

The Human Rights Committee is a specialist body of the Law Society which works closely with the International Department and is comprised of practitioners and experts in domestic and international human rights law. The Human Rights Committee is networked with a broad spectrum of international professional legal bodies, intergovernmental organisations, and non-governmental and civil society organisations.

The Law Society promotes the rule of law, compliance with court judgments and the protection of those exercising the functions of lawyers where they believe them to be at risk. To this end, it regularly writes reports and provides specialist submissions on these subjects to UK, international and intergovernmental bodies.

II. Basis for the Law Society's report

In accordance with the mandate of the Law Society of England and Wales, this report will concern two particular issues:

A. The need for the state to protect lawyers and other professionals who 'exercise the functions of lawyers without having the formal status of lawyers' so that they may discharge their duties without fear, intimidation, harassment or physical violence.¹

B. The requirement for all states to respect the jurisdiction of competent courts which have been recognised at state, federal and (where appropriate) supranational level. In particular, the requirement for compliance with protective measures issued by national or international fora to protect individuals at imminent risk of harm, often lawyers and/or those assisting them.

A. Protection of those who exercise the functions of lawyers

The United Nations Basic Principles on the Role of Lawyers (1990) (the "Basic Principles") provides the framework and codifies the relationship between the state and those who exercise the functions of lawyers.

In its Preamble, the Basic Principles affirm that 'professionals associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest'.²

The Law Society is particularly concerned that interference with those doing the work of lawyers and or with the performance of their duties is a serious breach of the independence of lawyers, which is key to the proper functioning of the judicial system, and ultimately has a severe and negative impact on the rule of law.

As set out in more detail at Section V(B) below, the Basic Principles require states to guarantee the protection of lawyers and other legal professionals 'from persecution and improper restrictions and infringements'.

Accordingly, the Law Society believes that these Basic Principles not only provide it with a right but also a responsibility to highlight the difficult conditions in which legal professionals exercise their duties, both inside England and Wales as well as further afield. In particular, the Law Society believes it must make firm representations to the relevant competent authorities as and when it believes that individual lawyers and/or lawyers' collectives are being 'persecut[ed]', or operate in conditions amounting to 'intimidation, hindrance, harassment or improper interference'.

B. Compliance with court rulings

The Law Society strongly advocates the need to further the rule of law. The keystones in any judicial system are the courts of law. Without the presence of these courts the whole legal system, and thus the rule of law, quickly unravels.

¹ United Nations Basic Principles of the Role of Lawyers (1990), Preamble.

² *Ibid.*

Tantamount to erosion of the rule of law and justice is the breakdown of the authority and independence of the court. The court's authority is seriously affected by the refusal of the state, or other parties within the state's jurisdiction, to recognise the authority of a 'competent' court or *inter-alia* comply with the court's rulings. This refusal to recognise and/or comply with the court creates an atmosphere of impunity, which, in turn, rapidly undermines the 'essence' of the judicial process and the sanctity of law.

To avoid damage to the effectiveness and integrity of the judicial system, it is incumbent upon the state to respect the authority and independence of a competent court and to decisively implement the court's rulings within the timeframe stipulated in the relevant judgment/order. Where no timeframe is stipulated, it is assumed that the state is to implement the court's judgment/order at the earliest possible opportunity.

States, moreover, not only have the duty to comply with rulings delivered by competent national courts, or obligate parties within their sovereign jurisdiction to comply with those decreed by national courts, they must also comply with judgments and orders delivered by supranational judicial structures as per the international agreements to which the state is party.

In particular, states have an important duty to comply with any protective measures issued by national or international fora to protect individuals at imminent risk of harm, often lawyers and/or those assisting them.

III. Methodology of report

A. Thematic focus of report

This report will address the duty of the state to protect lawyers and human rights advocates and the requirement for the state to comply with court rulings. It will reflect the interests and concerns of the United Nations Special Rapporteur on the Independence of Judges and Lawyers (herein “Special Rapporteur”).³

The report will also make reference to the Special Rapporteur, Mr Dato' Param Cumaraswamy's last visit to Mexico in May 2001 and the report published to the Commission on Human Rights on 24 January 2002 (E/CN.4/2002/72); the comments made by the Special Rapporteur, Ms Gabriela Carina Knaul, regarding her visit to Mexico on 15 October 2010;⁴ and the recommendations made by a number of states in the United Nations Universal Periodic Review of Human Rights on Mexico, presented to the United Nations Human Rights Council on 11 June 2009 (A/HRC/11/113).

Many of the views expressed in this report echo the recommendations made by the Bar Human Rights Committee of England and Wales following their delegation, which included solicitors from the Law Society, to Mexico in November and December 2009 which culminated in the publication of a report entitled ‘Recalling the rule of law: A report on the protection of human rights defenders and the rule of law in the states of Guerrero and Oaxaca, Mexico’ in July 2010.

Reference is also made to cases which have proceeded through, or are currently proceeding through, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Court of Human Rights (herein ‘European Court’) and the International Court of Justice (herein ‘ICJ’). In particular, this submission will refer to the following Inter-American Court cases: *Radilla-Pacheco v. Mexico*, 23 November 2009, *Fernández Ortega and Others v Mexico*, 30 August 2010, *Rosendo Cantú and Other v. Mexico*, 31 August 2010 and *Cabrera-García and Montiel Flores v. Mexico*, 26 November 2010.

The report relies on data and opinions provided by a wide range of non-governmental organisations based in the United Kingdom (‘UK’), the United States of America (‘US’) and the United States of Mexico (‘Mexico’). In particular, the Law Society has drawn on verbal and written sources from Amnesty International (Mexico), the Centro de Derechos Humanos PRO-DH Miguel Agustín Pro Juárez A.C. (herein, ‘PRO-DH’) (Mexico), Human Rights Watch (US) and Peace Brigades International (Mexico, UK).

In preparation for the report, representatives from the Law Society’s International Department met with PRO-DH and Peace Brigades International (UK) in London on 7

³ as set out in the United Nations Commission on Human Rights resolutions 1994/41 (4 March 1994), 1995/36 (3 March 1995), 2002/37 (22 April 2002), 2005/33 (14 April 2005) and 2006/102 (30 June 2006), the United Nations Human Rights Council resolution 8/6 (18 June 2008), and the United Nations General Assembly resolutions 40/32 (29 November 1985) and 45/166 (13 December 1985)

⁴ Office of the United Nations High Commissioner for Human Rights (2010), Special Rapporteur on the Independence of Judges and Lawyers, *Intervención de la Sra. Gabriela Knaul, Relatora Especial de la ONU sobre la independencia de magistrados y abogados al concluir su visita en Misión Especial a México*, 15 October 2010. Downloaded from: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10447&LangID=S>; last access: 01 March 2011.

February 2011. Meetings also took place in Mexico City between the Law Society and Peace Brigades International (Mexico) on 9 March 2011 and PRO-DH on 10 March 2011.

It is hoped that the data included in this report, relating to incidents concerning or attacks on lawyers and human rights advocates, will underscore the importance of the recommendations contained within this report. However, this document does not pretend to include a compendium of all of the recent incidents/attacks; for greater details on specific incidents please refer directly to the reports indicated in the footnotes.

B. Geographic focus of report

In his Report to the Human Rights Commission of 24 January 2002, the Special Rapporteur, Mr Cumaraswamy, placed special emphasis on the human rights violations occurring in the Mexican states of Chiapas, Guerrero and Oaxaca: 'The Special Rapporteur received numerous reports about past and present harassment, including death threats, kidnappings, intimidation, telephone tapping, unknown persons following human rights defenders and being posted outside their houses or offices, stealing of documents, fabricated criminal charges, unlawful detentions physical aggression, murder attempts and defamation [in these states]...There appears to be complete impunity for these acts'.⁵

The gravity of the situation affecting lawyers and human rights defenders in the states of Guerrero and Oaxaca was also highlighted in a United Nations Office of the High Commissioner for Human Rights report in 2009.⁶

The Law Society notes that the Special Rapporteur, Ms Gabriela Carina Knaul, did not visit the states of Chiapas, Guerrero and Oaxaca during her two week visit to Mexico in October 2010.⁷ Given that these states were singled out by the Special Rapporteur on his visit to Mexico in 2001, and the United Nations Office of the High Commissioner for Human Rights in 2009, the Law Society decided to collate information from those regions and this report will place special emphasis on the incidents involving lawyers and human rights advocates in these areas.

⁵ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2010), Para. 113.

⁶ Oficina en México del Alto Comisionado de Naciones Unidas para los Derechos Humanos (2009), *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la situación de las y los defensores de derechos humanos en México*, Para. 34 & 43.

⁷ Office of the United Nations High Commissioner for Human Rights (2010), Special Rapporteur on the Independence of Judges and Lawyers, *Intervención de la Sra. Gabriela Knaul*, 15 October 2010.

IV. Mexico's international obligations

As per Article 133 of the Constitution of the United States of Mexico (*Constitución Política de los Estados Unidos Mexicanos*) (1917), all international treaties which have been signed by the executive body (the government) must be ratified separately by the Senate. Only when ratification occurs does the law or treaty become 'Supreme Law of the Union'.⁸

The Mexican government has signed, and the Senate ratified, a number of international documents including the Universal Declaration of Human Rights (1948), the American Declaration on the Rights and Duties of Man (1948), the International Covenant on Civil and Political Rights (1966) and the American Convention on Human Rights/Pact of San José (1969).

The Mexican Senate's ratification of the American Convention on Human Rights (herein 'American Convention' or just 'Convention') in 1982 means that the Convention is a legally binding document. Article 1(1) provides that 'States Parties to this Convention undertake to respect the rights and freedoms recognized herein'. Article 2 states that 'Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms'.⁹

Of particular note, Chapter VII (Articles 34-51) of the Convention establishes the organisation, function, competence and procedure of the Inter-American Commission on Human Rights (herein 'Inter-American Commission' or just 'Commission'), whilst Chapter VIII (Articles 52-69) establishes the organisation, jurisdiction, functions and procedure of the Inter-American Court of Human Rights (herein 'Inter-American Court' or just 'Court'). The binding nature of the Court's judgments is underlined in Article 68(1): 'The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties'. None of Mexico's reservations, presented upon signature of the Convention in 1981, have any bearing upon the function, procedure or competence of either the Court or the Commission.¹⁰

Mexico, furthermore, signed and ratified the Inter-American Convention on Forced Disappearance of Persons (1994) in 2002. Mexico's reservation dated 9 April 2002, vis-à-vis the use of military jurisdiction to investigate forced disappearance of persons, was struck down by the Inter-American Court in *Radilla Pacheco vs. Mexico* (2009).¹¹

Moreover, Mexico signed and ratified (without reservation) the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) in 1986. Mexico also ratified (without reservation) the Inter-American Convention to Prevent and Punish Torture (1985) in 1987. The Law Society further notes Mexico's vote in favour of United Nations General Assembly Resolution 61/295 (13 September 2007) in support the United Nations Declaration on the Rights of Indigenous Peoples (2007).

⁸ *Constitución Política de los Estados Unidos Mexicanos* (1917), Art. 133.

⁹ American Convention on Human Rights/Pact of San José (1969), Art. 1(1) and Art. 2.

¹⁰ *Ibid.*, Art. 34-51 and Art. 52-69.

¹¹ Inter-American Court of Human Rights (2009), *Judgment of November 23, 2010, Radilla Pacheco vs. Mexico*, Para. 312.

V. International standards for the protection of lawyers and human rights advocates

A. Definition of lawyers and human rights advocates

In this report 'lawyers' will be defined not only as:

- those who have an official status as lawyers: that is, individuals who are members of professional legal associations and hold a recognised qualification in law; but also
- those 'who exercise the functions of lawyers without having the formal status of lawyers' in accordance with the Basic Principles.¹² Such persons may not be members of a professional legal association, nor hold a recognised qualification in law, but their activities, such as representing clients or acting as advocates before governmental authorities, courts of law or tribunals, are deemed analogous to those activities undertaken by members of the formal legal associations.

The term 'human rights advocate' will refer to human rights defenders who are non-lawyers but who:

- actively assist lawyers' work in human rights cases (such as support staff, clerks, trainee lawyers, etc), or
- whose human rights work is used or relied on by lawyers (such as researchers, monitors, observers, field workers etc).

B. The State's duty to protect lawyers

The Universal Declaration of Human Rights (1948), the American Declaration on the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969) provide 'inalienable rights' to all persons present within a sovereign state's jurisdiction. Accordingly, the state is required to protect the rights of all individuals present within their jurisdiction.

In addition to these fundamental human rights, there was a proliferation of international instruments which emphasised the importance of fair trial rights and the assistance of counsel in effecting such protection.

With these developments in mind, the United Nations formulated the aforementioned Basic Principles. Although this international instrument did not create any additional rights for lawyers, it did codify the fundamental principles which should guide the relationship between states and jurists. As described above, it affirmed the need for lawyers to 'further the ends of justice' and emphasised their role in acting in the public interest.¹³

Article 16 of the Basic Principles requires governments to 'ensure that lawyers...are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...[legal professionals] shall not suffer, or be

¹² United Nations Basic Principles of the Role of Lawyers (1990), Preamble.

¹³ *Ibid.*

threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics'.¹⁴

Article 17, moreover, provides that when and where 'the security of lawyers is threatened as a result of discharging their functions they shall be adequately safeguarded by the authorities'.¹⁵

Article 18 is also relevant and stipulates that: 'Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions'.¹⁶ This means that the state must not stigmatise lawyers nor permit lawyers to be stigmatised and must not relate their work or allow their work to be related to the activities or beliefs of their clients.

This principle is furthered in Articles 17(1)(2) of the International Covenant for Civil and Political Rights which provides additional protection from interference and defamation:

'1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, *nor to unlawful attacks on his honour and reputation.*

2. Everyone has the right to the protection of the law against such interference or attacks'.¹⁷

The Special Rapporteur's report in 2002 documented that he received 'several reports about harassment and intimidation of individual lawyers'¹⁸ and the report detailed a number of specific cases including those of Ms Pilar Noriega, Ms Ochoa y Plácido and Ms Sylvia Raquenel Villanueva.¹⁹

The Law Society believes that since the 2002 report there has been an increase in the incidents of harassment and the number of attacks upon lawyers. While it is acknowledged that such an increase may be attributable to more incidents being reported to local, national and supranational authorities and/or non-governmental/civil society organisations, recent investigations have not shown an improvement in the situation for lawyers and human rights advocates in Mexico. States voiced their deep concern with regard to the harassment of lawyers and other legal professionals in the United Nations Universal Periodic Review of Human Rights in Mexico (2009). Specifically, Norway suggested that Mexico should:

'Ensure that crimes and violations against human rights defenders, journalists and lawyers are effectively investigated and prosecuted; that those responsible are punished; that threats of harassment and intimidation of human rights defenders,

¹⁴ *Ibid.*, Art.16.

¹⁵ *Ibid.*, Art.17.

¹⁶ *Ibid.*, Para. 18,

¹⁷ Article 17(1)(2), International Covenant on Civil and Political Rights (1966). Note: our emphasis.

¹⁸ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2010), Para. 106.

¹⁹ *Ibid.*, Para. 106, 109, 110.

journalists and lawyers receive a prompt response and that adequate measures for their safety are taken'.²⁰

C. The State's duty to protect human rights advocates

In 1998 the United Nations General Assembly approved the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Approved, 8 March 1999, A/RES/53/144).

Article 1 makes clear that 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.' This is complemented by Article 12(1) which provides that 'Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.'

The Declaration also stipulates that: 'Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice'.²¹

The Declaration also calls upon the State to 'take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration'.²²

The work of human rights defenders, exercising their rights under this Declaration, often assists lawyers. The information and knowledge they provide to lawyers are often a significant contribution to the proper administration of justice. Therefore, the plight of human rights defenders, especially when they are assisting lawyers' work, is of concern to the Law Society.

In her last report, the Special Rapporteur Ms Gabriela Carina Knaul, highlighted the 'serious[ness of] the problem' of guaranteeing the security of human rights defenders and defending their work.²³ Copious evidence was provided detailing the persecution faced by a number of human rights defenders in Mexico. For example, the Special Rapporteur, made special reference to the death threats received by Father David Fernández in 1995 (the then Director of PRO-DH); the attacks on the PRO-DH building and theft of documents in 1999; the murder of Ms Digna Ochoa on 27

²⁰ Office of the United Nations High Commissioner for Human Rights (2009), United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Mexico*, 29 May 2009, Para. 59.

²¹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1999), Art. 2(1).

²² *Ibid.*, Art. 12(2).

²³ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2010), Para. 106.

October 2001; and, in the Autumn of 2001, the delivery of five separate death threats to human rights advocates working for different human rights organisations based in Mexico.²⁴

Concern over the situation of human rights defenders and advocates in Mexico is also reflected in the Universal Periodic Review of Mexico (2009) in which a number of states called upon Mexico to provide greater recognition of the work which human rights advocates undertake, and to take concrete steps to protect human rights defenders' safety.

The United Kingdom requested that Mexico 'publicly recognise the important role of human rights defenders and non-governmental organisations in the protection of human rights in Mexico'.²⁵

Equally, Belgium 'noted the persistence of a climate of impunity, particularly with regard to systematic violations of the human rights of...human rights defenders'.²⁶

This is a perspective shared by human rights organisations operating in Mexico. For instance, PRO-DH claimed that when human rights advocates sought 'justice on behalf of victims or advocated for changes in governmental policy, they faced harassment, criminalization or even physical attacks...this has resulted in the death of numerous human rights defenders in the last ten years...These crimes generally remain unpunished'.²⁷

²⁴ *Ibid.*, Para. 114.

²⁵ Office of the United Nations High Commissioner for Human Rights (2009), United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Mexico*, 29 May 2009, Para. 52.

²⁶ *Ibid.*, Para. 44.

²⁷ Centro de Derechos Humanos 'PRO-DH' Miguel Agustín Pro Juárez, A.C. (2009), *Uncontrolled and Unpunished: the Mexican State's violations of fundamental civil and political rights; Report presented to the UN Human Rights Committee on the occasion of the fifth periodic report of Mexico on its compliance with the International Covenant on Civil and Political Rights*, p. 2.

VI. ‘Protective measures’ in the Inter-American human rights system

A. “Protective measures” in Mexican domestic legislation

The Law Society notes that Article 20(V)(2) of the Mexican Constitution provides an obligation for the authorities to protect ‘victims, offenders, witnesses and all subjects involved in the [judicial] process. Judges should monitor compliance with this obligation’.²⁸

Similarly, Article 20(VI) stipulates that authorities can ‘request protective and preventive measures necessary for the protection and restitution of their [subjects] rights’.²⁹

Thus, the right to protective measures is a principle enshrined within the Mexican Constitution. Accordingly, the State has a duty to provide protection for all persons involved in a case while it transits through the domestic judicial system.

The domestic principle of protective measures is complemented by a similar capacity in the Inter-American human rights system.

B. Provisional measures by the Court

Although a State Party to the American Convention has an obligation to protect all persons subject to its jurisdiction,³⁰ the Court may use its authority to order a State to take special measures to protect persons in immediate danger.

Article 63(2) of the American Convention of Human Rights (1969) provides: ‘In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the [Inter-American] Court [of Human Rights], shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the [Inter-American] Commission [on Human Rights].’

These provisional measures are binding and mandatory on Mexico. Not only has Mexico recognised ‘as binding *ipso facto* the adjudicatory jurisdiction of the Inter-American Court of Human Rights on matters relating to the interpretation or application of the American Convention on Human Rights’ in accordance with Article 62(1) of the American Convention³¹ but also the Inter-American Court has held that its provisional measures are mandatory as follows:

‘the provision established in Article 63(2) of the Convention makes it mandatory for the state to adopt the provisional measures ordered by this Tribunal, since there stands “a basic principle of the law of international state responsibility, supported by

²⁸ *Constitución Política de los Estados Unidos Mexicanos* (1917), Art. 20 (V) (2).

²⁹ *Ibid.*, Art. 20(VI)

³⁰ *Peace Community of San José de Apartadó* (Colombia), Provisional Measures, Inter-Am. Ct HR, Order of 18 June 2002, Ser. E, para 7

³¹ <http://www.oas.org/juridico/English/sigs/b-32.html#Mexico>

international jurisprudence, according to which states must fulfil their conventional international obligations in good faith' (*pacta sunt servanda*)".³²

C. Precautionary measures by the Commission

Articles 25(1) and (2) of the Rules of Procedure of the Inter-American Commission on Human Rights (which entered into force on 1 January 2010) state that: "In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case...[or] to persons under the jurisdiction of the State concerned, independently of any pending petition or case".*

Articles 25(3) provides that precautionary measures "may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members".

The Law Society notes that the wording of precautionary measures provisions and their position in the Rules of Procedure could be interpreted to mean that there is no legal obligation to comply. However, the Law Society submits that developments in jurisprudence from (1) the Inter-American Court; and (2) other international tribunals; suggest that precautionary measures may be binding.

(1) Inter-American Court jurisprudence

The case of *Loayza-Tamayo v. Peru* (1997)³³ is authority that precautionary measures from the Commission may be binding, provided that they are contained as recommendations in a report transmitted by the Commission to the State concerned in accordance with Article 51 of the American Convention.

The Court ruled that "in accordance with the principle of good faith, embodied in the aforesaid Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is "to promote the observance and defense of human rights" in the hemisphere (OAS³⁴ Charter, Articles 52 and 111)".³⁵

The Court found support for its conclusion in Article 33 of the American Convention which states that the Commission is, as the Court, competent 'with respect to matters relating to the fulfilment of the commitments made by the States Parties to this Convention'. The Court explained that by ratifying the Convention, Mexico engaged itself 'to apply the recommendations made by the Commission in its reports'.³⁶

³² See *Constitutional Court* (Peru), Provisional Measures, Inter-Am, Ct HR, Order of 14 August 2000, Ser. E, para 14

* Article 25(1) of the previous version of the Rules had similar wording: "*In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons*".

³³ *Loayza-Tamayo v. Peru* (1997) para 81

³⁴ Organization of American States

³⁵ *Ibid.* para 80

³⁶ *Loayza-Tamayo v. Peru* (1997) para 81

This case indicates that the Inter-American system is moving towards formal recognition of the binding nature of precautionary measures, and towards affirmation of equal competence of the Court and Commission in matters relating to compliance.

(2) Jurisprudence of other international tribunals

The later European Court of Human Rights decision in *Mamatkulov and Askarov v. Turkey*, when discussing precautionary measures, cited the principle in *Loayza-Tamayo* with approval, and developed it further.³⁷ In the European system, the provisions for granting interim measures are located in the rules of procedure,³⁸ and framed in non-mandatory language, just like precautionary measures of the Commission.

In *Mamatkulov*, the fact that Turkey failed to comply with the interim measures issued under the Rules of Court raised the issue of whether Turkey was in breach of obligations under the European Convention.

The European Court referred to decisions in the International Court of Justice, the Inter-American Court, the United Nations Human Rights Committee and the United Nations Committee against Torture, which 'although operating under different treaty provisions...have confirmed in their reasoning in recent decisions that the preservation of the asserted rights of the parties in the face of the risk of irreparable harm represents an essential objective of interim measures in international law. Indeed, it can be said that, whatever the legal system in question, the proper administration of justice requires that no irreparable action be taken while proceedings are pending'.³⁹

Mamatkulov held that interim measures 'ensure that the protection afforded to the applicant is effective...[and] enable the State concerned to discharge its obligation to comply with the final judgment of the Court'.⁴⁰

The European Court also held that the effects of an interim measure must be examined in the light of obligations which are imposed on the Contracting States by Articles 1, 46 and 34 of the European Convention.⁴¹ The equivalent Articles in the Inter-American Convention might include Articles 1, 68 and 51.⁴²

Thus, the Law Society submits that failure by a State to comply with interim or precautionary measures, even though the authorising provision is expressed in non-mandatory language and located in the Rules of Court or Procedure, is a violation of the parent Convention if it prevents the Court from effectively examining the applicant's complaint⁴³ or would threaten the effectiveness of or ability to comply with the Court's final decision.

³⁷ Applications 46827/99 and 46951/99 [2005] ECHR 64 (4 February 2005)

³⁸ Rule 39, Rules of Court of the European Court of Human Rights

³⁹ *Ibid.* para 124

⁴⁰ *Ibid.* para 125

⁴¹ Articles 1 (general obligation to protect the rights in the convention), 46 (obligation to comply with the final decision of the court), and 34 (case-specific obligation not to hinder the right of petition), *ibid.* para 126

⁴² Articles 1 (general obligation to protect the rights in the convention), 68 (obligation to comply with the final decision of the court), and 51(2) (case-specific obligation to comply with Commission recommendations)

⁴³ *Mamatkulov and Askarov v. Turkey*, para 128

D. Provisional and precautionary measures in Mexico

Across Mexico there are numerous individuals who have been granted protective measures by either the Commission or the Court, in spite of the high burden of proof that must be satisfied before such measures can be ordered.

In April 2009, there were 107 individuals in the State of Guerrero alone, largely from indigenous backgrounds, who were protected under “Measures” requested by the Inter-American human rights system.⁴⁴ Similarly, on 7 October 2010 the Commission granted precautionary measures to 135 inhabitants of the town of San Juan Copala (State of México). Incidentally, all of those granted these Measures were members of the Triqui Indigenous Group (Commission: PM-197-10).⁴⁵ On 4 August 2010, the Commission also ordered that all of the inhabitants of Lázaro Cárdenas (in the State of Oaxaca) were granted protection.

The Law Society is especially concerned that in spite of those protective measures individuals continue to face regular intimidation, harassment and violence. In Section VII(B) below, this report outlines the situation of Ms Alba Cruz and her family who, despite receiving Precautionary Measures from the Commission in July 2007, are victims of continuing and regular intimidation and harassment. As Table 1 below shows, Ms Cruz and her family were threatened with mortal violence on six occasions and survived one assassination attempt in 2010. Similarly, Table 3 in Section VII(D) below describes a range of death threats made against Father (José) Alejandro Solalinde Guerra between 2008 and 2011. Threats of mortal violence have continued despite Mr Guerra receiving Precautionary Measures from the Commission in April 2010.

In the Universal Periodic Review of Mexico (2009), Germany asserted that Mexico should ‘increase the effectiveness of the “precautionary measures” to protect human rights defenders and step up investigations on reports of killings, threats, attacks and acts of intimidation of human rights defenders in order to bring the perpetrators to justice’.⁴⁶

⁴⁴ El Universal, ‘Denuncian al país por violaciones a indígenas’, 21 April 2009.

⁴⁵ Inter-American Commission on Human Rights (2010), *Precautionary Measures granted during 2010*, PM-197-10. Accessed via: <http://www.cidh.oas.org/medidas/2010.eng.htm>; last access: 15 February 2011.

⁴⁶ Office of the United Nations High Commissioner for Human Rights (2009), United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Mexico*, 29 May 2009, Para. 45.

VII. Incidents involving lawyers and human rights advocates

A. Categorising incidents

The Law Society carefully monitors incidents of harassment involving lawyers and human rights advocates in Mexico. The Law Society relies on a range of different sources including, but not limited to, verbal and written reports from individual lawyers/lawyers' collectives and international human rights organisations.

These incidents have been sub-divided into the following categories:

1. Stigmatisation of individuals, legal collectives or human rights organisations

This activity:

- de-legitimises the work of lawyers or human rights advocates;
- encourages individuals or groups to undermine the seriousness of the work undertaken by lawyers and or human rights advocates;
- isolates individual lawyers, advocates, legal collectives or human rights organisations and has the potential to render them more vulnerable to further abuse, including physical and non-physical harassment;
- tarnishes the reputation of individual lawyers and human rights advocates; and
- undermines the rule of law in general.

Common examples include:

- labelling lawyers and or human rights advocates as politically-motivated activists and or social agitators;
- portraying lawyers or human rights advocates as individuals pursuing a 'secret or subversive agenda' as opposed to working to uphold the rule of law.

2. Non-physical harassment

This activity:

- causes unease and psychological distress;
- impedes lawyers and or human rights advocates from carrying out their work by, for example, silencing them and or their clients and or witnesses privy to 'sensitive' information and dissuading them from reporting criminal activities to law enforcement agencies;
- encourages a climate of fear, impunity and self-censorship.

Common examples include:

- surveillance, 'following' or 'tracking' of individuals/civil society organisations (where this activity is carried out by a law enforcement agency of the state, it must hold a valid legal warrant issued by a competent judicial authority);
- entering private property or private meetings without express permission (where this activity is carried out by a law enforcement agency of the state, it must hold a valid legal warrant issued by a competent judicial authority);
- arbitrarily damaging or defiling private property;
- composing and delivering threatening letters, messages, e-mails or text 'SMS' messages;
- theft (by robbery or burglary) of belongings, information or personal articles.

3. Physical harassment

This activity:

- may result in death or irreparable physical harm;
- causes physical and psychological distress;
- prevents lawyers from undertaking their work;
- may silence lawyers, their clients or witnesses privy to 'sensitive' information, or dissuade them from reporting criminal activities to law enforcement agencies;
- encourages a climate of fear, impunity and self-censorship;

Common examples include:

- physical assaults;
- attempted murder; and
- murder.

B. Examples of attacks upon lawyers

As stated in Section III(A) above, this report cannot document all of the recent incidents involving harassment or attacks on lawyers and human rights advocates in Mexico. Instead, this report will provide details of specific cases which the Law Society believes are illustrative of the general situation in Mexico.

An archetypal example of the violence and insecurity faced by lawyers and human rights advocates in Mexico is the situation concerning the lawyers' cooperative of *El Comité de Liberación 25 de noviembre* (25th November Liberation Committee) based in Oaxaca state. In recognition of the seriousness of the incidents involving this collective, Ms Alba Gabriela Cruz Ramos, Mr Alejandro Noyola, Mr Jesús Manuel Grijalva Mejía, Ms Alma Delia Gómez Soto, Mr César Grijalva, Ms Flora Gutiérrez and Mr Jesús Alfredo López García were granted precautionary measures by the

Inter-American Commission on Human Rights on 26 July 2007 (Commission: Para. 40).⁴⁷ These measures were granted because ‘the beneficiaries and some of their family members [had] received threats by telephone and were victims of persecution and assaults promoted by private persons and *members of the police of the state of Oaxaca*’.⁴⁸

Table 1 documents the harassment and physical attacks suffered by Ms Alba Gabriela Cruz Ramos (herein ‘Ms Cruz’) and her family, despite the Commission’s grant of Precautionary Measures in 2007.

TABLE 1⁴⁹

Date of Event	Event Type	Brief Summary
26-01-2010	Non-Physical Harassment	Death threat via text ‘SMS’ message pledging a violent end for Ms Cruz if Ms Cruz did not terminate her work with the 25 th November Liberation Committee.
29-01-2010	Non-Physical Harassment	Ms Cruz was intercepted by a man as she left her office who demanded that Ms Cruz ‘ <i>Calm down [i.e. terminate her activities] or he would waste her</i> ’.
12-03-2010	Non-Physical Harassment	Ms Cruz received a text message claiming, ‘ <i>you [will] die...damned bitch</i> ’.
04-04-2010	Physical Harassment	Ms Cruz’s family home came under attack as a poisonous gas was released, endangering Ms Cruz’s life as well as that of her mother and young daughter.
30-04-2010	Non-Physical Harassment	Ms Cruz, whilst on a visit to Europe, received a threat on her life: ‘ <i>we won’t play games, we’re waiting, we’ll be there</i> ’.
11-01-2011	Non-Physical Harassment	Ms Cruz received the following message on her mobile telephone, ‘ <i>we know that you are being protected...we follow every step you take...we’re back</i> ’.
31-01-2011	Non-Physical	Ms Cruz received a further threat by text message threatening an imminent attack on her life and on

⁴⁷ Inter-American Commission on Human Rights (2007), *Precautionary Measures granted during 2007*, Para. 40. Accessed via: <http://www.cidh.oas.org/medidas/2007.eng.htm>; last access: 15 February 2011.

⁴⁸ *Ibid.* The emphasis is ours.

⁴⁹ The information contained within this table has been sourced from Peace Brigades International (Mexico) (2010), *Focos de interés*, Vol. 35-40 (January 2010-January 2011). At the time of publication these bulletins were not posted on the Peace Brigades International’s website. To source these documents, please write to Peace Brigades International (UK), 1b Waterlow Road, London N19 5NJ.

	Harassment	that of a client whom she represents, Mr Marcelino Coache.
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The Law Society believes that the experience of Ms Cruz and her family is not an isolated case but instead is representative of the treatment of many lawyers and advocates who involve themselves with human rights issues, minority rights and trade union rights.

On 5 June 2009, two lawyers of the *Monitor Civil de la Policía en Guerrero* (Civil Monitor of the Police of Guerrero) organisation, Mr Rommel Cain Chacán and Ms Matilde Pérez, received anonymous threats by telephone from an individual who threatened to assassinate them both together with members of their families.⁵⁰ Over the following months, Mr Chacán and Ms Pérez faced additional harassment including further death threats.⁵¹

It should be noted that the persecution of lawyers is not limited to rural areas of Mexico. In October 2001, human rights lawyer, Ms Digna Ochoa y Plácido, was murdered in Mexico City.⁵²

C. Examples of attacks upon human rights advocates in the State of Guerrero

Table 2 details incidents perpetrated against human rights advocates from three different human rights organisations who worked with indigenous communities in Guerrero state between January 2008 and December 2010. By no means does this table log every incident which happened to *OPIM*, *OFPM* or *CDHM*⁵³ staff or family members, nor does it cover every human rights organisation or civil society group which functions in the State of Guerrero.

TABLE 2⁵⁴

Date	Type	Event
09/02/2008	Physical Harassment	Attack and murder of Mr Lorenzo Fernández-Ortega of OPIM
10/07/2008	Non-Physical	Thirty representatives of the Federal Investigation Agency and Ministerial Police dismantled and burnt

⁵⁰ Peace Brigades International (Mexico) (2010), *Focos de interés*, Vol. 32.

⁵¹ *Ibid.*

⁵² Centro de Derechos Humanos 'PRO-DH' Miguel Agustín Pro Juárez, A.C. (2009), *Uncontrolled and Unpunished: the Mexican State's violations of fundamental civil and political right*, p. 22.

⁵³ OPIM means Organización de Pueblos Indígenas Me'Pha (Indigenous Mphaa Peoples' Organisation); OFPM means Organización para el Futuro del Pueblo Mixteco (Organisation for the Future of Mixtec Indigenous Peoples); CDHM means Centro de Derechos Humanos de la Montaña Tlachinollan ("Tlachinollan" Human Rights Centre)

⁵⁴ The information contained within this table has been sourced from Peace Brigades International (Mexico) (2010), *Focos de interés*, Vol. 26-39 (January 2008-January 2011), see fn 30.

	Harassment	down an indigenous community radio station in Xochistlahuaca (Radio Ñomndaa).
27/07/2008	Physical Harassment	Assassination of Mr Miguel Ángel Guitérrez Ávila, academic and documenter of aggressions against the Ñomndaa Community
24/01/2009	Non-Physical Harassment	Death threats made to Ms Otilia Eugenio Manuel (OPIM)
13/02/2009	Physical Harassment	Mr Raúl Lucas Lucía and Mr Manuel Ponce Rosas, President and Secretary of OFPM, are forcibly disappeared. Their corpses were found seven days later.
17/03/2009	Non-Physical Harassment	Death threat received by Ms Otilia Eugenio Manuel (OPIM) on her mobile telephone.
18/03/2009	Non-Physical Harassment	Eight members of the CDHM were followed by a vehicle whilst heading from Ayutla to Chilpacingo. CDHM represents members of OPIM and OFPM.
20/03/2009	Non-Physical Harassment	Death threat received by Ms Otilia Eugenio Manuel (OPIM) on her mobile telephone.
03/2009	Non-Physical Harassment	Death threats made to Mr Rafael Rodríguez Dircio (OPIM), and Ms Guadalupe Castro Morales and Ms Carmen Lucas Lucía (the respective widow and sister of murdered Mr Raúl Lucas Lucía).
24/06/2009	Physical Harassment	Ms Margarita Martín de las Nieves, Mr Santiago Ponce Rosas and Ms Modesta Laureano Petra (widow, brother and sister-in-law respectively of murdered Mr Manuel Ponce Rosas, murdered on 13/02/09) survived assassination attempt (OFPM)
12/10/2009	Non-Physical Harassment	Ms Valentina Rosendo Cantú, subject of a case before the Inter-American Court of Human Rights, was followed by a man who photographed her.
14/11/2009	Non-Physical Harassment	Mr Orlando Manzanares, Vice-President of OPIM, received death threats via radio. The individuals declared their desire to murder Ms Manzanares as well as other members of OPIM.
17/11/2009	Non-Physical	Director of the CDHM, Mr Abel Barrera made an official complaint to the State Attorney General

	Harassment	concerning the army's surveillance of his activities.
22/11/2009	Non-Physical Harassment	Mr Isodoro Vicario, member of the CDHM, reported that his home had been broken into and searched. The search took place without a valid warrant.
12/11/2009	Non-Physical Harassment	Two men, one of which was carrying a firearm, approached Ms Noemí Fernández (daughter of Ms Inés Fernández Ortega) and a female friend and threatened to murder Ms Noemí Fernández's parents.
11/12/2009	Physical Harassment	Ms Yenni Bernardino Rosendo, the eight-year-old daughter of Ms Valentina Rosendo Cantú, was approached upon leaving school, threatened and had her mobile telephone stolen.
12/12/2009	Physical Harassment	Mr Virgilio Cruz Ortega, member of OPIM, was attacked by four men carrying machetes. Mr Ortega was able to identify the four men.
06/03/2010	Non-Physical Harassment	Ms Otilia Eugenio Manuel received a death threat. The same day she reported being followed by an unknown vehicle.
16/03/2010	Non-Physical Harassment	Following a meeting at the CHDM, an unidentified man took photographs of individuals leaving the building.
17/03/2010	Non-Physical Harassment	Ms Andrea Eugenio Manuel, sister of Ms Otilia Eugenio Manuel, received a threatening message asserting a desire to rape and murder her (OPIM).
17/05/2010	Physical Harassment	Ms Ana Luz Prisciliano Fernández, daughter of Ms Inés Fernández Cantú, received death threats as she left school. The assailants grabbed her bag and stole her mobile telephone. They showed Ms Prisciliano Fernández a firearm and pushed her into a stationary vehicle where they detained her for thirty minutes before releasing her.
06/06/2010	Non-Physical Harassment	Four members of OFPM, including two brothers of the murdered Mr Manuel Ponce Rosas, were arrested and detained for six days, in relation to homicide. After six days all four men were released because of a lack of evidence, however, the murder charges have not been withdrawn.

28/08/2010	Physical Harassment	Two men approached Ms Ana Luz Prisciliano Fernández, daughter of Ms Inés Fernández Cantú, and threatened to murder her, Ms Fernández Cantú and her father, Mr Raúl Hernández Abundio. The men later attempted to kidnap Ms Prisciliano Fernández.
30/08/2010	Physical Harassment	Eight men carrying firearms attacked and threatened to murder four members of OFPM, Mr Álvaro Ramírez Concepción, Mr Guadencio Ramírez Concepción, Mr Catarino García and Mr Ramón García Guadalupe.
25/11/2010	Non-Physical Harassment	Mr Cuauhtémoc Ramírez Rodríguez and Ms Otilia Eugenio Manuel, both members of the Directors' Board of OPIM, received death threats by post. The attackers were unhappy that the cases of Ms Inés Fernández Ortega and Ms Valentina Rosendo Cantú were before the Inter-American Court of Human Rights.

D. Examples of attacks upon human rights advocates in the State of Oaxaca

Table 3 displays a number of incidents perpetrated against *Hermanos en el Camino* ('Brothers in the Road'), a civil society organisation located in Oaxaca. *Hermanos en el Camino* provides a refuge for migrants transiting through Ixtepec (in Oaxaca) and was founded by Father (José) Alejandro Solalinde Guerra in 2007.

On 23 April 2010, the Inter-American Commission granted Precautionary Measures for Mr José Alejandro Solalinde Guerra, Mr David Álvarez Vargas, Mr Areli Palomo Contreras, Mr Mario Calderón López and Ms Norma Araceli Doblado Abrego, all of whom work in the *Hermanos en el Camino* refuge (Commission: PM-250-09). The Commission showed particular concern for Mr Guerra, Mr Vargas, Mr Contreras, Mr López and Ms Abrego because, 'The petitioners [have] indicate[d] that the protection measures implemented by the authorities turned out to be ineffective, and they [have] inform[ed] the Commission that the acts of harassment continue'.⁵⁵

TABLE 3⁵⁶

Date	Type	Event
24/06/2008	Non-Physical Harassment	Fifty unidentified individuals, assisted by Municipal Police officials and Mayor Gabino Guzmán Palomec, entered the Refuge and threatened to burn the

⁵⁵ Inter-American Commission on Human Rights (2010), *Precautionary Measures granted during 2010*, PM-250-09. Accessed via: <http://www.cidh.oas.org/medidas/2010.eng.htm>; last access: 15 February 2011.

⁵⁶ Centro de Derechos Humanos 'PRO-DH' Miguel Agustín Pro Juárez, A.C. (2011), *Peace Brigades International (UK)* (2011)

		building down should the Refuge not close.
09/2009	Non-Physical Harassment	Mr David Álvarez Vargas received a death threat. The threat is suspected to have been delivered by officials from the Municipal Police.
02/2010	Non-Physical Harassment	Mr José Alejandro Solalinde Guerra was detained by Federal Police officers at gunpoint when he went to the Office of the Public Prosecutor in Oaxaca to provide evidence vis-à-vis the alleged assassination of three migrants.
04/2010	Stigmatisation	Mr Guerra was accused by authorities of the human trafficking of minors. No charges were brought by the authorities, nor was there any evidence produced to substantiate the accusation.
11/11/2010	Physical Harassment	Mr Alberto Donis, a volunteer in the Refuge, was attacked by an unidentified man: the man took photos of Mr Donis and his colleague Mr Gladis as they registered recent arrivals to the Refuge, the unidentified individual then followed Mr Donis to the Refuge's office and threw objects at him, and finally, the assailant punched Mr Donis twice and threatened to murder to him.
11/11/2010	Non-Physical Harassment	In a separate incident, Mr Donis received a warning from a Honduran national identified as 'Rafael'. 'Rafael' warned Mr Donis that local police officials and Zeta Cartel, an infamous criminal organisation in Mexico, were openly calling for Mr Guerra to be assassinated. The individual claimed that there was a price on Mr Guerra's head.
18/12/2010	Non-Physical Harassment	Mr Vargas, who at the time was not working at the Refuge, was allegedly warned by Commander Peña of the State Police to stay away from Mr Guerra because it was likely that Mr Guerra would be taken hostage or murdered.
05/01/2011	Non-Physical Harassment	An unidentified migrant who had previously lodged at the Refuge contacted the <i>Hermanos</i> after being detained by an unidentified individual in México State. The individual, who claimed to be a member of Zeta Cartel, interrogated the migrant and upon discovering that the migrant had been in Ixtepec, the individual informed the migrant that Mr Guerra was on the 'hit list' and would shortly be murdered.

E. Examples of attacks against human rights advocates in Mexican States other than Guerrero and Oaxaca

Stigmatisation, non-physical harassment and physical harassment are a widespread occurrence across Mexico and are not limited to the states of Guerrero and Oaxaca. Below are four recent examples of incidents which typify the day-to-day situations faced by human rights advocates operating outside the so-called 'high-risk' states of Chiapas, Guerrero and Oaxaca states.

On 31 August 2009 PRO-DH reported a violent attack on Mr Salomón Monárrez Meraz, Director of the *Frente Cívico Sinaloense* (Sinaloan Civic Front), a civil society organisation in Sinaloa State. Mr Meraz was shot three times by a group of unidentified persons who had broken into his private residence. This attempt on Mr Meraz's life followed the successful assassination of Mr Ricardo Murillo Monge, a member of the *Frente Cívico Sinaloense*, on 5 September 2007.⁵⁷

On 12 November 2009, Amnesty International recorded an incident of non-physical harassment in the state of Sinaloa. This case involved Ms Mercedes Murillo Monge, sister of murdered Mr Monge and colleague of attacked Mr Meraz (see above). In the early hours of the morning, twenty uniformed soldiers arrived at Ms Monge's house. Upon opening the door, approximately five soldiers pointed weapons at Ms Monge while the others remained outside patrolling the street. After threatening Ms Monge, the soldiers asked for Ms Monge's identity documents and then asked her questions about her family. Following the questioning, the five soldiers told Ms Monge that their battalion's General had ordered the visit Ms Monge's house.⁵⁸

On 8 November 2010, PRO-DH recorded an incident of non-physical harassment involving Mr Jorge Arzave Orihuela, member of the *Asociación de Vecinos Propositivos por Lomas de San Francisco Tepojaco* (Neighbours Association for Lomas de San Francisco Tepojaco), located in the state of México. In the early hours of the morning, a black truck drove up outside Mr Arzave's private residence playing music. The volume of the music was raised just at the point in which a threatening phrase was stated in the song's lyrics. The volume of the music was then lowered. When Mr Arzave got up and began to draw back the curtains the truck drove away quickly.⁵⁹

On 15 February 2011, Amnesty International reported an attack on a private residence in Ciudad Juárez (Chihuahua State). Following the enforced disappearance of Ms Malena Reyes, Mr Elías Reyes and Ms Luisa Reyes, the Reyes family organised a public march to galvanise support within Ciudad Juárez and to pressurise the Public Prosecutor to take affirmative action. When the Reyes family returned to the family home they found that their house had been set alight. Eyewitnesses claim that a group of armed men carrying homemade Molotov cocktails were responsible. Another local human rights advocate, Ms María Luisa Andrade, member of *Nuestras Hijas de Regreso a Casa* ("May Our Daughters Return

⁵⁷ Centro de Derechos Humanos 'PRO-DH' Miguel Agustín Pro Juárez, A.C. (2009), 'Atentado contra la vida del defensor de derechos humanos Salomón Monárrez', 31 August 2009.

⁵⁸ Amnistía Internacional (México) (2009), 'Defensora de los derechos humanos acosada por soldados', 20 November 2009.

⁵⁹ Centro de Derechos Humanos 'PRO-DH' Miguel Agustín Pro Juárez, A.C. (2010), 'Amenazas y hostigamiento contra el defensor de derechos humanos Jorge Arzave Orihuela', 16 November 2010.

Home”), a well-known civil society organisation in Ciudad Juárez, also returned home to find her house had been set alight.⁶⁰

⁶⁰ Amnistía Internacional (México) (2011), ‘Mientras una familia participa en una protesta, incendian su casa’, 18 February 2011.

VIII. Compliance with the State's obligation to provide protection

A. Agents of the State

The Law Society draws particular attention to the provisions detailed in Sections II(A), IV and V(A)(B)(C) above which provide that Mexico has an obligation not to stigmatise, criminalise, harass or attack lawyers or human rights advocates. The Law Society notes, however, that in a number of cases it appears that it is agents of the state, such as military personnel and or law enforcement officers who have perpetrated the alleged acts against lawyers and human rights advocates. Indeed, the Special Rapporteur, Mr Cumaraswamy, in his 2002 report on Mexico (2002) states that: 'the authorities, local politicians, armed groups and other organizations, usually with some backing from the authorities, are said to be responsible for the harassment'.⁶¹

Since the publication of the Special Rapporteur, Ms Gabriela Carina Knaul's last report, the Inter-American Court of Human Rights has found state agents responsible for violating human rights in four separate cases.⁶² This is corroborated by evidence provided by non-governmental organisations, such as Amnesty International, Human Rights Watch and Peace Brigades International, which have all highlighted a number of cases in which it is believed that agents of the state were responsible for attacks on lawyers and human rights advocates.

In the case of Ms Alba Cruz for example (see Sections VI(D) and VII(B) above), Peace Brigades International (Mexico) believes that Ms Cruz's persecution was at the hands of the state. In their 2010 Brief to the Special Rapporteur they stated that: 'As a result of her work, the [Mexican] Supreme Court published in 2009 a report identifying the state governor [of Oaxaca] and other state officials, as responsible for the grave human rights violations that took place during the social and political conflicts [in Oaxaca] of 2006 and 2007'.⁶³

The Law Society firmly believes that where agents of the state are responsible for the abuse of lawyers and or human rights advocates the state must take immediate steps to investigate any allegations, prosecute suspected individuals in a *civilian* court of law, sanction the perpetrators and remove them from the state's service (where necessary), and provide appropriate protective measures and guarantees together with reparations (where necessary) to the victim(s).

Similarly, where it is believed that private individuals, unconnected with the state, are harassing or intimidating others, the state is obliged to mobilise law enforcement agencies to investigate the alleged abuses, try the suspected perpetrators in a civil court of law, sanction the perpetrators (where necessary) and take appropriate measures to protect the victim(s).

⁶¹ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2010), Para. 113.

⁶² *Radilla Pacheco vs. Mexico* (2009), Operative Paragraphs 3,4,5,6; *Fernández Ortega vs. México* (2010), Puntos Resolutivos 3,4,6; *Montiel Flores y Cabrera García vs. México* (2010), Puntos Resolutivos 2,3,5,6, *Rosendo Cantú and Others v. Mexico* (2010).

⁶³ Peace Brigades International (Mexico), *Briefing for the Special Rapporteur on the Independence of Judges and Lawyers on the occasion of her visit to Mexico*, October 2010.

B. Lawyers and advocates who represent indigenous groups

The Law Society has observed that the lawyers and human rights advocates which appear most at risk from harassment, intimidation or violent attacks are those who defend or promote indigenous groups. The Law Society believes that the work of lawyers and human rights advocates who defend or promote the rights of indigenous groups is of paramount importance in the protection of highly marginalised ethno-cultural groups in Mexican society. As was expressed in the Bar Human Rights Committee's Report on their visit to Mexico in 2010, 9.8% of the Mexican population is classified as indigenous, and of this population (numbering close to ten million), 89.7% live in poverty compared to 46.7% of the non-indigenous population. Notably, 68.5% of the indigenous population lives in *extreme* poverty compared to 14.9% of the non-indigenous population.⁶⁴ These indigenous populations are heavily concentrated in the states of Guerrero and Oaxaca, which happen to be the poorest in the Mexican federation and the states for which the Special Rapporteur expressed particular concern in 2002.⁶⁵

In the report of the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in Mexico, the Special Rapporteur commented that: 'The protection of the human rights of the indigenous peoples has as its backdrop a high level of persistent social tension, frequently accompanied by violence, over agrarian, environmental and political problems which recur in almost all the indigenous regions, for the most part rural. These conflicts turn principally on the protection of communities' lands and resources and the control of local political power'.⁶⁶

With regard to the states of Guerrero and Oaxaca, the Special Rapporteur specifically noted: 'because of guerrilla attacks, the police and military presence has been stepped up and, sometimes, paramilitary groups have been active. These situations have given rise to numerous violations of the human rights of indigenous peoples and communities'.⁶⁷

In light of the extreme vulnerability of indigenous groups, the Law Society emphasises the pressing need for the Mexican authorities to protect lawyers and human rights advocates working with these groups. The capacity of lawyers and human rights advocates to represent and protect indigenous peoples has a direct bearing on the ability of these groups to enjoy their basic freedoms and rights.

⁶⁴ Bar Human Rights Committee of England and Wales, *Recalling the Rule of Law: A report on the protection of human rights defenders and the rule of law in the states of Guerrero and Oaxaca, Mexico* (July 2010), pg. 10.

⁶⁵ *Ibid.*

⁶⁶ Published to the United Nations Commission on Human Rights on 23 December 2003.

⁶⁷ Office of the United Nations High Commissioner for Human Rights, United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, *Addendum: Mission to Mexico* (23 December 2003), Para. 58 & 59.

IX. Use of military jurisdiction in cases involving human rights abuses

The overuse of military jurisdiction is a concern to the Law Society not only because it undermines the proper administration of justice but also because there have been a series of recent cases in the Inter-American Court ordering Mexico to reform its laws on military jurisdiction which require compliance.

The use of military jurisdiction in Mexico has been an ongoing concern for the Special Rapporteur dating back as long ago as 2002, when he reported a lack of impartiality in military courts in Mexico and recommended that crimes alleged to be committed by the military against civilians should be investigated by civilian authorities to allay suspicions of bias. Legislation should be amended to this end and urgent consideration should be given to removing the military from the policing of public law and order in society.⁶⁸

This Section will discuss Mexico's use of the Military Code of Justice (herein 'Military Code' (*Código de Justicia Militar*) to prosecute cases of alleged human rights abuses committed by military personnel. It will first outline the recent Inter-American Court judgments and explain how these deal with the concerns raised by a variety of intergovernmental organisations and domestic/international civil society groups.

A. The basis of the Military Code of Justice in Mexico

Article 13 of the Constitution of the United States of Mexico (1917) (*Constitución Política de los Estados Unidos Mexicanos*) stipulates that: 'Nobody may be prosecuted by exclusive laws or special courts'. The Constitution also provides that those who belong to the army may be subject to the Military Code of Justice for crimes and offences against military discipline. However, where a civilian is involved in a crime or offence of a military nature the corresponding civil authority will hear the case.⁶⁹

Article 57(2)(b) of the Code of Military Justice (1933) (*Código de Justicia Militar*) states that the Code is competent to try all crimes 'committed by members of the military whilst on duty'.⁷⁰ Thus, according to the Military Code, there are no limitations or restrictions placed on the Code's jurisdiction so long as military personnel are in 'active service'. The Code's jurisdiction derives from the condition of a soldier being in 'active service' when a crime is committed rather than the nature of the offence they are alleged to have committed.

At this point it is important to highlight that although Mexico is a party to the Inter-American Convention on Forced Disappearance of Persons (1994), upon ratifying the Convention in April 2002, the State entered a Reservation to Article IX of the Convention. Article IX states: 'Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions. *The acts constituting forced disappearance shall not be deemed to have been committed in the course of military*

⁶⁸ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2002), executive summary

⁶⁹ *Constitución Política de los Estados Unidos Mexicanos* (1917), Art. 13.

⁷⁰ *Código de Justicia Militar* (1933), Art. 57(2)(b).

duties. Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations'.⁷¹

Mexico's Reservation reads, 'The Government of the United Mexican States makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact'.⁷²

B. The position of the Inter-American Court of Human Rights on the use of military jurisdiction (*Radilla Pacheco v. Mexico*)

In *Radilla Pacheco v. Mexico* (2009), the defendants argued that the use of a military jurisdiction to investigate and prosecute the disappearance of Mr Radilla Pacheco was a violation of Articles 8(1) and 25(1) of the Convention.

Article 8(1) states: 'Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature'.

Article 25(1) provides: 'Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties'.

The Court held that Mexico had breached its obligation under Article 2 of the Convention, in conjunction with Articles 8 and 25 thereof, because it had extended the jurisdiction of military courts to crimes that had no close connection with military discipline or legal interests of the military sector.⁷³

The Court stated that Article 57(2) of the Military Code was '[a] broad and imprecise provision that prevents the determination of the strict connection of the crime of the ordinary jurisdiction with the military courts objectively assessed. The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted *due to the mere circumstance of being a soldier*'.⁷⁴

The Court also held that the use of the military jurisdiction to prosecute cases involving violations of human rights was a breach of Articles 25(1) and 8(1): 'Military jurisdiction is not the competent jurisdiction to investigate, and in its case, prosecute

⁷¹ Inter-American Convention on Forced Disappearance of Persons (1994), Article IX. The emphasis is ours.

⁷² Reservation of the United Mexican States to Inter-American Convention on Forced Disappearance of Persons (1994) of 9 April 2002.

⁷³ *Radilla Pacheco v. Mexico* (2009), Para 284

⁷⁴ *Ibid.*, Para. 286. The emphasis is ours.

and punish the authors of human rights abuses'.⁷⁵ It concluded: '[In] situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance'.⁷⁶

The Law Society notes that this ruling is consistent with the Inter-American Court's case-law. Indeed, the Court was at pains to reaffirm:

'The Tribunal considers it appropriate to state that it has repeatedly established that the military jurisdiction in democratic states, in times of peace, has tended to be reduced and has even disappeared, reasons of which, if a state conserves it, its use shall be minimum, as strictly as necessary and shall be inspired on the *principles and guarantees that govern modern criminal law*. In a democratic state of law, the military criminal jurisdiction shall have a *restrictive and exceptional scope and be directed toward the prosecution of special judicial interests, related to the characteristic of the military forces*. Therefore, the Tribunal has previously stated that only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offences that *based on their own nature threaten judicial rights of the military order itself*'.⁷⁷

In *Durand and Ugarte v. Peru (2000)*, the Court held: 'In a democratic Government of laws, the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only *the military shall be judged by commission of crime or offences that by its own nature attempt against legally protect interests of the military order*'.⁷⁸

In *Las Palmeras v. Colombia (2001)*, the Court concluded: '[I]n a democratic state of laws, the criminal military jurisdiction is to be restricted and exceptional in scope and intend to protect special juridical interests associated with the functions that the law assigns to the military forces'.⁷⁹

In *Palamara-Iribarne v. Chile (2005)*, the Court restated: '[E]very person has the right to be tried by a competent, independent and impartial judge or court. In a democratic constitutional State the military criminal jurisdiction should have a restricted and exceptional scope and should be aimed at the protection of special legal interests related to the duties the law assigns to the military'.⁸⁰

Prior to *Radilla*, the Court made similar rulings in respect of the use of military justice in *Castillo Petruzzi et al. v. Peru (1998)*, *Cantoral Benavides v. Peru (2000)*, *19 Tradesmen v. Colombia (2004)*, *Lori Berenson Mejía v. Peru (2004)*, *Mapiripán Massacre v. Colombia (2005)*, *Pueblo Bello Massacre v. Colombia (2006)*, *Almonacid Arellano et al. v. Chile (2006)*, *La Cantuta v. Peru (2006)*, *Massacre of La Rochela v. Colombia (2007)*, *Escué Zapata v. Colombia (2007)* and *Tiu Tojín v. Guatemala (2008)*.⁸¹ Accordingly, the Inter-American Court *could not be clearer* in respect of the use of military justice to prosecute human rights cases.

⁷⁵ *Ibid.*, Para. 273.

⁷⁶ *Ibid.*, Para. 274.

⁷⁷ *Ibid.*, Para. 272. The emphases are ours.

⁷⁸ *Durand and Ugarte v. Peru (2000)*, Para. 117.

⁷⁹ *Las Palmeras v. Colombia (2001)*, Para. 51.

⁸⁰ *Palamara-Iribarne v. Chile (2005)*, Para. 124.

⁸¹ *Castillo Petruzzi et al. v. Peru (1998)*, Para. 128; *Cantoral Benavides v. Peru (2000)*, Para. 112; *19 Tradesmen v. Colombia (2004)*, Para. 165; *Lori Berenson Mejía v. Peru (2004)*, Para.

The Law Society further notes that in *Radilla* the Court struck down Mexico's Reservation pursuant to Article XIX of the Inter-American Convention on Forced Disappearance of Persons. The Court affirmed that 'in a Constitutional State, the commission of acts such as the forced disappearances of persons against civilians by the members of the military *can never* be considered as a legitimate and acceptable means for compliance with the military mission. It is clear that those behaviors are openly contrary to the duties of respect and protection of human rights and, therefore, are excluded from the competence of the military jurisdiction'.⁸²

Moreover, the Court held that Mexico's Reservation to Article IX violated Article XIX of the Convention. Article XIX states that: 'states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, *unless such reservations are incompatible with the object and purpose of the Convention* and as long as they refer to one or more specific provisions'. This, in the Court's eyes, went against the 'object and purpose of the Convention'.⁸³ Accordingly, the Court rendered invalid and immediately struck down Mexico's Reservation in respect of Article IX. This adds further weight to the argument that a military jurisdiction should never be employed when investigating and prosecuting cases involving human rights abuses committed against civilians.

The Law Society also notes that Article X of the Inter-American Convention on Forced Disappearance affirms that, in no circumstances, may the state derogate from the responsibilities assumed from the Convention, not even in a time of national emergency or war.

C. Further rulings of the Inter-American Court of Human Rights (*Ortega and Others, Cantú and Others, and Montiel Flores and Cabrera García v. Mexico*)

Following the *Radilla* case, the Court has delivered three further judgments against Mexico, all of which affirm the need to clip the wings of Article 57(2) of the Military Code. The Court utilised the same arguments as set out in *Radilla* to reach its judgment in each of the cases. The only difference between the cases was that in *Radilla* the human rights abuse undertaken by service personnel was enforced disappearance, while in *Rosendo Cantú and Others v. Mexico (2010)* and *Fernández Ortega and Others v. Mexico (2010)* the human rights abuse committed by the soldiers was rape, and in *Cabrera-García and Montiel Flores v. Mexico (2010)* the human rights violation was torture.

In each of the four cases, irrespective of the nature of the human rights abuse, the Court has consistently ruled that cases of this type must be heard in civilian courts of law.⁸⁴ This implies that Article 57(2) of the Military Code requires immediate revision in that the nature of the crime alleged should supersede the individual soldier's status

142; *Mapiripán Massacre v. Colombia (2005)*, Para. 202; *Pueblo Bello Massacre v. Colombia (2006)*, Para. 189; *Almonacid Arellano et al. v. Chile (2006)*, Para. 131; *La Cantuta v. Peru (2006)*, Para. 142; *Massacre of La Rochela v. Colombia (2007)*, Para. 200; *Escué Zapata v. Colombia (2007)*, Para. 105; and *Tiu Tojín v. Guatemala (2008)*, Para. 118.

⁸² *Radilla Pacheco v. Mexico (2009)*, Para. 282. The emphasis is ours.

⁸³ Inter-American Convention of Forced Disappearance of Persons (1994), Article XIX; *Radilla Pacheco v. Mexico (2009)*, Para. 310. The emphasis is ours.

⁸⁴ *Rosendo Cantú and Others v. Mexico (2010)*, Para. 157; *Fernández Ortega and Others v. Mexico (2010)*, Para. 177; and *Cabrera-García and Montiel Flores v. Mexico (2010)*, Para. 198.

in determining whether the crime should be investigated, prosecuted and the perpetrator punished under the civil or military jurisdiction.

D. United Nations' concern about the use of the military jurisdiction in human rights cases

The extent to which the international community is concerned by the use of military jurisdictions in human rights cases is demonstrated in the various reports emanating from different branches of the United Nations Office of the High Commissioner for Human Rights. For example, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated in a Report published to the United Nations Commission on Human Rights in 1999 that military courts 'do not conform to the Basic Principles on the Independence of the Judiciary'. The Special Rapporteur also commented that 'the military justice system is arbitrary' and can 'result in the miscarriage of justice'.⁸⁵ A report from the Office of the United Nations High Commissioner for Human Rights in Mexico (2005), expressed grave concern at the State's reliance on the military jurisdiction when trying human rights cases involving civilians. As per the Court, the Office called for Article 57(2) of the Military Code to be revised so that alleged human rights abuses perpetuated against civilians by military personnel were heard in competent civil courts of justice.⁸⁶

In the 2002 report of the Special Rapporteur for the Independence of Judges and Lawyers, Mr Cumaraswamy noted that he had 'received complaints that military tribunals are not impartial, that they do not tolerate criticism by military officers of the army's methods, and that they are too lenient towards military officers who have violated the rights of civilians'.⁸⁷ The Special Rapporteur also voiced concern that 'the victims of human rights violations committed by the military are excluded from participation in the proceedings'.⁸⁸ This exclusion is tantamount to a clear violation of Articles 8(1) and 25(1) of the American Convention.

The Law Society notes that in a press statement released shortly after her country visit in October 2010, the Special Rapporteur, Ms Gabriela Knaul, also expressed concern about the use of the Military Code to prosecute alleged human rights abuses committed by members of the military. The Special Rapporteur called on the Mexican government to enact reforms in respect of the jurisdiction of the Military Code.⁸⁹

Moreover, a number of countries have commented about the use of military courts in Mexico in the Fifth Universal Periodic Review on Human Rights (2009). The Republic of Ireland, for example, expressed: 'concern at the continued use of military courts to investigate and try military abuses of human rights and noted that the military has taken on a policing role in many states. It recommended...reviewing the Code of

⁸⁵ Office of the United Nations High Commissioner for Human Rights (1999), Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Visit to Mexico* (25 November 1999), Para. 44.

⁸⁶ Oficina en México del Alto Comisionado de Naciones Unidas para los Derechos Humanos (2005), *Diagnóstico Sobre la Situación de Derechos Humanos en México: Derechos Civiles*, pp. 35-37.

⁸⁷ Office of the United Nations High Commissioner for Human Rights (2002), Special Rapporteur on the Independence of Judges and Lawyers, *Report on the mission to Mexico* (24 January 2002), Para. 79.

⁸⁸ *Ibid.*, Para 78.

⁸⁹ Office of the United Nations High Commissioner for Human Rights (2010), Special Rapporteur on the Independence of Judges and Lawyers, *Intervención de la Sra. Gabriela Knaul*, 15 October 2010.

Military Justice with a view to extending the jurisdiction of civil courts in cases involving violations of human rights by the military, in order to align more closely with international human rights obligations'.⁹⁰

E. Civil society/human rights organisations' perspective

A number of civil society organisations have raised concerns regarding Mexico's application of military jurisdiction in cases of alleged civilian human rights violations. In 2009, Human Rights Watch published a report which claimed: 'While engaging in law enforcement activities, Mexico's armed forces have committed serious human rights violations, including enforced disappearance, killings, torture, rapes and arbitrary detentions'.

The Report continued, '[These] abuses continue to go unpunished. And they go unpunished in significant part because most cases end up being investigated and prosecuted by the military itself. *By allowing the military to investigate itself through a system that lacks basic safeguards to ensure independence and impartiality, Mexico is, in practice, allowing military officers involved in law enforcement activities to commit egregious human rights violations with impunity*'.⁹¹

Peace Brigades International (Mexico) agrees: 'As the cases before the Inter-American Court show, the use of military jurisdiction is very often likely to result in impunity for the perpetrators. The urgency of restricting its use is clear: as more soldiers are deployed to carry out public security tasks for which they are not trained, more abuses are likely to take place'.⁹²

F. Mexico's compliance with the Inter-American Court

Given the binding nature of the rulings of the Inter-American Court, the Mexican government must comply with Court's Orders in respect of when and how military jurisdiction may be employed. The Law Society believes that the government must legislate in order to restrict the use of the Military Code of Justice to prosecute soldiers in 'active duty' only when they have committed crimes of a 'purely military nature' or committed crimes against the military itself.

Given that this is a well established principle in Inter-American case-law, and a principle which dates back over ten years, the Law Society is concerned about the Mexican government's slow progress to amend Article 57(2) of the Military Code of Justice and potentially Article 13 of the Mexican Constitution.

Moreover, the Law Society is particularly concerned by President Calderón's recent comments concerning reforms to the Military Code of Justice. He has stated that only three crimes, forced disappearances, torture and rape (which were those committed in *Radilla*, *Cantú*, *Ortega* and *García-Flores*) are to be excluded from military jurisdiction. The Law Society shares the concern of many civil society organisations

⁹⁰ Office of the United Nations High Commissioner for Human Rights (2009), United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Mexico*, 29 May 2009, Para. 54.

⁹¹ Human Rights Watch (2009), *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* (April 2009), pp. 2-3. The emphasis is ours.

⁹² Peace Brigades International (Mexico) (2010), *Briefing for the Special Rapporteur on the Independence of Judges and Lawyers on the occasion of her visit to Mexico, October 2010*, p. 2.

in Mexico and reminds the government of Mexico that it must comply with the full wording of Inter-American Court's judgments which clearly indicate that *no case whatsoever* involving human rights abuses allegedly committed by military personnel may be investigated or prosecuted under the Code of Military Justice.⁹³ Any deviation from this principle is a clear act of non-compliance with the rulings of the Court, and a breach of Article 68(1) of the American Convention (which article obliges Mexico to comply with judgments of the Court).

⁹³ Centro de Derechos Humanos Fray Bartolomé de las Casas, Centro de Derechos Humanos Fray Francisco de Vitoria, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro de Derechos Humanos de la Montaña Tlachinollan, Centro de Derechos Humanos de las Mujeres, Centro por la Justicia y el Derecho Internacional (CEJIL), Centro de Justicia para la Paz y el Desarrollo, Comisión Mexicana de Defensa y de Promoción de los Derechos Humanos, Fundación Diego Lucero, IDEHAS (Litigio Estratégico en Derechos Humanos), Indignación, Promoción y Defensa de los Derechos Humanos, Instituto Mexicano de Derechos Humanos y Democracia, Red Nacional de Organismos Civiles de Derechos Humanos 'Todos los Derechos para Todas y Todos', 'Civil society organizations condemn incomplete and counterproductive official proposal to reform military jurisdiction in Mexico', 19 October 2010.

X. Conclusion and recommendations

The Law Society of England and Wales concludes that:

1. Lawyers and human rights advocates in Mexico should not be subject to harassment, intimidation and even physical violence because this hinders and prevents them from carrying out their legitimate duties.
2. Since the United Nations Special Rapporteur's 2002 report there has been an increase in the incidents of harassment and the number of attacks upon lawyers. The Law Society notes that States voiced their deep concern about the harassment of lawyers in the United Nations Universal Periodic Review of Human Rights in Mexico (2009). Specifically, Norway recommended (and the Law Society agrees) that Mexico should:

'Ensure that crimes and violations against human rights defenders, journalists and lawyers are effectively investigated and prosecuted; that those responsible are punished; that threats of harassment and intimidation of human rights defenders, journalists and lawyers receive a prompt response and that adequate measures for their safety are taken'.

3. Attacks on human rights defenders, including those who or whose work assists lawyers, have also increased in recent years. States have voiced their concern in the United Nations Universal Periodic Review of Human Rights in Mexico (2009). Specifically, the United Kingdom recommended (and the Law Society agrees) that Mexico should 'publicly recognise the important role of human rights defenders and non-governmental organisations in the protection of human rights in Mexico'. The Law Society recommends that Mexico take urgent steps to bring to an end to what Belgium called 'the persistence of a climate of impunity, particularly with regard to systematic violations of the human rights of...human rights defenders'.
4. Mexico should comply with provisional measures from the Inter-American Court and precautionary measures from the Inter-American Commission. The evolving jurisprudence of international tribunals reinforces this principle. For example, we are aware of the situation of Ms Alba Cruz and her family who, despite receiving precautionary measures from the Commission in July 2007, are victims of continuing and regular intimidation and harassment. Ms Cruz and her family were threatened with mortal violence on six occasions and survived one assassination attempt in 2010. Similarly, there were a range of death threats made against Father (José) Alejandro Solalinde Guerra between 2008 and 2011. Threats of mortal violence have continued despite Mr Guerra receiving precautionary measures from the Commission in April 2010.
5. The high numbers of protective measures (which are only granted in serious and urgent cases where they may be irreparable harm to persons) suggests that in certain areas or in relation to certain groups there is a climate of non-compliance with human rights standards. The Law Society notes that in April 2009, there were 107 individuals in the State of Guerrero alone, largely from indigenous backgrounds, who were protected under measures issued by the Inter-American human rights system. Similarly, on 7 October 2010 the Commission granted precautionary measures to 135 inhabitants of the town of San Juan Copala. Incidentally, all of those granted these Measures were

members of the Triqui Indigenous Group. On 4 August 2010, the Commission also ordered that all of the inhabitants of Lázaro Cárdenas (were granted protection.

6. Mexico should take urgent steps and pay special attention to compliance with human rights standards and protective measures of the Inter-American system in high-risk regions of the country. The particular areas of concern are Chiapas, Guerrero and Oaxaca. The gravity of the situation for lawyers and human rights defenders in Guerrero and Oaxaca was highlighted in a United Nations Office of the High Commissioner for Human Rights report in 2009. The Special Rapporteur on the Independence of Judges and Lawyers had previously emphasised the problems in Chiapas, Guerrero and Oaxaca in his 2002 report.
7. In light of the vulnerability of indigenous groups, there is a pressing need for the Mexican authorities to protect lawyers and human rights advocates working with them as this will have a direct bearing on the ability of indigenous groups to enjoy their basic freedoms and rights and have access to justice. The Law Society has observed that lawyers and human rights advocates working with these groups are most at risk from harassment, intimidation or violent attacks. Indigenous groups are already highly marginalised, more likely to live in poverty or extreme poverty, and are heavily concentrated in the states of Guerrero and Oaxaca.
8. Where agents of the state are responsible for the abuse of lawyers and or human rights advocates the state must take immediate steps to investigate any allegations, prosecute suspected individuals in a *civilian* court of law, sanction the perpetrators and remove them from the state's service (where necessary), and provide appropriate protective measures and guarantees together with reparations (where necessary) to the victim(s). Recently the Inter-American Court of Human Rights has found state agents responsible for violating human rights in four separate cases.⁹⁴ State non-compliance with international legal standards is compounded when it is state agents that have actively participated in human rights abuses, which ultimately undermines the rule of law and promotes a culture of impunity.
9. Mexico must comply with the full wording of the four recent Inter-American Court judgments which clearly indicate that *no case whatsoever* involving human rights abuses allegedly committed by military personnel may be investigated or prosecuted under the Code of Military Justice. The Law Society is particularly concerned by recent government proposals concerning reforms to the Military Code of Justice. The proposals suggest that only three crimes (forced disappearances, torture and rape), rather than all human rights abuses, are to be excluded from military jurisdiction. Deviation from the full principle would be non-compliant with the rulings of the Court.
10. The fact that three further Inter-American Court cases have since followed and affirmed the original ruling⁹⁵ but that there has been no reform of the military jurisdiction law in the meantime highlights that Mexico is not yet acting

⁹⁴ *Radilla Pacheco vs. Mexico* (2009), Operative Paragraphs 3,4,5,6; *Fernández Ortega vs. México* (2010), Puntos Resolutivos 3,4,6; *Montiel Flores y Cabrera García vs. México* (2010), Puntos Resolutivos 2,3,5,6, *Rosendo Cantú and Others v. Mexico* (2010).

⁹⁵ *Radilla Pacheco vs. Mexico* (2009)

in compliance with the judgments of the Inter-American Court. The Law Society urges Mexico to rectify this situation urgently.

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