

SRA. KYUNG-WHA KANG	3
DISCRIMINATION	7
DISCRIMINATION AGAINST THE COMMUNITY FOR SEXUAL DIVERSITY IN MEXICO	8
DISCRIMINATION AGAINST INDIGENOUS COMMUNITIES IN MEXICO.....	10
DISCRIMINATION AGAINST PERSONS WITH DISABILITIES	12
MILITARIZATION, PUBLIC SAFETY, DISAPPEARCE AND ARRAIGO	13
THE ARRAIGO IN THE CRIMINAL JUSTICE AND PUBLIC SECURITY SYSTEM’S REFORM	14
DEPLOYMENT OF THE MILITARY IN SECURITY OPERATIONS AND APPLICATION OF MILITARY JURISDICTION TO CASES OF ABUSES BY THE MILITARY AGAINST CIVILIANS.....	15
INCOMPLIANCE OF THE SENTENCE FOR THE CASE OF ROSENDO RADILLA V. MEXICO	17
SECURITY, MILITARIZATION AND MILITARY JURISDICTION AT THE NORTHERN BORDER	20
AMENDMENTS TO THE CRIMINAL JUSTICE SYSTEM.....	21
FREEDOM OF EXPRESSION.....	24
INTRODUCTION	25
DEFAMATION	25
INFORMATION RELATED TO VIOLENCE AGAINST JOURNALISTS.....	25
PERPETRATORS	26
IMPUNITY AND PENDING LEGAL REFORMS.....	26
PREVENTIVE MEASURES	27
ECONOMIC, SOCIAL, CULTURAL AND ENVIROMENTAL (DESCA)	28
THE CONTEXT OF POVERTY AND ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS IN MEXICO.....	29
SITUATION OF THE RIGHT TO EDUCATION	31
SITUATION OF THE HUMAN RIGHT TO ADEQUATE HOUSING IN MEXICO.....	33
THE HUMAN RIGHT TO FOOD AND FOOD SOVEREIGNTY	35
SITUATION OF THE RIGHT TO HEALTH.....	37
THE RIGHT TO THE ENVIRONMENT IN MEXICO.....	38
LABOR RIGHTS VIOLATIONS IN MEXICO.....	40
THE MINING INDUSTRY	42
HUMAN RIGHTS DEFENDERS IN MEXICO	44
THE KIDNAPPING OF MIGRANT PERSONS IN TRANSIT THROUGH MEXICO	47
OFFENCES OF THE PAST	51

Mexico, August 5, 2010

Sra. Kyung-wha Kang

United Nations Organization

Deputy High Commissioner for Human Rights

By means of this document, we, the undersigned, extend you cordial greetings and present this brief report on some of the most pressing issues related to Human Rights in Mexico for your consideration. This report includes a concise overview over these issues, whose direct sources are found in public documents, national as well as international, and are manifest in our daily experience in the defense of human rights.

This report is divided in seven topics; below there is a brief assessment of each topic from the part of the undersigned organizations:

- 1) **Human Rights defenders at risk:** Mexico should assume its obligations of protecting and guaranteeing the work conditions for human rights defenders, including punishing those responsible for attacks against the defenders. In the same way, the state should establish greater collaboration mechanisms with organisms of protection of human rights in the Universal and inter-American systems in order to strengthen international supervision in safeguarding the integrity of the human rights defenders;
- 2) **Constitutional reform of the criminal justice system in 2008:** The criminal justice system that is currently being implemented in the federal and local levels should place at its core the respect and protections of human rights, correcting its multiple inadequacies in regards to international standards;
- 3) **Public Security, militarization, extensive application of military jurisdiction and violence in the Northern border of the country;** Mexico should make effective the prohibition and the persecution of the crimes of forced disappearances, torture, and illegal or arbitrary detentions; eliminate the criminal justice mechanisms that allows this type of arbitrariness, such as the case of *arraigo*; including the measures that lead to the institutionalization of impunity, such as the extensive application of military jurisdiction to judge military officers that violate the human rights of civilians. In the same way, the state should end militarization in its territory as well as end militarization in the government positions that civil authorities should fill exclusively in a situation of democratic normality;

4) **Economic, social, cultural, and environmental rights:** Mexico should assume the protection, guarantee, and universal promotion of these rights as part of a State policy that involve diverse sectors of society, including indigenous communities, worker's unions, and social organizations, and not as a State policy that does not respect human rights,

5) **Discrimination:** Mexico should fulfill its obligation to prevent, prohibit and sanction every form of discrimination, a situation that becomes urgent due to the diversification, increase, and exacerbation of the manifestations of discrimination in Mexican society, particularly against women, indigenous communities, people with disabilities and the LGBTI community;

6) **Situation of migrants:** Mexico should act in conformity with its discourse before the international community in regards to the treatment that migrants receive from authorities, independent of their origin, and implement a normative framework on the topic that adheres to the highest international standards;

7) **Transitional justice: a lost agenda in Mexico:** Given that the regional democratic transition generated legitimate expectations of justice to the victims of crimes of the past, whose effects are present, Mexico has pending its obligation to investigate, sanction those responsible, and repair integrally the victims whose material and immaterial damages were caused by the repressive politics of the state in the seventies and eighties.

In order to the above, we can conclude that:

1. Since a decade ago, the Mexican government maintains a policy of open doors to the international organisms of protection of human rights, a positive aspect without a doubt: nevertheless, this openness has led to numerous recommendations that are not implemented and thus maintain in force the causes of numerous human rights violations. In this way, there are often moments where we experience a policy of simulation; many actions are carried out (new laws, programs, and numerous workshops) but the institutional dynamics that violate human rights remain untouched.
2. The Mexican justice system overall (criminal, labor, environmental, etc) functions deficiently, impedes the effective access to justice of victims and leaves an interminable trail of impunity. The system also has many discriminatory characteristics against women, indigenous communities,

and poor people. Therefore, in Mexico, society does not trust or believe in the institutions of justice;

3. Due to the federal structure of the country, we live in a permanent problematic of the coordination between the federal government and the other two levels of government (state and municipal), becoming almost impossible to implement a state policy in terms of human rights.

Precisely because this current situation is presented as a challenge, we have the confidence that the dialogue that initiates with this message and the attached report will be beneficial to the development of the agenda for an active defense of human rights in Mexico. We also hope that you can retake our observations as testimony of a sector of Mexican society which is concerned about the development of the authorities' agendas with whom you will meet with during your visit.

We reiterate our willingness to continue to accompany you, the High Commissioner, as well as the office in Mexico in the duties that we share, and our wishes that your trip to Mexico results fruitful.

SINCERELY

Asistencia Legal por los Derechos Humanos A.C (AsiLegal)

Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México, AFADEM-FEDEFAM

Centro de Derechos Humanos de la Montaña "Tlachinollan"

Centro de Derechos Humanos "Fray Bartolomé de Las Casas", A.C.

Centro de Derechos Humanos "Fray Francisco de Vitoria" OP. AC.

Centro de Derechos Humanos "Miguel Agustín Pro Juárez" (Centro Prodh)

Centro de Derechos Humanos "Juan Gerardi"

Centro Diocesano para los Derechos Humanos "Fray Juan de Larios"

Centro Mexicano de Derecho Ambiental, A.C. (CEMDA)

Centro de Reflexión y Acción Laboral (CEREAL)

Centro Regional de Derechos Humanos "Bartolomé Carrasco"

Coalición Internacional para el Hábitat, Oficina para América Latina (HIC-AL)

Comisión de Derechos Humanos y Laborales del Valle de Tehuacan

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)

Espacio DESC¹

Frontera con Justicia, A.C.

Fundación Diego Lucero, A.C.

Humanidad Sin Fronteras, A.C.

Indignación, Promoción y Defensa de los Derechos Humanos, A.C.

Instituto Mexicano de Derechos Humanos y Democracia (IMDHD)

Instituto Mexicano para el Desarrollo Comunitario (IMDEC)

Movimiento Ciudadano por la Justicia 5 de Junio A.C.

Nacidos en la Tempestad, A.C.

Organización Familia Pasta de Conchos

Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos”

¹ The “Espacio DESC” is comprised by Human Rights and Development organizations, namely: Centro de Reflexión y Acción Laboral (CEREAL), Coalición Internacional para el Hábitat (HIC-AL), Equipo Pueblo, Centro de Investigación y Promoción Social (CIPROSOC), CDHDF, Instituto Mexicano para la Democracia y los Derechos Humanos (IMDHD), Centro de Derechos Humanos “Miguel Agustín Pro Juárez” (Centro Prodh) y Centro Antonio Montesinos (CAM).

DISCRIMINATION

ELABORATED BY:

Asistencia Legal por los Derechos Humanos (ASILEGAL)

Centro Mexicano de Derecho Ambiental (CEMDA)

Excelencia Educativa

Indignación, Promoción y Defensa de los Derechos
Humanos

Instituto Mexicano de Derechos Humanos y Democracia
(IMDHD)

Discrimination against the community for Sexual Diversity in Mexico

- *The impunity of hate crimes committed against the LGBTI community*
- *The need to implement the recommendation specific to the LGBTI community over the evaluation of Mexico's compliance of the International Covenant of Civil and Political Rights by the Human Rights Committee of the United Nations in March of 2010*
- *The upcoming decision of the Mexican Supreme Court (SCJN) on whether or not to accept the act of unconstitutionality against the reform legalizing the right of homosexuals to marry and adopt in the Federal District.*

Discrimination against the community for sexual diversity is one of the most troubling issues that currently faces Mexican society. Homophobic attitudes, legislation and campaigns, arbitrary detention, and torture are practices that continue in the entire country, and there are countless reports that confirm violations to fundamental human rights of the LGBTI community. Many of the human rights violations are committed by police forces, an entity in which homophobic attitudes are common. Furthermore, these illicit acts often remain in complete impunity, which allows for the repetition of these crimes.

Hate crimes based on sexual preference, sexual orientation, or gender identity or expressions are the most brutal side of the discrimination faced by members of the LGBTI community every day². Assassinations remain hidden as “simple homicides” or are classified as “crimes of passion” - discrimination is not considered an element in the investigation. The pattern of insults and aggressions create a culture of gender violence, in which discrimination and prejudice are considered the norm, only aggravated when this leads to physical abuse. According to the Human Rights Commission for the Federal District (CDHDF) the discrimination faced by the LGBTI population is evidenced by extrajudicial executions, cruel, degrading and inhumane treatment, and torture, all of which show the silent complicity of state institutions³. At this time there are no official statistics regarding hate crimes based on sexual orientation; however, the Citizen Commission against Hate Crimes based on Homophobia (CCCCOH) has counted in the press approximately 464 assassinations of people belonging to the sexually diverse community between 1995 and 2003⁴. According to this source, for each homicide that has been reported, two homicides are not reported, and for this reason they estimate that there could be as many as 1,260 assassinations of members of the LGBTI

² In Spanish at <http://www.cd hdf.org.mx/index.php?id=dfemav09crimenodio>

³ CDHDF, Special report on human rights violations based on sexual orientation or preference, and gender identity and expression. 2007-2008, México D.F., pag. 77 available in Spanish at http://directoriod.cd hdf.org.mx/libros/2008/10/informe_lgbt.pdf 09/09/09 14:05

⁴ <http://impreso.milenio.com/node/8594483> 3/07/09, 18:30

community.

We highlight the recommendation made in March 2010 over the evaluation of Mexico's compliance with the International Covenant of Civil and Political Rights by the Human Rights Committee of the United Nations: "the State should adopt immediate measures to investigate all report of violence committed against people of the LGBTI". This recommendation cannot continue to be ignored by the Mexican government.

A significant advance to the LGBTI community is the reform adopted by the Legislative Assembly of the Federal District in 2009; homosexual people have the right to marry and form a family through adoption. Although this event does represent a fundamental step forward in the establishment of measures that combat discrimination of this historically discriminated group, it also serves as an indicator that reveals the more generalized situation on a state as well as on national level. Some states have even adopted legislative reforms that reinforce the exclusions of this social group as in the state of Yucatan where the state Congress reformed the local constitution in order to establish a definition of marriage as the union of a man and a woman⁵.

This policy of discrimination is not exclusive of the states. The federal government, due to the approval of the reform that recognized this right to marriage in the Federal District, presented an act of unconstitutionality to the Supreme Court of the Nation (SCJN). We emphasize that the decision of the Supreme Court, which is tentatively to be discussed in August of this year, is of grave importance. If the SCJN accepts the constitutionality of the reform in the Federal District, this could open doors so that the federal states can make impulse the similar reforms in favor of the community for sexual diversity. If the contrary occurs, this act would thus revert a right that has already been acquired and recognized, which is inadmissible from the perspective of international human rights law. As members of civil society, we predict a violent backlash against the LGBTI community in the near future.

⁵ Reform to article 94 of the Political Constitution of the State of Yucatan, July 15th, 2009, published in the Official Report of the State in the decree 219 dated July 24th of the same year.

Discrimination against Indigenous Communities in Mexico

- *Discrimination against indigenous communities in access to justice, highlighting the right to an interpreter/translator in their language.*
- *Discrimination against indigenous communities and their right to land, territory, and natural resources, highlighting the tendency of the State to privative communal lands without the consent of the indigenous population.*
- *Calling for an enforcement of the recommendation made by the Special Rapporteur of the United Nations for the Human Rights and Fundamental Liberties of Indigenous Communities in 2003.*

In the political agenda of the current federal administration, the rights of the indigenous communities in our country are notoriously absent. Indigenous communities continue to maintain the highest rates of marginalization, exclusion and poverty. Their collective rights, recognized in the Federal Constitution as well as the 169 Convention of the OIT and the recent Declaration of the United Nations on the rights of Indigenous Communities, have been continuously denied. Although the degree of discrimination against indigenous communities cuts across all human rights, it is in the areas of access of justice and in the right to land, territory and natural resources, where there is a clear discrimination against indigenous communities

In access to justice, we highlight especially the issue of indigenous people in imprisonment. In the investigation and analysis of over 30 cases of indigenous women that are found deprived of their liberty in the state of Guerrero, serious violations in the judicial process are evident. The indigenous people are found helpless before the district attorneys or even the judges for not speaking or understanding Spanish and not being assigned an interpreter or translator in their language, even though that there is a law that specifically establishes this right. The defense lawyers issued by the state in indigenous areas are scarce and generally not very qualified; the population does not count with the resources or possibilities to hire a more qualified lawyer. In addition, there is no consideration to the cultural practices of these indigenous communities in the legal proceedings.

In the case of the right to land, territory and natural resources, speculation from the private sector and government policy drives investment, manifesting a concept of development fundamentally *incompatible* with human rights and the collective rights of indigenous communities. As a consequence, indigenous communities are stripped of their resources⁶ with the risk of being evacuated from their lands in the name of these “development” projects. Due to the acquiescence of the State, the destruction of their natural resources, properties and cultures proceeds, without the communities being informed, being asked

⁶ http://indignacion.org.mx/wp-content/uploads/2009/10/INFORME_MISION_PAZ_EBULA_VF.pdf

for observations, nor giving consent. The constant legislative reforms coming from the President (we highlight constitutional article 27 to privatize communal lands), has had a devastating effect on the relation between indigenous communities and their right to land, territory, and natural resources.

We consider that the recommendation by the then Special Rapporteur of the United Nations for the Human Rights and Fundamental Liberties of Indigenous Communities, Dr Rodolfo Stavenhagen, in his report to the General Assembly of the UN in regards to his visit to Mexico⁷, where he clearly identifies some of the more troubling problems in relation to the enforcement of the human rights of indigenous communities, is still valid and must be enforced in Mexico.

⁷ Informe E/CN.4/2004/80/Add.2 de 23 de diciembre de 2003.

Discrimination against persons with disabilities

Despite the efforts to promote a culture of respect for the rights of persons with disabilities, discrimination continues and affects 95% of this group of the population, according to the numbers stated in a study undertaken in 2008 by the National Council for the Prevention of Discrimination [Consejo Nacional para Prevenir la Discriminación]⁸.

Despite the efforts undertaken over the past decade to promote a culture of respect for the rights and the inclusion of persons with disabilities, it is clear that this vulnerable group suffers from discrimination by the same society, which it is a member of. In addition to facing a lack of adequate infrastructure, disabled persons must fight against the lack of a culture of respect among most people.

This may be the most expressive example of discrimination faced by persons with disabilities: the lack of harmonisation of the concept itself in Mexican laws, which far from using inclusive terms, actually reflect important flaws on this issue. It is worth emphasising, first, the inappropriate title of the specific laws that have been created in some states for the attention to, and regulation of, the services aimed at persons with disabilities, and in others, the total absence of specific laws, as is the case in the state of Jalisco. Secondly, it is worth mentioning that the majority of local civil codes have not amended their terminology in relation to persons with disabilities, referring to this group in inappropriate, even pejorative terms, such as incapable [*incapaces*], unfit [*incapacitados*], idiot [*idiotas*] and stupid [*imbéciles*].

A legislative reform in matters of disability must be considered, as the basis to generate the most urgent changes that this population requires to improve its conditions in all aspects. Thus, we urge the Mexican State to comply, in due course and form, with its international commitments, and to present, through true and up-to-date information, its first report on the changes implemented on the basis of the entry into force of the Convention on the Rights of Persons with Disabilities.

⁸Miguel Ángel Maciel González, *La percepción cotidiana de la discapacidad: un análisis a partir de grupos de enfoque* [The daily perception of disability: An analysis based on focus groups], CONAPRED, Mexico, 2008.

MILITARIZATION, PUBLIC SAFETY, DISAPPEARANCE AND ARRAIGO

ELABORATED BY:

Centro de Derechos Humanos “Fray Francisco de Vitoria”
Centro de Derechos Humanos “Miguel Agustín Pro Juárez”
Comisión Mexicana de Defensa y Promoción de los
Derechos Humanos (CMDPDH)
Monitor Civil de la Policía y de las Fuerzas de Seguridad en
la Montaña de Guerrero (MOCIPOL)

The arraigo in the criminal justice and public security system's reform

1. In the new criminal justice system established after June 2008's reform, the *arraigo* has been raised to a constitutional status, which provides the possibility of detaining a person without any filed charges against him/her for a period of up to 80 days, without being brought before a judge and without the necessary judicial guarantees that assist a person formally linked to a criminal procedure. In keeping with a governmental discourse that promotes increasing penalties, reducing due process rights, and expanding the powers of the security forces as the answer to crime, the current administration has witnessed not only the *arraigo*, but also the creation of an alternative justice regime with fewer due process rights for persons accused of belonging to organized crime (including a definition of "organized crime" that is wider than that contemplated in the Palermo Convention); and existing initiatives as the National Security Law that pretends not just to legalize arrest or investigation by armed forces but also allowing a procedure for derogating rights that will give extraordinary powers to the armed forces, and is completely contrary to international human rights treaties.

2. The *arraigo* has become a research tool used systematically to obtain statements and/or confessions, which has allowed the expansion of the possibilities for a person to be subject to torture, due to its discretionality and limited judicial control in its execution. In this regard, and for 7 years, the Working Group on Arbitrary Detention of the UN said that "the institution of the *arraigo* is actually a form of a preventive arbitrary detention because of the inadequacy of judicial review and the execution of such measure in places that, while not secret, they are 'discreet' ".⁹

3. About the systematic way the *arraigo* has been used, it is important to stand out the official sources. For example, the Federal Attorney General's Office (PGR) sustains¹⁰ that between June 18, 2008 and April 9, 2010 they asked for 647 orders of *arraigo* to the Justice Department, the Judiciary Council, for its part, supports the issuance of 1,051 orders of *arraigo* by the federal courts between June 18, 2008 to May 14, 2010.

4. With regard to cases of torture in an *arraigo* situation, the Subcommittee on Prevention of Torture of the UN highlighted in paragraph 225 of its report on its visit to Mexico¹¹, that half of the 70 cases of analyzed medical examinations, people showed signs of recent violence.

5. In these cases it is also exposed the systematic practice of other human rights violations such as illegal and/or arbitrary detentions and other cruel, inhuman and degrading treatment. All these cases have the common feature of

⁹ Report of the Working Group on Arbitrary Detention. Mexico (2002) E/CN.4/2003/8/Add.3, par 50.

¹⁰ Official letter No. SJAI/DGAJ/3440/2010

¹¹ CAT/OP/MEX/R.1

having been committed as part of the policy of the Mexican State in the fight against organized crime. Additionally, these acts have been consistently reported to international bodies like the Inter-American Commission on Human Rights and the Universal System on Human Rights Protection *Rapporteurs*.¹²

6. The above table is completed by the fact that under current law, a high probative value is assigned to the first confessions made before a police officer or district attorney and that the burden of proof/*onus probandi* that the statements were not obtained as a result of torture or cruel, inhuman or degrading treatment does not fall on the prosecutor or investigating authority. In this regard, the Human Rights UN Committee suggested that Mexico ensures that only confessions made or confirmed by the judicial authority are admissible as evidence against the defendant, and that burden of proof in cases of torture is not applied to the alleged victims¹³, although such provision has been incorporated in 2008's penal reform, an exception remains for cases likely linked to organized crime.¹⁴

7. With regard of these situations, several international organisms had appointed the need to eliminate the *arraigo* from Mexican law. It is also noteworthy that parliamentarians from different political parties had promoted recently at least two law initiatives to abolish the *arraigo* from the Constitution¹⁵.

Deployment of the military in security operations and application of military jurisdiction to cases of abuses by the military against civilians

8. The most emblematic response of the Calderon administration to insecurity has been the deployment of militarized security operations. According to the administration, the presence of the military in the streets would reverse the trend of insecurity in Mexico and therefore the military was entrusted with tasks previously reserved for the police and other civil authorities; tasking the military with carrying out arrests and searches and dismantling drug distribution centers; and in certain states, the eradication of illicit plants.

9. All over the country, soldiers patrol the streets and set up roadblocks to search people and cars without civilian supervision. Even more worrying is that in many places the military has taken charge of investigating crimes and the custody of detained individuals as well as taking control of police units in various cities and states of Mexico. Forty-two months into the Calderon administration, almost 50,000 military troops are deployed in various regions

¹² Cases of: 25 policemen in Tijuana: 11 Tijuana policemen, 4 civilians in Tijuana, 2 federal police agents in Tijuana and the case of 19 policemen and a civilian in Tabasco.

¹³ Concluding Observations of the Human Rights Committee. 98th session. New York, March 8 to 26, 2010.

¹⁴ See Article 20, Paragraph B, section V of the Constitution of the United Mexican States.

¹⁵ <http://www.senado.gob.mx/gace61.php?ver=gaceta&sm=1001&id=3442> y <http://www.senado.gob.mx/gace61.php?ver=gaceta&sm=1001&id=3560&lg=61>

of the country in public security operations, carrying out activities designated for the civilian police.

10. The decision to deploy Mexican soldiers as the dominating force in counter-drug operations has not increased security in Mexico. On the contrary: as of June 2010, roughly 23,000 people had been killed in drug-related violence in the past three and a half years. In 2009, more than 8,200 drug-related killings were reported; by June 2010 over 6,200 people had been killed so far in the year.¹⁶ The militarization of public security has instead subjected the civilian population to numerous human rights abuses. The failure to hold security forces responsible for their actions when they violate human rights perpetuates more abuses as well as weakening civilian ability to trust in and collaborate with security institutions in the struggle against any type of crime.

11. One indicator of the abuses committed by the armed forces is the number of complaints received by the National Human Rights Commission (CNDH) against Mexico's Defense Department (Secretaría de la Defensa Nacional, SEDENA). The number of complaints has increased almost 1000% in the first three years of Calderon's six-year term, passing from 182 in 2006 to 1,791 in 2009.¹⁷ The human rights violations referred to in the complaints include frequent acts of torture, arbitrary detentions, searches without warrants, sexual abuse, forced disappearances and arbitrary executions.

12. Further, despite the fact that Article 13 of the Constitution and various international human rights treaties prohibit the use of military jurisdiction to investigate, try, and punish alleged cases of human rights violations, the Mexican government continues to promote the application of military jurisdiction in these cases. Therefore, whenever a member of the military is involved in a crime committed against a civilian, the civilian judicial institutions decline their jurisdiction over the case so that it can be investigated under military jurisdiction, a system of justice under the command of the Defense Department (that is, it is part of the executive branch, not the judicial system). What ensues is a process with a foreseeable ending: the acts are investigated by the Military Attorney General's Office and, even in the event that the accused is actually brought before a military judge, the case ends almost inevitably in impunity.

13. Moreover, in August 2009, the Supreme Court refused to enter into an analysis of the merits of a case challenging the constitutionality of Mexico's Code of Military Justice, which establishes that military authorities investigate and try human rights violations committed against civilians. Instead, the Court declared that victims of human rights violations have no legal standing to challenge the application of military jurisdiction to their cases. The Supreme Court's decision cancels all possibilities for victims of military human rights

¹⁶ These are the figures reported by the Mexican national newspaper *Milenio*, which monitors these numbers on a continuous basis (reporters in charge: Roberto López, Rafael López, and Melissa del Pozo).

¹⁷ See the corresponding annual reports of the CNDH: www.cndh.org.mx.

violations to avoid the processing of their cases by military authorities, and thus eliminates all domestic remedies that could protect the victims' rights to due process and an independent judicial process. This in itself places Mexico in violation of international law.

14. The debate on military jurisdiction is part of a process to strengthen civilian controls over the Armed Forces, a necessary component in any democracy. What it is being debated is not the existence of military jurisdiction, but its limits, with emphasis on which issues should be excluded from the reach of military discipline. In this sense, the Army must be accountable to civilian authorities for human rights abuses, such as torture, rape, homicide, forced disappearance, and others; it is undeniable that these abuses are not exclusively infractions of military discipline but rather are violations of civilians' fundamental rights.

15. International human rights law is unanimous in holding as unacceptable that victims of military abuses must turn to military bodies to search for justice. In the Sentence for the case *Radilla Pacheco vs. Mexico*, the Inter-American Court of Human Rights ordered the Mexican State to make legislative changes to ensure that human rights abuses are investigated and tried in civilian jurisdiction. Yet as of today, Mexico has not complied with this binding legal order. Rather, the Army recently launched a new website on human rights in which it defends military jurisdiction as legal and in compliance with international standards,¹⁸ despite the enormous number of rapporteurs and other human rights bodies – now including the region's highest tribunal – that have made clear that military jurisdiction in Mexico is not independent nor impartial and must not investigate human rights abuses.

Incompliance of the Sentence for the case of Rosendo Radilla v. Mexico

On 23 November 2009 the Inter-American Court of Human Rights issued a sentence against the Mexican State for the forced disappearance of Mr. Rosendo Radilla Pacheco in 1974. However, the State has accomplished only one of 10 specific actions that the Court ordered: the publication of various paragraphs of the Sentence. No further investigation has been initiated or continued to find the victims of the "*guerra sucia*" ("dirty war"), nor has the State sanctioned any responsible of this acts. Similarly, as it has been mentioned before, Mexican State has failed to comply with the obligation to amend Article 57 section II paragraph a) of the Code of Military Justice, which favors an ambiguous interpretation that is extensively invoked to implement the military jurisdiction to cases of human rights violations on civilians and has ignored the obligation to adjust the offense of the crime of forced disappearance, referred in Article 215 - A Federal Penal Code.

¹⁸ <http://www.sedena.gob.mx/index.php?id=919>

The disappearance of persons in the state of Coahuila and on the northern border of Mexico

The war against the organised crime, 'decreed' by the President of the Republic in 2006, has become a war against citizens and has left countless forced disappearances, extrajudicial killings, including those of journalists, as well as a serious increase in attacks against human rights defenders, among other violations of human rights. This reality is confronted by the local and federal authorities with a clear and intended policy of hiding and omitting their responsibility to guarantee the security of the population.

The Diocesan Centre for Human Rights Fray Juan de Larios, A.C. [Centro Diocesano para los Derechos Humanos Fray Juan de Larios, A.C.], with headquarters in Saltillo, Coahuila, is aware of 60 cases of disappearance of persons from 2007 to date. Among them, there are those of a 27-year-old woman and a nine-year-old child. However, the media report at least 200 disappearances in the state of Coahuila.

In a recent meeting of relatives of disappeared persons of the Central-Northern and North-Eastern region of the country, there were reports of the disappearance of 15 men in the state of Nuevo León as well as of that of 26 persons in Chihuahua, most of them women. Organisations of relatives in Tijuana, Baja California, report 240 disappeared persons, whilst in the municipality of Cuencamé, Durango, there has been a report of 60 men and women.

The profile of the alleged authors varies: whilst in the state of Chihuahua, members of the Mexican Army or of various police forces have been identified in the majority of cases, in the other states of Nuevo León and Coahuila, there is only data on the involvement of members of these military and police forces in relation to some cases as the majority of them can be attributed to organised criminal groups.

Among the cases' shared elements, we consider that: the formal complaints that are submitted are not investigated as a disappearance of a person or as another similar offence, based on the argument that the offence is not defined or that there are no elements to generate a line of investigation. Furthermore, in many cases, the public officers intimidate the families, by implying that 'their relatives disappeared for a reason'; thus, that there is nothing else to investigate, and even suggesting that they should not submit a formal complaint. In those cases in which the families may contribute with elements in order for the competent authority to initiate an investigation, these do not do so given the involvement of persons with 'power in the region'.

On the other hand, in those cases in which there is information on the involvement of members of the Mexican Army or of police forces, these investigation lines are discredited or rejected immediately. Several families do

not dare to submit formal complaints, as they do not trust the authorities given that they consider that these are involved with the same criminal gangs that have taken their families and therefore fear retaliation, including the killing of their relative or threats to kill them if they complain.

The shared profile among the disappeared persons is that of being ordinary citizens and workers; there is no data to identify them on the basis of an activity or interest in common. The public and criminal condemnation, which mostly the mothers, spouses, daughters and grandmothers have dared to express, has placed them in conditions of high vulnerability. Their demand for access to justice has found a response of omission and neglect – in addition to indolence – by the entities in charge of the administration of justice.

Security, Militarization and Military Jurisdiction at the Northern Border

The MOCIPOL is conformed by the Human Rights Center Tlachinollan, FUNDAR, and INSYDE, and functions as an external control mechanism claiming civil participation and involvement in monitoring action and performance of the Police and Security Forces of the region in la Montaña, Guerrero, Mexico.

It has among its objectives to provide police and security forces on the region of la Montaña in Guerrero, from external perspective, civil, impartial and independent investigation it report the performance perceptions and satisfaction of citizens regarding their service.

Given the severe conditions of poverty and marginalization, the region of la Montaña is a scenario for the systematic violation of civil rights. Violations such as arbitrary detention, extortion, imposition of excessive fees, to cruel, inhuman, degrading treatment are common mechanisms of action of the police.

There are 24 security corporations operating in the region. The common factor is that they are institutions with a lack of resources, which are not trained, have no labor rights and are unable to react. The historical role of the police in the region is to look after the interests of the City Council (being a political office) and not public safety.

From 2008 to April 2010, the MOCIPOL has received 281 complaints. 88% comes from civilians and the remaining 12% of complaints received are from elements of the security forces.

In relation to the institution, authority or corporation responsible in the complaints are: 33% the Municipal Preventive Police; in 26% of the cases the Ministerial Investigative Police; 16% the Military and 8% of the cases the Town Hall. Regarding the allegations, the complaints are for: arbitrary detention, excessive use of force, burglary, extortion, damage and intimidation.

From the documentation of the cases has been found that:

Malpractice of the Military

- They perform investigations.
- Act in duties which are responsibility of the Civil Police.
- They operate from anonymous reports
- Break-in to “investigate”.
- They interrogated at military installations.

Ministerial Police. Detected Malpractice

- Develop mechanisms of corruption and extortion.
- Do not have mechanisms to implement strategic operations to investigate.
- There is no control mechanisms at the interior of the corporation.

AMENDMENTS TO THE CRIMINAL JUSTICE SYSTEM

ELABORATED BY:

Instituto Mexicano de Derechos Humanos y Democracia
(IMDHD)

Centro de Derechos Humanos “Fray Francisco de Vitoria”

The implementation of the penal reform in Mexico

The Mexican system of justice has great shortcomings and this is the current reality in the country. For example, in cases of torture, the judges grant no value to the victims' witness statements nor to the reports of experts submitted by them on the basis of the Protocol of Istanbul; they are only given a status of opinion and not of technical evidence.

Another example is the lack of scientific evidence, which supports the charges against the alleged authors of offences; this has resulted in a common practice of 'manufacturing of those responsible'.

It is foreseen that the important problem of lack of access to justice may only be solved with a total reform of the system.

Thus, a constitutional reform was published on 18 June 2008; it initiated the process of transformation of our criminal justice system, in order to leave behind the inquisitorial model and achieve one of adversarial type, that is oral, fair and able to guarantee the human rights of the victims of offences as well as those of the accused. The reform established a period of eight years to complete the reform as much of the federal system as that of the 31 states and the Federal District.

Aspects in favour of the protection of human rights as well as aspects explicitly against it, such as the following, coexist in this reform:

- The inclusion of the concept of '*arraigo*' [informal and provisional custody] in breach of the various reports of the UN mechanisms, which have described the criminal *arraigo* as a form of arbitrary detention and recommended its removal from domestic legislation.
- It maintains the regime of 'automatic' preventive imprisonment for some offences.
- The establishment of a regime of exception, with restrictions to fundamental due process guarantees, in relation to those persons accused of being members of organised criminal groups.

The context of insecurity and violence experienced in the country has led to the authorities, in matters such as the previously-mentioned ones, having called for maintaining these and even increasing them. For example, last May, all the country's Attorney-Generals declared to be in favour of a new reform, which would allow the expansion of the application of the *arraigo* to offences of the common order and not only to offences of the organised crime.

In January of this year, an amendment to the Criminal Code of the state of Chihuahua was approved; it expanded the scope of preliminary evidence, thereby weakening the principle according to which every piece of evidence must be submitted and cleared during the hearing. As may be observed, this

type of reforms against the reform results in a discreditation of the protection of human rights.

With regards to implementation, the level of progress of the reforms is the following. In the case of the federal reform, the Coordination Council for the implementation of the Criminal Justice System [Consejo de Coordinación para la implementación del Sistema de Justicia Penal] was only established in June 2009. This entity recently submitted the draft Criminal Proceedings Code, which is a fundamental piece for the implementation of the reform and must still be granted the approval of the Congress.

In relation to local reforms, only six states in the Republic already have ongoing reform processes. In two of them, it is applicable in its totality and in the other four, its operation is partial. Among the remaining, three states recently initiated their reforms and the others – 22 and the Federal District – still have not started.

The capacity-building offered to date has given priority to the training of state prosecutors and judges; to a lesser extent to that of court-appointed lawyers and quasi not at all to experts. Thus, the development of professional skills, which may contribute with scientific and objective evidence, is not a priority; this is a matter of concern given that this part of the new system could be what may mark a before and an after in the Mexican justice sector.

In this great reform, the federal government has not achieved clear leadership nor does it have a comprehensive plan of implementation; there is therefore a risk that the states apply different models of reform.

We wish to attract the attention of the Office of the High Commissioner to the following issues:

1. There is no guarantee, in the reform, that human rights are a fundamental element and there is a clear risk that authoritarian measures could increase.
2. Given that there is no comprehensive plan for the reform, it may happen that the federal and local reforms do not develop into a harmonised system, but rather sub-systems that could end up repeating the flaws of the old system.
3. There is no policy of inclusion of the participation of civil society and therefore also no interest by the latter in following-up and supervising this reform, which should be a momentum for human rights.

FREEDOM OF EXPRESSION

**ELABORATED BY:
ARTICULO 19**

Introduction

1. The most serious violations of the right to freedom of expression in Mexico are
 - failure to decriminalise defamation in all states and restrictive use of defamation law; and
 - violence against those who exercise the right to freedom of expression, alongside with lack of adequate rules and institutions to address these attacks, leading to a climate of impunity.
2. Violations of the right to freedom of expression in Mexico are not limited to these two areas. Hence, we would like to point other violations namely a failure to adopt an adequate framework for broadcast regulation that lacks independence from government; the failure of the Government to prevent monopolisation of the media and failure to foster community broadcasting; and the failure of the Government to operationalise fully the right to information in the country.

Defamation

3. Reforms to decriminalise defamation in the Federal Criminal Code were approved in recent years. At the same time, we note that this reform is only partial, given that crimes of defamation, slander and libel still exist in 16 states envisaging these crimes with prison sentences for defamation up to four year imprisonment. In states where the defamation is a criminal offense, it continues to be used by both officials and private individuals to hinder journalistic investigations. Defamation has not only been used to hinder journalistic investigations but has paved the path to violate other human rights¹⁹.

Information related to violence against journalists

4. Mexico has been recognized as one of the most dangerous countries in the world in which to practise journalism. In 2008, the International Mission to Document Attacks against Journalists and the Media²⁰ observed that 24 journalists were killed from 2000 to April 2008. Moreover, eleven journalists remain missing since 2000 to date. Just in 2009, 11 murders of journalists were documented and at least 6 journalists have been murdered in 2010. The National Human Rights Commission of Mexico has reported

¹⁹ For example the case of Lydia Cacho.

²⁰ In April of 2008, the International Mission to Document Attacks against Journalists and the Media, consisting of representatives from 12 international organisations which work for the defence and the promotion of freedom of expression and from UNESCO, took part in a visit to Mexico. The report is available at: <http://www.article19.org/pdfs/publications/mexico-shadow-of-impunity-and-violence.pdf>.

even higher figures: on 25 December 2009, it declared that “from 2000 to date 57 killings of journalists were registered”²¹.

Perpetrators

5. Statistics from 2009 show that an average of more 65.57% of aggressions were committed by state agents. Contrary to government public statements on the organised crime being the chief perpetrator²². From the total of aggressions committed by local public officials in 2009, 59.38% were committed by local security forces. At federal level, 88.89% of the aggressions committed by state agents were committed by public security forces (including civil and military forces)²³.

Impunity and pending legal reforms

6. A number of problems are identified in the Government’s investigations into cases of aggressions committed against journalists and media workers noted above. In particular, these include a prevailing failure to address the cases of aggressions against journalists including omissions, delays and lack of diligence in the investigations.
7. The Office of the Special Prosecutor for Crimes against Journalists “FEADP”, recently restructured to be named Office of the Special Prosecutor for Crimes against Freedom of Expression “FEADLE”, but with no substantive investigative tools, was established in 2006 to address these killings and aggressions. To date, the institution achieved little, and none of the crimes against journalists have been solved. This has largely been attributed to a lack of political will, and the poor capacities of the FEADP/FEADLE to investigate. Due to defective investigation, cases of aggressions against journalists rarely reach courts. As an example, the FEADP reported charges being brought in only four cases in four years.
8. On April 2009, the Mexican Chamber of Deputies approved a legal reform aimed at confronting a prevailing impunity for these crimes. This reform is a positive step, but it is far from being complete. Prior to entering to force, the reform has to be approved by the Senate. The reform would include “crimes committed against freedom of expression exercised through the practice of journalism”. However, this reform is not sufficient to protect freedom of expression. The main shortcoming is the failure to provide federal authorities with the power to investigate crimes qualified as those falling under local jurisdiction, where the majority (85%) of the cases rest.

²¹ Press release available at: <http://www.cndh.org.mx/comsoc/compre/compre.asp>

²² During the Universal Periodic Review of Mexico by the Human Rights Council in February 2009, the Secretary of the Interior expressed that the organized crime is the main perpetrator of the aggressions against journalists.

²³ Report 2009, *Entre la Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en México*, ARTICLE 19 and the National Centre for Social Communication, February 2010. Report available at: http://www.articulo19.org/index.php?option=com_content&view=frontpage&Itemid=1&lang=es

Preventive measures

9. In 2008, the International Mission to Document Attacks against Journalists and the Media called the Government to establish measures to prevent aggressions against journalists, since then ARTICLE 19 particularly promoted a similar mechanism implemented in Colombia on preventing human rights violations. The Mexican Government initiatives to address aggressions against journalists are focused on investigation, although they have been ineffective. No policy of prevention and protection for journalists and media workers has been put in place at all.²⁴

²⁴ Various human rights organisations and the Special Rapporteur for Freedom of Expression of the Organization of American States have address the need of implementing preventive mechanisms to protect journalists in Mexico (Proceso magazine, Jesús Esquivel, January, 2010)

ECONOMIC, SOCIAL, CULTURAL AND ENVIROMENTAL (DESCA)

ELABORATED BY:

Centro de Acción y Reflexión Laboral (CEREAL)
Centro de Derechos Humanos “Fray Francisco de Vitoria”
Centro Mexicano de Derecho Ambiental (CEMDA)
Coalición Internacional para el Hábitat, Oficina para
América Latina (HIC-AL)
DECA Equipo Pueblo
Instituto Mexicano de Derechos Humanos y Democracia
(IMDHD)
Proyecto de Derechos Económicos, Sociales y Culturales
(PRODESC)

The context of poverty and economic, social, cultural and environmental rights in Mexico

Ten years after having committed itself to the Millennium Declaration, not only poverty but also inequality remain two of the most important challenges in matters of social development. The delays accumulated for years, which have been recognised in the 2006 Progress Report on the Millennium Development Goals in Mexico, remain valid: the absence of the environmental element in development policies; the lack of comprehensiveness of social policy due to insufficient social protection actions, in particular in relation to unemployment and collective risks; budgets and programmes mainly aimed at the employed population in the formal sector of the economy; the social exclusion that jeopardises the strengthening of democracy.

With regards to the Human Development Index (HDI) in Mexico, UNDP has recorded, over the past years, the considerable disparities among regions and federative entities in the country, even though Mexico is positioned close to the countries with the highest levels of development. For example, it is noticeable that the North-East of the country is the area with the highest HDI (some places are at the same level as European countries) and the southern region offers the lowest HDI (some places have a similar HDI to the Occupied Palestinian Territories). Among the causes of this inequality, UNDP puts emphasis on the precariousness of investments and the obstacles faced by the public administration at local level, and highlights internal as well as external migration as the consequence of this regional inequality.

In relation to poverty, the new methodology for multi-dimensional measuring of the National Council for Social Development Policy Evaluation [Consejo Nacional de Evaluación de la Política de Desarrollo Social, CONEVAL] establishes that *'a person is in a situation of multi-dimensional poverty when he or she does not have the enjoyment of at least one of his or her social development rights guaranteed, and his or her income is insufficient to obtain the goods and services he or she requires to meet his or her needs'*²⁵. The most recent data (2008) indicate that 44.2% of the population in Mexico – i.e. 47.19 million people – are in a situation of multi-dimensional poverty. In the state of Chiapas, this percentage reaches 76.7% of the population²⁶. On the other hand, 48.7% of the national population – i.e. 51.97 million people – receive an income below the welfare line. The population that is vulnerable due to social

²⁵ Metodología de Medición Multidimensional de la Pobreza en México [Methodology for the multi-dimensional measuring of poverty in Mexico], available at: http://www.coneval.gob.mx/contenido/med_pobreza/8803.pdf.

²⁶ Estimates of the National Council for Social Development Policy Evaluation [Consejo Nacional de Evaluación de la Política de Desarrollo Social, CONEVAL] on the basis of the Module on Socio-economic Conditions [Módulo de Condiciones Socioeconómicas, MCS] and the National Poll on the Incomes and Expenses of Homes [Encuesta Nacional de Ingresos y Gastos de los Hogares, ENIGH], 2008. Further information at: www.coneval.gob.mx.

shortages represents 33%, i.e. 35.18 million people are in this situation. In terms of social deprivation, CONEVAL states that 77.2% of the population, which is equivalent to 82.37 million people, have at least one social shortage.

However, the situation is even worse in the country, given that the violations of economic, social, cultural and environmental rights are not only evidenced in terms of poverty and inequality. The measures adopted to date seem insufficient and the reconsideration of the development strategy with a human rights perspective can no longer be postponed.

Situation of the right to education

Over the past 25 years, the governments in power have maintained a public policy of dismantlement of social programmes and institutions, which has been characterised by attacks to the access to public services and to the quality of the latter, which adds up to the lack of economic income resulting from the economic crises.

Education suffers from serious problems, ranging from structural ones, such as the disarticulation of the educational system between the federal and state levels, to the creation of ad hoc measures designed to share aspects relating to planning and budgeting with the National Education Workers Union [Sindicato Nacional de Trabajadores de la Educación]: the management of the national education system, the political decisions relating to the school curriculum, educational programmes and assessments of the quality of education.

This is reflected in the negative results in the coverage, permanency and quality of education, and which mainly affect members of indigenous peoples, persons with disabilities, agricultural day labourers and persons living on the streets²⁷.

Thus, it is necessary:

That the State harmonises the legislative framework with international obligations, in order for education to be recognised as a right and that this approach be incorporated into the public policies, which are a primary responsibility of the Federal Governmental, but mainly ought to be implemented at the level of local governments;

To take emergency measures to combat the educational lag of persons over the age of 15 years, as requested by the Special Rapporteur on the Right to Education. It is urgent that this plan, first, pays attention to indigenous persons, with a priority on women, who are those who have the highest level of illiteracy, school lag, over-age. Official data (2000) have made it possible to ascertain an improvement in the situation of women; however, the percentage of illiterate women over the age of 15 years is of 3.9% of all women in comparison to that of the men, which is of 3.3%.

To include civil organisations in the Social Participation Councils, given that the governments of the entities currently prevent the admission of critical voices²⁸. One example of this is the issue of sexual and reproductive education taught in the basic education system. In 2006, the United Nations Committee on the Rights of the Child issued a recommendation in relation to Mexico on

²⁷ United Nations Educational, Scientific and Cultural Organisation (UNESCO). EFA Global Monitoring Report. Overcoming inequality: Why governance matters.

²⁸ Office of the High Commissioner for Human Rights in Mexico. *Diagnóstico sobre la Situación de los Derechos Humanos en México* [Assessment of the situation of human rights in Mexico], 2003. Recommendation 27, p. IX.

the need to improve the quality of sexual education. There remains reluctance among some public officials in several federative entities, supported by groups of parents with conservative ideas and sectors of the Catholic Church, who hinder or prevent the improvement of the quality of sexual education, aimed at it being taught in accordance with scientific, and not moral, criteria.

To develop the legal bases for the recognition and standing of trade union movements in the education sector, which are independent and plural, with a view to delimit their areas of intervention, and which would enable the coordination of the education system based on the needs of the population, as well as for an end to the political and instrumental use of the teaching profession, such as the obligation to join the formation of political parties or the embezzlement of economic resources for activities beyond education.

Situation of the human right to adequate housing in Mexico

We hereby offer a brief assessment of the implementation of some of the recommendations issued in relation to Mexico by the former UN Special Rapporteur on Adequate Housing (Document E/CN.4/2003/5/Add.3, March 2003). Seven years after his visit, the recommendations have only partially been addressed and there is rather an increase in the right to housing not being complied with for considerable sectors of the population as well as in measures of a regressive nature when complying with the State's obligations in this field. There is also considerable concern at the State's implementation of mega development projects (among others, the case of the hydroelectric project of La Parota), that are frequently carried out in violation of the right to housing, of other economic, social and cultural rights, of the right to information and consultation and in the absence of mechanisms, which allow the affected persons to obtain satisfactory judicial protection and access to compensation and restitution measures that are equivalent to what they have lost.

In his recommendations, the Rapporteur mentioned **the importance of integrating a human rights perspective into the laws, policies and sectoral programmes on housing**. This is based on article 133 of the Constitution, which states that international instruments that have been ratified by Mexico are part of the supreme law of the Union. On the other hand, the Housing Law, approved in June 2006, regulates article 4 of the Constitution, which establishes the right to housing; however, the fact that it limits its scope to the family made it necessary to have long negotiations in order to establish its universality in art. 3 of the Housing Law. Of the seven elements established in the CESCR's General Comment 4 for the definition of the right to adequate housing, only three of them are explicitly mentioned in article 2, which defines what the Law considers to be decent housing: security of tenure, habitability and availability of infrastructure and services. Given that this Law is one of the few instruments, in relation to which efforts were made to translate, into various articles, the obligations committed to by Mexico in matters of economic, social and cultural rights, the mentioned limits prove that there remains a lot of work ahead to strengthen awareness on the issue, to build the capacity of the actors that are responsible for translating these into instruments, procedures and actions aimed at implementing them, and to overcome their reluctance to address the issue. It must also be said that the Law has not yet been regulated.

Furthermore, in relation to the issue of evictions, the Rapporteur recommended the **creation of a task force, with the participation of civil society, in charge of monitoring the issue, and 'to keep a public record of evictions carried out and to continually train federal and local judges and magistrates in the application of international human rights treaties'**. Nowadays, it is still necessary to proceed to the creation of concrete measures to avoid them, to

design the adequate instruments to record them and the mechanisms to assess their impact and to follow-up on them.

Another of the Rapporteur's recommendations that still requires urgent attention is the **reorientation of the national housing policy to meet the needs of the poor, 'with more emphasis on the social aspects of housing rather than viewing housing as an economic sector'**. In this regard, he recommends that the authorities do not spare efforts 'to support various modalities that could lead to social production of housing and community'. The current Housing Law intends to promote accommodation aimed at low-income sectors and extensively includes the issue of the social production of housing. However, it does not include specific mechanisms to operate it, and it is therefore necessary to build a comprehensive system of support instruments; this is a task that makes slow progress given that a lack of interest, fears and pressure by powerful groups, that are against the development of such a form of production, prevail.

The human right to food and food sovereignty

1. Mexico does not enjoy any food sovereignty nowadays. According to Oxfam, an international organisation, since the signature of the North American Free Trade Agreement (NAFTA), Mexico has spent 80 thousand million dollars in the import of food, with a subsequent deficit in the agro-alimentary trade balance of 1,435 million dollars²⁹. This is directly linked to the manner, in which the national agricultural activity has been centralised in a few hands, in particular in those of great producers, leaving small and medium-size farmers out, who, with well-directed support, could generate sufficient supply for the local market and greater development in rural areas.
2. In October 2009, the Ministry of Agriculture, Cattle Farming, Rural Development, Fishing and Food [Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, Sagarpa] and the Ministry of the Environment and Natural Resources [Secretaría de Medio Ambiente y Recursos Naturales, Semarnat] approved the undertaking of experimental planting of transgenic corn. In response to this decision, several food and agricultural production experts, civil environmental and human rights organisations, as well as farmer movements, expressed their rejection of the planting of transgenic corn, given the risks it entails for the production of this seed, which stems from our country. The following are among the grounds for opposing this experimental planting: 1) Corn is an open pollination plant, i.e. a plant that pollinates others. Thus, there is a risk that native varieties may blend with the genetically modified ones, thereby putting an end to national biodiversity; 2) The Monsanto Bt corn is designed to generate specific resistance to the lepidopterous larvae, which bring together moths and butterflies, including the Monarch butterfly³⁰; 3) There is a risk that wild and cultivated colonies, for which genetic modifications were not designed, may be contaminated by transgenes; 4) There are biological consequences due to the use of transgenes and to the contamination that arises from these, as they generate plagues of weeds that are resistant to herbicides and pesticides; 5) The harmlessness of genetically modified food and seeds cannot be guaranteed; this is stated by the World Health Organisation (WHO) itself, which also stated that there are doubts as to the strictness of the tests made on these food and seeds; 6) In the case of GMOs and their harmful effects on health, these have been observed several years after their consumption, as has occurred in Japan and the

²⁹ Pérez U. Matilde, 'En materia alimentaria para México, el TLCAN está reprobado: Oxfam' [In alimentary matters for Mexico, NAFTA has failed: Oxfam], *La Jornada*, 2 January 2010, p.6.

³⁰ Nieto Hernández Julio César, 'México, el gran laboratorio de pruebas de Monsanto' [Mexico, Monsanto's great trial lab], *Contralínea*, weekly publication, Week of 22 to 28 November 2009, Year 8, Number 158, pp. 22-25.

United States; thus, the argument according to which there is no evidence that they harm human health is not valid; the State should apply the precautionary principle and give priority to health and human life rather than to the interests of transnational biotechnology and agro-industry companies; 7) The contamination of seeds by GMO may entail a payment, on behalf of the farmers, for the use of patents, pursuits, investigation and demands for alleged violations of the right to intellectual property; 8) The reduction in agricultural biodiversity and the loss of food sovereignty; 9) The payment for modified seeds, which are up to 30% more expensive, and a potentially lower yield of the crops; 10) The disappearance of native seeds, such as the *criollo* corn of Mexico, which will be exposed to the risks entailed in the experimental planting approved by the Federal Government in 2009³¹.

³¹ See Marielle E, Catherine *op.cit* and Julio César Nieto Hernández, *op.cit*.

Situation of the right to health

1. Persons living with HIV/Acquired Immune Deficiency Syndrome (AIDS) remain one of the most discriminated groups in our country. The Mexican authorities have not been able to design an efficient policy to avoid the spread of the Human Immunodeficiency Virus (HIV), which has been evidenced by the increase in the number of cases. The Minister of Health, Córdova Villalobos, has emphasised that the policy and actions aimed at preventing contagion have had good results, as the rate of HIV infection is of 0.4% and the Millennium Goal set for 2015 by the WHO is this component – which, for our country, is not to exceed 0.6% in the rate of infection³² – has therefore been met. Up until September 2009, the Ministry of Health (Secretaría de Salud, SSa) had 31,203 HIV/AIDS carrier patients under treatment. The Ministry informed of an increase of 33% in the latter's number in comparison with the number recorded the previous year. On the other hand, the National Centre for HIV/AIDS Prevention and Control [Centro Nacional para la Prevención y el Control del VIH/SIDA, Censida], through its webpage, informed of, and notified, 102,000 cases, the ages of which range from 14 to 49 years, of which 21,000 relate to women and the remaining to men. What is of concern is that this same body recognises that there still remain many persons, who live with the virus without knowing it, and it is therefore estimated that the number could increase up to 380,000 HIV/AIDS-carriers. The economic crisis, the lack of capacity to produce treatments at national level and the dependence on transnational pharmaceutical companies jeopardise the physical and economic access to antiretroviral drugs. Only a devaluation of our country's currency – which reached 15 pesos for one dollar in the first months of 2009 – has made the purchase of medicines more expensive and has jeopardised governmental commitments to covering the treatment.

³² Dirección General de Comunicación Social [General-Directorate of Social Communication], 'Hay en el país 57 clínicas especializadas en atención del VIH' [There are 57 specialised HIV clinics in the country], Communication 410. Ministry of Health. León, Guanajuato, 29 November 2009.

The right to the Environment in Mexico

In Mexico, there is a great variety of laws and norms in environmental matters, which intend to preserve and restore the ecological balance, the protection of the environment, and natural resources; the objective of these provisions is to promote sustainable development and to establish the bases to guarantee the right to live in an adequate environment for the development, well-being and health.

We do have environmental policy principles and the instruments for their application, such as the prevention and control of air, water and soil pollution, the participation in the preservation and restoration of the ecological balance and the protection of the environment, as well as a great variety of mechanisms of coordination, inducement and agreement among authorities, the social and private sectors, as well as persons and social groups, in order to ensure compliance with, and the application of, the law.

The challenge is the application and effectiveness of environmental norms; this is deficient and sometimes non-existent, and leads to damages to the environment, ecosystems, natural resources and health of persons, given that the condition of being affected, due to a lack of actions by the state, including in cases of concise and specific demands, results in serious health problems for entire communities, without any action taken as a consequence.

On the other hand, we face a system of access to environmental justice that, despite recognising the existence of the right to an adequate environment, alleges, in the practice of the courts, which under the protection of brief and short-sighted criteria, that there is no legal interest and that there is a need for the existence of the condition of being affected in a particular and direct right. On other occasions, the lack of access to justice is reflected in the impossibility of accessing the jurisdictional bodies to defend the rights of a community to an adequate environment, due to a lack of suitable mechanisms for it, given that the instruments currently in existence are slow procedures and with no clear results.

We wish to attract the attention of the Office of the High Commissioner to the following issues:

1. Despite the extensive legislation that exists in environmental matters, it is not possible to access the judicial courts to defend the right to the environment.
2. The lack of expeditiousness in administrative procedures and in the investigation of complaints causes serious harm to the environment and health, and, in addition, there are no mechanisms nor instruments to undertake the reparation for the harm caused.
3. The state is not acting consequently to the environmental problems that exist, but in many cases, it rather denies the condition of being affected despite

the fact that there is considerable convincing evidence of the pollution.

4. The indigenous and farming communities are the most affected, are those discriminated in the access to natural resources, such as water, and are those who suffer the consequences on their health or life, above the bad management of services, works and activities. Furthermore, there are not informed nor consulted in the implementation of works.

Labor Rights Violations in Mexico

In Mexico, especially after NAFTA, we have observed that the government has been unable to create social and economic policies that can guarantee decent work, competitive wages and sustainable development.

Most of the time, people living in poverty, exclusion, and deprivation do not have access to the entitlements available to the better off, and for that reason they are trapped in poverty, specially vulnerable populations such as indigenous migrants³³. For instance, in Mexico, workers are often denied the right of freedom of association or the authorities override the will of workers or communities benefiting transnational corporations' interests. Moreover, in the past year we have experienced a hostile attitude from the government and corporate unions towards organized workers³⁴.

The Mexican government has repeatedly claimed that the increase of foreign direct investment will provide competitive jobs, protections for workers, and development alternatives for communities; nevertheless, this has not happened. In many cases, multinational companies violate Mexican labor law, criminalize the opponents to their practices, and even collude with authorities to suppress human rights³⁵. For example, in August Wal-Mart reported monthly sales profit for \$ 22,567 million pesos representing a 12.7% increase from the year before. Also, one of the concerns is the lack of job creation and loss of more than 3 million 500 thousand jobs in three years. Contractual wages in the country continued with the annual decline .

The protection, enforcement and justiciability of human rights work is a priority that has not been sufficiently addressed by the Mexican government effectiveness and gives ample scope for violations of labor rights by transnational corporations.

There is a concern about the lack of effective programs against child labor. Officially, there are 3.6 million children and adolescents between 5 and 17 years who work and of these, one third work in agriculture, along with construction and mining. The governmental program "Stop Child Labour in Agriculture", aims to remove 6,500 children form child labour by 2015 but it dosent represent event 1% of the total. In addition, the program has no actions to abate the situation in the mining sector.

³³See:http://www.radiobemba.org/index.php/archivos/doc/ongs_evidencian_violaciones_a_los_derechos_hu_manos_en_sinaloa/

³⁴ See: Urgent Action, Repression in Cananea, <http://www.prodesc.org.mx/2010/07/represion-en-cananea-sonora-mexico/>;

³⁵ We name some emblematic cases in which Mexican human rights organizations are working. The list is not an exhaustive one but gives an example of the situation. Cases: Johnson Control's (Centro de Apoyo al Trabajador); Alcoa (Comité Fronterizo de Obreras); Pasta de Conchos (Centro de Reflexión y Acción Laboral); Trabajadores de la Tercera Edad (Pastoral Obrera Ciudad Juárez); Goldcorp and WalMart (ProDESC)

Moreover, the deficiencies of the National Labour Inspection System, especially in matters of health and safety, has been strongly questioned in the latest International Labour Conference in June 2010. The lack of inspection has led to a state of failure and impunity of national legislation across the country.

The mining industry

Lack of inspection

The inspection of the conditions of safety of the work in the mines is fully inefficient. In June 2010, the ILO approved the following paragraph:

The Committee points out that the Governing Body's recommendations on the labour inspection system stem from the findings in paragraphs 75-85 of the Governing Body's report on the accident in the Pasta de Conchos mine which cost 65 miners their lives, where the Governing Body found that the labour inspectorate had failed to satisfy itself that the defects noted had been set right (lighting, dusting, risk plans, etc.). The Committee notes that paragraph (b)(iii) and (iv), the application of which it is examining, and (d), refer to measures the Government should adopt in consultation with the social partners, and observes that the Government's report contains no indication of any such consultation.

Since the approval of the new Official Norm on security in coal mines, the accident rate has increased by 200%.

Impunity

Over the 110 years of coal exploitation in Mexico, there has been absolutely no criminal proceedings in which sanctions for criminal neglect have been decided when there have been deaths of miners, as a consequence of the serious violations of laws and agreements in matters of labour safety. No manager has seen his franchise for the operation of mines withdrawn. In addition, the economic sanctions that have been applied are completely ludicrous when compared to the profits and economic benefits of the companies. One manager in Coahuila recognised that 'it is cheaper and more economic to pay reparations than to invest in better equipment and safety systems'.

Violation of the right to strike

The increasing deterioration in the conditions of safety of the work in coal mines, and the inefficiency and complicity of the labour inspection authorities and the managers, have resulted in an increase of strike movements by mine workers in several regions in the country. However, invariably, the Board of Conciliation and Arbitration [Junta de Conciliación y Arbitraje] has issued illegal resolutions, which declare the strikes non-existent. This situation has extended the strikes through the submission of *amparo* [protection of individual guarantees against actions by the authorities] proceedings and other legal resources for their legal recognition.

Defencelessness of the victims

The Executive (General-Directorate of Mines and Ministry of Labour) as well as the Judiciary have denied legal personality and legal interest to the

survivors of deceased mine workers (either widows, brothers or parents of the worker) in initiating legal proceedings aimed at the application of punishment to those responsible of neglect in matters of safety and hygiene. The only right they have been recognised is that of benefitting from 'humanitarian support' and receiving a pension, which are calculated illegally and without dignity. In the case of Pasta de Conchos, they were denied the right to submit expert engineering and mining reports, which evidenced the technical possibility of recovering the remains of the 63 workers, which were still buried in the mine four years after the explosion.

HUMAN RIGHTS DEFENDERS IN MEXICO

ELABORATED BY:

Artículo 19

Centro de Derechos Humanos “Bartolomé Carrasco “

Centro de Derechos Humanos La Montaña “Tlachinollan”

Centro de Derechos Humanos “Miguel Agustín Pro Juárez”
(Centro Prodh)

Comité Cerezo

Comisión Mexicana de Defensa y Promoción de los
Derechos Humanos (CMDPDH)

Centro Nacional de Comunicación Social

Red Nacional de Organismos Civiles de Derechos Humanos
“Todos los Derechos para Todas y Todos”

Human Rights Defenders in Mexico

People and organisations working to promote and defend human rights face a range of threats and harassment from various state and state-supported actors. Furthermore, they suffer from greater insecurity, as a consequence of the activities of the organised crime and the militarisation currently faced by the country, in a climate marked by impunity. In this context, it may also be added that the work undertaken by the defenders is not adequately recognised nor valued by the authorities and society in general; thus, they have to face many of the prejudices, which still remain in relation to the demands for respect for, and promotion of, human rights.

The Office of the High Commissioner for Human Rights in Mexico analysed 128 cases of attacks and alleged acts of aggression against Mexican defenders, which took place between 2006 and August 2009, and in relation to which they reported 10 homicides and 26 criminal proceedings undertaken against 32 defenders, and which were allegedly initiated in retaliation for their work. In its report, OHCHR-Mexico was able to conclude that impunity reigns in over 98% of the cases³⁶.

Furthermore, there is a widespread practice of undue use of laws and other legal provisions, through the manufacturing of offences or files, in order to incriminate defenders and undermine their work. Another means of aggression against defenders has been the unreasonable use of force in the context of public demonstrations or the undue use of criminal offences. This situation becomes worse when the defenders are members of, or work in, some sectors, such as those committed to claiming the sexual and reproductive rights of women, the defense of indigenous peoples' territories or those working for the rights of specific marginalised or discriminated groups, such as migrants or LGBTTI, who usually face some form of harassment or risk that is specific to their condition or work.

These cases occur within a context of quasi total impunity and lack of clear, coordinated and efficient policy for the full implementation of protection measures for defenders. It is usually the authorities – in particular, the local authorities – which, faced with a lack of clear responsibilities, do not implement these measures efficiently; this is a serious situation as much due to the urgency of protecting these groups and people as to the unprecedented number of defenders, who have had to obtain protection measures: for example, there are currently 107 human rights defenders in the state of Guerrero with provisional measures granted by the Inter-American Court of Human Rights.

Furthermore, the situation in Guerrero is emblematic, given that in the majority of the cases of aggression that have taken place against human rights defenders in this state, it has not been possible to elucidate the facts, the location of the authors and their submission to a law-compliant process. Impunity, the total absence of investigation and of access to justice have made the human rights defenders in Guerrero more vulnerable, given that when the State gives up on the fulfilment of its duty to guarantee and protect, the message is one of impunity for the attackers.

In Oaxaca, the situation for the defense of human rights is increasingly difficult; so far this year, two defenders have been killed within the framework of their activity, thereby

³⁶ Office of the United Nations High Commissioner for Human Rights in Mexico, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los Defensores de Derechos Humanos en México* [Defending human rights: Between commitment and risk. Report on the situation of human rights defenders in Mexico], 2009, available at: www.hchr.org.mx/documentos/libros/informepdf.pdf.

confirming the previously-mentioned lack of investigation and impunity. Illegal deprivation of liberty, torture and physical attacks with firearms and sharp weapons that are carried out against human rights activists have also been reported. Campaigns of defamation and disqualification, through which the private lives of the defenders are made public in a distorted manner, are a common situation; this results in a trend of negative opinion on the people and organisations, whilst there are also alerts that link them to armed groups, which result in the authorities initiating judicial investigations against them.

In brief, we may state that the situation of human rights defenders may be summarised as follows:

- There is an undue use of laws and legal provisions by the State, in order to prevent the work of defenders as well as to criminalise social protest.
- There are instances of manufacturing of offences and files, in order to incriminate human rights defenders and aimed at impairing their work and safety.
- There remains a high number of human rights violations committed against them that remain in impunity; this has negative repercussions on their work and safety.
- It has begun to be reported that the aggressions suffered by human rights defenders come from state, federal, military authorities and sometimes *de facto* powers protected by governmental authorities.

Based on this, and in order to respond to these shortcomings and others that we have been able to identify from our experience as civil human rights organisations, it is fundamental to ensure the following:

- The full recognition of the contribution for the complainant person or organisation (or the relatives, in relation to deceased victims).
- Prioritise and exhaust all lines of investigation relating to the pro-human rights work and activities of the complainant person or organisation.
- Due diligence in the process of compilation of statements from all the witnesses (including the elaboration of questions aimed at identifying whether the aggression took place in retaliation for the activities of the person or organisation).
- The full investigation of threats received by defenders as criminal offences (without the need to wait until a threat has become reality).
- The investigation and punishment, with the full weight of the law, of the civil servants who, through their acts or omissions, have used or have allowed to use in an altered manner the justice system in order to criminalise human rights defenders; for example, through the presentation before the authorities of the latter for offences manufactured despite a lack of evidence and the many irregularities that are usually observed in such criminal proceedings.
- The consideration of the background of acts of harassment, threats or aggressions against the affected person or group or against his colleagues or allies, as well as of any pattern of similar cases.
- The development of a sound case against the authors, with a view to bringing them before the authorities for the committed offences and to prevent that the aggressions be reclassified as minor offences.

THE KIDNAPPING OF MIGRANT PERSONS IN TRANSIT THROUGH MEXICO

ELABORATED BY:

Centro de Derechos Humanos “Fray Juan de Larios”
Centro de Derechos Humanos “Miguel Agustín Pro Juárez”
Frontera con Justicia
Humanidad Sin Fronteras

The kidnapping of migrant persons in transit through Mexico

Through this document, the key points intended to be highlighted are the following: the abuses against persons transiting through Mexico, committed with the collusion or consent of Mexican authorities, the shortcomings in the current migration policy, the problem of trafficking in persons, in particular in relation to migrant women, the situation of the defenders of migrants' human rights, as well as the thematic hearing relating to migrants at the Inter-American Court of Human Rights (IACHR) and the response of the Mexican State to the request for information.

Given its geographic location, Mexico is a country through which thousands of people from Central America transit with the objective of reaching the so yearned-for American dream. For many of these men, women and children, this crossing becomes a nightmare when crossing the Mexican territory, as they are victims of kidnappings committed by members of the organised crime and in some cases with the connivance of the Mexican authorities. Since the end of 2007, organised criminal groups have taken over the communities, through which migrant people transit, in order to carry out kidnappings and extortions in a systematic manner. For this reason, these facts have gained a more serious dimension. Some victims have stated that the municipal police forces are those working most directly with the criminals. Similarly, officers of the National Migration Institute [Instituto Nacional de Migración] and of the Federal Police do not undertake any action to free the victims and arrest the kidnappers. For information purposes, last year, nine thousand people were victims of kidnappings over a period of six months.

Migration is a phenomenon that is inherent to the human race, but nowadays, it is criminalised and hindered. The policies of public security in the administration of President Felipe Calderón have focused on the development of actions to 'combat violence and organised crime'. Therefore, the kidnapping of migrants does not seem to be a priority. On the contrary, this has also resulted in the persistence of all kinds of sexual abuses, physical and psychological torture, killings, extortion, corruption, illegal deprivation of liberty, labour and sexual exploitation, slavery-like practices, organ trafficking and impunity.

The bottom of the problem is that the current migration policy does not guarantee the fundamental rights of every person who transits through Mexico. Among the responses to this issue offered by the National Migration Institute, it is worth highlighting operations of migration verification and the subsequent arrest in migration centres. These

actions are carried out without legal backing and outside the standards provided for by International Law. Such actions are evidence of the low effectiveness in the prevention, investigation, punishment and reparation of the harm caused by the abduction of migrant persons. Furthermore, the Mexican State has not taken any measure to ensure the victims' access to justice. Impunity, neglect and the lack of diligence among the authorities have been a constant element in the coordination of the prevention and investigation of the mentioned offences. In addition, the mechanisms of protection and attention to victims are scarce and only function circumstantially. In fact, the Mexican State has not addressed the recommendations of the various UN Rapporteurships in matters of harmonisation of the domestic legislative framework with international human rights standards.

It is necessary to link the kidnapping problem to the trafficking in persons, which particularly affects women and girls, who are displaced from the southern border to the northern border of Mexico through a long series of clandestine bars and *cantinas*, in which forced prostitution is practiced. Other women are deceived by the traffickers, who lead and coerce them into becoming their sexual partners or they are forced into housework activities in places where they find themselves held; in addition, once they are at the border, they are handed over to cells of the organised crime for their sexual or labour exploitation. The great majority of the kidnapped women are victims of sexual offences.

In this regard, the Special Rapporteur on Violence against Women of the Committee on the Elimination of Discrimination against Women stated, in her 2006 report on her Mission to Mexico, that the illegal migration status, with which the women and girls from Central America transit through Mexican territory, increases their vulnerability to being extorted; to being physically, sexually and psychologically attacked; to being exploited sexually and through labour; and even to being killed by organised criminal groups and corrupt security and migration officers linked to crime. According to the report, the conditions of vulnerability of migrant women and girls are aggravated by the criteria included in the General Law on Population, which prevent the victims with an illegal migration status from accessing the judicial authorities.

The harassment and persecution of the defenders of the human rights of migrant people must be added to this serious situation. The Mexican State continues to criminalise the migrant population as well as the work of defense and humanitarian support undertaken by the homes for migrants, shelters, human rights centres and other civil society

organisations. The defenders of the human rights of migrant people are placed in conditions of high risk, as they are not guaranteed the mechanisms of security, which allow them to develop their work of public denunciation.

Faced with the magnitude of the problem, several organisations have expressed their concern at the kidnapping of migrants in Mexico in a hearing at the IACHR last March. The IACHR has described this situation as a 'true humanitarian tragedy'. In response to the question issued by the president of the IACHR and the Rapporteur on Migrant Workers, Felipe González, on the number of persons, as much by from the State as from the organised crime, who have been prosecuted, the public officials could not give any single example. The response of the Mexican State allows for a glimpse of the lack of efficient actions in response to a fact that has been complained about for over three years by many civil organisations.

In the hearing, the IACHR also issued a request for information to the representatives of the government, to which Mexico responded with a *Report of the Mexican State on the Kidnapping, Extortion and other Offences committed against Migrant Persons in Transit through Mexican Territory* [Informe del Estado Mexicano sobre Secuestro, Extorsión y otros Delitos Cometidos contra Personas Migrantes en Tránsito por Territorio Mexicano], only published in July of this year. This report avoids the serious problem of kidnapping of migrants and intends to divert the attention from the request for information. What the Mexican State intends is to evade its responsibilities of respect, protection and guarantee by apologising on the basis of the lack of 'adequate statistical methodologies'; this, once again, reflects the serious institutional crisis in the administration of justice.

OFFENCES OF THE PAST

ELABORATED BY:

Asociación de Familiares de Detenidos Desaparecidos y
Víctimas de Violaciones a los Derechos Humanos en
México, AFADEM-FEDEFAM

Comisión Mexicana de Defensa y Promoción de los
Derechos Humanos (CMDPDH)

Offences of the past

During the 1960s, 1970s and 1980s, the Mexican State implemented a strategy of violent repression against movements of social and political dissidence, that were planned and specially enforced by the army; this strategy is known as the 'dirty war'. This repression left approximately 1,200 victims of forced disappearance by security forces, and whose whereabouts remain unknown to date.

In 2001, after having accepted Recommendation 26/2001 of the National Human Rights Commission (NHRC) on the human rights violations committed during the dirty war, the Mexican State created the Office of the Special State Prosecutor for Social and Political Movements of the Past [Fiscalía Especial sobre Movimientos Sociales y Políticos del Pasado, FEMOSPP]. This Office concluded that the existence of forced disappearance was fully evidenced in 476 cases³⁷, whilst the Working Group on Enforced or Involuntary Disappearances reported that 208 cases were still pending in relation to Mexico, of which the majority dated back to the decade of the 1970s³⁸. Over its five years of operation, the Office has only provided a result of 16 charges, of which none resulted in a final sentence nor in the punishment of those responsible. Thus, despite international recommendations on the issue³⁹, the Mexican State has continued to commit a violation of the victims' international rights to the truth, justice and reparation.

Despite the lack of results, the FEMOSPP was shut down on 30 November 2006 and its pending work was transferred to the General Investigation Coordination [Coordinación General de Investigaciones]. Currently, President Felipe Calderón continues without assuming a position on the future of the investigations, which were left pending from the Office of the Special Prosecutor.

It is worth emphasising that the previously-mentioned statements have been confirmed in the area of international justice by the Inter-American Court of Human rights in the case of Rosendo Radilla Pacheco⁴⁰. In its decision on this case, the Court has been forceful when it concluded that:

[...] It has been documented that at the time at which Mr. Rosendo Radilla-

³⁷ Fiscalía Especial para Movimientos Sociales y Políticos del Pasado [Office of the Special State Prosecutor for Social and Political Movements of the Past], *Informe Histórico a la Sociedad Mexicana* [Historical Report to the Mexican Society], 2006.

³⁸ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008, paras. 207-217.

³⁹ Report on the Mission to Mexico of the Special Rapporteur on the Independence of Judges and Lawyers, E/CN.4/2002/72/Add.1, 24 January 2002, para. 192, sub-para h); Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008, paras. 216-217; Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/4/41, 25 January 2007, para. 264.

⁴⁰ IACHR. *Case Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgement of 23 November 2009. Serie C N° 209.

Pacheco was detained and disappeared numerous forced disappearances of persons occurred throughout the Mexican territory [...]

[...] Thus, the disappearance of Mr. Radilla-Pacheco is not only, from all points of view, contrary to the right to personal liberty, but it is also framed within a pattern of massive arrests and forced disappearances [...]

[...] Additionally, in the present case the commitments assumed by the State since the creation of the Special Prosecutors' Office have not been fulfilled. After almost three years since the General Investigation Coordination assumed the investigations again, the State has also failed to prove the existence of a renewed commitment with the determination of the

truth taking into consideration the victims' dignity and the seriousness of the facts.

[...] In that sense, [...] 35 years after Mr. Rosendo Radilla-Pacheco was detained and disappeared, and 17 years after the first criminal accusation in this regard was formally filed, there has not been a serious investigation leading to both determine his whereabouts and to identify, prosecute and, if it were the case, punish those responsible for those facts [...]⁴¹.

When describing them as behaviours having occurred in a context of massive violations of human rights, the Court reasserts that the offences committed by state officials during the 'dirty war' are true crimes against humanity and that their prosecution is therefore subject to a special regime of international law, within which the limitation period or the excluding elements of criminal responsibility for due obedience or official position are not applicable.

During all these long years, and faced with several obstacles, the relatives-victims and social human rights defending organisations have maintained aloud the demand for the truth and justice. This truth has progressed through a long fight, in which it has been necessary to overcome multiple hurdles set not only by the eight federal administrations that have governed the country for over 40 years, but also by other areas of the State, including the Judiciary and the Legislative Branch, without omitting the informative isolation undertaken by many in the media and through the indifference or complicity of powerful groups.

The organisations agree on a fundamental point of view: in Mexico, the right to the truth and to justice is still far from being complied with. Thus, it is essential that the end of impunity be achieved in the wrongly-described 'cases of the past', in order to create the basis for aberrant violations of human rights not to be repeated by the State, as has continued to occur until now.

⁴¹ *Ibid*, paras. 132, 152, 213 and 214.