



Mexico, two years after the Universal Periodic Review

Assessment of Mexico's compliance with the recommendations issued by the
UN Human Rights Council

National Network of Civil Human Rights Organizations "All Rights for All"

June 2011

Executive Summary

In 2009, the UN Human Rights Council issued a list of recommendations to the Mexican government under the Universal Periodic Review (UPR). Two years later, in anticipation of the forthcoming review of the UPR which will take place in 2013, the National Network of Civil Human Rights Organizations "All Rights for All" ("Todos los Derechos para Todos y Todas" Red TDTT) makes an assessment of the state's response to the UPR recommendations in order to measure the progress and setbacks in the field of human rights in the country.

The recently approved reform that raises the protection of human rights to constitutional rank constitutes a decisive step towards a full harmonization of the domestic regulatory framework with the highest international standards in human rights, which favors the fulfillment of the commitments made by Mexico to the international community. In general, significant developments have been made to the legislation but we note that this has not translated yet into public policies that have a reverse impact on the context of impunity and discrimination against vulnerable groups (such as women, indigenous people and migrants) and that create a safe environment to ensure the full participation of the citizens in the democratic processes and the full enjoyment of their economic, social, cultural and environmental rights. Nor are there adequate spaces to involve the civil society in the design, implementation and evaluation of these policies.

Despite the several recommendations made by international bodies that protect human rights or the judgments by the Inter-American Court of Human Rights, the Mexican government remains reluctant to amend the Code of Military Justice to abolish arraigo (pre-charge detention) and to meet the demands for justice, truth and reparations in the cases of the "Dirty War". Neither has the government taken steps to create an environment conducive for the defense of human rights and the exercise of freedom of expression nor to protect human rights defenders and journalists.

Mexico, June 2011.

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I. Introduction

The Universal Periodic Review (UPR) is a novel mechanism adopted by the United Nations that periodically evaluates every country on the subject of human rights. Every four years the Human Rights Council reviews the level of compliance of member states with their international commitments using as analysis criteria the respect for the Universal Declaration of Human Rights, the United Nations Charter and the treaties and international agreements ratified by the State.

Mexico went through the UPR for the first time in 2009.¹ For the organizations that belong to the National Network of Human Rights Organizations "All Rights for All" (Red TDTT) this was an exercise which identified the challenges that the country is facing and that also serves as a guide to pursue changes in the legislation and in the design of public policies.

Furthermore, the UPR allows for the active participation of the civil society. The organizations that comprise the Red TDTT made full use of this space by providing inputs to the states participating in the review of Mexico so that they could have a comprehensive picture of the human rights situation in the country. The result of these inputs was the final recommendations in the report approved by the Human Rights Council.

In this document we present an assessment of the compliance of the Mexican government with the recommendations in a context that is increasingly adverse to the enjoyment of human rights. Two years after the first review and in view to our participation in the upcoming Universal Periodic Review of Mexico in 2013, our aim with this assessment is to raise awareness of the need to promote the full implementation of the recommendations to advance fundamental changes that improve the human rights situation in Mexico.

¹ The Documents regarding the UPR process are available on the website dedicated to the Universal Periodic Review Mechanism of the UNESCO Professorship on Human Rights UNAM (Mexico, 2009): <http://catedradh.unesco.unam.mx/webEpu/>.

II. Context

Mexico is going through a difficult situation regarding public safety. De facto, there is an absence of the state in various regions of the country and the human rights situation has deteriorated considerably. The strategy to combat drug trafficking initiated by the administration of Felipe Calderón is based on the deployment of armed forces to perform tasks that belong to the public security forces and on the reform of the public security system at the national level. This strategy is not working and has the country mired in a spiral of violence.

The decision to deploy Mexican soldiers as a dominant force in counter-drug operations (nearly 50,000 soldiers have been deployed in the last four years and a half) has not improved security in Mexico. On the contrary, up to May 2011 about 40,000 people had been killed because of violence related to drug trafficking and organized crime. The government considers the criminal groups as the main perpetrators in the violence, thus evading the responsibility of the local police and the military in the growing number of human rights violations.

The armed forces have not limited themselves to acting as a support to the civilian authorities; they instead have taken on tasks that correspond to the latter. The army patrols the streets and has installed military checkpoints, is responsible for dismantling drug distribution centers and carries out arrests and searches without necessarily having the corresponding warrant. In several cities and states the army has undertaken the task of investigating crimes and the custody of the arrestees as well as the control of police units. In this process of militarization it is becoming increasingly common to observe military personnel as heads of the states' public security departments or of the different law enforcement agencies.

The militarization of public security has led to numerous human rights abuses on the civilian population. There is no effective mechanism for the security operations and to hold the security forces accountable for their actions when they violate human rights; this perpetuates graver abuses and undermines the civil capacity to trust and cooperate with security agencies in the war against any type of crime.

The number of complaints received by the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) against the Ministry of National Defense (Secretaría de Defensa Nacional, SEDENA) serves as an indicator of the increment in military abuses. In the first three years of Calderon's government, the number of complaints increased by almost 1000% and so far during his administration, 4,772 complaints have been received for alleged human rights violations committed by military personnel, out of which 74 have resulted in recommendations addressed to the government.² The human rights violations that are referred to in the complaints include

² Data from the 1st of December 2006 to the 25th of March 2011. Ministry of National Defense (SEDENA), *Cifras de los militares procesados y sentenciados vinculados con violaciones a los derechos humanos durante la presente administración*, March 2011

frequent acts of torture, arbitrary arrests, illegal searches, sexual abuse, forced disappearances and extrajudicial executions.

The panorama of insecurity described above takes place in a context where impunity prevails and has grown in recent years particularly affecting human rights violations. The population, especially vulnerable groups and those living in marginal areas, generally perceives the justice system as distant and regards its officials as remote figures that are not easily accessible. Women, indigenous peoples, migrants, youth, defenders of human rights and journalists are constant victims of a structure that systematically discriminates them.

On numerous occasions, the justice system in Mexico has been identified by NGOs, UN agencies and the Inter-American system as deficient. Many of these deficiencies cannot be attributed to economic factors, not even to the security problems in the country; on the contrary, we can assure that these deficiencies derive from a lack of political will and from historical vices that have resulted in a culture of impunity. The fact that the implementation of the new justice system is not being carried out in an effective way is proof of this. There is a lack of political will to combat the high levels of corruption that characterize the institutions of enforcement and administration of justice as well as to promote the changes needed to reverse this situation.

- **UPR recommendations and their applications**

The UPR recommendations made to Mexico during the 10th of February 2009 working session were included in the Report of the Working Group on the Universal Periodic Review for Mexico. Subsequently, on the 11th of June that year, the Mexican government presented before the Human Rights Council its final report which provides a supplemental response to the recommendations made in the previous report.³

The Mexican government received 91 recommendations out of which 83 were accepted while 8 awaited for a response. The final report rejected 3 recommendations and did not give a clear answer to 5 of them even though during the plenary the Mexican State considered them to be fulfilled or resolved.⁴ The accepted recommendations constitute new commitments of the Mexican state to the international community and the State must carry out the relevant reforms and policies to meet them. From the point of view of the organizations of the National Network of Human Rights Organizations "All Rights for All and All" (Red TDTT), the rejected recommendations constitute obstacles that prevent a full guarantee of human rights in line with international standards.

[http://www.sedena.gob.mx/images/stories/archivos/derechos_humanos/quejasyrecom/D.-_PNAL._MIL._PROCESADOS._Y._SENTENCIADOS.doc_Modo_de_compatibilidad.pdf].

³ We have taken up wording and numbering of the recommendations, Document A/HRC/11/27 prepared by the UN Human Rights Council (paragraphs § 93 and § 94) and published on the 5th of October 2009 [<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/11/27&Lang=S>].

⁴ Disponible en Final report of the Mexican State, June 2009. available at: <http://catedradh.unesco.unam.mx/webEpu/Documentos/InformeFinalMexicoEpu.pdf>

One of the challenges that Mexico is facing in the implementation of the received recommendations is the coordination of actions between federal and local governments, both at the state and the municipal level. Over the years, the organizations that are part of the Red TDTT have carried out a wide dissemination campaign in the three levels of government of international human rights instruments and on the importance of adopting the recommendations made by the United Nations and the Inter-American Commission on Human Rights.

The same dissemination effort has been made with the UPR recommendations. After the issuance of the final report, Red TDTT sent it to the authorities of state governments to make them aware of it. The importance of this action should not be underestimated because practice has taught us that in the last ten years, such recommendations are rarely circulated through channels accessible for state officials and rarely reach those in charge of the design and evaluation of public policies. The document was sent to the local authorities, the human rights commissions of the local Congresses, the Courts of Justice and the state human rights commissions along a request for information.

The responses to the request for information were very scarce, which is an indicator of how little importance this kind of input has in the design of actions in states and municipalities. The communication mechanisms used by the federal government to improve access to the UPR recommendations remains unknown to us. In general, the dissemination of the recommendations that Mexico receives on human rights issues is extremely poor in the country, leaving this work to human rights organizations.

▪ **Rejected recommendations: consequences and challenges**

The recommendations that the Mexican government did not accept or considered as fulfilled have to do with issues vital to ending impunity and preventing gross human rights violations: the persistence of military courts, the use arraigo (pre-charge detention), the absence of an organized crime definition that is in accordance with international standards and the shutting down of the Special Prosecutor dedicated to investigating human rights violations committed during the "Dirty War."

In the subjects of the review of the military jurisdiction, the investigation of human rights violations committed by the military and the fight against impunity, the State has not shown the political will to fully comply with both the accepted and the not accepted recommendations. The proposals that have been analyzed so far for a reform of the Code of Military Justice are incomplete, do not meet international human rights standards and allow the prevalence of an atmosphere of impunity.

The demand to limit military jurisdiction is an essential measure to strengthen civilian control over the armed forces, which is necessary in any democracy. The issue being debated is not the existence of military courts, but its limits, with emphasis on the types of issues that should be excluded from the scope of the military discipline: the army should be accountable before civil authorities for abuses such as torture, rape, murder, enforced disappearance and any violation of human rights committed against civilians.

The international law of human rights is unanimous in considering unacceptable that the victims of military abuses should be sent to military bodies to seek access to justice. In the 2009 judgment *Radilla vs. Mexico* the Inter-American Court of Human Rights (IACHR) ordered the Mexican government to carry out legislative changes to ensure that human rights abuses are investigated and tried in the civilian courts. To date, Mexico has not complied with this binding order even though the Inter-American Court has reiterated it in three other cases.⁵

The Mexican government also rejected the recommendation regarding the elimination of arraigo from the legal system. Its persistence presumes an increase in the cases of torture and inhuman or degrading treatment, as well as of violations of due process and of the principle of legality. The use of arraigo, according to the Mexican government, would be restricted to the war against organized crime. Despite these arguments, this practice contravenes the international human rights standards that Mexico is committed to respect. In this sense, the lack of a definition in the Constitution of organized crime in compliance with the Palermo Convention has opened the door to accuse innocent people or people linked with social movements of belonging to organized crime groups, using arguments that are more political than legal.

Finally, the subject of the Special Prosecutor in charge of investigating crimes committed during the sixties and seventies shows the lack of political will to investigate human rights violations committed during those years, to compensate the victims and to put an end to impunity. Currently there is no progress in the investigations and there is no comprehensive policy that ensures access to justice and to the truth and reparations for the families of the victims.

⁵ It is the cases of Inés Fernández Ortega, Valentina Rosendo Cantú and the ecologists peasants Teodoro Cabrera García and Rodolfo Montiel Flores v Mexico (see table).

Recommendations and Judgments by international bodies (2009 – 2011)

Recommendations that other international bodies have developed over the past two years complement the UPR recommendations. Among them are those recommendations that have resulted from a review of the International Covenant on Civil and Political Rights or those that have been issued by special Rapporteurs. It is also necessary to consider the first five judgments issued by the Inter-American Court of Human Rights (IACHR) against the Mexican state which are binding judicial decisions.

Revision of the International Covenant on Civil and Political Rights

In March 2010 the Human Rights Committee examined Mexico's fifth periodic report under Article 40 of the International Covenant on Civil and Political Rights. The Committee noted "the lack of significant progress in implementing previous recommendations," especially those relating to "violence against women, the deployment of armed forces to ensure public safety and the lack of protection for human rights defenders and journalists."

The resolutions of the Committee and of other international instruments are applicable to all the entities of federal States; in the opinion of the Committee, the Mexican government "should take measures to ensure that the authorities, including courts, in all states, are aware of the rights set out in the Covenant and of their duty to ensure their effective implementation, and that legislation at both federal and state level is brought in line with the Covenant."

- *Concluding observations of the Human Rights Committee*, CCPR/C/MEX/CO/5, April 7th 2010 [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MEX.CO.5_E.PDF].

Joint visit by the Rapporteurs on freedom of expression

The Rapporteurs on freedom of expression of the Organization of American States (OAS) and the United Nations Organization (UNO), Catalina Botero and Frank La Rue respectively, made for the first time a joint visit to Mexico from the 9th to the 24th of August 2010. After their visit they released a report of preliminary observations where they pointed out the severity of the attacks against journalists and the media and the impunity surrounding them. They also stated that there are serious limitations in terms of the plurality and diversity of information in the country. Subsequently, the Rapporteur of the Commission published her annual report in March 2011 with a special report on Mexico while the UN Rapporteur presented his to the Human Rights Council in June 2011.

- Report of the Office of the Special Rapporteur for Freedom of Expression, *Annual Report 2010. Vol. II Annual Report of the IACHR*, March 2011 [http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA_2010_ESP_P_abril.pdf].

- *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión*, Frank La Rue. Addendum: *Misión to México*, A/HRC/17/27/Add.3, 19 May 19th, 2011 [http://www.hchr.org.mx/files/informes/2011/Informe_final_Mision_Frank_La_Rue.pdf].

Visit by the Special Rapporteur on the independence of judges and lawyers

Gabriela Knaul, UN Special Rapporteur on the independence of judges and lawyers, visited Mexico from the 1st to the 15th of October 2010. While acknowledging the efforts made by Mexico in recent years regarding the mechanisms for the protection of human rights, Knaul cited a list of areas in which the

country is failing in its obligations on the administration and enforcement of justice in spite of the 1994 and the 2008 reforms. The report on her visit was submitted to the Human Rights Council in May 2011.

- *Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30/Add.3, April 18th, 2011* [<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/30/Add.3&Lang=S>].

Visit the Working Group on Enforced or Involuntary Disappearances

The Working Group of the United Nations on Enforced or Involuntary Disappearances (WGEID) visited Mexico from the 18th to the 31st of March 2011. The WGEID presented a preliminary report and announced that the information received during and after the visit and the evaluation carried out on the places visited would be considered in preparing the report to be submitted to the Human Rights Council in March 2012.

The WGEID observed that there is an absence of a comprehensive public policy that deals with the different aspects of prevention, investigation, punishment and reparation of enforced disappearances and that it "appears that there is no vertical and horizontal coordination among authorities at the federal, local and municipal levels and neither among authorities at the same level of government."

- *The United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) concludes visit to Mexico, March 31st, 2011* [<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=E>].

International Convention on the protection of the rights of migrant workers

The Committee on Protection of Rights of All Migrant Workers and Members of their Families examined Mexico's second periodic report during its 14th session held from the 4th to the 8th of April 2011 and adopted a series of observations and recommendations. Among the main concerns it highlighted the fact that there is no effective coordination between the federal agencies that deal with immigration issues and between them and the state and municipal authorities.

- *Observaciones finales del Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares. México, CMW/C/MEX/CO/2, May 3rd, 2011* [http://www2.ohchr.org/english/bodies/cmw/docs/co/CMW.C.MEX.CO.2_sp.pdf].

Visit by the Special Rapporteur on the Right to Education

Vernor Muñoz Villalobos in his capacity as Special Rapporteur on the right to education paid an official visit to Mexico from the 8th to the 18th of February 2010. His final report was submitted to the Human Rights Council in June 2010. He found it necessary to "achieve a national consensus on education that goes beyond changes in the government and that involves various civil society actors, such as parents and mothers, academia members, civil society organizations, students, teachers and authorities of federal and state levels."

- *Informe del Relator Especial sobre el derecho a la educación, Adición: Misión a México, A/HRC/14/25/Add.4, June 2nd, 2010* [<http://www.unhcr.org/refworld/docid/4c07607c2.html>].

Visit of the Subcommittee on Prevention of Torture

On May 7th, 2010 the Mexican government announced its decision to make public the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment's visit to

Mexico that took place from the 12th to the 27th of August 2008. The Subcommittee was established after the entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading in June 2006 and took office in February 2007.

- *Informe sobre la visita a México del Subcomité para la Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes*, CAT/OP/MEX/1, May 31st, 2010 [http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportMexico_sp.pdf].

Judgments by the Inter-American Court of Human Rights

• **Campo Algodonero Case.** In November 2009 the IACHR condemned the Mexican government for violating human rights in the femicide cases that occurred in Ciudad Juárez of Esmeralda Herrera Monreal, Laura Berenice Ramos Monarrez and Claudia Ivette González, two of them minors, and for the state's violence exercised against their families. The judgment details the international responsibility of Mexico.

- Red Mesa de Mujeres de Ciudad Juárez y Comité de América Latina and el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), *Campo Algodonero: análisis y propuestas para el seguimiento de la sentencia de la CoIDH en contra del Estado mexicano*, February 2010 [http://www.campoalgodonero.org.mx/sites/default/files/documentos/Caso_Campo_algodonero_ES.pdf].

• **Radilla Pacheco Case.** On December 15th, 2009, the IACHR issued the judgment in which it condemned the Mexican government for the forced disappearance of Mr. Rosendo Radilla by the military in 1974. The IACHR found the Mexican government responsible for the violation of the rights to liberty, personal integrity, life and to the recognition of the legal personality of Mr. Radilla Pacheco, as well as the rights of his family members to physical and mental integrity, to judicial guarantees and to judicial protection. The Court also considered that the process brought before military courts did not comply with international law standards of due process.

- Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), *La sentencia de la Corte IDH. Caso Radilla Pacheco vs. Estados Unidos Mexicanos*, November 2010 [http://www.cmdpdh.org/docs/La_Sentencia_de_la_Corte_IDH_vs._Estados_Unidos_Mexicanos_Caso_Radilla_Pacheco_AFADEM_CMDPDH.pdf].

• **Case of Fernández Ortega and Rosendo Cantú.** On the 1st of October 2010, the Inter-American Court issued two rulings against the Mexican state in the cases of Inés Fernández Ortega and Valentina Rosendo Cantú. In these rulings, the IACHR determined that, under different circumstances during the year 2002 at the age of 25 and 17 years respectively, both women had been raped and tortured by soldiers in the Mexican state of Guerrero, Mexico, in a context marred by poverty, discrimination and what it called "military institutional violence."

- Centro de Derechos Humanos de la Montaña "Tlachinollan", Organización del Pueblo Indígena Mephaa and Centro por la Justicia y el Derecho Internacional (CEJIL), *Rompe el muro de la impunidad. El cumplimiento de las sentencias dictadas por la corte Interamericana de Derechos Humanos en los casos de Inés Fernández Ortega y Valentina Rosendo Cantú*, April 2011 [http://www.tlachinollan.org/Descargas/110429_Dossier_Ines_y_Valentina_ES.pdf].

• **Case of Cabrera García and Montiel Flores.** In 1999, Rodolfo Montiel and Teodoro Cabrera, forest defenders in the state of Guerrero, were victims of arbitrary detention and torture by members of the Army because of their environmental activism. On the 7th of November 2001 the President ordered their release on humanitarian grounds but failed to acknowledge their innocence and the existence of human rights violations. In December 2010, the IACHR issued a judgment in which it condemned the Mexican

government for violations of human rights to personal liberty, personal integrity, judicial guarantees and judicial protection.

- Centro de Derechos Humanos "Miguel Agustín Pro Juárez", *Nuestra lucha es por la vida de todos. El caso y la Sentencia emitida a favor de los campesinos ecologistas Rodolfo Montiel y Teodoro Cabrera*, 2011 http://www.redtdt.org.mx/media/descargables/nuestra_lucha_WEB.pdf].

All of these judgments, observations and new recommendations reinforce and extend the recommendations of the UPR and serve to obtain new indicators of the progress in legislative changes and in public policies that can reverse the present condition of helplessness in which a great number of Mexicans live.

III. Accepted Recommendations

A. Legislative Harmonization

Accepted Recommendations:

1. Continue to promote the ratification of the International Convention on the Rights of Migrant Workers and Member of Their Families (Morocco)
2. Consider progressively withdrawing its reservations to international human rights instruments (Brazil)
3. Pursue with reforms initiated to ensure the full enjoyment of human rights and fundamental freedoms to its citizens, in particular the harmonization of domestic legislation with its international commitments (Morocco)
4. Complete its institutional efforts ensuring that international human rights norms adopted by Mexico have constitutional status and are applied as supreme law in courts proceedings (Spain)
5. Effectively incorporate the provisions of the international human rights instruments into national legislation (Azerbaijan)
6. Harmonize federal and state laws with international human rights instruments (Bolivia, Guatemala, Spain, Turkey, Uruguay), in order to ensure their effective implementation (Turkey), and equal protection and guarantees (Spain), at federal and state levels (Spain, Turkey).
7. Ensure concrete implementation of international human rights standards at all levels (Canada, Switzerland), through the adoption of policies, laws and other measures at the federal and state levels and through regular consultations with key stakeholders, including states, civil society organizations and others (Canada)
8. Harmonize national and regional legislation in order to avoid discriminatory practices against women and indigenous peoples (Brazil) and eliminate all discriminatory elements still present in some state laws (Chile)

The first block of recommendations corresponds to legislative issues which mainly include the harmonization of federal and state laws with international human rights standards; the withdrawal of reservations to certain international instruments and the effective implementation of these standards by the administrative and judicial authorities at the different levels of government.

On the 8th of March 2011 –eight years after the Office of the High Commissioner to the United Nations in Mexico issued its recommendations,⁶ the Congress approved a

⁶ The reform was one of the recommendations contained in the Diagnosis of the Situation of Human Rights in Mexico, prepared by the United Nations High Commissioner for Human Rights in Mexico in 2003: "Amend the Constitution to incorporate the concept of human rights as a cornerstone of it, and recognize human rights treaties as hierarchically superior to the federal and local normative orders, with the explicit

constitutional reform in the subject of human rights. The approval of this reform is a decisive step towards a full harmonization of the domestic regulatory framework with the highest international standards in human rights, which favors the fulfillment of the commitments made by Mexico to the international community.

The United Nations System in Mexico (UN Mexico) recognized the importance of this reform.⁷ Among the developments it highlighted: the elevation to constitutional rank of the human rights recognized in international treaties; the prevalent application of the rule most favorable to the person (*pro homine* principle); the consecration of the obligations of the authorities, both administrative and judicial, not to interpret the rules which elaborate on human rights in a strict manner (principle of progressivity); the enunciation of human rights at the center of education, of the prison system and of foreign policy; the strictest scope applied to the concept of state of emergency; amending Article 33 to recognize the right of audience to foreigners who are to be expelled from the country; the strengthening of human rights bodies and improving the system of compliance with the Constitution in the abstract level.

On the 18th of May 2011 the reform attained the minimum necessary for its approval in terms of section 135 of the Constitution: 22 states had approved the reform in the local Congresses and only Guanajuato had voted against it. On the 9th of June a Presidential Decree was issued that gave life to the content of the reform.⁸

The present challenges consist in implementing the transitory articles of the reform regarding the law on reparations, on the state of emergency, on the right of asylum and the deportation of foreigners, as well as secondary laws that allow for its implementation. Meanwhile, the House of Representatives must approve the budget for the implementation of some aspects of reform such as amending the Organic Law of the National Commission on Human Rights and the local legislatures will have to start the process of harmonization of the local constitutions with the content of the reform. This whole process must ensure the full participation of civil society.

Another important development is the enactment of the reforms of Articles 94, 100, 103, 107 and 112 of the Constitution related to the amparo trial (amparo is a legal action to constitutionally challenge human rights violations). Citizens will now be able to start an amparo trial when they consider that their human rights that are guaranteed not only

remark that all public authorities are subject to the international order when this confers greater protection to people than that provided by the Constitution or the legislations derived from it "

⁷ *La ONU México congratula a la Nación por la aprobación de la reforma constitucional que fortalece el respeto a los derechos humanos*, March 8th 2011 [<http://www.hchr.org.mx/Documentos/comunicados/2011/03/CDP090311.pdf>].

⁸ *Reforma constitucional en derechos humanos*, June 9th 2011 [<http://www.presidencia.gob.mx/2011/06/promulgacion-de-la-reforma-constitucional-en-materia-de-derechos-humanos/>].

under the Constitution but also in international treaties ratified by Mexico have been violated.⁹

⁹ Decree amending, supplementing and repealing diverse provisions of Articles 94, 103, 104 and 107 of the Constitution of the United Mexican States *Diario Oficial de la Federación*, June 6th, 2011 [http://www.dof.gob.mx/nota_detalle.php?codigo=5193266&fecha=06/06/2011]

B. National Human Rights Program

9. Further strengthen the mechanisms for the effective implementation of the National Human Rights Program at all levels of government (Austria), in particular strengthen the publicity, implementation and monitoring of the Program and step-up dialogue with civil society in this regard (Germany)

During the administration of President Felipe Calderon a new National Human Rights Program (NHRP) for 2008-2012 was developed, which was directed specifically at the Federal Public Administration. In December 2008 the Monitoring and Evaluation Subcommittee of the National Human Rights Program was established whose Technical Secretariat was in charge of the Unit for the Promotion and Defense of Human Rights (UPDDH) of the Ministry of Interior. This Subcommittee is part of the Commission on Government Policy on Human Rights Issues, a body that seeks to coordinate the various activities of the federal government on human rights and that maintains a dialogue with the civil society.

To date there is no systematic information that can be used to observe the progress in the implementation of the NHRP. The work has been slow and adequate methodologies and indicators to monitor and evaluate public policies on human rights have not yet materialized despite proposals from civil society organizations involved and the contributions of the Mexico's Office of the High Commissioner for Human Rights. In addition the Unit has undergone constant changes by their directors and in the view of civil society organizations it has not been active, effective and efficient to coordinate efforts. In 2010 the Unit (UPDDH) presented the first Follow-up Report without having consulted it with the most critical civil society organizations and academic institutions present during the process.

In addition to this, the federal government unilaterally decided that the Subcommittee should assume the follow up of the UPR recommendations. Subsequently, the Subcommittee also undertook the fulfillment of the Millennium Development Goals. These decisions were made without a clear methodology and with limited financial and human resources. It was not considered, for example, that the NHRP and recommendations made by the UPR require different levels of analysis, actions, agreements and monitoring and evaluation methodologies.

The civil society organizations participating in the Subcommittee are currently dormant and in the process of deciding to leave this space. The described situation has led to the alienation and distrust of the Subcommittee and of the Unit besides the weariness caused by the lack of results and the continuity of a process that dates back to at least 2004. Added to this, many organizations have stopped participating in the processes of articulation and dialogue with the Federal Government due to increased human rights violations and the position of the authorities towards issues like the militarization of public safety, femicide, women's rights, torture, enforced disappearances or the situation of migrants.

C. Women

11. Take further steps to address discrimination against, protect and provide assistance to women and vulnerable groups including children, minorities and indigenous peoples (United Kingdom)
12. Address discrimination and violence against women through education and specific legislation both in the public and private sectors; and develop affirmative programmes to uplift the living standards of women and ensure their presence in decision-making positions (Pakistan)
13. Conduct a time-bound review of legislation at state level which discriminates against women; commit to promptly repealing such legislation, with priority attention paid to family law that results in real or de facto discrimination against women and girls, and to legislation that prevents women's access to justice, particularly in respect of the reporting and prosecution of family violence; and from the federal level, provide guidance to all states on the adoption of practical measures to ensure the implementation of these legislative changes at the local level (New Zealand)
14. Effectively implement across the country (Turkey) and as soon as possible (Japan) the Comprehensive Program to Prevent, Address, Punish and Eliminate Violence against Women (Japan, Turkey).
15. Bring state laws and federal legislation in line with the framework established by the General Law for Women's Access to a Life Free of Violence (Netherlands); undertake the Law's implementation by all relevant authorities, at the federal, state and municipal levels, including in the prevention and eradication of violence against women, as well as care for victims (Chile); and assist and encourage the Federal state's authorities to implement it as a matter of urgency, and where it has been incorporated in states' legislation, ensure that appropriate regulations are elaborated to ensure its effective implementation (Ireland)
16. Continue efforts to eradicate and address cases of violence against women (Indonesia, Sweden), domestic violence (Algeria) and child abuse (Algeria, Indonesia)
17. Take effective measures to combat violence and discrimination against women, including cases of murder and disappearances (Azerbaijan)
18. Maintain its priority to end impunity for perpetrators of all forms of acts of violence against women, whatever their social condition; give more information on progress to prevent such violations (Panama); and bolster the Office of the Federal Special Prosecutor on violence against women so that it may better investigate cases, and that cases falling within local jurisdiction be investigated with due diligence. (Finland)
19. Ensure effective investigation and punishment of the crimes of murder of women, and adopt additional measures to combat this phenomenon and raise awareness about such threat (Ukraine)
20. Ensure that murder of women in Ciudad Juarez are fully clarified, that those responsible and their accomplices, including civil servants who might have not conducted investigations, are brought to justice and that effective measures are taken to prevent such crimes in Ciudad Juarez (Italy)
21. Tackle incidences of domestic violence and femicide through a multi-pronged approach, including effective legal measures and social awareness programmes (Bangladesh)

22. Provide adequate funding for investigations of violence against women, victim support programmes for affected women, and special training for the police to sensitize them to the problem of violence against women (Austria)

23. Set up structural measures to address systematically violence and violation of fundamental rights, of which women and human rights defenders are victims. (Belgium)

The concerns and recommendations expressed on women's rights were reaffirmed a year later by the Human Rights Committee during the review of the International Covenant on Civil and Political Rights in 2010. The Committee considered that the State should further intensify its efforts to combat violence against women and address the root causes of this problem.¹⁰

▪ **General Law on Women's Access to a Life Free of Violence**

The General Law on Women's Access to a Life Free of Violence (*Ley General de Acceso a la Mujeres a una Vida Libre de Violencia, LGAMVLV*) is the federal legislation that establishes the principles upon which a life free of violence should be guaranteed to women. At the state level, local laws that have been approved have omitted several provisions of the General Law such as femicide violence or have deleted the legal figure of protection orders. Therefore, it is not enough to point out quantitatively the enactment of such laws but it is necessary to analyze their content to determine whether or not they are in compliance with the General Law.¹¹

The Human Rights Committee reaffirmed the need to take "measures to ensure that the legislation of every state is fully consistent with the General Law, in particular the prohibition of sexual harassment and the provisions concerning the establishment of a database with information on cases of violence against women, creating an early warning mechanism on gender-based violence. "

One of the provisions of the General Law (*LGAMVLV*) is the creation of a National Data and Information Bank on Cases of Violence against Women (*Banco Nacional de Datos e Información sobre Casos de Violencia contra las Mujeres, BANAVIM*).¹² The Public Security Secretary, responsible for BANAVIM justified its failure to operate stating that the states do not add data or do not have the complete information on the variables being measured.¹³ So far the system has not made contributions in the prevention and eradication of violence against women. The Mexican government has no accurate information on this problem even though it recognized the problem more than 17 years ago.

¹⁰ Concluding Observations of the Human Rights Committee, CCPR/C/MEX/CO/5 April 7th, 2010

¹¹ In the state of Guanajuato, for example, the law was not enacted until the 25th of November 2010 and it doesn't contain the mechanism of gender alert.

¹² Transitory article of the *LGMVLM*, published in 2007.

¹³ The House of Representatives allocated 15.3 million pesos for its execution: CIMAC, *Incumple SSP proyecto contra violencia por el que recibió 15.3 mdp*, Mexico City, September 22nd 2010 [<http://www.cimacnoticias.com.mx/site/10092211-Incumple-SSP-proyec.44329.0.html>].

- **Protection Mechanisms for women**

Within the framework of legal protection for women, two types of mechanisms of protection provided for in the General Law (LGAMVLV) and in the correlative legislation of the states have been established: protection orders and the issuance of a gender alert. The National Citizens' Observatory of Femicide (Observatorio Ciudadano Nacional del Femicidio, OCNF) has identified a number of obstacles that have hindered and prevented the implementation of these two mechanisms.

Protection Orders¹⁴

Since their creation, protection orders included in the states' legislation of access to justice for women have had shortcomings since they do not specify the authority that is responsible for issuing them. This has meant that the authorities in charge of the enforcement and administration of justice do not assume the responsibility of implementing these orders. The mechanism is not disseminated by the authorities and there is no way of assessing the imminent risk; therefore the consideration of whether the woman's life is at risk is left at the official's discretion. Protection orders are only issued in cases of family violence and thus, in cases of violence at the workplace, by personnel or in community no special measures apply.¹⁵

In states such as Chihuahua and Coahuila this measure is not considered at all while in Campeche reference is made to the protection orders but they are not divided into emergency, civil and preventive orders providing no more specifications in this respect. Even when it is pointed out that the orders will be issued by the competent authority, violence against women is not criminalized in the Penal Code, let alone the protection orders.

Declaration of a Gender Alert

The Declaration of Gender Alert has been considered one of the most innovative mechanisms to protect the rights of women and it is defined as "a set of emergency

¹⁴ Protection orders are acts of protection and urgent application in the best interest of the victim and are primarily preventive and protective measures. They shall be granted by the competent authority immediately after it is aware of facts that may constitute violations or crimes involving violence against women (Article 27 of the LGAMVLV)

¹⁵

Nationally, 39.7% of women aged 15 or older have suffered a public assault of a sexual nature, which can range from verbal abuse to rape. Of these, 92.4% were intimidated and 41.9% suffered sexual abuse, these abuses took place in a community area. Overview of Violence against Women in the United Mexican States, 2006 National Survey on the Dynamics of Family Relations pp 13, INEGI, [http://www.inegi.gob.mx/prod_serv/contenidos/espanol/bvinegi/productos/estudios/sociodemografico/mujeresrural/2007/ENDIREH_bc.pdf].

governmental measures to confront and eradicate femicide in a given territory."¹⁶ The civil society has formally requested the application of this mechanism three times:

- On the 30th of April 2008 femicide was reported in the Triqui region of the state of Oaxaca due to political conflicts between the indigenous communities of the area in which women had been taken as the spoils of war; murders and disappearances were also reported. The authorities in charge of raising the Gender Alert did not even process the request arguing that it did not meet the requirements and there was no sufficient evidence (records and testimony, etc.) to demonstrate the systematic violence referred.
- In May 2009 the request filed was regarding unfair treatment¹⁷ in the state of Guanajuato. The request denounced the vulnerability of women victims of sexual violence because the body of law itself violated their human rights. Although the Penal Code permits abortion in cases of rape, the state does not provide for legal abortion and for the administration of justice to victims. It should be noted that this request was dismissed by the competent authority not in accordance with the procedure established by the law and its regulations.
- The request filed on the 8th of December 2010 sought to safeguard the lives and safety of women in the State of Mexico. From January 2005 to August 2010 there were 922 cases of femicide; in 526 cases the identity of the murderer remains unknown. The alert also intended to identify irregularities incurred by the justice system to detect the pattern of impunity and systematic violence which prevents and hinders the progress in the investigations so that the victims of violence and femicide can have access to justice. This application was declared admissible by the Executive Secretariat of SNPASEVM since it fulfilled the legal requirements established in the LGAMVLV. However, on the 11th of January 2011, during an extraordinary session, the SNPASEVM unfoundedly decided to deny the validity of the request putting forward arguments irrelevant to the context of the alert giving no assessment of the facts and of the evidence accompanying the application.

▪ Sexual Violence

The National Citizens' Observatory of Femicide (OCNF) has monitored the implementation of NOM 046 which is in force since 2009. Through this law the Mexican government agreed to modify its system of care for women victims of sexual violence. It is worrying that health departments in the states do not have a systematization of the

¹⁶ Article 22 of the LGAMVLV. Article 21 defines femicide as "the extreme form of gender violence against women as a result of the violation of their human rights in the public and private spheres, formed by a set of misogynistic behavior that can lead to social and State impunity and may culminate in the murder and other forms of violent deaths of women."

¹⁷ According to Article 31 of the General Law of Access to Women to a Life Free of Violence there is unfairness treatment when a regulatory body contains any of the following cases that violate women human rights: I. Distinctions, restrictions or specific rights for the same problem or crime, to the detriment of women in that state or municipality; II. Does not provide the same legal treatment in equal circumstances, and consequently generates a discrimination grievance or III. There is an inequitable application of the law that infringes women rights.

information concerning comprehensive care according to the criteria of the NOM 046, and thus, it is impossible to know the magnitude of the problem and the type of care they provide.

On the other hand, the lack of coordination between the health departments and the public prosecutors in the states becomes an obstacle for women victims of rape seeking access to comprehensive care and to a legal termination of a pregnancy resulting from rape. Specialized Centers of Attention to Violence are not available to all women because many live in marginalized communities or of difficult access and that are far away from these centers.

The Special Prosecutor for Crimes of Violence against Women and Human Trafficking (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas, FEVIMTRA) has been unable to serve as an institution firmly committed with the rights of women and it has shown that it is insensitive to the adverse effects of gender violence. In the case of Atenco, the Special Prosecutor did not diligently investigate as demonstrated by the lack a lack of expertise to gather the medical examinations in a prompt and adequate manner and through specialized female medical staff; furthermore, the complaint of sexual torture was reclassified and minimized and the victims have had difficulty at various times to access the investigation files. FEVIMTRA, which answers to the Attorney General's Office declined jurisdiction of the case in favor of the Attorney General of the State of Mexico in July 2009. Almost two years later, the investigation continues without having brought any of the officials responsible before a judge.

- **Femicide¹⁸**

The OCNF documented that from January 2009 to June 2010, 1728 intentional homicides of women were reported in 18 states of the country, 11 of these states¹⁹ provided partial information on the cases. It is presumed that 890 cases are femicide. In 576 cases (64% of the femicide cases) the victims were killed as a result of violent acts involving excessive use of physical force (head injuries, injuries caused by sharp objects, bruises, burns and fractures). Regarding the age of the victims, they were mostly between 11 and 30 years old (41%). The data on the victim-offender relationship reveals that in 20% of the cases the perpetrator was a spouse, a relative or an acquaintance of the victim, while in 40% the offender remains unknown. It is important to mention that in half of the documented cases the relevant authority does not provide the motive behind the murder.

¹⁸ Femicide refers to the murders of women resulting from violence against them because of their gender. That is, it is about violent murders of women because of misogyny, discrimination and hatred of this genre, where relatives or strangers engage in acts of extreme brutality on the bodies of the victims, in a context of permissibility by the state who, by act or omission, fails to fulfill its responsibility to safeguard the lives and safety of the women.

¹⁹ Nuevo León, Sinaloa, Sonora, Tamaulipas, Zacatecas, San Luís Potosí, Aguascalientes, Mexico City, State of México, Hidalgo, Jalisco, Morelos and Querétaro.

The OCNF states that violent deaths against women in Mexico reflect a widespread phenomenon that is tolerated by the state, creating an atmosphere of permissiveness by the authorities towards these crimes. This situation indicates the lack of due diligence in preventing, investigating and punishing violence against women.

In the process of administration of justice in the murders of women, the authorities are still doing a poor job and have not implemented comprehensive strategies besides the processes related to the judiciary level. The situation continues to place the state as a part of the chain of violence experienced by women. The state is to be held accountable for institutional violence from the moment it delays, impairs or prevents the enjoyment and exercise of the human rights of women, in particular of their right to life and security.

Proof of this is that after a year and a half after the judgment of the Inter-American Court in the case Campo Algodonero against Mexico in which the Court mandated through its operative clause number 12 the investigation and sanction of those responsible for the murders of the young women González Herrera and Ramos, no progress has been made. According to representatives of the victims in the records there are no new actions by the authorities since 2009.²⁰

With regards to operative paragraph number 13 on the trial of the officers who committed serious misconducts in the investigations,²¹ the Chihuahua Attorney General's Office reported that in June 2010 a procedure for administrative responsibility started against six public officials, involved in failed investigations, including one case in which the time prescribed for state authorities to exercise their authority in order demand accountability. In two cases the officers were acquitted; in two other cases, officials were disqualified for one year while in a couple of other cases the officials were banned from office for 2 years. The main concern in this case however, is that the Chihuahua state authorities have indicated that there are difficulties to carry out this Court's resolution because the relevant legislation provides that the crime prescribes after two years of the events.

In Guanajuato for example, although femicides are accounted for as "resolved" they are far from being so: officials, members of the judiciary and the police have failed to eradicate gender stereotypes which permeate the performance of their duties and thus, have carried out investigations that are biased against the murdered women subjecting the family of the victim to discriminatory and offensive questions.²²

²⁰ Report of the Judgment "Cotton Field" presented by the Special Commission to know and Monitor Timely and Comprehensively the Actions that the Competent Authorities have taken in Relation to the Registered Femicide in Mexico. April 14th, 2011.

²¹ The representatives of the victims indicate that in 2006 a complaint was filed against 26 public officials (prosecutors, experts and a judge), which has not been resolved by the authority.

²² Interviews with relatives of victims of femicide in Guanajuato by the Human Rights Center "Victoria Díez", from August to October 2010

D. Forced disappearances, torture and the penitentiary system

24. Continue promoting the bill on enforced disappearances (Colombia)
25. Extend to other federative entities, the categorization of the crime of “forced disappearance” and the full compensation mechanism for victims and members of their families (Uruguay)
26. Take all necessary measures to ensure the effective application of the Federal Act to prevent and punish Torture (Algeria, Portugal)
27. Take the necessary measures to prevent/prohibit the use of torture / ill-treatment (Japan, Uzbekistan); in particular by security forces in prisons, as noted by a number of special Rapporteurs (France)
28. Ensure the timely, effective, and impartial investigations of all allegations concerning torture (Uzbekistan) and combat impunity in this regard (France, Japan)
29. Improve living conditions in prisons (France), and continue to develop measures to improve the situation in prisons and the training of prison officials. (Portugal)

The increase in gross human rights violations such as forced disappearances, torture and arbitrary detention is directly linked to the deployment of armed forces to combat organized crime. In this context, no progress has been registered in the implementation of the UPR recommendations directed to end these practices and the impunity that surrounds them.

▪ Forced Disappearances

After its visit to Mexico, the Working Group on Enforced or Involuntary Disappearances (WGEID) again recommended the Mexican government to "guarantee that the crime of enforced disappearance be included in the criminal codes of all the states and to promptly pass a General Law on enforced or involuntary disappearances."²³

In its diagnosis, the WGEID observed that there is no comprehensive public policy to address the various aspects of prevention, investigation, punishment and reparation for victims of enforced disappearances. The victims "do not trust the justice system or the government ministries, nor the police and the armed forces. Impunity is a chronic pattern present in the cases of enforced disappearances and no sufficient efforts have been carried out to determine the fate or whereabouts of the missing persons, to punish those responsible, or to provide reparations".

²³ The General Law should define forced disappearance as an autonomous crime, creating a specific procedure for finding the missing person with the participation of the families of the victims, and establish a national registry of missing persons bound to ensure that relatives, lawyers, human rights defenders and anyone else interested can have full access to this record. This Law should allow the declaration of absence as a result of an enforced disappearance. Finally, the Act should be a legal tool for the full protection and support of families of missing persons and witnesses, and to guarantee the right to reparation. WGEID *Observaciones preliminares*, March 31st 2011

Even in states like Guerrero, one of the 8 states that has a specific law,²⁴ the investigation of events where the commission of an enforced disappearance may be presumed are not formally initiated for this crime and in its development they do not adopt the relevant parameters to investigate events with these particular characteristics.²⁵ Therefore, the lines of inquiry that could lead to the demarcation of the criminal liability of public servants are not exhausted.²⁶

This situation is of particular concern because, even though the forced disappearance of persons is not a new phenomenon, the number has increased in recent years. The National Human Rights Commission recorded a steady increase in the number of complaints, from 4 in 2006 to 77 in 2010. In states such as Chihuahua, civil society organizations have documented a series of cases that illustrate the phenomenon.²⁷ Nevertheless, there are no reliable statistics on the subject due to the lack of independent, impartial and effective investigations.

- **Torture**

Torture in Mexico is a systematic practice despite the existence of a legal basis since 1991 to prevent and punish it.²⁸ Therefore, the recommendations on torture focus in the need for effective and efficient measures to prevent and punish torture and combat impunity. In its final report, however, the Mexican government simply stated that the General Law of the National Public Safety from January 2009 prohibits the use of torture by personal security institutions.

From 2009 to date, the Committee against Torture and Impunity (CATI) has recorded 204 cases of allegations of torture, out of which 71 are women and 133 men. The increase in these cases has been linked primarily to security policies directed at fighting

²⁴ The Law to Prevent and Punish the forced disappearance of persons in the state of Guerrero, number 569, was published in the Official Gazette of the State of Guerrero on October 14th, 2005.

²⁵ The case of the defenders Raul Lucas Lucia and Manuel Ponce Rosas, leaders of the Organization for the Future of Pueblo Mixteco, stand out. They were detained by three people who identified themselves as police officers on February 13th, 2009. They were missing until their bodies were found seven days later with visible signs of torture. The authorities ignored the request for intervention by family members to investigate the facts and their whereabouts. To date there is no responsible punished.

²⁶ In the state of Guerrero, the State Human Rights Commission (CODDEHUM) recorded in the years of 2009 and 2010, 15 and 16 complaints respectively of enforced disappearances. From 2008 to 2010, 11 complaints received on disappearances and 108 on arbitrary detentions blamed the Ministry of National Defense. The Commission's reports show that the militarization of public security in Guerrero has caused an increment in human rights violations.

²⁷ The organizations of the Red Mesa Women of Ciudad Juarez have reported a hundred women missing between 1993 and 2007. The increase in disappearances fires up in recent years, following the Joint Operation in Chihuahua. Comunicación e Información para la Mujer (CIMAC) informs that the reports of "missing and at risk" have evolved over the past four years: 4 in 2007, 34 in 2008, 73 in 2009 and 29 in 2010. Víctor M. Quintana S., *Contexto y proceso de las desapariciones forzadas en el estado de Chihuahua*, March 8th, 2011

²⁸ Since 1991 in Mexico the Federal Law to Prevent and Punish Torture is in force. There are also state laws that define the crime of torture and set a punishment for those responsible. Mexico has signed and ratified both the Convention and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

organized crime and the use of arraigo. In practice the use of arraigo severely limits the possibilities of a legal defense since it is commonly used to manufacture crimes; furthermore, during the arraigo other series of human rights violations are committed including torture and other cruel, inhuman and degrading treatments.²⁹ Despite being a reprehensible act, the figure of arraigo was legislated only for cases related to organized crime; nevertheless the authorities have applied it to cases where there is not necessarily a link with organized crime groups.

In this context, the implementation of the Federal Law to Prevent and Punish Torture has not been ensured. One serious problem is the lack of impartiality in the investigations because the same instance that allegedly committed the crime is in charge of the investigation. The same problem exists in the implementation of the Istanbul Protocol regarding the necessary evidence to prove alleged acts of torture since the experts who carry out the tests are adhered to the Public Prosecutor's Office. Most allegations of torture do not proceed because of a lack of efficacy and willingness on the part of public prosecutors. To date there is a very small number of convictions for torture in the country.

The visit in 2008 by the Subcommittee on the Prevention of Torture led to a detailed analysis of the situation of persons deprived of their liberty in relation to torture and ill-treatment. The recommendations of its final report include strengthening the legal framework and to provide the necessary human and material resources for the National Mechanism for the Prevention of Torture (Mecanismo Nacional de Prevención de la Tortura, MNP). Furthermore, the Subcommittee recommends ensuring the Mechanism's autonomy, independence and institutionalization. One of the faculties of the Subcommittee is to provide assistance on the development and performance of the bodies designated by the States Parties to make regular visits to detention centers, known as national preventive mechanisms against torture; in the case of Mexico and after a controversial process this responsibility resides on the National Commission of Human Rights.³⁰

▪ Penitentiary System

In Mexico a high rate of incarceration and overcrowding in prisons prevails. The Human Rights Committee recommended in 2010 that, to improve living conditions in prisons, the State party should "harmonize the prison legislation of all states and expedite the

²⁹ Several Cases have been documented by the Human Rights Center "Miguel Agustín Pro Juárez", and are mentioned in *Documento preparado para la visita de la Relatora de Independencia de Jueces y Magistrados*, from October 2010, prepared by the National Network of Human Rights Organizations "All Rights for All." Another typical example was the arrest and torture of 25 Tijuana municipal police by the Army in March 2009, who remained in detention without charge (under arrest) in military barracks, allegedly accused of links with organized crime. A year and a half later, 13 of them were released for lack of evidence, without any penalties applied to those responsible. The Mexican Commission for the Defense and Promotion of Human Rights submitted the case to the Human Rights Commission: CMDPDH, *Liberan a 13 exagentes municipales de Tijuana acusados de supuestos vínculos con el crimen organizado*, August 2010.

³⁰ *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, CAT/OP/MEX/1, May 31st 2010

establishment of a single database for all penitentiaries throughout its territory with a view to ensuring a more even distribution of the prison population. Moreover, it should ensure that courts apply alternative forms of punishment."³¹

This situation especially affects women who face, both in their legal process and in the prison conditions, serious obstacles that stem directly and repeatedly from their gender and which result in violence against them and in a violation of their human rights. The civil society organizations have indicated that the effective separation of men and women prisoners should be ensured and regulations should be available for the treatment of prisoners with the issuance of specific rules to protect the rights of women prisoners and of the victims of discrimination and abuse.

It is particularly notable that the number of detainees who have not yet been sentenced represents 41.5% of the prison population. Therefore, detention on remand is not only a measure that contravenes the Constitution but its abuse by the judges represents the inefficient deployment of human resources, financial and material, within the Mexican criminal justice system and the prison system.³²

³¹ *Concluding Observations of the Human Rights Committee, CCPR/C/MEX/CO/5*, April 7th 2010, para16.

³² National Network of Human Rights Civil Organizations "All Rights for All", *Documento preparado para la visita de la Relatora de Independencia de Jueces y Magistrados*, October 2010 [http://www.redtdt.org.mx/media/descargables/documento_Relatora_Final.pdf].

E. Human Trafficking

32. Take measures to include the crime of trafficking in persons in all parts of the federation and strengthen the resource basis for the protection of victims (Belarus), and strengthen measures to protect and provide assistance to victims, with special emphasis on children victims (Philippines)

33. Continue efforts to eradicate sexual exploitation of children (Belarus); and to address prostitution, pornography and trafficking of children and adolescents for the purpose of sexual exploitation (Syrian Arab Republic)

The General Law to Prevent and Punish Human Trafficking entered into force in 2007. Currently 28 states throughout the country have typified this crime in their penal codes and 11 have local legislation on the subject. As part of the dissemination activities, the federal government issued the "Blue Heart Campaign" against human trafficking.

One of the states where the legislative process has not yet taken place is the state of Guanajuato, where there is no law on the subject. Even though non-governmental organizations have documented the crime in the state, no one has been convicted for this crime.

The case of the state of Tlaxcala is a telling one on the challenges posed by the issue and the need to address the problem in a holistic manner. From January 2009 to February 2011 in various state's and national printed media, electronic sources and official statements issued on the website of the prosecutor's office, a total of 34 human trafficking cases for sexual exploitation which mainly involved children, adolescents and women, were reported in Chiapas, Mexico City, Michoacán and Puebla. In all of them the state of origin of the victims and of the traffickers was identified as the state of Tlaxcala; it is also identified as the place where the victims took temporary shelter or of the residence of the sons or daughters of the victims and as a place of exploitation and demand.³³

In February 2010 the State Council against Human Trafficking of Tlaxcala was established through the participation of civil society organizations which, among other things, have highlighted the need for training of public officials responsible for handling cases of victims of human trafficking. They have also stressed the need to carry out actions aimed at eradicating the problem in specific municipalities in the state. In this sense, the actions must envisage specific strategies and programs to reduce demand in the terms established by the Palermo Convention.³⁴

F. Public Security and Judicial Reform

³³ Human Rights Center Fray Julián Garcés, *Noveno informe Centro Fray Julián Garcés*, Tlaxcala, April 2011, p. 26

³⁴ Article 9 of the Convention to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention) [<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>]

34. Promote the implementation of the police and the judiciary reforms (Canada)
35. Continue the Public Security and the Criminal Justice System reforms (Turkey) and ensure that it is being implemented quickly to ensure that human rights violations by the security forces are systematically investigated, perpetrators are brought to justice and victims are compensated (Austria)
36. Review the Code of Military Justice in order to align it more closely with international human rights obligations (Ireland)
37. Recognize the centrality of human rights and the rule of law in its approach to improving public security (New Zealand)
38. Ensure that the rights of detainees are respected (New Zealand)
39. Evaluate the use of “arraigo” (Ireland)
40. Carry out a prompt implementation of the judicial reform to ensure that complaints in cases of torture, arbitrary detention and forced disappearances are exhaustively investigated (Peru), in strict conformity with international human rights standards and adequately involve civil society in this process (Italy)
41. Continue working towards the professionalization and the modernization of the judicial system in all areas, including law enforcement and administration of justice (Palestine)
42. Allocate sufficient financial and human resources for the implementation of the new system of public security and criminal justice, including adequate dissemination of information for users as well as the respective training of judges and lawyers (Chile); devote sufficient resources to the criminal justice and prison systems in an effort to reduce the sentencing backlog (Ireland)
43. Fully investigate all allegations of human rights violations committed by elements of the military and security forces, including the adoption of recommendations made by Mexico National Human Rights Commission (Canada)
44. Fully investigate abuses and human rights violations by law enforcement officials in prisons and ensure that perpetrators are duly punished (Portugal); investigate all allegations of human rights violations particularly in relation to persons who were detained during police operations and ensure that perpetrators are properly brought to justice and punished (Uzbekistan)
45. Combat impunity as one of the Government’s priorities (Belgium), and make a concerted effort to tackle it nationwide (United Kingdom)
46. Investigate and prevent impunity in cases of human rights violations committed by law enforcement officials, throughout the national territory (Cuba); seriously deal with the allegation of systematic and excessive use of force and torture by law enforcing agencies, to end the culture of impunity (Bangladesh); Investigate the alleged cases of torture and other human rights abuses committed by police, military and security personnel and put an end to the climate of impunity (Azerbaijan); step up efforts to halt torture and ill-treatment, eradicate impunity for such acts and ensure that alleged perpetrators are brought to justice (Denmark)
47. Take firm action to eliminate corruption and impunity in the judicial, security and executive branches (Pakistan); redouble efforts in combating corruption at all levels (Cuba); strengthen measures against

corruption and police excesses (Italy); and continue to develop and ensure an effective policy in combating organized crime and corruption (Belarus)

48. Adopt necessary measures to eradicate impunity for human rights violations, particularly against women and indigenous population (Bolivia) and journalists. (Sweden)

49. Place high on the agenda the human rights of indigenous peoples when addressing questions of impunity; and improve access to justice for indigenous peoples, including by strengthening public defense for indigenous peoples and providing better translation services (Finland)

50. Fight against organized crime through effective policies (Turkey); and strengthen and share with countries of the region the Government's policies and strategies to combat organized crime at the regional level, and continue regional workshops to share experience for the transfer of knowledge in systems of public security and criminal justice (Honduras)

51. Include human rights aspects in all training programmes and extend them to all police units (Italy); ensure proper training on human rights to members of armed forces, the police, and prison staff and court staff (Switzerland)

Given the problem of organized crime that the country is facing, the government of Felipe Calderón adopted mainly a police strategy that has led to the militarization of the public security and the deployment of armed forces in large areas of the country. The recommendations on public safety and militarization are focused on preventing violations and abuses committed by police and the army, as well as promoting the reform of the criminal justice system to combat impunity.

▪ **Public Security and Militarization**

In its response to the recommendations relating to public safety, the Mexican government said that the 2009 General Law of National Public Security provides the basis for the professionalization of police in the three levels of government. However, the training process does not consider external participation or monitoring from specialized civil society organizations.

The federal government also stated in its responses to the recommendations that the Federal Police Act "recognizes the investigation capabilities of the police..." However, the law has been questioned because it empowers the police to conduct covert operations without the necessary controls. It has also led to possible effects on the individuals' rights to privacy, inviolability of the home and to private communications or the right of defendants to know the name of his/her accusers. The National Human Rights Commission (CNDH) filed an action challenging the constitutionality of this law

Furthermore, in Mexico³⁵ the so-called "quasi flagrancy" or "compared flagrancy" figure is still applicable. This is contrary to international standards that protect human rights

³⁵ Several international bodies have expressed contravention of the figure of "almost flagrancy" with the international law of human rights. In this regard, the United Nations Human Rights Committee has said that expanding the concept of flagrante delicto, increases the circumstances in which arrests can be made

since this type of arrest makes room for arbitrariness as it gives a sort of 'blank check' to detain people.

Currently the major concerns focus on the reform of the National Security Act. In April 2011 several organizations expressed their concern about three key issues with regards to the discussion on the reform: 1) the regularization of the participation of the Permanent Armed Forces (PAF) in jobs that constitutionally do not correspond them; 2) the criminalization of peaceful social protests, of the defense of human rights and the exercise of freedom of expression; 3) the absence of democratic controls over the actions of the PAF in the actions against alleged "adverse effects on the internal security", this is reflected in the extension of the military jurisdiction to offenses that constitute human rights violations against civilians and 4) the absence of monitoring and control mechanisms from Congress, the Judiciary and the autonomous public agencies.³⁶

The Mexican State should incorporate international standards and recommendations on the subject public safety so that the security it provides is the result of a holistic approach that understands the social, political and economic dimensions of the security issues that the country is facing today, and not only gives priority to the use of force.

This includes the progressive withdrawal of the armed forces from public security tasks, as has been recommended in numerous occasions. As noted by the WGEID, "the logic of the army and the police are different and therefore military operations undertaken in the context of public safety should be strictly restricted and properly supervised. Military personnel are trained to deal with hostile foreign forces and not to perform police activities or interact with civilians. "

▪ **Judicial Reform**

The constitutional reform on criminal justice and security came into force the 19th of June 2008; from that moment an eight year process began to fully implement it. To date, nearly three years later, the progress is as follows:

| | |
|---|--|
| Federal Level | The Code of Criminal Procedure has not yet been legislated |
| In 7 states the accusatory system is operating | Chihuahua, Oaxaca, Durango, Zacatecas, State of México, Morelos and Baja California |
| In 4 states it will start operating in 2011 | Hidalgo, Guanajuato, Yucatán and Puebla |
| 14 entities are in the process of planning its implementation | Campeche, Chiapas, Colima, Guerrero, Jalisco, Michoacán, Nuevo León, Querétaro, San Luís Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala and Mexico City |

without warrants, which "implies a serious threat to the safety of people ". Observations of the Human Rights Committee, Mexico CCPR/C/79/Add 109, July 27th 1999, para 10

³⁶ *Carta conjunta sobre la Ley de Seguridad Nacional*, April 25th 2011 [http://www.redtdt.org.mx/d_comunicados.php?id_comunicado=507&descargable=110422_LSN.pdf].

| | |
|--|--|
| In 7 states there has been no progress | Aguascalientes, Baja California Sur, Coahuila, Nayarit, Quintana Roo, Sinaloa and Veracruz |
|--|--|

At the federal level the new accusatory system does not exist. In less than a quarter of the states the new system is already operating although in some only partially. On the other hand, two thirds of the states are either in the beginning stages of the implementation process or have not done anything about it. A scenario seems to be setting up where most states want to do everything at the last minute or might as well end up pushing for an extension and will further delay the effective access to justice for citizens.

Another aspect of the reform is the figure of a judge in charge of enforcing the penalties. According to the fifth transitory paragraph of the reform, the judges should be taking office no later than the 20th of June, 2011. At the federal level the respective law has not yet been approved and therefore an appropriate legal framework is non-existent. The Federal Judicial Council reported that it will resolve the issue with a general agreement and foresee the entry of 16 federal judges on the matter. Besides the lack of legislation it must be noted that there are no budget plans for this stage.

In the case of Mexico City in early May 2011 the law on judgment enforcement was approved. However, the selection of the judges is quite delayed so that it is a possibility that only two or three judges will be working from the start and not the 25 that are needed. Furthermore, there is no planned budget for the essential infrastructure or the salaries.

To date there is no proposal to enforce the provisions of Article 18 which reads as follows: "The prison system is organized on the basis of work, the training to carry it out, education, health and sports as means to achieve the reintegration of those imprisoned to society."

This implementation process is meeting with resistance and opposition. In previous months, as a result of the acquittal judgment issued by the judges in the case of Ruby Marisol Frayre in the state of Chihuahua, a series of criticisms, launched by the President Felipe Calderon and the Governor of the state, began against oral trials which accused the system of being a revolving door for criminals as well as of having too many guarantees. This type of questioning keeps the possibility of a counter-reform alive and also acts as an update on the risk of executive intervention in the tasks of the judiciary. In this case, the Chihuahua state governor had an influence on the judges sitting on the cases being subjected to an investigation process and on the court of appeal reversing the judgment to meet the social pressure.

Regarding social participation, this is almost nonexistent. At the federal level only one member of the crime victims' organizations is part of the SETEC Council³⁷ and Implementation Committees are exclusively composed of government officials. There is no one general plan, in many cases the actions are improvised and the social expectation to have a new justice system is null. Three years into the process there is no dissemination strategy which leads to the marginalization of the society in the process.

Following its visit to Mexico, the Special Rapporteur on the independence of judges and lawyers concluded in its report that "the successful implementation of these reforms will rely on the political leadership and the redoubled efforts on the part of all relevant institutions and stakeholders, as well as on the necessary economic investments and other specific actions that need to be carried out immediately."³⁸

³⁷ Coordination Council for the Implementation of the Criminal Justice System: <http://www.setec.gob.mx/>

³⁸ *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/17/30/Add.3, April 18th 2011 [<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/30/Add.3&Lang=S>]

G. Human Rights Defenders, journalists and freedom of expression

52. Publicly recognise the important role of human rights defenders and NGOs in the protection of human rights in Mexico (United Kingdom)

53. Invite NGOs working on press freedom to a constructive dialogue on how Mexico can stop the violence against journalists and ensure press freedom (Norway)

54. Strengthen the rights of journalists and free media; the state as well as the municipal governments should fulfill their responsibility to protect a free media (Germany)

55. Undertake legal reforms to ensure openness and transparency of the media in the country (Russian Federation); review legislation governing radio, television and communication and follow-up on the Supreme Court's ruling for a new legal framework permitting diversity in the media (Netherlands)

56. Put into place more effective measures to tackle violence against journalists and media personnel (United Kingdom); provide greater guarantees to them (Peru); guarantee their safety and security (Bangladesh, Denmark, Peru), when they are discharging their professional duties (Bangladesh), in particular those that investigate and report cases of drug trafficking and corruption (Peru)

57. Create the proper legal framework that gives the Special Prosecutor for Crimes Against Journalists sufficient jurisdiction to investigate and indict perpetrators with greater independence (Netherlands)

58. Investigate cases of attacks / violence and threats against journalists and human rights defenders (Azerbaijan, Germany), in order to bring the perpetrators to justice (Germany); and step up efforts to ensure that investigation of attacks on voices for freedom of expression become a federal issue (Denmark)

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

60. Increase the effectiveness of the "precautionary measures" to protect human rights defenders (Germany), including through adopting effective and comprehensive prevention strategies, at central and local levels, to prevent attacks and protect the life and physical integrity of human rights defenders and journalists, and ensure that such programs are backed by a strong political commitment and provided with adequate resources (Norway)

61. Take measures to guarantee freedom of demonstration and ensure protection of demonstrators (France)

The context for the defense of human rights and the exercise of freedom of expression has worsened over the past two years. The documentation of attacks shows the seriousness of the situation as well as the lack of a tangible progress in the investigation and punishment of those responsible. The State has not carried out comprehensive strategies to prevent the attacks and protect human rights defenders, journalists and media channels at risk. There has also been no progress in the legal reforms that ensure the information's diversity and pluralism in the country as stated in the recommendations.

- **Human Rights Defenders**

In 2009 the Mexico Office of the High Commissioner for Human Rights (OHCHR) published a report on the situation of human rights defenders in Mexico. The study documented 128 cases of alleged attacks and acts of aggression against defenders between 2006 and August 2009, including 10 homicides, and found that the impunity and lack of punishment are prevalent in over 98% of cases.³⁹

The report was expanded and updated in 2010; it stated that from September 2009 to October 2010 there were a total of 37 alleged aggressions.⁴⁰ The OHCHR found an increment in harassment, threats and attacks against defenders and reaffirmed the high degree of impunity in all the cases, which constitutes "the factor that increases the most the risk of attacks against human rights defenders since it leaves them in a situation of helplessness and vulnerability". Furthermore, there was an increase in granted interim measures of protection to defenders at risk by the National Commission on Human Rights and the Inter-American Commission on Human Rights with respect to the previous year.⁴¹

It can be observed in this diagnosis that most of the victims' advocates in the analyzed cases work in isolated, marginalized or high risk areas due to the absence of safety conditions. The fields on which the defenders were working were related primarily to the rights of indigenous peoples, natural resources and the denunciation of abuses committed by the military. The highest number of denunciations has been registered in the states of Chihuahua, Chiapas, Oaxaca and Guerrero.

The origin of the attacks is uncertain in most cases because there are no prompt and efficient investigations. However, some evidence points to three types of alleged perpetrators: government officials whose interests are affected by the activities of the defenders; criminals who see these activities as an obstacle to their interests and transnational corporations that, driven by the desire for profit, undermine the resistance of communities affected by their activities.

For its part, the National Network of Human Rights Organizations "All Rights for All" (Red TDTT) has recorded 15 cases of attacks on defenders between 2009 and 2010; these attacks were reported by the organizations members of the Network (Red TDTT) itself. They all remain in impunity. In the state of Guerrero, for example, it has been documented how prosecutors often use a double standard in the proceedings related to

³⁹ *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los Defensores de Derechos Humanos en México*, 2009, disponible en [www.hchr.org.mx/documentos/libros/informepdf.pdf].

⁴⁰ The update was presented on the 24th of November: OACNUDH, *Actualización 2010: Informe sobre la situación de las y los defensores de derechos humanos en México*, 2010 [<http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>].

⁴¹ The Investigation Program of Attacks against Journalists and Civil Defenders of Human Rights of the National Commission of Human Rights (CNDH), had opened 38 complaint files up to November 17th, 2010 to investigate probable acts that violated the human rights of defenders, out of which 6 were opened ex officio. In 2010 the Commission issued 18 interim measures for defenders of human rights.

defenders. On the one hand, the investigation aimed at investigating threats, harassment or other crimes against activists are significantly delayed when it comes to presenting advancements and often remain without any progress at all. On the other hand, the investigations in which the activists have been falsely accused in order to criminalize them are dealt with unusual diligence.⁴²

This situation is also an example of the complete absence of investigation processes and the denial of access to justice as well as the lack of a clear, coordinated and effective policy for a comprehensive implementation of protective measures for the defenders. Usually it is the authorities (especially local authorities) who, in the absence of clear responsibilities, do not implement such measures effectively, this is particularly serious given the urgency to protect these groups and individuals and the unprecedented number of defenders who have been forced to request protection measures.⁴³

The OHCHR report included recommendations that, in line with the UPR, promoted the recognition of the defenders' work; it also urged the State to investigate the attacks and put an end to the impunity that prevails in these cases. Furthermore, it requested the creation of specific mechanisms of protection in consultation with the civil society organizations that would include defenders and other groups particularly vulnerable, including journalists.

In the case of the protection mechanism the Ministry of Interior, the National Commission on Human Rights and the OHCHR launched a forum held on the 11th and 12th of February 2010 with the participation of the civil society. Among the agreements it was decided to create a comprehensive mechanism of prevention, protection and research that would be subsidiary and complementary to existing state obligations. This mechanism would ensure the participation of the civil society and would take into consideration defenders and journalists, addressing the respective specificities.

However, the Ministry of Interior has not maintained the dialogue with civil society organizations to implement such a mechanism, as it had been agreed. Meanwhile, a group of organizations prepared a proposal for a mechanism able to implement preventive and protection measures, and generate efficient research.⁴⁴ The proposal gathers the experiences from various countries to propose a comprehensive mechanism that can respond to the various identified problems and, in this manner, respond to the UPR recommendations. To date, federal authorities have been reluctant to re-establish a space for dialogue to be able to implement the project.

⁴² The Human Rights Center of the Mountain "Tlachinollan" has documented in recent years cases of assaults against the Indigenous Peoples Organization Me'phaa, the Organization for the Future of Pueblo Mixteco or of Radio Ñomndaa, among others.

⁴³ After a mission of experts to Guerrero, the Foundation of the General Council of Spanish Lawyers (FCGA) stated that "there is malpractice in the performance of research activities, as well as passivity or inaction by the state not only in protecting the victim but in the provision of means to carry out effectively such protection and to be the guarantor of the protection of these people." FCGA, *Impunidad e indefensión: caso Fernández Ortega y otros vs. México*, October 2010.

⁴⁴ This proposal is public and was presented in thematic hearing before the Commission on Human Rights in October 2010 during the 140^o session.

- **Freedom of Expression**

During the years 2009 and 2010 at least 19 journalists have been killed and 2 more are still missing. The situation of violence against the press in some states is acute, especially against the local journalism that covers issues of corruption, organized crime, drug trafficking, and public safety. At the same time public denunciation of the attacks has weakened because of threats and the lack of investigation by the state.⁴⁵

In order to strengthen the investigation of cases of aggression, the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE) replaced in 2010 the Special Prosecutor for Investigating Crimes Committed Against Journalists (FEADP) created in 2006. In the new agreement some shortcomings and limitations remain such as discretionary powers to bring cases; the ambiguity in the definition of the passive subject of the aggression (victim) and constraints in the knowledge of crimes, such as the requirement that they be federal crimes or related to them, that they carry a prison sentence and the crimes are not presumed to be committed by the organized crime.⁴⁶

Only in 2010, the FEADLE brought 7 cases before a judge (that implicated 17 suspects but no conviction has been made yet) which is an increase compared to 4 cases recorded between 2006 and 2009 (in which 1 case ended in a conviction). These numbers are still insufficient compared to the total volume of recorded attacks. Furthermore, as stated in the recommendations by the UPR, efforts to federalize crimes against freedom of expression have not yet materialized and this in turn continues to limit the work of the FEADLE.⁴⁷ However, the fight against impunity also requires an effort of the states in the task of equipping their law enforcement bodies and their judges with more and better performance guarantees, including greater autonomy, resources and technical strengthening.

In November 2010, in relation to the progress on protection mechanisms, the Ministry of Interior announced the "Coordination Agreement on the implementation of preventive actions and the protection of journalists"; an interagency agreement that envisaged the creation of a Consultative Committee and Operational and Functioning Guidelines with

⁴⁵ In 2009 there were 244 assaults and in 2010, 155. While some of these attacks are the responsibility of actors linked to organized crime, 65% of cases in 2009 and 49% in 2010 are attributed to public officials and security forces. During this administration there have been a total of 44 murders and 8 missing journalists. These figures mentioned correspond to ARTICLE 19, Office for Mexico and Central America and the National Centre for Social Communication, Cencos: *Violencia en México y el acceso a la información. Análisis de cifras*, Mexico City, April 2011

⁴⁶ ARTICLE 19, Office for Mexico and Central America and the National Centre for Social Communication, Cencos, *op. cit.*, pp 45

⁴⁷ With the federalization is intended that the PGR and the federal penal judges have jurisdiction to investigate and prosecute these crimes. The House of Representatives passed in April 2009 an inadequate reform of the Federal Criminal Code since it partially protects the right to freedom of expression as "it does not enable the federation to investigate and punish these crimes through the federalization, or by means of attraction because it does not provide adequate procedural reforms and thus federal authorities can intervene only under the same circumstances in which they do today." Special Rapporteur on Freedom of Expression *Informe Anual 2010. Vol. II Informe Anual de la CIDH*, marzo de 2011 [http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA_2010_ESP_P_abril.pdf]

"the criteria for the adoption, implementation, preservation, modification or termination of preventive measures and protection of journalists." The Committee took office on the 3rd of December. However, the guidelines, which should have been finished before the 3th of January, 2011, have not yet been published.⁴⁸

With respect to ensuring the diversity and plurality of the media in the country, following their visit to Mexico, the freedom of expression Rapporteurs of the UN and the OAS considered that still a "legal uncertainty prevails regarding the regulation of broadcasting in the country".⁴⁹ The Rapporteur also considered necessary, in order to promote the diversity and plurality of the media, to adopt "structural measures such as the establishment of a broadcasting regulatory body that is autonomous from the government" and "to ensure the existence public media that are truly independent from the government with the purpose of promoting diversity and guaranteeing to the society, among others, certain educational and cultural services." In addition, they stressed the urgent need to "approve legislation that responds to the ruling of the Supreme Court and to international standards, so that community radio stations can obtain authorization to broadcast, as well as to establish a clear legal framework for their operations".⁵⁰

⁴⁸ Organizations such as ARTICLE 19 and the National Center for Social Communication (Cencos) noted the lack of clarity about the involvement of civil society and the need for the OHCHR to become a permanent member in this mechanism. The responsibilities of the Evaluation Subcommittee are not delineated, neither are the working procedures and the guidelines to ensure comprehensive care, timely, efficient, dignified, with a gender perspective and confidentiality. The Committee will not be effective if, among other things, it does not establish mechanisms for the investigation, prevention and protection at the state and municipal levels. ARTICLE 19, Office for Mexico and Central America and the National Centre for Social Communication *op. cit.*, pp. 54-56

⁴⁹ After the ruling by the Supreme Court in June 2007, which declared unconstitutional several provisions of the Federal Law of Telecommunications and Radio and Television, the Congress and the executive branch have not created the appropriate policy framework to cover the gaps generated and indicated by the decision of the Supreme Court. *Joint Official Visit. Preliminary Observations*, UN, OAS, August 24th 2010.

⁵⁰ *Joint Official Visit. Preliminary Observations*, UN, OAS, August 24th, 2010 [<http://www.libertad-expresion.org.mx/wp-content/uploads/2010/08/Informe-preliminarOEA-ONU.pdf>].

H. Poverty and Economic, Social and Cultural Rights (ESCR)

62. Continue to strengthen programmes aimed at creating growth and employment (Canada)
63. Continue enhancing the working conditions of temporary agricultural laborers and strengthen the work of labour inspection authorities (Guatemala)
64. Take more concrete measures to eliminate employment and wage gaps, to increase school enrolment rates of indigenous children, and review the justice system (Japan)
65. Combat (Algeria, Honduras) and continue efforts to eradicate (Holy See) extreme poverty (Algeria, Holy See, Honduras).
66. Strengthen efforts / programmes to fight against poverty (Brazil, Canada) and put more financial resources to eradicate it, especially in rural areas (Azerbaijan).
67. Pay special attention to the situation of indigenous people in programmes/strategies to reduce/eradicate poverty (Algeria, Azerbaijan, Philippines) and take measures to reduce that the problem of extreme poverty affecting them (Honduras)
68. Put more efforts and financial resources to eradicate high level mortality and malnutrition rates, especially in rural areas and among indigenous peoples (Azerbaijan)
69. Continue to extend and strengthen the system of primary healthcare and improve the quality of such services (Honduras); and redouble efforts to reduce the number of maternal deaths by training birth attendants and establishing more obstetric clinics (Holy See), with particular attention to indigenous women and peoples (Holy See, Honduras).
70. Continue efforts and take further steps / strengthen the national programme to ensure the right to food (Vietnam), to health (Saudi Arabia, Vietnam), and to education (Saudi Arabia), particularly for the vulnerable groups living in extreme poverty, including indigenous people (Vietnam)
71. Fully implement the Rural Food Support and Supply Programme, the Social Milk Programme, the Living Better Food Supplement Programme and the Comprehensive Food Aid Strategy, with a view to meeting the food requirements of the most vulnerable sections of society (Malaysia)
72. Continue efforts aimed at providing adequate financing for housing to the poorest segments of the population (Malaysia)
73. Ensure the effective access of all children to education, in particular migrant and indigenous children, and take effective measures to combat their exclusion from the education system (Algeria)
74. Seek to improve the enrolment rate of girls in primary and secondary schools (Philippines)

Economic, social, cultural and environmental rights are programmatic and their development must be progressive. Thus the state must allocate the means at its disposal to meet the minimum needs of the population in the areas involved and, by expanding the enjoyment of these rights, the state must delineate progressive policies to improve

the living standards of the population.⁵¹ The three branches of government in their different areas must use the maximum available resources while the scarcity of resources does not relieve the states of certain essential obligations.⁵² The UPR recommendations focus on reducing inequalities and, in particular, on guaranteeing the ESCR of vulnerable groups such as indigenous peoples, children and migrants.

- **Reduction of inequality**

To be able to achieve a reduction in inequality requires a set of coordinated economic and social policies between the different institutions and levels of government. However, overall there is no visible progress that is having an impact on reducing inequalities, as promoted by the recommendations.

The Organization of Economic Cooperation and Development (OECD) stated in a 2011 report that Mexico ranks second in income inequality in OECD countries and has the highest level of relative poverty (one in five Mexicans are poor, compared to only one in ten on average in the OECD countries).⁵³ Almost half of Mexicans find it difficult or very difficult to make ends meet.⁵⁴

For its part, the United Nations Development Programme (UNDP) has documented huge differences between the regions and the 32 states of the country in terms of health, education and income, even when Mexico is placed on the threshold of the most developed countries according to the Human Development Index (HDI).

The Northeast of the country is the area with the highest HDI, this is where the state of Nuevo Leon is located and is ranked second in the HDI; together with Mexico City it has

⁵¹ Chapter III paragraph 20, Quito Declaration on the enforcement and realization of economic, social, and cultural rights in Latin America and the Caribbean (July 24, 1998): “ESCR set the minimum standards that the State must meet in economic and social terms to guarantee the functioning of a just society and to legitimate its own existence. In order to achieve this minimum socioeconomic order, international instruments relating to ESCR do not impose blanket formulas, but require that the State at least mobilize the means within its reach to cover the minimum needs of the population and define policies aimed at progressively improving the standard of living of the population by expanding the enjoyment of these rights”

⁵² The ESCR Committee, in its general comment 3 established that: “In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations. “. The nature of States parties obligations General Comment 3, U.N., ESCR Committee, 5th Period of Sessions E/199/23 (1990), para. 10.

⁵³ The report *Panorama de la Sociedad 2011. Indicadores Sociales* of the Organization of Economic Cooperation and Development (OECD) states that the Gini index, which measures inequality, Mexico’s score was a 0.48 (the average of OECD countries is at 0.31). It identified that in 10 years there has only been an increase of 0.21 in the Gini index[http://www.oecd.org/document/24/0,3746,en_21571361_44315115_2671576_1_1_1_1,00.html].

⁵⁴ According to official data in 2008, 44.2 percent of the population lived in conditions of multidimensional poverty, i.e., about 47.2 million people in the country had at least one social deprivation and did not have enough income to meet their needs. National Council for Evaluation of Social Development Policy (CONEVAL), *Medición de la pobreza*, 2011 [<http://www.coneval.gob.mx/cmsconeval/rw/pages/medicion/index.es.do>].

a HDI close to the HDI of some European countries. On the other hand, the southern region, where Chiapas is located, has the lowest HDI. Chiapas occupies the last place on the HDI and, together with Oaxaca, does not surpass the index of the Occupied Territories of Palestine.

Among the causes of this inequality, UNDP underlines the precariousness of the investment and the obstacles that the public administration is facing at local level; this in turn prevents the individual from exercising his/her the rights and liberties. Regional inequality can also be observed in the phenomenon of internal and external migration. In fact, regional differences are such that "there are areas that offer better living conditions than those in their place of origin."⁵⁵

In contrast, Forbes Magazine published in March 2011 that the Mexican tycoon Carlos Slim Helú topped the list of billionaires. His fortune is estimated at 74 billion USD; it increased by 20.5 billion dollars in one year. In addition to Carlos Slim three other Mexicans are among the 100 richest worldwide.⁵⁶

▪ **Growth, employment and Jobs inspection**

Against all progressive harmonization logic on the subject of labor rights, the latest reform proposals contravene UPR recommendations on the subject of labor. The new proposals seek to downplay the enforceability of collective agreements; pay hourly wages according to number projects and productivity; to dispose of working hours according to market needs; reduce economic benefits, abolish the seniority premium and try to inhibit as much as possible the right to strike.⁵⁷

The Mexican government has favored a vision of productivity in poor working conditions. From 2007 to 2010 the unemployment rate rose from 3.7 to 6.3 percent, leaving young and working women primarily in a grave situation of vulnerability.⁵⁸ Only in March 2011 there were 957,071 job seekers in the Job Opportunities website of the Ministry of Labour and Social Security, out of which 173,399 were placed in a job. In 2011, 1.09% of the total budget was allocated to labor issues while 6.30% was allocated to business matters.

⁵⁵ UNDP, Human Development Reports on Mexico 2002, 2004 and 2006-2007. Available at: www.undp.org.mx.

⁵⁶ "The billionaires of the world", *Forbes Magazine*, March 2011 [http://www.forbes.com/fdc/welcome_njx.shtml]

⁵⁷ Efforts to reform the Federal Labor Law made in 2011 by the PRI and National Action Party demonstrate a lack of commitment to respect and guarantee labour human rights and to contribute to the vulnerability that many of the workers already live in. These initiatives seek to "regularize" the precarious and exploitation conditions against all logic of a gradual harmonization in the subject of labour human rights.

⁵⁸ Open unemployment rose 72% during the first three years of the administration of Felipe Calderón; while the largest growth in employment occurred in the informal sector. From 2006 to 2010 the percentage grew 5.76% (more than the total employed population, 4.04%) and formal employment grew by 1.95%. Center for Reflection and Action on Labor (CEREAL), *Década panista 200-2010. Decenio Perdido para los derechos laborales. XIV Informe de Derechos Humanos Laborales*, 2011.

The problem of unemployment is compounded by its precariousness. Out of the 44.6 million people employed in the country, 28.8 million do not have access to health care institutions (7.9% more than in the administration of President Vicente Fox). In addition, there is a sector of 29.2 million subordinate and paid workers and only 17.5 million have benefits (11.7 million do not have them), only 15.3 million have a contract while 13.7 million works without it; 14.2 million work 35 to 48 hours a week and eight million work more than 48 hours a week.⁵⁹

Working hours are extended beyond the provisions of the law, there is an increase in outsourcing that affects mainly young people, and there is a reverse process on the right to social security. The wage level has generated a loss in purchasing power parity which leaves workers unable to access their right to adequate housing, food, education and health among others.

Regarding the recommendation to strengthen the work of authorities on labor inspection, the head of the Ministry of Labour and Social Welfare said in 2011 that in Mexico there is not even one inspector for every 100,000 workers.⁶⁰ Labour inspection aims to ensure fair working conditions and protect the workers.⁶¹

The International Labour Organization has established as an indicator that the number of inspectors per worker "should be about one inspector per 10,000 workers in industrial countries with market economies, one inspector per 15,000 workers in countries undergoing economic industrialization, one inspector for every 20,000 workers in transition countries and one inspector per 40,000 workers in the least developed countries."⁶²

▪ **Right to Food**

In May 2011, the House of Representatives approved an amendment that raises to a constitutional level the right to nutritious, adequate and good-quality food. Article 4 of the Constitution has been amended to state that "everyone has the right to nutritious, adequate and good-quality food. The state shall guarantee this." Article 27 on the other hand states that "the comprehensive and sustainable rural development referred to in

⁵⁹ Center for Reflection and Action on Labor (CEREAL), *Op. Cit.*, p. 9.

⁶⁰ Press conference by the Secretary of Labor and Social Security, Javier Lozano Alarcon, at the end of the session of the Tripartite Commission for the Law on Food Assistance to Workers, March 28th, 2011, Hotel Niko, Mexico City

⁶¹ Article 10 of Convention 81 of the International Labour Organization, calls for a sufficient number of inspectors to perform the required functions that are: to ensure compliance with legal provisions, investigate complaints and to carry out examinations of the technical and administrative, to provide technical information and advice to employers and workers, propose to competent authorities the defects and abuses not covered by legal provisions in force.

⁶² ILO, *Estrategias y prácticas en materia de inspección laboral*, 2006, GB.297/ESP/3 para 13

the previous paragraph will have among its purposes that the State guarantees an adequate and timely supply of the staple foods established by law."⁶³

The constitutional changes are a step forward in the progressive realization of the right to food for the Mexican population in line with the UPR recommendations. The right to adequate food is a fundamental component for the enjoyment of other human rights including the right to an adequate standard of living.

- **Right to education**

Despite its acceptable educational indicators, Mexico faces the problem of a poor quality education provided by the state and the exclusion that many children and youth in the educational system are subjected to. It seems that there is a tendency to provide a poor education to the poor. The education provided by the state lacks the quality required by the job market and is not thought as an education meant to dignify the human being. The level of education limits them to become low skilled labor, cheap and uncritical. Our leaders have lacked vision and interest in investing in the education system in order to have an educated, competitive, productive and capable of thinking population that will build a democratic state of law and that respects human rights.

In 2010 the Rapporteur for the Right to Education indicated that 8 out of 10 indigenous people do not have primary education. The budget to meet the needs of indigenous peoples and communities is still very limited. In addition, the educational model is insufficient to be able to rescue and empower indigenous languages and cultures; there is lack of training for teachers and it is common for them not to know the languages of the students they educate. In the case of indigenous peoples, not even 1% of population that enters primary school manages to enter university, as opposed to 17% of the national population.

According to the Rapporteur the main problem that the education authorities are facing is to provide quality education; the "education supply does not meet the social inequalities that mainly affect marginalized populations, it also does not introduce structural measures that address more effectively their needs, nor does it invest sufficient resources for their care."⁶⁴ Although there are important initiatives, it would appear as if the system was reproducing these inequalities or it is very slow in removing them.

- **Right to the highest level of health**

Communities and indigenous peoples in Mexico are characterized for living in the marginalized areas of our country (even those living in urban centers), a situation which

⁶³ *Se eleva a rango constitucional el derecho a la alimentación en México*, Monitoring Center for social policy and human rights, May 20th 2011.

⁶⁴ *Relator Especial sobre el Derecho a la Educación culmina su visita oficial a México*, February 18th 2010 [<http://www.hchr.org.mx/Documentos/comunicados/2010/02/CDP190210Educacion.pdf>].

leads to a high degree of discrimination regarding their right to health. Many communities still suffer from the so-called "diseases of poverty." The main causes are the lack of physical access to basic services that allow an adequate quality of life, such as drinking water, as well as the lack of physical and economic access to medical facilities or basic health services, these are problems that make it difficult for them to timely and quality the attention to this sector, which is critical because many of the diseases, preventable or curable diseases in their early stages, can become fatal in the patients. An example of this is that three of the leading causes of death among the indigenous peoples are gastrointestinal diseases and respiratory infections (diarrhea, pneumonia, etc.).⁶⁵

Added to this, women in indigenous communities have the highest maternal mortality rate. This is linked to the little exercise of their sexual and reproductive rights, access to contraceptives and of appropriate health care during pregnancy and childbirth. The states of Oaxaca, Guerrero and Chiapas stand out since their population mainly indigenous accounts for almost half of the maternal deaths nationwide.

- **Right to mental health**

On the 17th of December 2010 the Legislative Assembly of Mexico City approved the Mental Health Act; which is an acknowledgment of mental health as a fundamental human value and the protection of the rights of persons with mental disabilities as a state obligation. This represents the first step towards the creation and adoption of policies, plans and programs that benefit this group especially vulnerable and towards the improvement of the lives and mental well-being of the inhabitants of Mexico City.

While this new law takes up certain human rights elements that any comprehensive legislation should contain there are provisions which are contrary to or simply ignore international standards, particularly those established in the Convention on the Rights of Persons with Disabilities.⁶⁶

Among other things, people or groups who have mental disorders should not be associated with groups that go against social norms or alter the social stability. To do so would be to incur not only in the risk of not saying the truth but, more importantly, these judgments contribute to perpetuate the social stigma and discrimination which these people are already being subjected to.

A Mental Health Act in line with international standards is critical to update our country in this subject and it will represent a milestone in the fight for the rights of persons with

⁶⁵ Human Rights Center Fray Francisco de Vitoria O. P., A., C. y Mexico City Human Rights Commission, *Informe sobre la Situación de los Derechos Económicos Sociales, Culturales y Ambientales en México*, Mexico, CDHFV, from 2008 to 2010.

⁶⁶ *Pronunciamiento Ley de Salud Mental DF*, January 11th, 2011 [http://www.redtdt.org.mx/d_comunicados.php?id_comunicado=423&descargable=Pronunciamiento%20Ley%20de%20Salud%20Mental%20en%20el%20DF%20compil].

disabilities, given that Mexico was one of the main promoters of the United Nations Convention on the Rights of Persons with Disabilities.

- **Right to housing⁶⁷**

Indigenous communities suffer multiple violations to their right to housing because their communities are confined to areas far from major urban centers and service infrastructure. However, in recent decades it has been the big corporations and in various occasions, the mega-projects often imposed by federal and local authorities, that have threatened and violated this rights the most. Due to their location in areas of great natural wealth, these regions are the main target of private, mainly foreign, investments that are trying to exploit these areas commercially.

Through the imposition of large infrastructure projects such as dams, wind farms, mines, trade corridors and tourism, the families in the communities are being forcefully displaced. Nevertheless, these actions are imposed on the population and are carried out without the consent of the communities who are also denied any information. As an example of dams we have the cases of El Cajon y la Yesca in Nayarit, the Picacho dam in Sinaloa and Cerro de Oro in Oaxaca.

Likewise, the mines have been another example of how the intervention of multinational corporations has affected the housing rights of rural communities in our country. One example is the company *Vista Gold*, a Canadian company that seeks to exploit the mine *Paredones Amarillos* in the Biosphere Reserve of Sierra Laguna, Baja California. This will lead to the pollution of water aquifers and drinking water sources violating the right of access to water. A similar case is taking place in the Ejido Huizopa in the municipality of Madera, Chihuahua. Residents have opposed the mine and are fighting the arbitrary proposal by the Canadian transnational Minefinders to evict them from their village. The villagers of Mazapil in Zacatecas, have also been affected by mining activities carried out by the transnational Gold Corp Inc., whose mining operations have poisoned the water as well as hundreds of residents in Zacatecas. Local people who have spoken out against the mine have been threatened. In general, mining companies come with threats or promises of payments and infrastructure to the indigenous peasants and then they do not comply with their promises, as it happened in the case of Blackfire Chicomuselo.

Similarly, in Chiapas, the Canadian transnational *Linear Gold* has become the largest concession holder in number of hectares (328 000 160). The hectares are distributed in 15 municipalities in the state such as Copainalá, Ixhuatan, Pichucalco, Rayon, Villa Comaltitlán, Motozintla, La Concordia, Amatenango del Valle, Ángel Albino Corzo, Escuintla, Huixtla, Mapastepec, Motozintla, Tapilula and Villa Flores.

⁶⁷ Human Rights Center Fray Francisco de Vitoria O. P., A., C. y Mexico City Human Rights Commission, *Informe sobre la Situación de los Derechos Económicos Sociales, Culturales y Ambientales en México*, Mexico, CDHFV, from 2008 to 2010.

- **Right to Housing in Mexico City⁶⁸**

The extreme poverty that affects indigenous communities has forced many families to migrate to Mexico City in search of better opportunities. However, many of them have not seen their rights guaranteed. In Mexico City more than thirteen thousand indigenous homes do not have drainage and drinking water, an issue that is resented the most by women whose social role makes them responsible of the home.

In addition, the indigenous population is discriminated against in the access to mechanisms and public policies on housing due to, in large part, the fact that their work situation does not allow them to individually acquire funding to purchase a home. The rules of operation of homeownership programs for indigenous people require them to demonstrate a legal organizational form to manage the credits.

This requirement only generates exclusion and therefore, the groups that cannot comply with it are discriminated against in any opportunity to be supported by housing agencies to access credit. The result is an indigenous population crowded in slums or abandoned buildings, and without basic services for their survival.

Furthermore, indigenous people are also discriminated against in being able to exercise, through their own worldview, their right to housing. The way housing is constructed, the materials used and the public policies generally do not allow them to replicate the expressions of each ethnic group, and thus the cultural identity and diversity of indigenous housing is being threatened. The authorities are not respecting the identities of these people and are not taking into account the element of cultural adaptation of housing, which in the end constitutes a substantial part in the construction of the collective conscience and the right to non discrimination in access to housing.

⁶⁸ Human Rights Center Fray Francisco de Vitoria O. P., A., C. y Mexico City Human Rights Commission, *Informe sobre la Situación de los Derechos Económicos Sociales, Culturales y Ambientales en México*, Mexico, , CDHFV-Indesol, 2008 pp 109.

I. Indigenous Peoples

75. Increase efforts to improve the whole system with regard to the indigenous peoples (Azerbaijan); and persevere in the efforts to build a truly inclusive democracy by fully recognizing the rights of indigenous peoples (Panama); and undertake measures to redress marginalization of indigenous and migrant populations, in line with the prominent role of Mexico in the international scene (Bangladesh)

76. Continue addressing the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Guatemala) and invite the relevant special rapporteurs to visit Mexico and make necessary recommendations to uplift the lot of indigenous communities, in line with its commitments and relevant international instruments (Pakistan)

77. Adopt appropriate legislation in full conformity with international standards on the rights of indigenous peoples (Argentina); and take necessary measures to ensure the right of indigenous peoples/other marginalized communities affected by planned economic or development projects to be adequately and fairly consulted (Bolivia, Denmark), in accordance with the commitments undertaken by ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples (Bolivia)

78. Strengthen efforts at the federal level to raise awareness of indigenous rights, language and customs, by providing guidance and training to military and local officials, including the police, judiciary, and members of the legal community, particularly in rural areas (New Zealand)

The recent enactment of the constitutional reform on human rights is also an important step forward in the recognition of the rights of indigenous peoples. This reform should now consider the contents of Convention 169 of the International Labour Organization (ILO). Again there is an urgent need to review the implementation of Article 2 of the Constitution. It should be recalled that to date the recommendations of the UN Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous People have not been addressed that call the State to reopen the debate about indigenous matters in accordance with the principles in the San Andres agreements and with international standards.

The Rapporteur's report touches upon several key aspects of the rights of indigenous peoples in Mexico; one of the main themes is the access to justice. The lack of protection of indigenous peoples in Mexico with regards to due process and a fair trial is evident. The indigenous people that are involved in a legal process face a discriminatory system alien to their culture and concepts of justice, besides being of an inquisitorial nature and expensive. Most processes present startling irregularities which start from the moment of detention, the vast majority of which were carried out arbitrarily. The police interrogations are often carried out under pressure and in many cases involve torture. The justice system is characterized by being biased and unfair. In everyday life, indigenous people are unaware of the judicial process and procedure which they are undergoing and the different stages of it. There is also a lack of interpreters of their language and according to their culture, which has become one of the most frequent irregularities in the judicial process. Furthermore, most lawyers do not know the language and culture of their clients. On the other hand, judges give sentences ignoring the legal norms of indigenous peoples and even unaware of the international human rights instruments that protect them, in particular of the United Nations Declaration on the Rights of Indigenous Peoples.

When speaking of justice, however, the right of these groups to access their own indigenous jurisdiction should not be overlooked, this jurisdiction is based on the regulatory systems of the indigenous people. These are explicitly mentioned in both Article 2 of the Constitution and the ILO Convention 169 and should be recognized by national authorities. However, the expressions of community justice are often unknown and even persecuted. In Guerrero, where the indigenous peoples of the Coast-Mountain have organized themselves around the Regional Coordinator of Community Authorities (CRAC) to find an alternative community justice and security in the region, the promoters of this grassroots system often go through interrogations by the formal authorities that often translate into criminal processes.

The recognition and implementation of the right of consultation of indigenous peoples in Mexico has been a long struggle that has not yet been implemented. Convention 169 states in its article 6 that in applying the provisions of this convention, governments have a duty to "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" and that such consultations "shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures". Currently, the projects that affect indigenous communities are being developed and carried out without consultation and prior informed consent. An example of this is the Mesoamerica Project or the mining concessions that have been granted to national and international companies for the exploitation of soils within the territory of indigenous communities.

In recent years one of the most intense in the struggles for recognition of their indigenous rights has been that of the wixárika community. During the Permanent Forum's session under the UN Economic and Social Council (ECOSOC), which ended on May 27th 2011, the Rapporteurs warned of the UN's concern on issues that endanger indigenous peoples because of the absence of recognition of the consultations. The Permanent Forum highlighted those issues related to extractive industries, the commoditization of water, forced displacement by armed conflict or megaprojects and the extinction of indigenous languages.⁶⁹

The historically continued practices and the great discourses by each specific indigenous group represent their culture, that is, we have the worldview of a group embodied in its great narratives such as art, religion, science, law, traditions and customs. From this and

⁶⁹ Nuño, *Analys, Foro permanente de la ONU exige al Estado mexicano respetar los derechos indígenas*, La Jornada Jalisco, May 30th, 2011. The inhabitants of Real de Catorce, San Luis Potosi, have denounced throughout 2010 and 2011 the mining by the Canadian company First Majestic Silver in Wirikuta, the main ceremonial center of the wixárika communities. In 2009, First Majestic Silver gained 22 concessions granted to the Canadian Normabec. The latter began to explore the mine Santa Ana in the community of La Luz, a few meters before the entrance of the tunnel to Real de Catorce. 6, 326 hectares were granted to the mining company for exploitation by the federal government in exchange for three million dollars. Nearly 70 percent this area is in Wirikuta, declared a natural protected area in January 2000.

based on the role of the modern political state, democratic governments should seek alternatives to consolidate, reproduce, create and promote spaces designed for culture.

For example, the government of Chiapas is not interested in culture; their priority instead is the image of culture and its translation into tourism and economic exploitation and thus people and communities are belittled. This is demonstrated in the Chiapas government's decree of December 2010, in which it ordered the demise of the State Center for Indigenous Languages, Arts and Literature (CELALI) and its dismantling by the end of March 2011. The CELALI now has been included in the Secretary of Indian Peoples. Throughout its short existence, the CELALI was a space of expression and of promotion of indigenous peoples' culture in Chiapas as well as of multiculturalism. It had had its successes and failures, as well as processes that required greater vitality and monitoring of continuity.

Finally, it is important to note that the participation of the armed forces in public security tasks is also endangering the safety of these communities. The complaints against the Army in states like Guerrero and Chiapas remain. There is a pattern of discrimination, particularly against indigenous women, and it attempts against their community organization.

J. Rights of migrants

79. Ensure the full realization of the rights of migrants on its territory by enacting legislation and providing training to concerned officials (Pakistan)

80. Give priority to the recommendations made by the Special Rapporteur on the human rights of migrants (Guatemala)

81. Take all necessary measures to protect the rights of migrant workers and members of their families, particularly by ensuring their access to justice (Uzbekistan) / their access to an effective remedy before a competent authority for the protection of their rights (Guatemala); and prosecute and punish civil servants responsible for acts of ill-treatment and offences against them (Guatemala)

Since the conclusion of the UPR there have been a number of legal and administrative reforms on immigration issues. In January 2011 the Law on Refugees and Complementary Protection was approved and the reform of Article 67 of the General Population Law is in effect since the 23th of November 2010. With these recently added or reformed laws, an investigation into a human rights violation complaint as well as access to justice cannot be denied or restricted to foreigners who so require, regardless of their immigration status.

These reforms are occurring in the context of a "humanitarian tragedy"⁷⁰ for undocumented migrant workers who come from the southern border and who are victims of kidnappings and extortion as well as of serious acts of torture and cruel, inhuman and degrading treatment, disappearances and deaths. This has been amply documented by the National Human Rights Commission of Mexico in two reports published in 2009 and 2011.⁷¹

Last April, the Committee to Protect the Rights of All Migrant Workers and their Families expressed concern at this situation as well as at the high level of impunity in these cases. The Committee urged the Mexican government to increase its efforts to prevent the kidnapping of undocumented migrant workers and other serious human rights abuses they face, in addition to investigating seriously and diligently and punish those responsible for these crimes with penalties appropriate to the seriousness of the

⁷⁰ This was held the Inter-American Commission on Human Rights on March 22th, 2010 during a hearing under the title "*Situación de derechos humanos de migrantes en tránsito por territorio mexicano*". The video of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=118>.

⁷¹ Between September 2008 and February 2009, 9.758 migrants were documented as kidnapped. The states of Tabasco and Veracruz were identified as the areas in which this practice has particularly increased. Between April and September 2010 11.333 kidnappings were documented. See *Informe Especial de la Comisión Nacional de los Derechos Humanos sobre los Casos de Secuestro de Migrantes*, June 2009, and the *Informe especial sobre secuestro de migrantes en México*, February 22nd, 2011. Available at www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf and http://www.cndh.org.mx/InfEspecialSecuestroMigrantes_2.pdf

offense. In cases where officials are involved the appropriate administrative sanctions should also be applied.⁷²

Indeed, the kidnapers of migrants usually belong to organized crime organizations. However, the involvement of authorities in the three spheres of government has been proven as they work in collusion with these groups. Municipal police have been identified as accomplices to the responsible groups and take advantage of their authority to arrest immigrants, handing them over to the kidnapers. Federal Police and officers of the National Migration Institute have also been implicated for acting in collusion with criminal groups or for tolerating this practice.⁷³

The 2008 reform of the General Population Law (LGP) does not criminalize the undocumented entry into the country of migrant workers although it does classify it as an administrative offense. Thus the state de facto criminalizes migrants by denying them legal entry into the country. This situation means that migrants have to enter through dangerous clandestine routes that often have a high crime rate.⁷⁴

In addition, human rights violations by agents of the National Migration Institute and the Federal Police are still being reported and documented during operations to verify the immigration status of people traveling through Mexico. These violations include: theft, extortion, threats, and use of excessive force or cruel and degrading treatment, among others.

The General Population Law no longer penalizes with imprisonment those who enter the country without documents; nevertheless, those who do are still being deprived of their liberty at the migrant checkpoints (the detention centers for migrants). The 8th of October 2009, an agreement issuing the standards for the operation of the migrant checkpoints entered into force. However, conditions in some places of detention are poor and a lack of medical care has been reported as well as restrictions on communication and even cruel, inhuman and degrading treatments that remain unpunished. Furthermore, the right to due process is not guaranteed.

Regarding the training of staff, biases are still being documented as well as the lack of preparation or judicial training, insensitivity ignorance towards the subject of immigration. This leaves foreigners subjected to immigration detention or opened judicial proceedings in an absolute state of helplessness and violates their right to due process and access to justice.

⁷² Paragraph 30 of the Concluding Observations of the Committee to Protect the Rights of All Migrant Workers and their Families, *op. cit*

⁷³ It is important to highlight that those who seek to defend the victims of kidnapping by denounce these crimes or giving shelter to the victims who have been released live in a situation of extreme danger. Violence, credible death threats, raids by groups of organized crime and property destruction are just some examples of the everyday risks faced by advocates of the rights for migrants in Mexico.

⁷⁴ Document prepared by the National Network of Civil Human Rights Organizations "All rights for all" for the Committee for the Protection of All Migrant Workers and their Families (CMW) in the framework of its evaluation of the second periodic report by the Mexican State, April 2011.

In 2011, following the discussion on the reform of the Migration Act, non-governmental organizations expressed their concern on the lack of some necessary measures for protection, as demanded by the UPR recommendations. For example, the bill does not detach the issue of immigration from the national security issue; it does not provide guarantees for migrant workers to enforce their right to due process and access to justice; it does not provide specific measures of recognition and protection to the work of human rights defenders; it does not include transparency measures and of access to information and it does not include a gender perspective nor the protection of unaccompanied migrant children.⁷⁵

⁷⁵ Working group on immigration policy and legislation, *Ley de Migración no mejorará los derechos humanos de las personas migrantes*, February 23rd 2011 [http://www.redtdt.org.mx/d_comunicados.php?id_comunicado=447&descargable=110223_Boletin_Ley_de_Migracion.pdf]

IV. Rejected Recommendations

A. Organized crime definition

Rejected Recommendations:

1. Enact a definition of organized crime consistent with the United Nations Convention against Transnational Organized Crime (Portugal)

The Mexican government did not accept the recommendation concerning the definition of organized crime arguing that the definition in the Mexican Constitution is in accordance with the Convention of the United Nations Convention against Transnational Organized Crime (Palermo Convention). However, the definition in the Constitution does not fulfill all the requirements provided in the Convention to define an "organized criminal group."

| Palermo Convention ⁷⁶ | | Amended Article 16 of the Constitution |
|--|---|--|
| Structured group | ≠ | De facto organization |
| Three or more people | = | Three or more people |
| Existing in a defined period of time | ≠ | In a permanent or reiterated manner |
| Acting in a concerted manner | ≠ | - - - |
| With the goal of committing one or more serious crimes | ≠ | To commit crimes |
| In the terms of the Convention | ≠ | In the terms established by law |
| To obtain a material or financial benefit | ≠ | - - - |

The Convention includes a reference to the type of benefit a criminal group seeks.⁷⁷ Article 2 of the Convention defines an 'organized criminal group' as a "structured group

⁷⁶ Comparative table of the Mexican Institute of Human Rights and Democracy (IMDHD) on the definition in the Palermo Convention and article 16 of the Constitution of the United Mexican States.

⁷⁷ Article 2 of the Palermo Convention states that an 'organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of

of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit"

This is an important safeguard that is absent in the definition used in the Constitution and of particular concern considering that Mexico has documented cases in which, for reasons more political than legal, innocent people and members of social movements are falsely accused of belonging to organized crime.

B. Eradicate the practice of arraigo

2. Abolish the practice of "arraigo" (New Zealand, Switzerland) as soon as possible (New Zealand)

The recommendation to eradicate the practice of arraigo was rejected. Recently, both the Working Group on Enforced or Involuntary Disappearances, the Subcommittee on Prevention of Torture and the Rapporteur on the independence of judges and lawyers have spoken in similar terms about the need to eradicate practice of arraigo: "It is an arbitrary legal figure incompatible with the presumption of innocence and the right to personal liberty. In addition, this figure is in itself contrary to the oral adversarial model that Mexico has adopted".

According to the Mexican government, the 2008 Constitutional Reform limits the practice of arraigo to organized crime groups of a federal order and subjects it to strict controls by a specialized federal judicial authority. However, neither paragraph 8 nor paragraph 14 of amended Article 16 of the Constitution states that the scope of this figure will only be federal, or that the decision of its implementation will fall exclusively in the jurisdiction of a federal judicial authority. In fact, several states retain and make use of arraigo; in the case of Nuevo Leon for example, the person can be arraigado for up to 90 days, in contravention of the constitutional reform that limited the use of arraigo for up to 80 days.

The accused thus is in a defenseless position against the resolution ordering the arraigo, and though the Mexican Government states that in these cases the amparo proceeds, it should be noted that the beginning of this process will not prevent the application of the measure if the person was already detained. This is because the effects of a possible amparo suspension do not go as far as to order the release of the accused but only to "make it available to the district judge" (amparo judge), who will oversee the detention but cannot put an end to the arraigo until the amparo is resolved. This procedure usually lasts longer than 80 days, so in most cases the resolution on the amparo is issued when the arraigo has ended and the judge is obliged to dismiss it because of "a change in the legal status" of the person; thus, in practice there is no effective remedy against the arraigo.

committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit".

The Mexican government affirms that in the implementation of the arraigo, confinement, intimidation or torture are prohibited. Furthermore, the detainees should be informed of the charges against them and of their rights and access to a lawyer must be guaranteed. In reality, people under arraigo do not enjoy the rights of due process enshrined in Article 14 of the International Covenant on Civil and Political Rights since they are not indicted at the time of their arrest; neither are they brought before a judicial authority. Moreover, the period of custody under arraigo ranges from 40 to 80 days, which exceeds by far the period of 96 hours established in Article 16 paragraph 10 of the Constitution for the retention of the accused in the Public Prosecutor's custody. The arraigo is also in violation of the guarantee provided for in Article 14 of the Constitution, under which a person may not be deprived of his or her liberty without a trial before a previously established court in which the essential formalities of the procedure are complied with and in accordance with the laws enacted prior to the facts. This however is not fulfilled, because those under arraigo are deprived of their liberty without a trial before a competent judge.

In practice, it has been documented that the arraigo is usually preceded by an arbitrary detention; those under arraigo do not have access to lawyers; have no contact with their families; are subjected to conditions of detention inconsistent with international standards (arrest are carried out without a warrant, or without the existence of *flagrante delicto* and with great violence, the detainees are also left in a state of *incomunicado*) and are often subjected to torture and other cruel, inhuman and degrading treatment. In the case of a group of police officers in Nuevo Leon, they were arrested for obstructing a public road⁷⁸ and remained under arraigo in the premises of the State Academy Police from the 17th of June to the 17th of July 2009. In this case, the constitutional requirement for the use of arraigo that it be a crime related to organized crime was not established, this requirement defines an organization as made up of three or more people to commit crimes on a permanent or reiterated manner.

According to the constitutional description and the definition given by the Mexican state, the figure of arraigo is used to investigate complex crimes. In practice, it is actually used when the authority does not have the sufficient elements to arrest the person according to the law respecting his/her individual rights. What the Mexican state is saying through their response is that, in its negligence towards the use of modern investigation and intelligence techniques, it is necessary to deprive citizens of their liberty for being suspects alone and with no evidence against them to be able to investigate and interrogate them and to create a record that did not exist before the arbitrary deprivation of liberty. Needless to say, this is in violation of the constitutional principle of presumption of innocence, of the guarantee to personal liberty and the right

⁷⁸ In the case in question, according to media reports, the 8th of June 2009 police arrested 100 municipal police officers in from Escobedo and San Nicolas de los Garza, who concentrated on the intersection of avenue Senderos and Manuel Barragan in an occasional manner and with no intention of committing crimes on a permanent or repeated basis, as it can be understood from the statements made to the media. Some of these police officers were detained, were kept under arraigo and tortured, according to reports received by the civil organization in Nuevo Leon that is dedicated to defending human rights. The guts of one of the police officer burst and another one had a skull fracture.

to due process; these rights are also protected by the treaties ratified by the Mexican State.

C. Reform of the Code of Military Justice

3. Ensure that the primacy of the civil legal system prevails over military judicial process across the entire territory (Bangladesh)
4. Extend the jurisdiction of civil courts in cases involving violations of human rights by the military (Ireland)
5. Follow-up on the recommendations of Committee against Torture and OHCHR to empower civil courts to try offences against human rights, in particular torture and cruel, inhuman or degrading treatment committed by military personnel, even when it is claimed that they were service-related (Portugal)
6. Grant jurisdiction to its civil authorities/courts over the acts/human rights violations committed by members of armed forces when performing law enforcement functions (Republic of Korea, Russian Federation); if the military involvement in combating organized crimes is necessary, the expanded role of the military must be counterbalanced by measures to reinforce the protection of human rights (Republic of Korea)
7. Review the relevant legal provisions to ensure that all offences committed against human rights by military forces may also be submitted to civil courts (Peru, Uruguay)

The Mexican government said that the recommendations to ensure the primacy of the civil over the military justice had been fulfilled since the civil legal system prevails over the military. It argued that any resolution of a military court can be appealed in a civil court through an amparo. However, although a military official who has been convicted may appeal against any decision through the regular procedures and even through filing an amparo, civilian victims and their representatives do not have the possibility to appeal a resolution absolving a soldier, applying a derisory penalty or that leave a case in impunity. It should not be overlooked that the amparo is an extraordinary means of judicial review; however, in the military courts there is no ordinary appeal that can be used to review the decisions of a military body in a civil court.

In accordance with Article 13 of the Constitution the military jurisdiction should be applied only to crimes that are related to military discipline, such as insubordination or desertion. In contrast, when a crime violates human rights or when the same facts constitute violations to military discipline and human rights, the competence over the of human rights violations should correspond to the civil courts. It also states that military courts can not extend their jurisdiction over a civilian.⁷⁹

However, the Code of Military Justice includes as offenses to military discipline, among others, all offenses "committed by military personnel on active service or in connection

⁷⁹ Article 13 imposes a clear limit to the scope of military jurisdiction by stating that: "There is still military jurisdiction for crimes against and violations to the military discipline, but the military tribunals in no circumstances and for no reason, may extend their jurisdiction over people outside the Army. When a crime or a violation to military law involves a civilian, the competent civilian authority shall hear the case. "

with active service."⁸⁰ Through this provision, the Code of Military Justice turns the military jurisdiction system into a personal jurisdiction applicable, in practice, to all crimes committed by military personnel in active service. The Inter-American Court of Human Rights has stated that this article "is a wide-ranging and imprecise provision that prevents determination of the exact connection between a crime that falls under the ordinary jurisdiction and military service objectively assessed."⁸¹ Furthermore, the Court also notes that under that article, the military jurisdiction in Mexico "is a rule and not an exception."⁸²

Human rights violations are routinely investigated and judged in the military system but this system lacks independence. The investigating and judicial authorities belong to the same institution as the accused that committed the abuse (the Ministry of National Defense, SEDENA). The evidence supports this lack of independence, according to data by the Interior Ministry there is only one conviction against a soldier for the human rights violations committed in the Calderon's administration.⁸³

The Ministry of National Defense advocates for the military jurisdiction stating that it is legal and in compliance with international standards despite the large number of special Rapporteurs and other human rights bodies including Inter-American Court, which have made it clear that the military courts in Mexico are not independent and impartial and should not investigate human rights abuses.⁸⁴ The IACHR judgments establish unequivocally that the State should amend the Code of Military Justice to be in line with the American Convention on Human Rights.⁸⁵ This is required by a legal obligation of the State and as a practical measure to give victims of military abuses the possibility to access justice.

It is worrying that in August 2010 the Supreme Court refused to go into the analysis of the merits of a case on the constitutionality of the Code of Military Justice in the cases in which the military authorities investigate and prosecute human rights violations committed against civilians. The Court ruled that victims of human rights violations have no standing to request a review of the application of the military jurisdiction to

⁸⁰ Article 57.II of the Code of Military Justice, which is the secondary rule by presidential decree issued in 1933 to regulate Article 13 of the Constitution.

⁸¹ Fernández Ortega and others v México, para 178 and Rosendo Cantú and other v México, para 162.

⁸² Fernández Ortega and others v México, para 179 and Rosendo Cantú and other v México, para 163.

⁸³ This is a sentence of 9 months of imprisonment imposed on an element of troops who opened fire on a civilian, depriving him of his life. See, Oficio 100-243 issued by the Ministry of the Interior, October 20th, 2009, available at www.hrw.org/es/news/2009/11/20/carta-respondiendo-al-secretario-de-gobernacion-de-mexico-fernando-francisco-gomez. The document identified 9 cases of convictions for alleged human rights violations, only 3 correspond to events that occurred after 2006, of which 2 have ended in convictions. One of these is a car accident, so from the document it can be concluded that there is a sentence (9 months) for a probable violation of human rights, the deprivation of life mentioned above.

⁸⁴ Go to the SEDENA website: <http://www.sedena.gob.mx/index.php/derechos-humanos>.

⁸⁵ The Inter-American Court of Human Rights has issued five judgments against the Mexican government in the last three years. In four of them it has established the responsibility of the Mexican army in abuses committed against civilians. The impunity that surrounds these cases is directly linked to the implementation of the military jurisdiction. These are the cases of Rosendo Radilla Pacheco, Inés Fernández Ortega, Valentina Rosendo Cantú, Rodolfo Montiel and Teodoro Cabrera, all in the state of Guerrero.

their cases. The decision of the Supreme Court eliminated all possibilities for victims to prevent their case from being examined by military authorities. Furthermore, this eliminates all the internal resources that can protect victims' rights to due process. The Mexican state thus is violating the international law of human rights in a context of an increasing participation of armed forces in public security tasks.

- **Reform Proposal on the subject of Military Justice**

On the 18th of October 2010 the Executive Branch sent to Congress a draft to reform the system of procurement and administration of military justice. The initiative establishes the possibility of the ministerial investigating military authority as the one that will determine which cases will be referred to the civil courts. This authority shall also be responsible for carrying out the first proceedings aimed at verifying the *corpus delicti* and the probable responsibility of the perpetrator.

The proposal ignores international standards on the subject that have been confirmed in the resolutions of the Inter-American Court, which are legally binding. It aims to exclude from the Code of Military Justice only three crimes: forced disappearance, torture and rape. This proposal would open the door for intentional crimes that classify as negligence, to serious injuries that are not taken as such, or even to a deliberately manipulation of the evidence, as has happened in many recent cases according to the National Commission of Human Rights itself.

The Rapporteur on the independence of judges and lawyers considered the reform as insufficient and recommended that: "In addition to reforming the Code of Military Justice, persons affected by judgments issued by military courts should have an effective judicial remedy for contesting or challenging them."⁸⁶ The reform of the military jurisdiction must exclude any offense that allegedly is constitutive of one or more human rights violations and not only to cases of torture, rape or forced disappearances.

⁸⁶ Report by the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30/Add.3, 18th of April 2011

D. Re-establish the Special Prosecutor's office⁸⁷

8. Re-establish the Special Prosecutor's office for past-political and social movements or create a similar office, which would be a strong signal towards combating impunity for victims and their families (Belgium).

Despite its limitations, the FEMOSPP was the only avenue opened by the state to be able to access truth and justice regarding the state crimes committed during the sixties and seventies, which is why many civil society organizations and victims' families contributed to the investigations.⁸⁸ The administration of Felipe Calderón eliminated the FEMOSPP in 2006 and referred all the pending inquiries to the General Coordination of the Assistant Attorney-General for Federal Crimes Investigation (Coordinación General de Investigación, CGI) under the Attorney General's Office (Procuraduría General de la República, PGR).⁸⁹

The Mexican government's argument for not restoring the FEMOSPP was that the CGI "had the same faculties, coupled with others, as the FEMOSPP on investigation and prosecution of crimes so that with the transfer, the course of the investigations was maintained and the rights of victims were left intact." However, the preliminary investigations carried out by the PGR have not made significant progress. There are also no mechanisms to ensure the right to truth and reparations for victims.

This was recently corroborated by the Working Group on Enforced or Involuntary Disappearances (WGEID), who included in its report that, in relation to enforced disappearances, the PGR "did not provide any specific information regarding the research lines, the substantive progress in the investigations, the possibility of new charges and the channels of communication with the relatives of the forcibly disappeared persons".

The WGEID recommended some measures in relation to past crimes. Among them, to immediately circulate the FEMOSPP report, which was not made public at the time; clarify the location of all the documents received by this instance and transfer the military files to the National Archives to ensure full access to them. For its part, the Human Rights Committee recommended the re-establishment of the Special Prosecutor to address the human rights violations committed during this period.

⁸⁷ The Special Prosecutor for the Investigation of Acts that Probably are Constitutive of Federal Crimes committed directly or indirectly by Public Servants against people linked to Social and Political Movements of the Past (FEMOSPP) was created in November 2001 as an administrative unit of the Attorney General (PGR) to respond to the recommendation 26/2001 of the National Commission on human rights (NCHR), which had documented in a report the human rights violations committed during the sixties, seventies and eighties.

⁸⁸ From the beginning, advocacy and promotion of human rights organizations, noted some limitations of FEMOSPP, including: a) the appointment of a prosecutor who had no recognition among the actors involved in the subject, b) the low and unskilled use of international law of human rights in their research and arguments; c) lack of staff training, and d) the absence in practice of a interdisciplinary approach appropriate to investigating crimes occurred decades ago.

⁸⁹ Agreement A/317/2006

In the absence of internal mechanisms, the relatives of missing persons and victims of human rights violations during the period of the "Dirty War" have been forced to resort to international instances of protection of human rights for justice. On the 23rd of November 2009, the Inter-American Court of Human Rights issued a guilty verdict against the Mexican government for the forced disappearance of Rosendo Radilla Pacheco in 1974. The judgment includes a series of reparation and non-repetition measures that have not yet been fully met by the Mexican state.