



**Information presented by organizations forming part of the Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos” (National Network of Human Rights Civil Organizations “All Rights for All”) to the UN Human Rights Committee for consideration as part of its fifth periodical report on Mexico pursuant to Article 40 of the International Covenant on Civil and Political Rights.**

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Secretaría Ejecutiva de la Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos”  
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## **Constitutional and Legal Framework for application of the Covenant (Article 2)**

### **Constitutional and Legislative Harmonization and Incorporation of International Standards**

1. The project for institutional human rights reform was approved by the Chamber of Deputies on April 24, 2009. On April 28, 2009, the draft for the project decree that reforms numerous constitutional clauses was sent to the Senate and is still awaiting approval by this Chamber. With respect to the project for reform it is important to point out that it has fundamental flaws and includes regressive and contradictory criteria such as the following:

- Rather than establishing the pro persona principle in Article 1 in accordance with application of the most favorable human rights norm, the decree establishes that in the case of any contradiction between the Constitution and international agreements the Constitution takes precedence. This decree is contrary to the obligations of the Mexican State with respect to international law and fails to privilege international human rights agreements in the constitutional hierarchy.
- With respect to Article 33, this fails to guarantee the right to due process for foreign nationals in the country. The reform proposal maintains the exclusive faculty of the Executive to deport any foreign national from the country whose presence is determined “inconvenient”. Consequently, this reform cannot be considered a significant advance as it fails to recognize the basic rights of all persons and leaves foreign nationals without the right to lodge appeals.

2. The approved reform is subordinate to minimum agreements reached by political parties in the legislature which ended its session on August 30, 2009 but failed to seriously consider alternative proposals such as those offered in 2007 by a broad grouping of civil society organizations and human rights experts supported by the UN Office of the High Commissioner for Human Rights in Mexico. Similarly, the reform lacked a transparent process for discussion in commissions responsible for preparation of the project and did not involve consultation with civil society organizations.

3. For these reasons we believe this reform fails to comply with the recommendations made to the Mexican State in the sense of guaranteeing that international norms enjoy constitutional status and meet international human rights standards developed by diverse international bodies and mechanisms recognized by Mexico.

### **Equality between men and women, violence against women and the principle of non-discrimination (Articles 3 and 26)**

4. The Federal Special Prosecutor's Office for Violent Crimes against Women and Human Trafficking (FEVIMTRA – acronym in Spanish) does not enjoy jurisdiction for cases of violence against women, including femicide or rape committed by local government agents. An example of this is the case of the 26 women of Atenco who were subject to sexual abuse, including rape and other forms of sexual aggression and violence, during their transfer to the Santiaguito prison by state police. In response to complaints lodged by a group of these women, the previous Federal Special Prosecutor's Office for Violent Crimes Against Women and Human Trafficking conducted a federal investigation parallel to that of state investigations but did not hold direct jurisdiction over the case and consequently no legal action was taken, thereby leaving the victims completely defenseless as the local investigation proved ineffective.

5. It must also be pointed out that while the Commission for the Prevention and Eradication of Violence against Women in Ciudad Juárez became a new commission on June 1, 2009, there has been no evaluation of the tasks performed by the previous Commission and consequently there is no information concerning advances in relation to its proposed objectives. It is cause for concern that the new commission has been assigned the duties of the Ministry of the Interior established in the General Law on Women's Access to a Life Free from Violence, among them the Gender Violence Alert. It must be pointed out that the General Law on Women's Access to a Life Free From Violence was established to ensure compliance with programs and implementation of the law without the need for additional organic structures<sup>1</sup> and consequently the creation of this commission, in addition to violating the law, represents yet another action by the government that attempts to simulate, make invisible and effectively disappear mechanisms for the verification, follow-up and protection of the human rights of women and makes it difficult to comply with the State's obligation to protect the life and human rights of women.

### **Femicide**

6. For more than a decade Ciudad Juárez and the city of Chihuahua have been the focus of national and international attention due to the number of cases of women murdered and disappeared in these border cities. From 1993 to September 2007 a total of 553 women were brutally murdered in these cities in northern Mexico. According to information from the Office of the Chihuahua State Attorney General's Office a total of 206 women were murdered between January 2007 and November 2008<sup>2</sup>.

7. Currently, the problem of femicide is not limited to Ciudad Juárez. Impunity and government permissiveness, which serves as a crude expression of institutional violence, have led to a multiplication in the number of women murdered throughout the country and this can be attributed to a lack of due diligence.

8. Between January 2007 and December 2008, the National Citizens' Femicide Watch (OCNF – acronym in Spanish)<sup>3</sup> documented 1,221 cases of the murder of women and girls in 12 states<sup>4</sup>.

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<sup>1</sup> Provisional Article Six of the General Law on Women's Access to a Life Free From Violence, published on February 1, 2007 in The Official Government Gazette

<sup>2</sup> "Una mirada al Femicide en Mexico (A View of Femicide in Mexico)", Observatorio Ciudadano Nacional del Femicide (National Femicide Citizen's Observatory), Report for January 2007 to July 2008, p. 5.

<sup>3</sup> The OCNF is formed by 43 women's and human rights organizations from 18 states and the Federal District.

Impunity and government permissiveness as a concrete expression of institutional violence have led to an increase in the number of women murdered in Morelos and the high incidence of these crimes (32 cases in 2006 and 26 murders in 2007) has made it necessary to assign a Special Prosecutor; in the state of Chiapas the murders of 1,485 women were reported between 2000 and 2004; and in the state of Veracruz the number was 1,494 for the same period.

9. Analysis of information from periodicals and official sources showed that femicide violence occurred with greater frequency for women aged 21 to 40 with 530 victims (43%), followed by women over the age of 40 (24%), and girls and minors under the age of 20 (23%).

10. Official information acquired by the OCNF in 2009 revealed that from January to June of that year a total of 430 girls and women were murdered in 15 states<sup>5</sup>, with the majority of victims, -254 cases (59%)-, under the age of 40 (170 were women aged 21 to 40, and 84 babies, girls and young women aged up to 20). The official register of girls and women murdered during that period confirms that many of the victims died as a consequence of the use of firearms, stabbings and asphyxiation (73, 32 and 31 cases, respectively). However, for the vast majority of murders, 255 cases (59%), there was no information available concerning this fundamental variable. This is also the case for other basic variables of the criminal investigation such as the motive for the crime, registered in only 24 cases, and the relation of the victim to the perpetrator, documented in only 82 cases.

11. Mexico received a total of 140 international recommendations during the period 2000-2006 on the subject of the rights of women and of these 63 recommendations concern the femicide in Ciudad Juárez<sup>6</sup>, mostly concerning aspects of law enforcement and administration, since actions taken have proved inadequate.

12. This atmosphere of institutional violence against women has further worsened due to the permissiveness of the State concerning the lack of due process. Of the 430 registered cases of murder - from January to June 2009 -, only 78 of these (18%) have been sent to the corresponding authorities with none of them leading to a sentence meeting international standards for restitution of damages. This is exemplified in states such as the State of Mexico where 672 women have been murdered over the last 4 years and 89% of cases remain unpunished since only 76 murderers have been sentenced<sup>7</sup>; in Sinaloa, of the 140 murders registered between 2007 and August 2009, only 75 responsible parties have been charged and of these only 20 have received sentencing. Attempts have been made to minimize the true problem of femicide through the issuing of statements by authorities such as that made by Adriana Cabrera Santana, Head of the Special Prosecutor's Office for Intentional Crimes Committed against Women in the State of Mexico, who declared that "intentional crimes against women continue to be committed in the state as the population continues to grow and the problems

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<sup>4</sup> Chihuahua, Nuevo León, Sinaloa and Sonora in the north; Estado de Mexico, Distrito Federal, Tlaxcala, Morelos, Jalisco and Guanajuato in the Central/Bajío region; and Tabasco and Yucatán in the south.

<sup>5</sup> In addition to the 12 states documented in 2007 and 2008, in 2009 official information was obtained from Baja California, Coahuila and Aguascalientes.

<sup>6</sup> "Una mirada al Femicide en Mexico (A View of Femicide in Mexico)", Observatorio Ciudadano Nacional del Femicide (National Femicide Citizen's Observatory), Report for January 2007 to July 2008, p. 6.

<sup>7</sup> Impunes, 89% de femicidios; Codhem pide agilizar pesquisas, "El Universal" newspaper. <http://www.eluniversal.com.mx/edomex/558.html>

of family break-up are also on the increase”<sup>8</sup>. Declarations of this nature reduce the problem of femicide to one of domestic violence while ignoring the many faces of femicide and failing to address the problems of prevention, attention, eradication, law enforcement and administration which serve to protect the rights of women.

13. These femicides serve to indicate the serious situation of violence against women, in particular in the area of administration of the law with respect to due diligence, by which the State is obliged to undertake actions for the prevention, punishment, investigation, combating, compensation and elimination of acts of violence against women and which have received little attention. The above represents a failure to implement a comprehensive policy for the eradication of violence against women that not only includes investigation and law enforcement procedures but also includes state apparatus.

14. The current situation of women’s rights has been aggravated by the lack of attention by authorities as well as the inefficiency and collusion of public employees and authorities assigned to local and federal government who are responsible for dealing with and establishing the facts in these cases and which continue to demonstrate serious acts of negligence, omission and crimes in the administration of justice that serve to obstruct law enforcement and the interests of truth and justice.

#### **Legislation that protects life from the moment of conception**

15. In the period to December 2009 there have been reforms to local constitutions in 17<sup>9</sup> of the 31 states of Mexico to protect the right to life from the moment of conception or fertilization of the egg by sperm. These initiatives establish the moment of conception as the time when the egg is fertilized and this is contrary to the definition offered by medical science. In addition, approval of similar initiatives is pending in another 6 states.<sup>10</sup>

16. The immediate consequences of these reforms are as follows:

- The impossibility of using an Intrauterine Device since one of its mechanisms is to impede implantation of the fertilized egg in the endometrium. This is the second most popular contraceptive method used by women in Mexico (exceeded only by the definitive method of tubal ligation)
- The impeding of regulation for the offering of medical services to terminate pregnancy
- Penalization for women having abortions
- The generation of insecurity with respect to application of the Official Mexican Norm<sup>11</sup> that regulates criteria for the prevention of and attention to domestic and sexual violence against

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<sup>8</sup> Imparable, Asesinatos de Mujeres, “El Universal” newspaper, Section: D. F. p. 27

<http://ciudadanosenred.org.mx/metroaldia.php?cont=1&info=9939> [Last consulted on October 29, 2009]

<sup>9</sup> The states are Baja California, Campeche, Chihuahua, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Veracruz and Yucatán.

<sup>10</sup> Estado de Mexico, Michoacán, Tabasco, Sinaloa, Aguascalientes and Baja California Sur, while at the federal level there is another in the Chamber of Deputies and one in the Senate.

<sup>11</sup> NOM-046 SSA2-2005. Violencia familiar, sexual y contra las mujeres. Criterios para la prevención y atención (Domestic Violence, sexual violence and violence against women. Criteria for prevention and attention).

women and which provides for emergency contraceptive methods for women who have been raped.

17. These reforms fail to recognize the right of women to a decent life, their personal integrity, the protection of their health, respect for their dignity, equal protection under the law without any form of discrimination, effective recourse, a private life, freedom of conscience, freedom of thought, free choice concerning their life and the ability to make a free, responsible and informed decision concerning the number and spacing of their children while also denying the effective enjoyment, exercising and protection of these rights.

18. These local reforms are discriminatory as they represent an action based on gender since only women can become pregnant. They impose pregnancy against women's free will and dignity and essentially label women human incubators. These reforms also lead to physical, sexual and psychological harm since women are forced to seek clandestine abortions. These actions by local congresses represent acts of institutional violence and for this reason the lack of legislative harmonization for federal and state laws (derived from numerous recommendations made to the Mexican State) not only remains a pending topic but also violates the principal of equality since they establish a difference between women living in Mexico City, who enjoy the right to terminate a pregnancy during the first 12 weeks, and those who live in one of the states where constitutional reform has made abortion a crime.

19. It is a further cause for concern that violations of the rights of women who have been the victims of sexual violence, and which directly result from these reforms, not only threaten the possibility of providing emergency contraception but also create barriers for access to medical-legal procedures for the interruption of pregnancies resulting from rape. As indicated by the UN Committee against Torture in the case of Nicaragua: prohibition of abortion for the victims of sexual aggression represents a form of inhumane and degrading treatment.

20. In this context it is known that to date a number of appeals have been made against reforms that protect life from the moment of conception or fertilization in absolute terms and completely fails to recognize the rights of women.

#### **Legislative harmonization for the General Law for Women's Access to a Life Free from Violence (LGAMVLV – acronym in Spanish)**

21. The General Law for Women's Access to a Life Free from Violence (LGAMVLV) is federal legislation that establishes the principles for guaranteeing the respect for a women's right to a life free from violence. At the state level approval of local laws has omitted many provisions of the general law, such as femicide, or eliminated protection orders. While it is true that the 31 states and the Federal District have enacted legislation in terms anticipated by the General Law for Women's Access to a Life Free from Violence in its Transitional Article 8, laws enacted by states and the Federal District do not include a conceptual framework that allows for recognition of the following:

- a) The types and forms of violence committed against women. That is, they fail to recognize where violence against women occurs (in the home, in the work place, at school, in the

community and by institutions) and the damage it causes (physical, psychological, to property, economic, sexual and femicide).

- b) Mechanisms that make the norms operational, as well as coordination mechanisms between the different levels of government and between institutions, and protocols that regulate the way women should be treated when making charges concerning any form of violence.
- c) Governing principles: substantive equality, non-discrimination, respect for human dignity and freedom for women.
- d) Protection orders as special procedures for urgent application in the higher interests of the victim which are: emergency, preventive and of a civil nature.
- e) The establishing of intervention measures for: prevention, attention, punishment and eradication of all types and forms of violence against women.

22. For these reasons it is insufficient to indicate the purely quantitative enacting of such laws, it is necessary to perform a study of their content in order to determine whether they are in harmony with the General Law.

23. In some states, such as Guanajuato, where the General Act against Violence has been enacted, it is focused on domestic violence and fails to recognize other forms and types of violence established in the LGAMVLV. Furthermore, the subject of violence against women is only dealt with in relation to its prevention while the rest of the act refers to all family members who suffer violence.

24. In the case of the state of Jalisco there is a “lack” of legislation to prevent and eliminate discrimination and this has created a legal gap that leaves any person who has suffered an act of discrimination at the hands of state or municipal authorities defenseless. In the specific area of violence against women, gender violence, and in particular institutional violence committed by agents of the state, is not defined as a crime and in practice cannot be punished. Finally, it must be pointed out that application of these laws is subordinated to the publication of their regulations. In daily practice some of these regulations have become mechanisms that impede women’s access to a life free from violence. This lack of regulation makes it impossible to assign jurisdiction and responsibilities to each government body and institution and leads to a lack of resources for their activation. This situation is clear in the case of protection orders where the authority responsible for issuing them has yet to be determined. An example of this is the case of rape where the party responsible is not punished and there is a lack of follow-up on protection for the victim.

25. Implementation of Official Mexican Norm 046-SSA2-200519 regulates the offering of medical services to women who have suffered sexual violence and includes the guidelines to be followed by health authorities for interrupting pregnancies when they are the result of rape. Implementation of the Norm has also been impeded by constitutional reforms in 17 states as mentioned above.

26. A clear example of this is the situation in Guanajuato. Last May 8 reform of Article 1 of the Guanajuato Constitution was approved to establish: “For the effects of this Constitution and all laws

derived from it, a person is any human being from the moment of conception to their natural death. The State guarantees the full enjoyment and exercising of all their rights.” This not only impedes application of Official Mexican Norm 046 but also the interruption of pregnancy in cases of rape. Prior to constitutional reform women rape victims have also been denied information concerning the possibility of legally interrupting their pregnancy; some women who went to hospital with septic abortions were accused, investigated and punished, violating the right to confidentiality. Some women were even imprisoned for “parental homicide against their unborn child”.

#### **State of Exception (Article 4)**

27. The recently published General Law on the National Service of Public Security, which establishes the basis for professionalization of police for the three levels of government, does not include external participation or monitoring, in particular by specialized civil society organizations.

28. For his part, on April 23, 2009, President Calderón sent an initiative to the Senate for modification of the current Law on National Security which proposes recognizing the participation of the Armed Forces in matters of national security as well as providing powers for implementing a procedure to declare a national security emergency. The following should be highlighted concerning this initiative:

- The National Security Council will be the body charged with evaluating any possible emergency concerning national security as well as the character of actions or measures to be implemented and their duration.
- Based on the decision of the Council, the President of the Republic will issue a declaration of a national security emergency.
- This state of emergency may be extended while the underlying causes leading to the emergency continue, although the period cannot be indefinite.
- The reasons for calling a national security emergency are as vague as the following indicate: “an uprising or disorder within a state; direct aggression against authorities or the members of this Council; acts that threaten the order and peace of a municipality, state or region, where the ability of competent authorities to perform their functions is insufficient or ineffective and acts of collective extortion affect the community or town”.
- The initiative empowers the authority charged with controlling the situation to perform such actions as: requesting preventive measures for investigations, searches, detentions and telephone tapping. The jurisdictional authority must approve these within a period of 8 hours or less.

29. This project for modification of the Law on National Security points in the direction of broadening and maintaining the militarization the country has witnessed over recent years. For its part, the Law on Federal Police “recognizes the capacities of the police for investigation ...” However, the law has been questioned, for example, for its empowering of police to perform undercover operations without the existence of necessary controls. It has also led to possible detrimental effects on individual guarantees such as privacy, the inviolability of property and private communications or the right of the accused to know the name of their accusers. In response the National Human Rights Commission (CNDH – acronym in Spanish) has lodged a claim of unconstitutionality against the law.

30. Furthermore, little has been consolidated concerning trials and due process. In fact, it should be remembered that constitutional reform established a period of eight years for implementation of the new accusatory and trial system and consequently the old system of justice is still being used.

### **Participation of the Armed Forces in public security operations**

31. The participation of the armed forces in public security tasks dates back decades and since 2006, when Felipe Calderón assumed the presidency, the strategy of public security based on “direct combat” with organized crime has been reinforced together with the organization of numerous large scale operations headed by the military and federal police in various states of the Republic.

32. The widespread participation of the Mexican Armed Forces in public security tasks has become a de facto state of exception. The Armed Forces do not simply act as support for civil authorities and accept orders from them but perform tasks that correspond exclusively to these authorities, such as receiving accusations of crime from the public.<sup>12</sup> Furthermore, the military has assumed control of a number of police bodies, selecting and naming their leaders, acting as prison authorities and in general performing operations without effective control by civil authorities responsible for ensuring compliance with the law and much less by civil legal authorities as these are not recognized as having the authority to investigate or judge members of the military who commit abuses within the context of militarized public security operations.

33. This situation has led to the committing of serious and generalized violations of the human rights of the civil population in the extensive militarized areas of the country, violations that continue to go unpunished, and has created an atmosphere in which abuses continue to be committed without adequate civil control.

34. These militarized operations, involving on average 45,000 soldiers per month<sup>13</sup>, consist of the deployment of these elements in the streets of urban areas or at strategic points on highways where they search homes (in many cases without a search warrant issued by the court), individuals and automobiles. These searches are characterized by treatment that violates fundamental rights and even include extrajudicial executions.

35. When carrying out these operations the Armed Forces perform tasks that should be the preserve of civil police or even public prosecutors or other civil authorities and there are no mechanisms for control and review of the army’s participation in these tasks. Military personnel have assumed control of a number of municipal and state police corporations;<sup>14</sup> in certain cases the Sedena (National Defense Ministry) has itself designated the heads of Public Security Ministries. An example of this is the situation in Ciudad Juárez, Chihuahua State. Although formal agreements exist between

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<sup>12</sup> See, for example, Jesús Aranda, *Asume Sedena ilegalmente la investigación de delitos en BC*, LA JORNADA, January 21, 2008, [www.jornada.unam.mx/2008/01/21/index.php?section=politica&article=003n1pol](http://www.jornada.unam.mx/2008/01/21/index.php?section=politica&article=003n1pol)

<sup>13</sup> See Sedena, *Segundo Informe de Labores* (2008), p. 111, available at [www.Sedena.gob.mx/pdf/informes/segundo\\_informe\\_labores.pdf](http://www.Sedena.gob.mx/pdf/informes/segundo_informe_labores.pdf)

<sup>14</sup> See, for example, Jéssica Zermeño, *Toman Generales mandos policíacos*, REFORMA, February 15, 2009, available at [www.reforma.com/enfoque/articulo/484/967995/](http://www.reforma.com/enfoque/articulo/484/967995/)

the Army and the local government of Juárez that establish that military participation in Juárez is with the approval of civil authorities, in practice the Sedena has named people to these posts, including those responsible for prisons and transit. These cannot be considered appropriate posts for military personnel trained in the logic of war.

36. The number of complaints received by the National Human Rights Commission (CNDH – acronym in Spanish) concerning the National Defense Ministry multiplied by a factor of six during the first two years of the Felipe Calderón government –increasing from 182 in 2006 to 1,230 in 2008, the year when the Sedena was the dependency receiving the highest number of complaints.<sup>15</sup> The Sedena announced that at least 934 complaints were received concerning its actions during the first seven months of 2009, affecting at least 888 civilians, of a total of more than 2,000 complaints received so far during the Calderón administration.<sup>16</sup> In the context of the Operativo Conjunto Juárez (Joint Operation Juárez) alone, which includes a module for receiving complaints, the head of the module informed the media that more than one thousands complaints concerning abuses by military personnel and federal police were received between January 2008 and October 2009; they added that the Army accepted it had adopted excessive measures in 732 cases for which it had allegedly paid some form of indemnity to victims.<sup>17</sup>

37. To date the CNDH has issued more than 40 recommendations (reports by the CNDH that, on the basis of its investigations, confirm human rights violations) to the Sedena during the present administration. In the light of the above, it is of particular note that more than half of all recommendations issued to the Sedena since the creation of the CNDH in 1990 have been during the present administration (that is, over the last three years), a presidency characterized precisely by the huge mobilization of soldiers in the streets.<sup>18</sup>

38. Non-government organizations, as well as public human rights bodies, have documented many cases of abuse by the military of which the following are merely examples:

39. During the afternoon of March 26, 2008 four civilians were arbitrarily executed by soldiers in the State of Sinaloa when Army personnel opened fire on their vehicle killing four of the passengers and wounding another two. The victims were unarmed and were not involved in any illicit conduct; neither was there a roadblock or checkpoint at the site of the shootings. The case was investigated by the military itself and the crime remains unpunished.<sup>19</sup>

40. On August 14, 2009 two young men, Silverio Iván Jaimes Filio, aged 22, and Jorge Raúl Jaimes Jiménez, aged 23, were arbitrarily detained in the state of Morelos and tortured by soldiers. They

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<sup>15</sup> See the corresponding annual reports of the National Human Rights Commission, available at [www.cndh.org.mx](http://www.cndh.org.mx).

<sup>16</sup> Silvia Otero, *Sedena suma 934 quejas de abusos en siete meses*, EL UNIVERSAL, August 15, 2009, available at [www.eluniversal.com.mx/notas/619498.html](http://www.eluniversal.com.mx/notas/619498.html).

<sup>17</sup> *Deciden abandono del Ejército en Ciudad Juárez*, EL PORVENIR, October 25, 2009, available at [www.elporvenir.com.mx/notas.asp?nota\\_id=347908](http://www.elporvenir.com.mx/notas.asp?nota_id=347908).

<sup>18</sup> See <http://www.cndh.org.mx/recomen/recomen.asp>.

<sup>19</sup> See Centro Prodh, *¿Comandante Supremo? La ausencia de control civil sobre las Fuerzas Armadas al inicio del sexenio de Felipe Calderón (Supreme Commander? The lack of control over the Armed Forces at the start of the Felipe Calderón presidency)*, March 2009, available at [www.centroprodh.org.mand](http://www.centroprodh.org.mand) submitted in printed form to the Human Rights Committee in June 2009 by representatives of the Centro Prodh, pp. 39-41.

were freed several hours later but were told that if they reported the incident their lives would be in danger.

41. On June 1, 2007, five members of the same family were arbitrarily executed in La Joya, Sinaloa. Soldiers opened fire on eight members of the Esparza Galaviz family who passed a military roadblock (checkpoint). Five members of the family, women and children, were shot to death while another three members of the family were wounded, including another two children.<sup>20</sup> The case was dealt with by military courts.

42. Generalized violations of human rights in Carácuaro, Nocupétaro and Huetamo, in the state of Michoacán, during the first week of May 2007. While searching for those responsible for an ambush that claimed the lives of five people, the Army conducted a generalized repression of the people of three municipalities and maintained a virtual state of siege. The mayors of Carácuaro and Nocupétaro denounced “numerous” searches of homes without a warrant as well as cases of torture.<sup>21</sup> It was reported that two people who attempted to make a complaint against the military to the State Human Rights Commission were beaten and threatened in reprisal.<sup>22</sup> On May 2, 2007 in Nocupétaro, Michoacán, four female minors were sexually abused by soldiers when interrogated about presumed drug cartel activities in the area. The CNDH, which documented the case, later attributed the rape of two of the minors to the military.<sup>23</sup>

43. On May 8, 2009 the Sedena issued a press release indicating that the Military Attorney General had charged 12 members of the Army for the forced disappearance of the civilians Miguel Ángel Gama Habif, Israel Ayala Ramírez and Aarón Rojas de la Fuente in Tamaulipas in March, 2009. According to information released by the Sedena, the soldiers were to appear before the second military judge of the I Military Region, that is, they were to be tried by a military court.<sup>24</sup>

44. In the state of Guerrero the cases of military abuse have multiplied exponentially. Statistics from the Human Rights Defense Commission in Guerrero (Coddehum – acronym in Spanish)<sup>25</sup> indicate that over the last eight months 125 complaints have been registered, while in 2008 only 35 files were

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<sup>20</sup> *Matan a familias en retén*, Reforma, June 3, 2007

<sup>21</sup> Francisco Gómez and Marco Antonio Duarte, *El Ejército asume el control de Carácuaro*, EL UNIVERSAL, May 5, 2007, available at [www.el-universal.com.mx/estados/64593.html](http://www.el-universal.com.mx/estados/64593.html)

<sup>22</sup> Idem

<sup>23</sup> CNDH, Recommendation 38/2007, available at [www.cndh.org.mx](http://www.cndh.org.mx)

<sup>24</sup> See Centro Prodh, *La posible participación de militares en casos de desaparición forzada confirma la necesidad de fortalecer el control civil sobre las fuerzas armadas* (The possible participation of soldiers in cases of forced disappearances confirms the need to strengthen civil control over the armed forces), Press Bulletin SC-04-09, May 13, 2009, available at [http://centroprodh.org.mx/2008/index.php?option=com\\_content&task=view&id=123&Itemid=58](http://centroprodh.org.mx/2008/index.php?option=com_content&task=view&id=123&Itemid=58) see also Amnesty International, urgent action 88/09, AMR 41/018/2009, March 27, 2009.

<sup>25</sup> The Commission for the Defense of Human Rights officially came into being on September 28, 1990 and in accordance with its natural law the Commission is an organism with its own legal and financial character; it is plural and includes the participation of civil society; enjoys technical and operative autonomy and can communicate with the Head of Executive Power without intermediation as well as receive material assistance, but without being subjected to the executive’s power. Its primary objective is to design and implement the necessary instruments to promote, safeguard and defend the human rights of the people of Guerrero and in general of the state’s inhabitants and visitors when the violation of these rights is perpetrated by state and municipal public servants.

opened.<sup>26</sup> In none of the cases registered with the Coddehum has the CNDH made a declaration concerning cases of human rights violations committed by the Mexican Army in the State of Guerrero.

45. On December 7, 2009 the regional inspector of the Coddehum, Eusebio Saldaña Moreno, reported that during 2009 45 complaints concerning military abuse had been made and another two against members of the Federal Preventative Police involving citizens of this region. Saldaña said that, based on complaints statistics concerning federal authorities received by the regional office of the Coddehum in Tecpan de Galeana, “it is the military that is mostly responsible for alleged human rights violations of citizens on the Costa Grande”.<sup>27</sup> In none of the cases registered before the Coddehum has the CNDH made a declaration concerning cases of human rights violations committed by the Mexican Army in the State of Guerrero.

46. Information registered by the Centro de Derechos Humanos de la Montaña Tlachinollan together with the Civil Police Monitoring project and the Cuerpos de Seguridad en la Montaña (Security Organizations of the Mountain), confirm that the number of cases has increased from 2008 to the present with 73 documented cases between 1994 and 2007 while in 2008 and 2009 a total of 36 complaints were received from indigenous peoples concerning members of the Mexican Army.

47. Of the total number of quoted cases it is important to highlight that 18 of these have been declined to military courts, among them the case of Inés Fernández Ortega and Valentina Rosendo Cantú, two Me’phaa indigenous people from the municipality of Ayutla de los Libres, Guerrero who were raped by soldiers of the Mexican Army in March 2002. It must be pointed out that both women were forced to seek recourse through the Inter-American System due to the lack of access to justice in Mexico. After a protracted process of internal litigation their cases are currently being dealt with individually before the Inter-American Court of Human Rights.

48. Article 13 of the Mexican Constitution establishes that “military law exists for crimes and failure to respect military discipline”. In Art. 57 of the Mexican Military Legal Code it is established that civil or federal crimes are considered crimes against military discipline when committed by military personnel on active service. This article has been repeatedly used for attracting cases of serious violations by the military to military courts.

49. In order to understand Army practices in the investigation of human rights crimes and violations involving the civilian population, the example of the highly militarized state of Chihuahua on the Mexico-US border is useful since documented military abuses frequently include torture, arbitrary detention and illegal detention by military personnel. In July 2008, staff of the CNDH confirmed to the media that, “people taken from their homes are transferred to military installations where they do not immediately appear before the relevant legal authority but are held incommunicado for up to 15

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26 The information corresponds to complaints received in central and regional offices of the Coddehum throughout the state of Guerrero.

27 See: Escobar, Brenda, “En la Codehum, 45 abusos de militares este año en Costa Grande”, El Sur, [http://www.suracapulco.com.mx/notale.php?id\\_notas=71144](http://www.suracapulco.com.mx/notale.php?id_notas=71144)

days” and that “the injured parties are interrogated by military personnel who extract information using torture: blows, electric shocks, submersion in water, covering their heads with plastic bags...”<sup>28</sup>

50. In this sense, documentation prepared by the CNDH<sup>29</sup> and non-governmental organizations leads to the conclusion that this sequence of arbitrary detention-improper withholding-torture is not an isolated practice but a recurring pattern used by members of the military and is implemented with the consent of the military chain of command.

51. In the context described above it must not be forgotten that in many cases the militarization of public security particularly affects vulnerable groups such as indigenous peoples, women, migrants and people identified as political dissidents by the government. In this sense it should be pointed out that strong-handed measures and militarized operations can be used by authorities as tools of political repression against groups or organizations that protest against government actions, diverse social movements and human rights defenders, among other actors.

52. Finally, it should be noted that despite certain declarations by the State to the effect that participation of the Army in civil public security tasks is a temporary measure, Mexican daily reality reveals widespread and indefinite militarization.<sup>30</sup> In October 2008, the National Defense Ministry announced that it would continue to use military personnel in security operations “for permanent operations that should conclude in 2012... If the goals and timetable of civil authorities are not met then the Army will remain on the streets for an indefinite period ...”<sup>31</sup> It also indicated that operations will be extended to yet more areas of Sonora, Coahuila, Oaxaca and Chiapas.<sup>32</sup>

**53. In the light of the above we call on the Human Rights Committee to recommend to the State that it immediately, or at the earliest possible opportunity, withdraw the Armed Forces from public security tasks; that it immediately and seriously investigate, through the competent civil authorities, all complaints lodged concerning human rights violations committed in the context of militarized operations; and that the State guarantee all victims of these violations comprehensive and fair indemnity, including the corresponding compensation, finally performing all necessary actions to guarantee the speedy and simple functioning of legal resources by which victims can demand these reparations.**

### The Right to Life (Article 6)

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<sup>28</sup> Víctor Ballinas, *Chihuahua, primer lugar en abusos de militares: CNDH*, LA JORNADA, July 16, 2008, available at [www.jornada.unam.mx/2008/07/16/index.php?section=politica&article=019n1pol](http://www.jornada.unam.mx/2008/07/16/index.php?section=politica&article=019n1pol)

<sup>29</sup> See <http://www.cndh.org.mx/recomen/recomen.asp> See, in particular, recommendations 55/2009; 54/2009; 53/09; 48/09; 41/09; 38/09; 34/09; 33/09; 28/09; 18/09; 13/09; 67/08; 60/08; 33/08; 32/08; 31/09; 30/08; 29/08; 39/07; 38/07.

<sup>30</sup> It should also be noted there was an increase in the number of elements deployed for certain operations. This was the case of the Joint Operation Chihuahua that began with the sending of 2,500 soldiers to the state but by 2009 involved 7,500 soldiers.

<sup>31</sup> Jorge Alejandro Medellín, *Sedena planea ampliar operativos antidrogas*, El Universal, October 16, 2008, available at [www.eluniversal.com.mx/nacion/162990.html](http://www.eluniversal.com.mx/nacion/162990.html)

<sup>32</sup> Idem. See also: *Ejército seguirá en la lucha contra el narco*, Milenio, October 19, 2009, available at <http://impreso.milenio.com/node/8659400>

### **Office of the Special Prosecutor for Past Social and Political Movements (FEMOSPP - acronym in Spanish)**

54. In 2001 the government of President Vicente Fox created the Office of the Special Prosecutor for dealing with events probably constituting federal crimes committed directly or indirectly by public servants against people linked with social and political movements in the past, known by the acronym Femosp. <sup>33</sup> This office represented the institutional response to the legacy of extrajudicial killings, hundreds of forced disappearances, acts of torture and other human rights violations that occurred in the context of the repression of political dissidence in the 1960s, 1970s and 1980s in the context of the so-called Dirty War.

55. The Femosp has three areas: 1) the ministerial legal area, formed by ministerial program "A", responsible for investigating forced disappearances; ministerial program "B", responsible for investigating the student massacres of October 2, 1968 and June 10, 1971; and ministerial program "C", responsible for investigating complaints not within the jurisdiction of the other two programs; 2) the area of information analysis and documentary research responsible for historical clarification; and 3) the area for cooperation, citizen participation and institutional linking which is responsible for forging links with civil society. <sup>34</sup>

56. Since its beginnings, organizations for the defense and promotion of human rights have pointed out the shortcomings of the Femosp, with the following among them: a) the naming of a prosecutor who was not recognized by the actors involved; b) the scarce and underqualified use of international human rights law in its investigations and arguments; c) the lack of training for staff; and d) the lack, in practice, of an appropriate interdisciplinary effort for the investigation of crimes committed in past decades. Despite its limitations, the Femosp represented the only channel opened by the State to deal with the ongoing demand for truth and justice. For this reason a number of victims, relations and organizations decided to seek assistance from this organization to help their efforts.

57. After many years assisting in ministerial investigations conducted by the Femosp, Mexican civil organizations were able to extensively document the limitations and structural faults of the Femosp, confirming that many of these followed the pattern established by other bodies used by the Mexican system of law enforcement and administration for the investigation and, unsuccessful, processing of serious human rights violations.

58. Below we offer a brief analysis of actions taken by the Mexican State via Femosp, the process and result of the same:

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<sup>33</sup> See AFADEM, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Comité 68 Pro Libertades Democráticas, Comité de Madres de Desaparecidos Políticos de Chihuahua, Fundación Diego Lucero, Nacidos en la Tempestad and the Red Nacional Todos los Derechos para Todas y Todos, *Esclarecimiento y sanción a los delitos del pasado durante el sexenio 2000-2006: Compromisos quebrantados y justicia aplazada (Clearing up and Punishment of crimes of the past during the 2000-2006 presidency: Broken promises and delayed justice)*, 2006, pp. 20-21.

<sup>34</sup> See *idem*, pp. 25-26.

59. Lack of access to justice: The Femospa does not represent an effective mechanism for gaining access to justice.

60. During its five years of existence the Femospa initiated more than 500 criminal investigations of which less than 5% led to charges. Of these, none has led to sentencing that punishes those responsible and to date there has been no conviction for those who committed serious and systematic violations of rights protected by the International Covenant on Civil and Political Rights.<sup>35</sup>

61. Furthermore, the performance of the Femospa regarding the investigation of forced disappearances has been characterized by the failure to comply with the obligations and standards derived from international human rights law. The Special Prosecutor limited their actions to the framework of Mexican criminal law and filed its prior investigations for the crime of “illegal deprivation of freedom in the form of kidnapping” and not for the crime of “forced disappearance of persons”, as authorized by numerous international agreements ratified by the State.

62. It should also be pointed out that the Femospa was indulgent with the military and failed to investigate in depth its responsibility for crimes committed in the past despite historical evidence that clearly implicated the Armed Forces in the committing of serious human rights violations. Despite evidence that indicates their responsibility for these violations, the Femospa failed to bring any soldier before civil courts and also failed to gain full access to military files.

63. Failure to provide access to truth: As previously indicated, the institutional design of the Femospa anticipated an area of information analysis. Over time this became an office for Investigations and Documentary Analysis. After numerous changes the work of this Office moved towards the preparation of an historical report concerning crimes against humanity committed in the immediate past. In the context of severely adverse conditions, in December 2005 the Office finally prepared a draft of the historical report entitled “¡Qué no vuelva a suceder! (So It Doesn’t Happen Again!)”. In its public statements the Office of the Special Prosecutor maintained that this document would prepare the ground for national reconciliation; however, within the Femospa steps were being taken to prevent its publication.<sup>36</sup>

64. After months of uncertainty, in February 2006 a preliminary version of the report was leaked to the press and published by a number of national and international media. Although this draft demonstrated the inherent limitations of a work in progress, the investigation and documentation were sufficiently solid to establish the basis for recognition of the State’s responsibility in the committing of crimes against humanity during the 1960s, 1970s and 1980s.<sup>37</sup> Nevertheless, the report was not presented publically by any government agency. Finally, the Federal Attorney General

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<sup>35</sup> It is important to point out that when formalizing accusations against a former president and two former directors of the now defunct Federal Office of Security, these did not involve processes leading to a sentence determining the criminal responsibility or innocence of the accused. For various reasons each of these causes were dismissed at the time; at present neither of these criminal prosecutions remains open. *Cfr.* Gustavo Castillo and Elizabeth Velasco, *La Femospa dejó pendientes de resolver 90% de casos investigados*, La Jornada, July 11, 2007, available at [www.jornada.unam.mx/2007/07/11/index.php?section=politica&article=014n1pol](http://www.jornada.unam.mx/2007/07/11/index.php?section=politica&article=014n1pol)

<sup>36</sup> Medellín, Jorge, *Informe sobre “Guerra Sucia” circula en internet*, EL UNIVERSAL, February 28, 2006, available at [www.eluniversal.com.mx/notas/333196.html](http://www.eluniversal.com.mx/notas/333196.html)

<sup>37</sup> Since February 2006 the report *¡Qué no vuelva a suceder!* has been available for consultation at: [www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/index.htm](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/index.htm)

uploaded an edited version of this document to their website for a limited period only; this also limited public presentation of the report by the Femosp. Today the information collected by the Office of Investigations and Documentary Analysis of the Femosp cannot be accessed; despite the fact that the agreement that formalized the disappearance of the Femosp in November 2006 ordered that these documents be held at the National Institute for Penal Sciences (INACIPE – acronym in Spanish), this institution has denied holding the respective file in its archive.<sup>38</sup> Given that the Federal Attorney General has also denied possession of the documents, Mexican society has been denied access to this important preliminary work of documenting human rights violations committed in the past and as a result has seen its right to truth violated.

65. Lack of reparations: In the area of reparations the Femosp has limited itself to propose, for some affected parties, financial compensation and has therefore ignored other aspects such as recognition of State responsibility and necessary measures for preventing the repetition of events. Nevertheless, not even this materialized.

66. While it is public knowledge that a “Comité Interdisciplinario para la Reparación del Daño a Víctimas u Ofendidos por Violaciones a Derechos Humanos de Individuos Vinculados a Movimientos Sociales y Políticos en la década de los sesenta y setentas (Interdisciplinary Committee for Redress of Victims or Offended Parties of Human Rights Violations of Individuals Linked to Social and Political Movements of the 1960s and 1970s)” was created in 2001, to date the advances achieved by this committee remain unknown since their meetings and minutes are not published. Furthermore, it is cause for concern that said committee is guided by criteria that insist on the individuality of each case thereby ignoring the systematic nature of human rights violations committed in Mexico in the recent past.

67. It should also be pointed out that the persistent failure of the State to address the problem is not only attributable to the Femosp. Other actors also failed to meet their obligations on this topic: the Executive obviously lacked the necessary political leadership to bring the criminals of the repressive regime to justice; the Legislature, for its part, failed to perform the necessary normative changes for the creation of processes respecting international human rights law; for their part, Judicial Authorities applied excessively formalist criteria when dealing with cases concerning impunity for crimes of the past; and finally, the Army refused exposing itself to public scrutiny and closed ranks in its traditional way.

68. Current situation: At the end of November 2006 the then Federal Attorney General, Daniel Francisco Cabeza de Vaca Hernández, issued an agreement dissolving the Femosp and dispersing the information it had collected. It was not deemed relevant that several criminal investigations were still pending and criminal proceedings under way. Neither did it seem important that the collective right to truth was not respected. The decision to dissolve the Femosp was approved by the successor to Cabeza de Vaca Hernández, Eduardo Tomás Medina Mora Icaza, by means of agreement A/317/2006

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<sup>38</sup> This information has been sought without success through the Federal Institute for Access to Public Information. The INACIPE maintains that it has no such documents in its archive.

of the Federal Attorney General's Office in March 2007, already under the control of new president Felipe Calderón's administration.<sup>39</sup>

69. The administration of President Calderón has now opted to perpetuate impunity and minimize the topic: the information collected and work performed by the Femospa was passed to the Central Office for Investigations (CGI – acronym in Spanish) of the Deputy Attorney General's Office for the Specialized Investigation of Federal Crimes via the above mentioned agreement no. A/317/2006 without the government establishing a clear position, in accordance with the importance of the topic, concerning the way these tasks would be continued. Since that time the criminal investigations that became the responsibility of the Central Office for Investigations have not reported any significant advances.<sup>40</sup>

70. Furthermore, the current administration's lack of commitment to the families of the disappeared and other victims of the Dirty War was made clear in the recent Universal Periodic Review (UPR) of Mexico, performed in February 2009, the final report of which was adopted during a public session of the Committee on June 11, 2009. During this process the question of impunity for crimes committed during the Dirty War was one of the points taken up again by member States of the committee as well as national and international civil society organizations. In this context it should be mentioned that the official recommendation made by Belgium to Mexico was that the latter take the necessary action to "[r]e-establish the Special Prosecutor for crimes committed against social and political movements in the past or create a similar prosecutor, thereby sending families a clear message that it is fighting impunity".<sup>41</sup> Since this is derived from the complementary document submitted by the State on this occasion, Mexico considered the proposal to create a Special Prosecutor irrelevant since the General Office of Investigations has authority in the matter, although it offered no example of a sentence or punishment being applied based on actions performed by the CGI for crimes committed during the Dirty War.<sup>42</sup>

71. While it is true that current incidence of forced disappearances in Mexico is not to the same degree of violations that affected hundreds of families during the Dirty War, such practices do continue. The above example highlights that the authoritarian structures allowing such practices have not been replaced and that impunity for past crimes leads to the persistence of serious human rights violations in the present.

## **72. We call on the Committee to recommend the following to the Mexican State:**

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<sup>39</sup> Accord A/317/2006 of the Federal Attorney General's Office, published in the Official Government Gazette on March 26, 2007, available at [www.dof.gob.mx/index.php?year=2007&month=03&day=26](http://www.dof.gob.mx/index.php?year=2007&month=03&day=26)

<sup>40</sup> It should be mentioned that the Deputy Attorney General's Office for the Specialized Investigation of Federal Crimes is responsible for the identification of tax crimes, fraud and crimes covered by special laws related to the financial system.

<sup>41</sup> Human Rights Committee, *Examen Periódico Universal: Informe del Grupo de Trabajo sobre el Examen Periódico Universal: México (Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Mexico)*, May 29, 2009, Doc. A/HRC/11/27, par. 94.8, available at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A\\_HRC\\_11\\_27\\_MEX\\_S.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_MEX_S.pdf)

<sup>42</sup> *Informe del Grupo de Trabajo sobre el Examen Periódico Universal: México: Adición: Opiniones sobre las conclusiones y/o recomendaciones, compromisos voluntarios y respuestas presentadas por el estado examinado (Report of the Working Group on the Universal Periodic Review: Addition: Opinions on the conclusions and/or recommendations, voluntary commitments and responses presented by the State under examination)*, June 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A\\_HRC\\_11\\_27\\_Add1\\_MEX\\_S.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_Add1_MEX_S.pdf), para. 27

a) Create and guarantee a permanent Special Prosecutor for the investigation of State crimes committed in the authoritarian past with its own budget and staff versed in the circumstances of said crimes in order to perform serious investigations that impose and promote relevant punishment for those responsible for these crimes.

b) Create, to assist this office, a Commission of Historical Verification to consolidate investigations initiated on the subject and that culminates in the preparation of an official report that clearly recognizes the responsibility of the State in these crimes and establishes the bases for the truth to be known and for the victims to be compensated. Said commission should be formed by recognized independent experts in the field who are selected on the basis of a consultation with the public and civil society.<sup>43</sup>

### Prohibition of torture (article 7)

73. In Mexico probative value is routinely given to statements made by the accused to authorities other than judicial authorities and without adequate legal control. It is important to highlight that while Mexico adopted constitutional reform in 2008 with regard to criminal justice that could contribute to the elimination of the violatory practices mentioned above, said modification has yet to come into effect<sup>44</sup> meaning that at present confessions made before authorities other than judicial authorities continue to enjoy probative value and this provides incentive for the practice of torture and cruel, inhuman and/or degrading treatment.

74. This method of giving value to statements made without judicial control is reinforced in practice by the conceptualization in Mexico of the “principle of procedural intervention”. As commonly understood in Mexico, this principle gives privileged probative value to initial statements of persons charged since these are made without the possibility of the defense inducing from the accused a version of events more favorable to their cause. Since the criminal justice system anticipates the possibility that the public prosecutor obtains the statement from the accused without judicial control, application of the “principle of procedural intervention” means that these statements given to a public prosecutor are given greater probative value during trial.

75. The preeminence of initial statements has been supported by jurisprudence of Judicial Power of the Federation using the criteria indicated below:

**CONFESSION. INITIAL STATEMENTS OF PRISONER.** According to the principle of procedural intervention, and subject to the legal appropriateness of retraction of the statement, the initial

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<sup>43</sup>See AFADEM, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Comité 68 Pro Libertades Democráticas, Comité de Madres de Desaparecidos Políticos de Chihuahua, Fundación Diego Lucero, Nacidos en la Tempestad y Red Nacional Todos los Derechos para Todas y Todos, *Esclarecimiento y sanción a los delitos del pasado durante el sexenio 2000-2006: Compromisos quebrantados y justicia aplazada*, 2006, p. 93 at: [www.redtdt.org.mx](http://www.redtdt.org.mx)

<sup>44</sup> See, Transitory provisions of the decree that reforms and adds a number of provisions to the Political Constitution of the United Mexican States, published in the Official Government Gazette on June 18, 2008, Article two, paragraph one: “The accusatory criminal justice system anticipated in Articles 16, paragraphs two and thirteen; 17, paragraphs three, four and six; 19; 20 and 21, paragraph seven, of the Constitution, will come into force when established in corresponding secondary legislation, without exceeding a term of eight years from the day following publication of this Decree.”

statements of the accused, produced without sufficient time for defensive instruction or reflection, should prevail over subsequent statements.<sup>45</sup>

76. While the jurisprudential bases supporting this practice were established many decades ago, it is true that in general there has been no modification to the method of considering the probative value of the initial statements of the accused. Consequently, agents of the public prosecutor's office daily take statements from the accused without judicial control.

77. The probative value of statements obtained without judicial control, and the general practice of torture in Mexico, have been referred to by numerous international human rights groups. In the report of his visit to Mexico, the Special Rapporteur on Torture, Nigel Rodley, stated in 1998 that: "The statement of the accused, even when coerced, has a value that makes its refutation by other evidence difficult according to the prevailing criterion".<sup>46</sup> He consequently recommended that: "statements made by detainees should not be considered to have probative value unless they have been made before a judge".<sup>47</sup> In subsequent declarations made up to 2008, the UN Rapporteur indicated that the Mexican State has failed to respect this recommendation.<sup>48</sup>

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<sup>45</sup> Thesis of Jurisprudence II.2o. J/5, available on page 33 of the Gaceta del Semanario Judicial de la Federación 64 (Weekly Judicial Gazette of the Federation 64), Octava Época, April 1993.

<sup>46</sup> Report of Special Rapporteur Nigel Rodley, presented as legally bound by Resolution 1997/38 of the Human Rights Committee, E/CN.4/1998/38/Add.2, January 14, 1998, para. 41.

<sup>47</sup> *Idem*, para. 88(d).

<sup>48</sup> In 2002, when reviewing the position regarding compliance with their recommendations, the Rapporteur stated: "957. (d) *Statements made by detainees should not be considered to have probative value unless they have been made before a judge.* 958. According to information received by the Special Rapporteur, the Code for Criminal Procedures has not been amended to award probative value solely to statements made by detainees before a judge. *Cfr.* Report of the rapporteur on the question of torture, March 14, 2002 (E/CN.4/2002/76/Add.1). In 2004, he reiterated that: "147. Recommendation d) states that: "Statements made by detainees should not be considered to have probative value unless they have been made before a judge. 148. According to information provided by non-governmental sources, statements made before prosecutors continue to enjoy probative value. 149. The Government confirmed that in accordance with the Federal Criminal Procedures Code (CPPF – acronym in Spanish) all statements made by the probable culprit or accused will enjoy probative value (...)." *Cfr.* Report of the rapporteur on the question of torture from February 13, 2004 (E/CN.4/2004/56/Add.313). In 2006 the Rapporteur indicated that: "167. Recommendation d) states that: Statements made by detainees should not be considered to have probative value unless they have been made before a judge. 168. According to information received from non-governmental sources, this recommendation has not been complied with. Confessions made to prosecutors continue to serve as fundamental evidence in investigations and criminal proceedings despite the fact that the project for Criminal Justice and Security sent by President Fox includes constitutional reform to the effect that the only valid statements are those made before a judge. Furthermore, proposals relative to the validity of confessions made before a judge and presumed innocence for members of organized crime groups were not accepted by the Senate in the first review of the numerous proposals made for reform of the criminal justice system. (...)." *Cfr.* Report of the rapporteur concerning the question of torture from March 21, 2006 (E/CN.4/2006/6/Add.2). Finally, in 2008 the rapporteur stated: "341. Recommendation d) states that: Statements made by detainees should not be considered to have probative value unless they have been made before a judge. 342. *Non-governmental sources report that the Interior and Foreign Affairs Ministries have spent six years discussing how to change the inquisitorial system of justice for the accusatorial system without taking any practical steps with respect to the problem. These sources added that with mounting social protests in response to the increasing violation of economic, social, cultural and environmental rights, the previously mentioned inquisitorial system serves as an invitation to arbitrary detention and the search by public prosecutors for self-incrimination using methods of torture.* 343. The Government reiterated that the Supreme Court of Justice of the Nation had created binding jurisprudence for all courts that establishes that confessions made to a Public Prosecutor or judge without the presence of a defense lawyer lack all probative value (...)." *Cfr.* Report of the rapporteur on the question of torture, February 18, 2008 (A/HRC/7/3/Add.2). It is important to indicate that in order to correct the problem indicated it is not enough that jurisprudence exists to establish the exclusion of confessions obtained without the aid of a defense lawyer. Confessions made to a public prosecutor (rather than a judge) should also be excluded and it is equally important to implement said exclusions in practice.

78. The Committee against Torture (CAT) stated, after its visit to Mexico in 2003, that:

Examination of the information collected during the course of this procedure, without distortion by authorities, and the description of cases of torture, most of which occurred in the months prior to the visit and the previous year and were received directly from the victims, their uniformity in terms of the circumstances in which they were produced, the objective of the torture (almost always for obtaining information or a self incriminating confession), the similarity of methods used and their territorial distribution, has led the members of the Committee to conclude that these are not exceptional cases or examples of occasional excesses on the part of certain police agents but, on the contrary, that the use of torture by these agents is habitual and is used systematically as a further resource of criminal investigations and is always available when the investigation requires it.

[...]

Numerous factors concur to explain the persistent use of torture by police of the State in question, the majority of which have been mentioned in this report:

[...]

b) The extension of periods so that detainees can be presented before a judicial authority.

c) The generalized failure to respect the guarantee of the accused not to have to make a statement, established in Article 20 of the Constitution, and the legal provisions that prohibit the police from obtaining confessions, which are alluded to via the method of presenting them as formally provided before an agent of the Public Prosecutor.

d) The lack of judicial control during the period when detainees are at the disposition of the public prosecutor (in fact, in the custody of police) and the lack of effective procedures for supervision of the places of detention by an authority distinct from that responsible for providing the services these places are dependent on.

[...]

f) Impunity would seem to be the general rule and not the exception for police agents using the practices of torture. [...]

g) The failure to respect provisions concerning exclusion from the probative archive of any statement or evidence obtained via torture or similar methods of coercion. In practice, coerced statements are not invalidated during the processes for which they are used by the public prosecutor as the basis for sentencing.<sup>49</sup>

79. In addition, a number of international non-governmental organizations such as Human Rights Watch and Amnesty International have made declarations on the subject.<sup>50</sup>

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<sup>49</sup> Report on Mexico prepared by the Committee in the context of the Article 20 of the Convention, dated May 25, 2003 (CAT/C/7528), paras. 218-19. Our emphasis. The Committee later reiterated “its concern due to information indicating that in numerous cases dominant probative value is still given to the first statement made before the attorney general (the public prosecutor statement) with respect to all subsequent statements made before a judge”. *Cfr.* Examination of reports presented by participating states in compliance with Article 19 of the Convention, February 6, 2007. (CAT/C/MEX/CO/4).

<sup>50</sup> Human Rights Watch, *El cambio inconcluso: avances y desaciertos en derechos humanos durante el gobierno de Fox (The Inconclusive Change: advances and errors in human rights during the Fox administration)*, 2006, available at [www.hrw.org/en/reports/2006/05/16/mexico-el-cambio-inconcluso](http://www.hrw.org/en/reports/2006/05/16/mexico-el-cambio-inconcluso) and Amnesty International, *Injusticia e impunidad: deficiencias en el sistema de justicia penal mexicano (Injustice and Impunity: Mexico's Flawed Criminal Justice System)*, AMR 41/001/2007.

80. To summarize, the value given by Mexico to the initial statements of detainees provides an incentive to obtain confessions by means of acts that according to international law constitute torture or cruel, inhumane and/or degrading treatment. This is true even when in Mexico there is a Federal Law for the Prevention and Punishment of Torture (promulgated in 1991), which in Article 8 establishes that “No confession or information that has been obtained by means of torture can be used as proof”. As indicated in the paragraphs above, the practice is in clear violation of this norm.

81. We conclude by reiterating that while the constitutional reform of June 2008 includes legal provisions designed to reduce the incentive to obtain confessions using torture, it has yet to come into effect and in practice its implementation has been delayed since a period of eight years exists for implementation.

**82. For the above reasons we call on the Honorable Committee to recommend to the Mexican State that it implements without delay the accusatory and oral criminal justice system considered in constitutional reform of June 2008, giving priority to immediate implementation of the guarantee that no confession have probative value if not made before a judge.**

#### **National Mechanism for the Prevention of Torture**

83. On July 11, 2007, the Ministry of Foreign Affairs (SRE – acronym in Spanish) announced to the United Nations the Mexican State’s compliance with obligations included in the Statutory Protocol of the Convention against Torture. In letters sent to the UN General Secretary and the UN High Commissioner for Human Rights, it was indicated that the Government of Mexico had made a proposal to the National Human Rights Commission (CNDH – acronym in Spanish) and that this body had accepted to act as the National Mechanism for the Prevention of Torture (MNPT – acronym in Spanish).

84. After a process lasting two years, and which consisted of four seminars and numerous working meetings organized by the Ministry for Foreign Affairs, the Mexico Office of the UN High Commissioner for Human Rights and the Association for the Prevention of Torture (APT), and also included the participation of a number of governmental institutions, Ministries, Public Human Rights Bodies and Civil Society Human Rights Bodies, the State failed to take into account the discussion and proposals arising from this process to create the National Mechanism for the Prevention of Torture and unilaterally named the CNDH as the only organization responsible for monitoring the country’s numerous detention centers and the performance of necessary actions to prevent torture and ill-treatment<sup>51</sup>.

85. It is evident that naming the CNDH as the MNPT was not the result of a process of consultation

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<sup>51</sup> *Gobierno federal decide unilateralmente mecanismo nacional de prevención, habiendo convocado foros para su integración*, Press bulletin, 27 de junio de 2007, available at: <http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=720>

with the institutions charged with leading it, nor fully compliant with Articles 3, 17 and 18 of the Statutory Protocol, but a unilateral and authoritarian decision on the part of the Mexican Government that clearly demonstrated the lack of a true commitment to the effective prevention and eradication of torture and ill-treatment.

86. Furthermore, it is important to point out that the functioning of the MNPT is regulated by a number of Government Ministries that head the list of principal perpetrators of torture in the country such as the Ministry for National Defense, the Ministry of Public Security, the Ministry of the Navy and the Federal Attorney General's Office. This nullifies the legitimate aspiration of many civil society organizations to create a true National Mechanism for the Prevention of Torture and not another inspector general of penitentiaries with extended powers. With these decisions the government excluded human rights defenders, which it currently harasses, persecutes and impedes in the performance of their work in prisons.

**The specialized medical-psychological opinion for possible cases of torture and/or ill-treatment and the territorial scope of its application.**

87. On August 18, 2003 Accord A/057/03 of the Office of the Federal Attorney General came into effect, establishing the Institutional Guidelines to be followed by Agents of the Federal Public Prosecutor and Expert Medical and/or Forensic Examiners for the application of the Specialized medical-psychological opinion for possible cases of torture and/or ill-treatment.

88. The Accord establishes that the Public Prosecutor is obliged to request application of said opinion by an expert medical and/or forensic examiner appointed by the Office of the Attorney General. These experts, although formally trained in giving these opinions, do not meet several basic criteria established for the quick and effective investigation of torture as established in the Istanbul Protocol: Independence of investigators from the alleged authors of the crime and the institutions to which they belong, competence and impartiality. They are both judge and party since they belong to the same authority that allegedly performed the acts of torture.

89. In practice we have been able to confirm that the attitudes and the techniques used during evaluations do not respect the guidelines and suggestions for conducting medical-psychological examinations established in the Istanbul Protocol. According to the testimony of many people examined by experts from the Attorney General's Office, these professionals do not establish a climate of trust, demonstrate an apparent lack of interest in what those being examined have to say, do not perform an exhaustive and complete examination and even create conditions leading to the retraumatization of victims. One example is the case of Bárbara Italia Méndez Moreno, who was evaluated in May 2007 by experts from the PGR after having suffered physical and sexual torture.<sup>52</sup>

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<sup>52</sup> In this particular case, in addition to deficiencies of the method of evaluation it is of serious concern that during one of the sessions the room where the examination was conducted was filled with approximately 20 uniformed police who went into the room next door which served as a clinic. In addition naked photos were taken of her whole body; front, profile and back as well as one of her mouth which was held wide open by the four hands of the experts. This was done despite the fact that there was no prior record of dental arches being injured during torture.

90. Decrees for the evaluation of possible torture drawn up by experts of the Attorney General's Offices, to which we have had access, more closely resemble personality and criminality studies and lack the necessary scientific vigor. The method of application, the atmosphere during examination and the interpretation of information received impede an adequate evaluation and necessarily lead to a negative conclusion.

91. Even when victims enjoy the acknowledged right to choose their own experts<sup>53</sup>, in practice Public Prosecutors make it obligatory for studies to be performed by experts from the Attorney General's Office and under no circumstances permit independent experts to substitute them.<sup>54</sup> Furthermore, the work of independent experts has been relegated to the status of "opinions" or "testimonies" or even denied value by ministerial and judicial authorities who criticize the content of this work and the conclusions reached.

92. It should also be noted that preparation of the opinion report, supposedly based on the Istanbul Protocol, has allowed authorities to avoid the analysis of and search for other forms of evidence and indications (analysis of the statements of victims and aggressors, visual inspections, the study of related files, etc) that would constitute a truly exhaustive investigation.

93. In practice, the way experts of the Office of the Federal Attorney General (PGR) and state Attorney Generals have reviewed alleged victims since the creation of the "specialized opinion for possible cases of torture and/or ill-treatment" has appeared more like the application of a pre-established format than an exhaustive investigation. The training received by these experts from the Attorney General's Offices, which includes the participation of the United Nations and other international experts, has increased their sense of power and authority and has served as a means of condoning their conduct, both legally and politically. This process of institutionalization of the Protocol has been counterproductive in many senses and has allowed the following: 1) the authorities have more methods (legal and political) to deny accreditation of acts of torture and consequently the punishment of those responsible; 2) the Mexican government has promoted this process of cooperation to "justify" compliance with its international human rights commitments but has not produced results in individual cases; 3) the process has made the opinions and judgments of independent experts secondary; it has been limited to a technical debate between public and private professionals within criminal investigations.

94. The previously mentioned Accord A/057/2003 established the Committee for Monitoring and Evaluating the Specialized Medical/Psychological Opinion for Possible Cases of Torture and Ill-

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<sup>53</sup> According to Article 7 of the Federal Law for the Prevention and Punishment of Torture, victims have the right to name private experts independent of the intervention of official experts. However, in practice the participation of these independent experts has been disregarded through assigning them lesser legal classifications than those of official experts. Accord No. A/057/2003 de la PGR, indicates the "*right to be examined by an expert medical and/or forensic examiner and in their absence, or if further required, by a general practitioner of their choice in the terms of Article 7 of the Federal Law for the Prevention and Punishment of Torture*".

<sup>54</sup> Again we mention the case of Bárbara Italia Méndez Moreno. Despite the existence of a medical-psychological examination (The Istanbul Protocol) drawn up by independent experts, in addition to a medical examination performed by the National Human Rights Commission, staff of the Attorney General's Office indicated that failure to agree to an examination by experts of the Federal Attorney General's Office would "surely" lead the judge to issue a decision finding against claims of torture.

treatment as a regulatory agency for the operation, control, supervision and evaluation of said document. This Committee is formed in the following way:

- I. The Federal Attorney General;
- II. The heads of Deputy Attorney General Offices;
- III. The heads of the Institutions' control and supervision bodies;
- IV. The General Directorate for the Coordination of Expert Services;
- V. A representative of the Citizen Participation Council of the Federal Attorney General's Office, and
- VI. A representative of the Consejo Mexicano de Medicina Legal y Forense, A.C., (Mexican Council of Legal and Forensic Medicine) endorsed by the National Academy of Medicine.

95. Due to its composition, we affirm that this Committee does not enjoy the necessary independence, impartiality and objectivity to control and supervise application of the Specialized Opinion by experts of the Attorney General's Office since it is the same institution that allegedly committed the crimes of torture that provides the experts responsible for conducting the examinations.

96. Furthermore, no public information exists concerning the work or recommendations of this Committee.

## **Freedom and security of persons and due process (Articles 9 and 14)**

### **Implementation of reforms to the criminal justice system**

97. It should be remembered that, since it was approved by Congress, constitutional reform to the Public Security and Criminal Justice System includes points that are contrary to human rights, such as:

- Incorporation of arraigo (arraigo is often translated as house arrest or pre-charged arrest) in the Constitution while paying no attention to the Supreme Court of Justice that declared the measure unconstitutional. Neither were UN reports classifying arraigo as a form of arbitrary detention and recommending its removal from national legislation taken into account. A period of 80 days preventive detention is now permitted prior to indictment<sup>55</sup>.
- "Automatic" preventive imprisonment is still used for certain crimes. This is in violation of the principle of presumed innocence.
- The ending of investigations when a person admits their guilt. While this is implemented due to its success in other countries, in the Mexican context it is extremely dangerous when we consider how deeply rooted the practice of torture is in the police force.
- Establishing a state of exception with restrictions on basic guarantees of due process for people accused of organized crime represents not only an attack on guarantees of due process but also on the principle of equality, recognized in Article 1 of the Constitution.

98. The constitutional reform was published on June 18, 2008 and from this date a period of eight years is permitted for its implementation.

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<sup>55</sup> Article 16 of the Constitution

99. The Government of Mexico affirms that the constitutional reform of June 2008 limited arraigo to crimes committed by Organized Crime groups and that these crimes are federal and subject to strict controls by specialist federal judicial authorities. Neither paragraph 8 nor paragraph 14 of Article 16 of the reformed constitution establish that the sphere of application for arraigo is exclusively federal or that the decision of how to apply it will be the exclusive preserve of the federal judicial authority. In practice, a number of states maintain and employ the use of arraigo; in the case of Nuevo León it is for a period of up to 90 days, which is in breach of the constitutional reform which limits arraigo to a period of 80 days. In the case of Mexico City, as recently as July 14 a new center for local arraigo was opened.

100. The figure of the “control judge” suggests that the function of the authorities is to ensure that the rights of those indicated are not violated, whereas in reality they are forced to apply norms that, such as arraigo, violate human rights per se. Control judges have no legal power for refusing to apply norms contrary to international standards since diffuse constitutional control is not recognized in Mexico and neither can they request the intervention of a superior court in the matter since the question of constitutionality does not exist in the country.

101. In this way, against the resolution ordering the arraigo, the defendant remains defenseless and although the Mexican State affirms that in these cases arraigo is applicable, it should be noted that the commencement of this process does not prevent application of the measure if the person has already been detained since the effects of a possible suspension of amparo do not include the ordering of the defendant’s release but “their bringing before a district judge” (amparo judge), who will monitor the detention but will not have the power to end detention until the amparo is resolved; this proceeding is generally longer than 80 days so in the majority of cases the resolution is delivered when the arraigo has concluded and the amparo judge is forced to cease proceedings “due to a change of the legal situation”. For this reason there is no efficient recourse against arraigo.

102. The Mexican Government affirms that when arraigo is applied, all forms of incommunication, intimidation or torture are prohibited; the individual must be informed of his/her alleged crime and the individual must also be guaranteed full access to a lawyer. In reality, persons to whom arraigo is applied do not enjoy the rights of due process in accordance with article 14 of the International Covenant on Civil and Political Rights since they are not informed of their crime at the time of arrest and neither do they appear before a judicial authority; furthermore, the time of detention in arraigo, which can be between 40 and 80 days, greatly exceeds the constitutionally permitted period for the detention of defendants by the Prosecutor’s Office.

### **Military jurisdiction**

103. In Mexico the extension of military jurisdiction to crimes constituting human rights violations and which have no relation to military discipline is a systematic practice that impedes access to justice and violates legal guarantees.

104. The application of military jurisdiction to human rights cases is specifically due to the text of the Mexican Military Justice Code which violates the limit the Mexican Constitution imposes on the extension of military jurisdiction in its Article 13.

105. However, the Code of Military Justice, a secondary norm issued by presidential decree in 1933 (that is, a norm that was not evaluated and approved by the Legislature) defines “military discipline” in Article 57.II in a broad manner applying military jurisdiction to almost all crimes committed by active military personnel through establishing them as crimes against military discipline:

II.- Those of state or federal authorities that when committed concur with any of the following circumstances:

A) That they were committed by military personnel when on active service or when performing acts of the same ...

106. Due to this undue extension of the scope of military jurisdiction, cases of serious human rights violations are investigated and tried within the military system which, due to its very nature, lacks independence and impartiality being a criminal justice system dependent on Executive Power with judges and other officials named by, and responsible to, the Ministry of National Defense which is empowered to declare the discontinuation of legal action.

107. The role of military jurisdiction in maintaining impunity for human rights violations committed by military personnel is exemplified by the fact that available information does not allow the organizations signing this document to identify any concrete case of abuses committed during the present administration where a military court has subsequently punished a member of the military for having violated the human rights of a civilian.<sup>56</sup>

108. The UN Special Rapporteur on Torture, Nigel Rodley, when referring to the impunity generated by the military jurisdiction system in Mexico indicated after his visit to the country that “military personnel seem to enjoy immunity with respect to civil justice and are generally protected by military justice”<sup>57</sup> and recommended that “serious crimes committed by military personnel against civilians... should be presented before civil courts, independently of whether these have been committed while on active service.”<sup>58</sup>

109. Similar recommendations have been made to the Mexican State by the Committee against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of

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<sup>56</sup> While the Sedena indicates that 12 soldiers that have been sentenced by military courts since 2006, analysis of the information cited reveals that only one of these cases corresponds to a crime committed during the present government (since December 2006). The majority of the other cases are from the decade of the 1990s. Neither is it possible to establish whether these cases correspond to human rights violations or whether other responsible parties have faced trials or have been absolved in these cases.

<sup>57</sup> Report of Special Rapporteur Nigel Rodley, presented in accordance with Resolution 1997/38 of the Human Rights Committee, E/CN.4/1998/38/Add.2, January 14, 1998, para. 86.

<sup>58</sup> *Ibid.* Para. 88[j]

Indigenous People, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers and the Working Group on Arbitrary Detention.<sup>59</sup>

110. On the other hand, the Executive has sought to justify the application of military jurisdiction in human rights cases with fallacious arguments before such groups as the UN Human Rights Committee and the Inter-American Human Rights System. In this sense, the State affirmed in June 2009 that “the decisions of military courts and the Supreme Military Tribunal can be brought before civil courts through use of *juicio de amparo*, by which tribunals of Judicial Power of the Federation can determine in the final instance the legality of acts of authority resulting from the application of the Military Code of Justice.”<sup>60</sup> However, it is not true that victims of human rights violations are able to appeal the decisions issued by military courts before civil authorities, except for a couple of instances (for example, the question of reparations). The only person with the legal right to make such an appeal to civil courts is the soldier accused of the crime and this person has no interest in seeking a sentence outside the military justice system.

111. The State has also sought to justify the undue use of military jurisdiction, arguing that “during the present administration, the Ministry of National Defense has accepted all recommendations formulated by the National Human Rights Commission ...”<sup>61</sup> However, the acceptance of these recommendations does not imply that the Ministry of Defense need do anything more than conduct an investigation within the parameters of military jurisdiction given that these recommendations propose that military authorities investigate the claimed violations. Furthermore, even supposing that acceptance of recommendations from the CNDH were sufficient for resolving the cases referred to in the recommendations, it is not sufficient for ending the impunity generated by the undue and generalized extension of military jurisdiction to human rights violations.<sup>62</sup>

112. Faced with this panorama of impunity, the relations of four civilians executed arbitrarily by military personnel in March 2008 in the state of Sinaloa filed *amparos* against the application of military jurisdiction in their case, contesting in particular Article 57 of the Military Code of Justice and its unconstitutionality. This was based on the fact that the military had declined the authority to

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<sup>59</sup> Committee against Torture, *Conclusions and Recommendations*, CAT/C/MEX/CO/4, February 6, 2007, para. 14. Committee against Torture, *Report on Mexico prepared by the Committee*, CAT/C/75, May 25, 2003, para. 220g. *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk*, E/CN.4/2006/61/Add.4, January 13, 2006, para. 69a(vi). *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen*, E/CN.4/2004/80/Add.2, December 23, 2003, para. 90. *Report of the Rapporteur, Asma Jahangir, Relative to Extrajudicial, Summary or Arbitrary Executions*, E/CN.4/2000/3/Add.3, November 25, 1999, para. 107f. *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato'Param Coomaraswamy*, E/CN.4/2002/72/Add.1, January 24, 2002, para. 192d. Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, E/CN.4/2003/8/Add.3, December 17, 2002, para. 72f.

<sup>60</sup> *Report of the Universal Periodic Review Working Group: Mexico: Addition: Opinions on the Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Examination*, June 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A\\_HRC\\_11\\_27\\_Add1\\_MEX\\_S.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_Add1_MEX_S.pdf), para. 15

<sup>61</sup> *Idem*, para. 16.

<sup>62</sup> With regard to the creation of the General Office of Human Rights by the Sedena in January 2008, this does not represent a significant step in the direction of ensuring the protection of human rights. In an interview with the media, the head of this Office, General Jaime Antonio López Portillo, stated that his office did not conduct investigations and does not represent the “route” for making complaints since its purpose was limited to serving as an information link between the Sedena and the CNDH as well as representing the Sedena before international human rights organizations. See Jesús Aranda, *En tres años crecieron las denuncias contra militares por violar derechos humanos*, LA JORNADA, March 31, 2008, available at [www.jornada.unam.mx/2008/03/31/index.php?section=politica&article=011n1pol](http://www.jornada.unam.mx/2008/03/31/index.php?section=politica&article=011n1pol)

investigate these events in the civil realm and decided to extend military jurisdiction. The amparos were rejected in the first instance; however, one of them, filed by the wife of one of the victims, was taken to the Supreme Court of Justice of the Nation.<sup>63</sup> Rather than deal with the matter in depth and pronounce judgment on the legal scope of military jurisdiction, the Court decided by a vote of 6-5 that the woman had no legal interest (that is, no procedural legitimacy) in asking civil authorities to investigate the murder of her husband. This judgment, based on a restrictive and imprudent reading of the Amparo Law, has closed the door to all victims of military abuses in the country as there is no legal recourse available that allows them to demand their right to justice be respected.

113. Another example is the rape of two indigenous Tlapanecas, Inés Fernández and Valentina Rosendo, in 2002 by members of the Mexican Army in Barranca Bejuco and Barranca Tecuani, communities forming part of the municipality of Ayutla de los Libres, in the state of Guerrero (mentioned in parr. 47). On February 16, 2002, Valentina Rosendo Cantú was interrogated regarding the presence of guerrillas in the region and due to her negative responses she was beaten by soldiers and later raped by two of them while the other six watched.

114. On March 3, 2002, approximately 50 armed soldiers surrounded the home of Valentina and forced her to come out and “identify” her aggressors. Obviously scared, Valentina could not identify anyone and the soldiers took advantage of the situation by having her sign documents to that effect.

115. On March 8, 2002 she lodged a complaint against military personnel with the Civil Public Prosecutor in Ayutla de los Libres, Guerrero, for the crimes of rape, torture and illegal detention. The prosecutor declared they were unfit to receive the case and passed the criminal investigation to the Director General of Criminal Investigations of the Guerrero State Attorney General’s Office for it to be sent to the corresponding Military Public Prosecutor. In response to this decision, Valentina filed an amparo on June 6, 2002 against the State Attorney General’s Office decision to decline jurisdiction, claiming civil authorities should investigate and resolve the crime committed against her and not military authorities since they lack independence and impartiality. The amparo was declared inadmissible along with the subsequently submitted amparo en revisión.

116. Due to the legal vacuum and sense of defenselessness in which she had been left by the Mexican government after her case was returned to the military tribunal, which then closed the case after conducting partial investigations, Valentina Rosendo Cantú turned to the Inter-American Human Rights Commission (CIDH – acronym in Spanish) on November 6, 2003.

117. On October 12, 2007 a hearing was held at the CIDH, in Washington D.C., with the presence of the victim and the Mexican government. On August 27, 2009 Valentina was notified that her case would be tried within the jurisdiction of the Inter-American Human Rights Court since the Mexican state had not complied with recommendations made by the CIDH in its detailed report.

118. On March 22, 2002, Inés Fernández Ortega was raped by three soldiers who invaded her home in Barranca Tecuani, municipality of Ayutla de los Libres. On March 24, 2002, Inés and her husband Fortunato filed a complaint concerning the rape with the Civil Public Prosecutor of the Judicial District of Allende, with official residence in Ayutla de los Libres, Guerrero.

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<sup>63</sup> We refer to *amparo en revisión* 989/2009, resolved on August 10, 2009.

119. Throughout the course of the investigation on March, 2002, gynecological studies were performed and samples of sperm cells and semen were taken. Nevertheless, the evidence was “ruined” during studies performed by the Public Prosecutor and key evidence for the identification of those soldiers responsible was therefore lost.

120. On May 17, 2002, the Head of the Civil Public Prosecutor’s Office declined the case and sent it to the Military Public Prosecutor, who reports to the Attorney General for Military Justice, an institution lacking independence and impartiality that leaves the victim defenseless. After two years of unsuccessful legal battles to have the case tried before civil authorities, Inés went to the Inter-American Human Rights Commission (CIDH – acronym in Spanish) on June 14, 2004, as a last resort in her search for justice.

121. On October 21, 2006, the CIDH declared the case admissible and one year later, on October 12, 2007, Inés attended a public hearing before the CIDH. Her case is currently being dealt with by the Inter-American Court of Human Rights because the Mexican State did not respond to the recommendations issued by the CIDH in its detailed report.

**122. For the above reasons we call on the Committee to recommend to the Mexican State that it cease to apply military jurisdiction in human rights cases, transfer all corresponding cases currently open to civil jurisdiction; reopen under civil jurisdiction the relevant investigations archived by the Military Public Prosecutor; and perform the necessary modifications to the Code of Military Justice to explicitly exclude these cases from the power of military authorities for law enforcement and implementation.**

### **The right to humane treatment for people deprived of their liberty (Article 10)**

123. In Mexico in August, 2009, the prison population stood at 229,915, of which 11,728 (5.1%) were women. The female population principally consisted of young women with little education, were first offenders, poor and with few family ties<sup>64</sup>.

124. Neither the Mexican Constitution nor relevant federal and state legislation establish differences and mechanisms for attending to the specific needs of women held in correctional facilities apart from their separation from male prisoners. The law establishes the minimum norms regarding the social re-adaptation of convicted prisoners<sup>65</sup> but there is no norm offering a gender perspective for the State to use for the administration and management of prisons where there is a female population. Neither do laws or regulations exist at the state level which legislate the specific conditions in which women are held, ignoring such obvious situations as second level medical attention required by all women, attention for pregnant women or those who have children living with them.

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<sup>64</sup> Red TDT, CDD, CEDEHM, Centro Victoria Diez and Asilegal, “*Institutional violence against women*”, November, 2009, available at: <http://www.redtdt.org.mx/media/descargables/CIDH51109.pdf>

<sup>65</sup> Published in the Official Government Gazette on May 19, 1971, reformed on 23-01-2009

125. The lack of gender indicators in the National Diagnosis of the Prison System prepared by the National Human Rights Commission is notable. In its analysis of Mexican prisons this diagnosis only considers the male population and also fails to evaluate whether prisons separate men and women<sup>66</sup>.

126. The architecture of prisons, distribution of space and equipment used do not take into account the specific characteristics and needs of women and this demonstrates the unequal, discriminatory and violent treatment of women interns by the State when compared with its treatment of male prisoners.

127. There are only ten prisons exclusively for women in the country with a capacity for 1559 prisoners. In August 2009 these centers had a population of 3467 interns (29.56% of all female prisoners), which represents a general female overcrowding rate of 222.39%, while the general overcrowding rate is 133%. One particular case is that of the Santa Martha Female Social Re-Adaptation Center (CERESO – acronym in Spanish) in the Federal District that, according to official sources, has a capacity for 234 prisoners and currently holds a total of 1893, with an overcrowding rate of 808.97%<sup>68</sup>.

128. Other women prisoners are held in mixed prisons throughout the country where they are housed in marginalized and improvised female sections and wings<sup>67</sup> with high overcrowding rates; on occasion the female area is nothing more than a room under the stairs where all female prisoners are held. Another possibility is a room in the middle of the male area. Sometimes the women are held in the area set aside for the admission of prisoners<sup>68</sup>.

129. In many cases the cells do not offer minimum conditions for habitability which are necessary to guarantee a dignified stay for imprisoned women: cells have been found that have been designed to house two women and measure no more than two square meters. In other prisons the female area is a corridor converted into cells and areas measuring 30 square meters house more than 20 women.

130. The food served to women prisoners is also inadequate and fails to meet the requirements established in international law to guarantee the right to adequate food. In addition they are required to pay for food that should be free, do not receive sufficient quantities of food of a decent quality and there is no respect for the basic rules of hygiene.

131. The situation is also problematic concerning water: in the vast majority of Social Re-adaptation Centers (CERESOS) drinking water is not provided for interns and this leaves them with two options: drink tap water that has not been purified or buy water themselves. In only one CERESO was a water filter installation found, but this was for use by the male population and women only had access to this circumstantially.

132. The conditions of overcrowding and poor diet to which women are subjected lead to illness and critical situations that affect their right to health.

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<sup>66</sup> CNDH, *National Diagnostic Prison Oversight*, available at: <http://www.cndh.org.mx/informesv3/index.asp#>

<sup>67</sup> See the Jalisco State Human Rights Commission, Recommendation 1/2003, Guadalajara, May 19, 2003.

<sup>68</sup> See the Jalisco State Human Rights Commission, Recommendation 1/2003, Guadalajara, May 19, 2003, p. 10.

133. The prisons where women are held do not generally offer basic medicines, the necessary instruments or the medical staff necessary to serve the entire female population. 54% of interviewees reported that they had to buy the medicines they needed. In the Female Santa Martha CERESO in the Federal District, only two doctors are on call each day, supported by two nurses<sup>69</sup>. Those prisons with smaller populations lack a medical service given that an external doctor is only called to attend to urgent cases “when necessary”<sup>70</sup>. In fact many women state that medical visits are sporadic: some women prisoners indicated that they had gone three months without receiving medical attention.

134. No prison provides specialized medical services that meet the specific needs of women prisoners. For example, no gynecological<sup>71</sup> or obstetric services are provided. Only on occasion does a gynecologist check pregnant women. In one case, according to the State Human Rights Commission of Sinaloa, a pregnant female prisoner at a CERESO in the state went to the medical center of the prison when she began to experience pains and the medical studies conducted failed to detect the prenatal death of the fetus, which was expelled in a state of decomposition several days later<sup>72</sup>.

135. With respect to the reproductive health of women, we have found that they do not enjoy constant access to contraceptive and protection methods and neither is there an efficient program for detecting sexually transmitted diseases<sup>73</sup> or training and information for interns regarding their sexual health. In 2002, the Human Rights Commission of the Federal District indicated that tubal ligation was not performed on female prisoners, even when they met all conditions established by law, thereby discriminating against female prisoners in the exercising of their sexual and reproductive rights due to their legal condition<sup>74</sup>.

136. Educational services are among the most important for promoting social reincorporation for women prisoners. Illiterate women or those with only a basic education are more vulnerable to crime “to the extent that the high level of their unawareness that they are ‘committing a crime’ goes hand in hand with their illiteracy”<sup>75</sup>. During their imprisonment women should therefore enjoy the opportunity to continue their studies, which they have often been forced to abandon due to poverty.

137. Prisons where women are held generally do not have the infrastructure, services and materials necessary to guarantee access to education for all interns. The area set aside for developing educational activities is usually in the men’s area and this serves as a deterrent for women who fear entering it.

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<sup>69</sup> See Human Rights Commission of the Federal District (CDHDF – acronym in Spanish), Recommendation 8/2005, Mexico D.F., December 21, 2005, p. 10

<sup>70</sup> See also Veracruz State Human Rights Commission, Recommendation 1/2001, Xalapa, October 1, 2001, p. 8

<sup>71</sup> On the basis of compliance with CDHDF recommendation 8/2005, a gynecological attention service for women interns at the CERESO Femenil de Santa Martha was introduced. Human Rights Commission of the Federal District, Follow up to Recommendation 8/2005

<sup>72</sup> Sinaloa State Human Rights Commission, Recommendation 37/2006, Culiacán Rosales, October 16, 2006.

<sup>73</sup> During our research we discovered that medical examinations conducted to determine whether they had acquired an infection are discontinuous: the women allege that the HIV/AIDS test is only performed every six months and the pap smear test sporadically.

<sup>74</sup> See Human Rights Commission of the Federal District (CDHDF – acronym in Spanish), Recommendation 1/2002, Mexico D.F., March 7, 2002.

<sup>75</sup> Marcela Briseño López, *Garantizando los derechos humanos...* op. cit., p. 42.

138. Furthermore, educational programs only exist for elementary and secondary education: women who wish to study for a high school diploma, a first degree or a postgraduate degree are not catered for. In addition, teachers are often other prisoners, male or female, and there is no chance to take classes in languages other than Spanish. This further discriminates against indigenous women who not only have difficulties in gaining access to educational services but are also unable to understand them since these are only offered in Spanish.

139. Finally, while the CERESOS offer different forms of training for women, this is generally professional training in “typical” female activities such as sewing, beauty salon work and small handicrafts.

140. As seen above, the legal and material conditions of women prisoners are afflictive and lead to unfair and unnecessary physical, psychological and moral injury and suffering. Women held in prison are the object of institutionalized violence in the light of the current General Law for Women’s Access to a Life Free from Violence<sup>76</sup>.

141. It is therefore clear that female prisoners, both in terms of their legal processing and prison conditions, face serious obstacles based directly and repeatedly on their gender and that these lead to violence against them and violate their human rights. Consequently, women prisoners are victims and this contradicts all principles of non-discrimination and substantive equality established in the Mexican Constitution, ratified international instruments and current national norms.

**142. For the above reasons we call on the Committee to recommend that the Mexican State review its prisons system and effectively incorporate a gender perspective that should be reflected in measures such as the following:**

- a) Create, with the participation of civil society, specific regulations for women prisoners.**
- b) Include gender indicators in the prisons supervision system of the National Human Rights Commission.**

### **Protection against the arbitrary deportation of foreigners (Article 13)**

143. In the context of the case of police repression in the town of San Salvador Atenco in May 2006,<sup>77</sup> five foreign nationals were arbitrarily and summarily deported from Mexico: two of these people

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<sup>76</sup> The General Law for Women’s Access to a Life Free from Violence defines institutional violence as “those acts or omissions by public servants at any level of government that discriminate or serve to delay, obstruct or impede women’s enjoyment and exercising of their human rights as well as their ability to enjoy the benefits of public policies designed to prevent, attend to, investigate, punish and eradicate different forms of violence”. Art. 18 General Law for Women’s Access to a Life Free from Violence.

<sup>77</sup> On May 3 and 4, 2006 a conflict developed between a group of flower sellers and public security forces in the municipality of San Salvador Atenco in the State of Mexico. With the support of a local social movement, the Peoples Front in Defense of the Land (FPDT – acronym in Spanish), the flower sellers staged a protest against the local government’s

were Chilean, two Spanish and one German, while all of them were in the country legally and with documents. None of the five had committed a crime when they were detained in a context of generalized repression on the part of police against local residents in retaliation for protests conducted by a group of residents against the forced relocation of the stalls of a number of flower sellers.

144. According to a documentation mission conducted by the International Civil Commission for Human Rights Observation (CCIODH – acronym in Spanish) in May and June 2006, among the irregularities characterizing these expulsions, “there was no formal communication of the administrative decision to deport them ... immigration authorities hindered, and in the case of the Spanish citizens actively impeded, access to legal aid from the lawyer stationed at the immigration center in Mexico City.”<sup>78</sup> The summary deportation of these foreign citizens for simply being present in Atenco at the time of police repression was also documented by the National Human Rights Commission, which determined that, “in the procedure used by the National Immigration Institute against the foreigners in this case, a series of legal irregularities and inconsistencies were identified that failed to respect the constitutional guarantees established for all people in national territory.”<sup>79</sup>

145. The above represents a violation of Art. 13 of the International Pact on Civil and Political Rights (PIDCP) since the guarantees of the foreign nationals anticipated in said article were not respected; neither can it be sustained that their deportation was “in compliance with a decision taken according to law”.<sup>80</sup>

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intention to forcibly relocate them. The authorities, refusing to negotiate with the FPDT, deployed more than 2,500 state and federal police in the municipality with the goal of repressing protestors. During the clash police indiscriminately beat and arrested not only protestors but also people not participating in the protest. Two young people, aged 14 and 20 respectively, were killed as a result of police brutality. In addition, police arbitrarily arrested more than 200 people who were beaten and suffered other physical abuse including being piled one on top of another in the buses used to transport them to prison. Among the victims were 47 women, many of whom were systematically tortured by police who raped and beat them during their transfer to prison and forced them to wear blindfolds. These acts have enjoyed total impunity as not one police officer has been punished for the serious human rights violations referred to above. On the contrary, as the result of accusations made by the State Attorney General’s office 12 social activists detained during the operations in Atenco are still deprived of their freedom and three of them are being held at a maximum security prison. For further information concerning the women subjected to sexual torture in San Salvador Atenco, see [www.centroprodh.org.mx](http://www.centroprodh.org.mx) For further information concerning the 12 activists who remain in prison as a result of the operation, see [www.atencolibertadyjusticia.com](http://www.atencolibertadyjusticia.com) See also National Human Rights Commission, Recommendation 38/2006, available at [www.cndh.org.mx](http://www.cndh.org.mx)

<sup>78</sup> International Civil Commission for Human Rights Observation (CCIODH - acronym in Spanish), Fourth visit, May 29 to June 4, *Preliminary Report Concerning the Events of Atenco, Mexico*, June 2006, pp. 92-93.

<sup>79</sup> National Human Rights Commission, Recommendation 38/2006, Section C: “Rights to legality and legal security”, available at [www.cndh.org.mx](http://www.cndh.org.mx) Another example of the illegality of the deportation is that in April 2009 it was reported in the media that a federal judge had revoked the deportation order and with this, “the imposition that prohibited the foreign nationals from returning to Mexico within a period of five years”. *Juez revoca expulsión a extranjeros por Atenco*, EL UNIVERSAL, April 7, 2009, available at [www.eluniversal.com.mx/notas/589536.html](http://www.eluniversal.com.mx/notas/589536.html) This legal decision was made in a context of international pressure as one of the people deported, Cristina Valls, had filed a complaint with the Audiencia Nacional in Spain denouncing the physical, sexual and psychological torture suffered at the hands of police in San Salvador Atenco. Idem.

<sup>80</sup> It should be mentioned that in March 2009, after a famous Franco-Spanish Singer (Manu Chao) who was in Mexico to participate in the Guadalajara International Film Festival referred to the acts of repression and torture committed in San Salvador Atenco as acts of “State terrorism”, government sources commented to the press that the State was analyzing the possibility of deporting the singer in accordance with Art. 33 of the Constitution. See: Jorge Caballero, *Analiza Gobernación aplicar el artículo 33 a Manu Chao*, La Jornada, March 27, 2009, available at [www.jornada.unam.mx/2009/03/27/index.php?section=espectaculos&article=a08n1esp](http://www.jornada.unam.mx/2009/03/27/index.php?section=espectaculos&article=a08n1esp)

146. Regarding the deportation of these foreign nationals, in the decision for constitutional human rights reform approved by the Chamber of Deputies in April 2009, Article 33 establishes that:

Foreign nationals are those people who do not possess the qualities described in Article 30. They enjoy the rights recognized in the present Constitution. The Executive then has the exclusive right to force any foreign national whose presence it deems undesirable to leave the country. The law will regulate the administrative procedure as well as the place and time detention is for. Resolution of this procedure will be final and incontestable.

Under no circumstances can foreign nationals become involved in the nation's politics.

147. In this way, the proposed reform would add a number of provisions that at first seem to be designed to respect the right of all foreign nationals to a process governed by law when facing the threat of deportation from the country. It includes the right to a hearing prior to deportation and indicates that the administrative process for deportation would be regulated by the law. However, the reform proposal maintains the Executive's exclusive faculty to force any foreign national to leave the country if it deems them "inconvenient" and reiterates the prohibition on foreigners becoming "involved" in political matters without defining the scope of this prohibition.

148. So, although it textually establishes that all foreign nationals enjoy the human rights recognized by the Constitution, the proposed modifications do not indicate any criteria to be applied when determining whether someone should be deported by the Executive; on the contrary, they maintain a vague and discretionary tone that allows the Executive to deport any foreign national as it sees fit. This situation becomes more serious in the light of the final proposed modification which establishes that the administrative decision to deport a foreign national is "final and incontestable", that is, no form of appeal exists. We consider that neither the current Article 33 nor the proposal for reform meet the international obligations of the Mexican State under Article 13 of the PIDCP.

149. We therefore call on the Committee to recommend to the Mexican State that it withdraw its provisions concerning Article 13 of the Pact and that it provide foreign nationals with all the internationally recognized guarantees of due process applicable to processes of deportation from the national territory of a member State of the PIDCP.

#### **Freedom of expression, assembly and association (Articles 19, 21 and 22)**

150. In October 2009 the Office of the UN High Commissioner for Human Rights in Mexico (OHCHR) released a report concerning the situation of human rights defenders in the country. The OHCHR stated that:

"The 128 aggressions or limitations on the work of human rights defenders registered by the OHCHR during the period analyzed allow us to state that this is a generalized situation. It is cause for concern that these aggressions have become an implicit aspect of their work and not occasional occurrences that should be prevented, investigated and sanctioned. In 2006 a total of 24 alleged events of aggression and obstruction were registered while in 2007 this figure almost doubled with 40 events registered without any specific situation being identified as

detonating this increase in aggressions. In 2008 there was a slight drop with 32 reports while in the first half of 2009 a total of 27 events had been registered. This number exceeds the events registered in the first half of 2007 (24), the year when the OHCHR registered the highest number of aggressions. If this trend continues the figure for 2008 could be equaled or even exceeded.”<sup>81</sup>

151. The states reporting the highest number of aggressions against human rights defenders were Oaxaca (26), the Federal District (20), Guerrero (19), Chihuahua (11), Chiapas (13) and Jalisco (10).

152. Harassment, in the form of following and surveillance, constitutes a violation of the right to personal integrity and safety. Cases of surveillance have been made public by members of the Fray Bartolomé de las Casas Human Rights Center in Chiapas<sup>82</sup>.

153. The problem of a lack of guarantees for the work of human rights defenders is a pending issue for the Mexican State and represents an addition to the broader agenda of impunity for individual and collective human rights violations. In general, criminal complaints concerning human rights violations are not processed or investigated. This problem of impunity cannot be solved with provisional actions or public policy decisions if the structural causes leading to human rights violations are not dealt with, which is precisely the demand of human rights defenders<sup>83</sup>.

154. On Sunday February 10, 2008, the body of Lorenzo Fernández Ortega was found in the river running through the city of Ayutla, in the state of Guerrero, and bore marks of torture.

155. Lorenzo Fernández Ortega was a member of the Me'phaa Indigenous Peoples Organization (OPIM – acronym in Spanish) and played an important role in denouncing the forced sterilization of 14 Tlapaneco indigenous women. Furthermore, he denounced the rape and torture of his sister Inés Fernández Ortega by Mexican soldiers.

156. Despite this formal complaint, more than eight months after the execution of Lorenzo Fernández Ortega the only formal evidence included in the file are the so-called preliminary proceedings that include removal of the corpse and the declarations of two witnesses who identified the body. To date there is no concrete and tangible evidence that sheds light on the extrajudicial killing of Lorenzo Fernández Ortega.

157. On February 13, 2009, human rights defenders Raúl Lucas Lucía and Manuel Ponce Rosas, President and Secretary, respectively, of the Organization for the Future of the Mixteca People (OFPM – acronym in Spanish) were forcibly detained and disappeared by individuals claiming to be police

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<sup>81</sup> OHCHR, “Defender los derechos humanos: entre el compromiso y el riesgo (Defending Human Rights: Caught between commitment and risk)”, Mexico, October 2009, p. 12, available at <http://www.hchr.org.mx/documentos%5Clibros%5Cinformepdf.pdf>.

<sup>82</sup> For further information see: “Vigilancia a integrantes del Centro DH Fray Bartolomé de las Casas (Surveillance of members of the Fray Bartolomé de las Casas HR Center)”, Fray Bartolomé de las Casas Human Rights Center, Press bulletin No. 24, June 16, 2009, available at : [www.redtdt.org.mx](http://www.redtdt.org.mx)

<sup>83</sup> Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos”, Agenda de Derechos Humanos (The National Network of Human Rights Organizations “All Rights For All”, Human Rights Agenda”, Mexico, 2006, p. 134, available at : [www.redtdt.org.mx](http://www.redtdt.org.mx)

during a public event in the state of Guerrero. Their bodies were found three days later with visible signs of torture. To date no advances have been made in the investigation of their case.

158. Human rights defenders in Mexico face threats, attacks, politically motivated criminal charges and imprisonment for heading protests or promoting respect for human rights. While the government has agreed to provide certain human rights defenders with protection as ordered by the Inter-American Human Rights Commission, some of these defenders have reported they have not been given effective protection. Substantial efforts have not been made to investigate cases of abuse against human rights defenders and impunity has become the norm in these cases, leaving defenders exposed to the possibility of further attacks.

159. Since the execution of Raúl Lucas and Manuel Ponce on April 9, 2009, the Inter-American Court of Human Rights issued urgent measures in the cases of 108 human rights defenders in the state of Guerrero. To date, harassment and threats continue against members of organizations for the defense and promotion of human rights.

160. Furthermore, it is important to point out that all current preliminary investigations into aggressions against and killings of human rights defenders at the state and federal levels are characterized by unjustified delays. Furthermore, infrastructure shortcomings contribute to the failure to protect the integrity of human rights defenders in clear violation of the obligations the Mexican State has adopted regarding human rights.

### **Criminalization of social protest**

161. The climate of criminalization of social protest has recently intensified; that is, acts of resistance to authoritarianism, the reporting of human rights violations and pressure on authorities to meet their obligations increasingly lead to criminal accusations against human rights defenders who are imprisoned and face one or many criminal proceedings<sup>84</sup>.

162. The violations implied by the criminalization of special protests are regularly linked to demands for compliance with economic, social, cultural and/or environmental rights.

163. On November 27, 2009, Mariano Abarca Roblero, a human rights defender and distinguished member of the Mexican Network of People Affected by Mining (REMA – acronym in Spanish) received three gunshots from a man passing by on a motorcycle. The attack occurred in the municipality of Chicomuselo in the state of Chiapas.

164. Mariano Abarca Roblero and other activists of the REMA had blocked a highway in June to protest the operations of a mining company in the area that, in their opinion, was polluting and damaging the environment. They blocked one of the two highways providing access to the mine. On August 17, Mariano Abarca Roblero was detained at the site of the protest by agents of the Chiapas

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<sup>84</sup> Red Nacional de Organismos Civiles de Derechos Humanos “Todos los derechos para todas y todos”, Los derechos humanos en el primer año de Felipe Calderón, febrero de 2008 (The National Network of Human Rights organizations “All Rights For All”, Human rights during the first year of Felipe Calderón, February 2008), available at: [www.redtdt.org.mx](http://www.redtdt.org.mx)

state police without explanation or an arrest warrant. He was held in preventive detention (“arraigo”) for his participation in the protests but was released on bail on August 25 due to a lack of evidence that the protest in which he participated was violent or threatened public order. He was detained several days prior to the holding of a regional meeting of ecologists by the REMA in Chicomuselo.

165. In the state of Guerrero the fabrication of files and certain criminal charges have been used by state and federal authorities as well as the army, including illegal detention and attacks on public highways and transport, among others, to silence the work of human rights defenders. In particular, in the regions of the Costa Chica and la Montaña there is a general policy of harassment and criminalization against indigenous and campesino organizations.

166. Emblematic of the above are the 15 arrest warrants<sup>85</sup> issued for members of the Mee’phaa Indigenous Peoples Organization (OPIM – acronym in Spanish) for the murder of Alejandro Feliciano García<sup>86</sup> on December 31, 2007.

167. On April 17, 2008, at a military roadblock at the Tecruz town crossing, members of the Mexican Army, the Federal Investigations Agency (AFI – acronym in Spanish), Federal Preventive Police (PFP – acronym in Spanish), Ministerial Police of the State of Guerrero, State Preventive Police and Municipal Preventive Police detained, without explanation, five members of the OPIM: Manuel Cruz Victoriano, Orlando Manzanarez Lorenzo, Natalio Ortega Cruz, Romualdo Santiago Enedina and Raúl Hernández Abundio on the basis of the arrest warrants.

168. That same day they appeared before the Judge of the First Instance in Civil and Criminal Affairs for the Judicial District of Allende, in the city of Ayutla de los Libres, Guerrero. Without sufficient evidence and in violation of basic legal guarantees they were jailed in the CERESO of Ayutla. In response, on November 11, 2008, Amnesty International adopted the case of the five members of the OPIM as prisoners of conscience.

169. After a year Manuel Cruz Victoriano, Orlando Manzanarez Lorenzo, Natalio Ortega Cruz and Romualdo Santiago Enedina were freed. However, the struggle continues to secure the release of Raúl Hernández Abundio who was not included in the amparo and remains in prison.<sup>87</sup>

170. In recent years, and particularly in recent months, the situation of risk, threats and attacks on human rights defenders from civil organizations has worsened. In 2004 the CNDH received 14 complaints directly related to this situation. However, the situation is even more serious than these numbers would suggest, as evidenced by a number of murders. Furthermore, this was one of the fundamental points of criticism in the Universal Periodical Review.

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<sup>85</sup> The arrest warrants were issued on April 11, 2008.

<sup>86</sup> On December 31, 2007, Alejandro Feliciano García (who had been identified as a military informant) was murdered in the community of El Camalote, municipality of Ayutla. Preliminary proceedings were performed on January 4, 2008. His family did not want the autopsy performed. On February 15 the investigation came to a halt. Since January 2008 the OPIM has denounced the murder and expressed fears that it would be accused of the crime on the basis of rumors circulating at the time. According to the OPIM, those responsible would most likely be other Army informants who had been harassing the OPIM for years.

<sup>87</sup> Similarly, there are currently 10 pending writs of execution, of which five already have an *amparo en revisión*. Once they have been reviewed the *amparo* will be final.

171. Despite this fact, the CNDH has responded timidly. It has issued no recommendation on the subject and in specific cases, such as the forced disappearance and later extrajudicial execution of human rights defenders in the state of Guerrero, has responded tardily and has offered no advances or information in relation to the recommendation.<sup>88</sup>

172. The work of human rights defenders in the context of the fight against organized crime and the growing militarization of public security places them at even greater risk. On August 31 an armed man entered the store of Salomón Monárrez in Culiacán, state of Sinaloa, Mexico, and shot at him several times. Salomón Monárrez had only just opened his construction equipment store when he heard a gunshot behind him. He turned around and saw an armed man with his face covered by a ski mask who then shot directly at him. The man fired nine times and three of these shots hit Salomón Monarrez; in the ribs, shoulder blade and arm. When he had finished firing the man ran out of the store. He stole nothing and never said a word.

173. Salomón Monarrez is the director of the Sinaloa Civic Front (FCS – acronym in Spanish), a human rights organization that works for the defense of human rights in the state of Sinaloa. He had repeatedly reported human rights violations committed in Sinaloa, in particular abuses committed by members of the Mexican Army.

On September 5, 2007, Ricardo Murillo Monge, one of the founders of the FCS, was kidnapped. His corpse was found the following day in an abandoned car in the city of Culiacán, Sinaloa, with a bullet wound to the head. The investigation of his killing has produced no results.

174. It is also necessary to highlight the vulnerability of human rights defenders who defend and promote the rights of the sexually diverse community since they are the object of threats, aggressions, murder, politically motivated criminal charges and imprisonment for organizing protests or events promoting respect for human rights<sup>89</sup>.

175. In January 2005, Antonio Chamorro, aged 23 and director of Esperanza Voluntades Comprometidas, an activist for human rights, sexual diversity and HIV/AIDS in Puebla and Mexico City was found hanged in the offices of his civil association in the city of Puebla. To date local legal authorities have yet to open a line of investigation.

176. In June 2005, Octavio Acuña, a psychologist by profession and member of the Querétaro Education Association for Human Sexualities (AQUESEX – acronym in Spanish), was murdered. During the final months of 2004 he had lodged his first report of homophobia with the State Human Rights Commission (CEDH – acronym in Spanish) due to aggressions suffered at the hand of State police<sup>90</sup>.

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<sup>88</sup> “160 organizaciones exigen a autoridades esclarecer ejecuciones y resarcir el daño”, available at: <http://www.fundar.org.mx/boletines2009/25febrero.htm>

<sup>89</sup> La Red de Movimientos en Pro de la Diversidad Sexual y Equidad de Géneros (Network of Movements in Favor of Sexual Diversity and Gender Equality) reported that in Guerrero members of the Army illegally detained members of this association in the street and searched them more meticulously than they would criminal suspects. See: <http://www.notigay.com/tablero/446-exigen-que-militares-dejen-de-vejar-a-gays-de-tecpan-guerrero.html>

<sup>90</sup> Del Collado, *Fernando, Homofobia. Odio, crimen y justicia*, 1<sup>a</sup> ed, Tusquets Editores, Spain, 2007, <http://www.cdhd.org.mx/index.php?id=dfemay09crimenodio> y <http://anodis.com/nota/8318.asp> 05/09/09

José Ernesto Leal López, a gay rights activist in Matamoros, Tamaulipas, was beaten, stabbed eight times and had his throat cut in January 2007<sup>91</sup>.

177. This pattern of discrimination and homophobia against members of the LGBT community and its defenders is also reflected in the attitude of public officials responsible for the administration of justice. They fail to investigate crimes against homosexuals, again victimizing and discriminating against the victims and leaving these hate crimes against people due to their sexual preferences or orientation unpunished. This point has also been noted by international organizations<sup>92</sup>.

178. Agustín Estrada Negrete, Director of the Multiple Attention Centers located in the Municipality of Ecatepec, State of Mexico, who has been a social activist in the municipality of Ecatepec for more than a decade, has promoted and staged protests for the recognition and protection of the rights of vulnerable groups such as disabled children, women and homosexuals.

179. In May 17, 2007 Professor Estrada participated in the Fight against Homophobia at the invitation of the Human Rights Coordination of the State of Mexico and the Presidency of the Municipality of Ecatepec in representation of sexual diversity, heading the march wearing a red dress and high heels<sup>93</sup>. The participation of Estrada Negrete triggered a series of homophobic and discriminatory reactions from a number of state public servants<sup>94</sup> who were responsible for a number of discriminatory acts in addition to repeated threats and verbal and physical harassment<sup>95</sup>. These eventually led to his being relieved of his duties arbitrarily and without justification, discriminating against his sexual orientation, by means of a notification<sup>96</sup> on February 14, 2008, forcing him to take leave with pay from his position as Educational Director for a year<sup>97</sup>. At the end of this period of leave Agustín Estrada was not reinstated and to date remains suspended from activities.

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<sup>91</sup> <http://www.cd hdf.org.mx/index.php?id=dfemay09crimenodio> 05/09/09, 10:25

<sup>92</sup> Intervention of Amerigo Incalcaterra, Representative of the UN High Commissioner for Human Rights in Mexico, at the Forum “la Reforma Constitucional en Derechos Humanos. Un análisis desde las obligaciones internacionales (Constitutional Reform for Human Rights. An analysis from the perspective of international obligations)” Mexico, D.F. April 9, 2008.

<sup>93</sup> Diario de Ecatepec, Marcha lesbico-gay en contra la homofobia, 18/05/2007, available at <http://ecatepec.blogia.com/2007/051802-marcha-lesbico-gay-en-contra-de-la-homofobia.php>

<sup>94</sup> Some teachers of the CAM 33 and 34 lodged a complaint with the Public Education Ministry Comptroller calling for the dismissal of Professor Estrada Negrete. They argued that Estrada Negrete presented a poor image of the school he directed by appearing in public dressed as a woman. This action is currently suspended before the Internal Audit Office since no basis exists for his dismissal.

<sup>95</sup> On December 19, 2007 The Assistant Secretary for Education in the State of Mexico, in the presence of parents of students, said to Professor Estrada that “*Muerto el perro se acaba la rabia (When the dog is dead rabies ends)*”. (Statement by Agustín Estrada Negrete before the State of Mexico Comptroller, file no. DGR/DRA-A/QUEJA/727/2008.) On February 13, 2008 the Sub-secretary for Education in the State of Mexico again insulted and threatened Estrada in front of parents, stating, among other things, that “*we don’t want faggots in the education system, I’ll kill you for being a faggot so you’d be better off leaving the education system because I can’t stand faggots who are teachers*”. (Statement by Agustín Estrada Negrete before the State of Mexico Comptroller, file no. DGR/DRA-A/QUEJA/727/2008)

<sup>96</sup> In addition, Estrada is planning legal action for the falsification of his signature as he does not recognize as his own the signature accepting his period of leave. This has only been made available to the victim in the last few days. Criminal Investigation TOL/DR/III/1022/2009, Toluca responsibilities desk.

<sup>97</sup> Document N° 2053A0000/134/2008 dated January 29, 2008, authorized by the Assistant Secretary for Public Education in the State of Mexico and the Assistant Secretary of Planning and administration of the Public Education Ministry (SEP).

180. Complaints made by Agustín Estrada have documented threats, ill-treatment, beatings, insults and arbitrary detentions in addition to alleged rape while in detention.

181. In addition, information has been received concerning the arbitrary detention, ill-treatment, beating and insulting of his lawyer Mr. Jaime López Vela by State of Mexico police during events in the city of Ecatepec, State of Mexico.

182. Despite the fact that the Ministry of Foreign Affairs affirms that “human rights policy in Mexico includes attending to problems faced by human rights defenders in order to prevent obstruction of their work”<sup>98</sup>, in Mexico at present there exists no State policy for protecting the work of human rights defenders. The Mexican State does not create the necessary conditions allowing human rights defenders to perform their work freely and effectively, thereby leaving them in a state of permanent insecurity.

### **Rights of minorities (Articles 25 and 27)**

183. While the Political Constitution of the United States of Mexico recognizes that the nation is pluricultural and constructed on the basis of its Original Indigenous Peoples, it does not fully recognize the rights of these Indigenous Peoples.

184. In the first place, constitutional reform has ignored the San Andrés Accords that recognize the fundamental rights of Indigenous Peoples. In addition, the legislative process for the approval and enactment of the Decree for Constitutional Reforms for Indigenous Rights infringes Article 6 of ILO Convention No. 169 as it fails to comply with procedural guarantees established in this article concerning the right of indigenous peoples to be previously consulted, in good faith and in a manner adequate to the case, at all levels, in order to reach an agreement through their representative institutions in the adoption of legislative measures likely to directly affect them.

185. As a consequence, the organized indigenous movement in Mexico rejected this reform, appealing by means of an amparo the constitutional dispute before the Supreme Court of Justice of the Nation. The court failed to deal with the matter in depth and left communities and Indigenous peoples without legal recourse to oppose constitutional reform. Faced with this situation, in various parts of the country and in accordance with the San Andrés Accords, ILO Convention No. 169 and other international instruments, they decided to form the so-called Autonomous Municipalities which name their own authorities; resolve conflicts in accordance with their own practices and customs, thereby maintaining social order; organize their own health and education systems in accordance with their culture; legitimately exercise, at the local level, their right to free determination and autonomy which is something not legally recognized.

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<sup>98</sup> Foreign Affairs Ministry, “Defensores de derechos humanos (Human Rights Defenders)”, México, *available at*: [http://www.sre.gob.mx/derechoshumanos/t\\_relevante/defensores.html](http://www.sre.gob.mx/derechoshumanos/t_relevante/defensores.html)

186. The report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, prepared in the light of a visit to Mexico, concluded that with respect to constitutional reform<sup>99</sup>:

“57. The constitutional reform of 2001, a late and adulterated product of the San Andrés Accords signed by the federal government and the EZLN, formally recognizes the right to free determination of indigenous peoples, but includes provisos that make their application difficult. For this reason the reform has been challenged by the organized indigenous movement that insistently demands it be reviewed as a necessary condition for achieving peace in the country and guaranteeing the human rights of indigenous peoples. In addition, during the process the principles of ILO Convention No. 169 concerning indigenous and tribal rights (1989), ratified by Mexico, were not respected, in particular those referring to the obligation to consult indigenous peoples.”

187. Finally, it recommends that the debate on indigenous peoples be reopened following the principles signed in the San Andrés Accords and international legislation, something that to date has not happened.

188. Since constitutional reform some local congresses have modified their constitutions or enacted regulatory laws for indigenous peoples that, like the federal law, fail to recognize the rights of indigenous peoples.

189. The system of law enforcement and administration in Mexico most clearly demonstrates the lack of protection experienced by Indigenous Peoples since indigenous peoples involved in legal proceedings face a discriminatory system completely foreign to their culture and concept of justice. In practice not only do they fail to receive interpreters or lawyers who are versed in their language and culture, but the legal proceedings are plagued with irregularities from the start of the investigation by the public prosecutor to the administration of justice by the judiciary. For example, in a study performed by the OHCHR concerning access to justice for indigenous people in Mexico, 169 cases of possible torture of indigenous people imprisoned in Oaxaca were identified.<sup>100</sup>

190. Even those states with prosecutors for indigenous justice are unaware of the laws governing indigenous peoples. Recognition of pluriculturalism in Mexico must include recognition of the vision of order and justice of indigenous peoples and respect their legal authorities in order for them to fully exercise their free determination.

191. Civil society organizations in Mexico that accompany and document human rights violations have repeatedly indicated that indigenous communities in Mexico are the victims of police-military operations including house raids, murders, massacres and the physical abuse and torture of

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<sup>99</sup> Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, Sr. Rodolfo Stavenhagen. Adición. Misión a México. (Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Rodolfo Stavenhagen. Addition. Mission to Mexico). E/CN.4/80/ADD.2

<sup>100</sup> Mexico Office of the UN High Commissioner for Human Rights (OHCHR). Report on the Diagnostic of Access to Justice for Indigenous Peoples in Mexico – Oaxaca Case Study. 2007.

indigenous detainees. The complaints filed with legal authorities against the perpetrators of these acts are not given sufficient attention with the majority of them remaining unpunished. Indigenous communities that organize themselves and fight for their rights are accused of destabilizing the State and therefore described as conflictive. Their protests, complaints, acts of resistance and social mobilization activities are therefore criminalized. Legal authorities fabricate crimes, detain their authorities, community leaders and organizations illegally, as well as defenders of their human rights, while the justice system imposes disproportionate fines and prison sentences.

192. The militarization of indigenous communities, as well as their paramilitarization, is a reality faced by Indigenous Peoples. Militarization is justified by the State on the grounds of the fight against drug trafficking while the existence of paramilitary groups is categorically denied by the Mexican government. Nevertheless, paramilitary groups are a reality since human rights rapporteurs have on several occasions reported the existence of armed groups. This militarization and paramilitarization has led to the displacement of indigenous peoples and horrific acts such as the Acteal Massacre.<sup>101</sup>

193. The economic interests of the Mexican State are placed above the fundamental rights of Indigenous Peoples. This is most clear in decisions affecting the land and territory of indigenous communities. In decisions taken regarding development projects, ecotourism projects, the exploitation of natural resources and the creation of protected natural areas the Mexican State does not act in good faith since consultations with indigenous communities are not held freely, in advance or with the necessary information as indicated in ILO Convention 169 and the UN declaration on the Rights of Indigenous Peoples. In this sense the Mexican State has not complied with recommendations made by the Rapporteur on Indigenous Peoples after their visit to Mexico.<sup>102</sup>

194. According to official information from the National Population Council (Conapo – acronym in Spanish), the states of Chiapas, Guerrero and Oaxaca demonstrate a “very high” level of marginalization. The most highly marginalized municipalities in Mexico continue to be those of indigenous peoples where extreme poverty and food poverty are the principal characteristics and indigenous children suffer serious malnutrition and mortality rates. The exploitation of natural resources located in indigenous territories, the denial by the army of their right to free determination and, therefore, the management of their own resources, prevent these peoples from attending to their needs on the basis of their own world view.

195. The Office of the UN High Commissioner for Human Rights (OHCHR Mexico) has indicated that Guerrero and Chiapas are the states suffering the highest levels of inequality between the mestizo and indigenous populations<sup>103</sup>. This inequality and the low levels of human development in indigenous regions are the product of racial discrimination. In Mexico, structural discrimination and

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<sup>101</sup> Report to the Human Rights Commission by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. E/CN.4/2000/3/add.3

<sup>102</sup> Ibid, E/CN.4/80/ADD.2, Recommendations 70-80.

<sup>103</sup> El derecho a una vida libre de discriminación y violencia: mujeres indígenas de Chiapas, Guerrero y Oaxaca (The Right to a Life Free of Discrimination and Violence: Indigenous Women in Chiapas, Guerrero and Oaxaca). Available at: [http://www.hchr.org.mx/documentos/libros/derecho\\_vida\\_libre.pdf](http://www.hchr.org.mx/documentos/libros/derecho_vida_libre.pdf)

marginalization is far more evident for women living in rural communities since they live a triple oppression on the basis of the following: class, they are poor; gender, they are women; and for their ethnicity, they are indigenous. Poverty, inequality and marginalization are structural human rights violations directly linked to state policies that prioritize the interests of capital.

196. The situation of indigenous peoples who migrate to other states for economic reasons in search of work as agricultural laborers becomes more serious day by day as they are forced to live and work in terrible conditions. Women and children agricultural laborers are even more vulnerable. Many men and an increasing number of indigenous women attempt to migrate to the USA and many die in that attempt.