



**Joint report presented
by Mexican civil society organizations**
on the occasion of the second

**Universal
Periodic Review
of Mexico**

4 March, 2013

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This document was drafted with the specific inputs of the following organizations: Acción Urgente para Defensores de los Derechos Humanos (ACUDDEH), Asistencia Legal por los Derechos Humanos, A.C. (ASILEGAL), Casa de los Derechos de los Periodistas, Católicas por el Derecho a Decidir, Centro de Derechos Humanos de la Montaña "Tlachinollan", Centro de Derechos Humanos de las Mujeres (CEDHEM), Centro de Derechos Humanos Fray Bartolomé de las Casas, A.C., Centro de Derechos Humanos Fray Francisco de Vitoria OP A.C., Centro de Derechos Humanos Fray Juan de Larios, Centro de Derechos Humanos Fray Matías de Córdova, Centro de Derechos Humanos Miguel Agustín Pro Juárez A. C., Centro Mexicano de Derecho Ambiental (CEMDA), Colectivo contra la Tortura y la Impunidad, Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos (CMDPDH), Comité de Defensa Integral de Derechos Humanos Gobixha A.C., Comité de Derechos Humanos de Tabasco A. C. (CODEHUTAB), Comunicación e Información de la Mujer A.C. (CIMAC), DECA Equipo Pueblo A.C., Documenta A.C., Equis: Justicia para las Mujeres, Espolea, A.C., Espacio de Coordinación de Organizaciones Civiles sobre Derechos Económicos, Sociales y Culturales (Espacio DESC), Frontera con Justicia, FUNDAR Centro de Análisis e Investigación, Grupo de Información en Reproducción Elegida (GIRE), Iniciativas para la Identidad y la Inclusión, A.C. (INICIA), Instituto de Derechos Humanos Ignacio Ellacuría S. J. Universidad Iberoamericana Puebla, Instituto Mexicano de Derechos Humanos y Democracia (IMDHD), Observatorio Ciudadano Nacional del Femicidio (OCNF), Red Nacional de Resistencia Civil contra las altas tarifas de la energía eléctrica, Red Nacional de Organismos Civiles de Derechos Humanos, "Todos los Derechos para Todos y Todas" (REDTDT), Red por los Derechos de la Infancia en México (REDIM), SMR Scalabrinianas. Misión para Migrantes y Refugiados.

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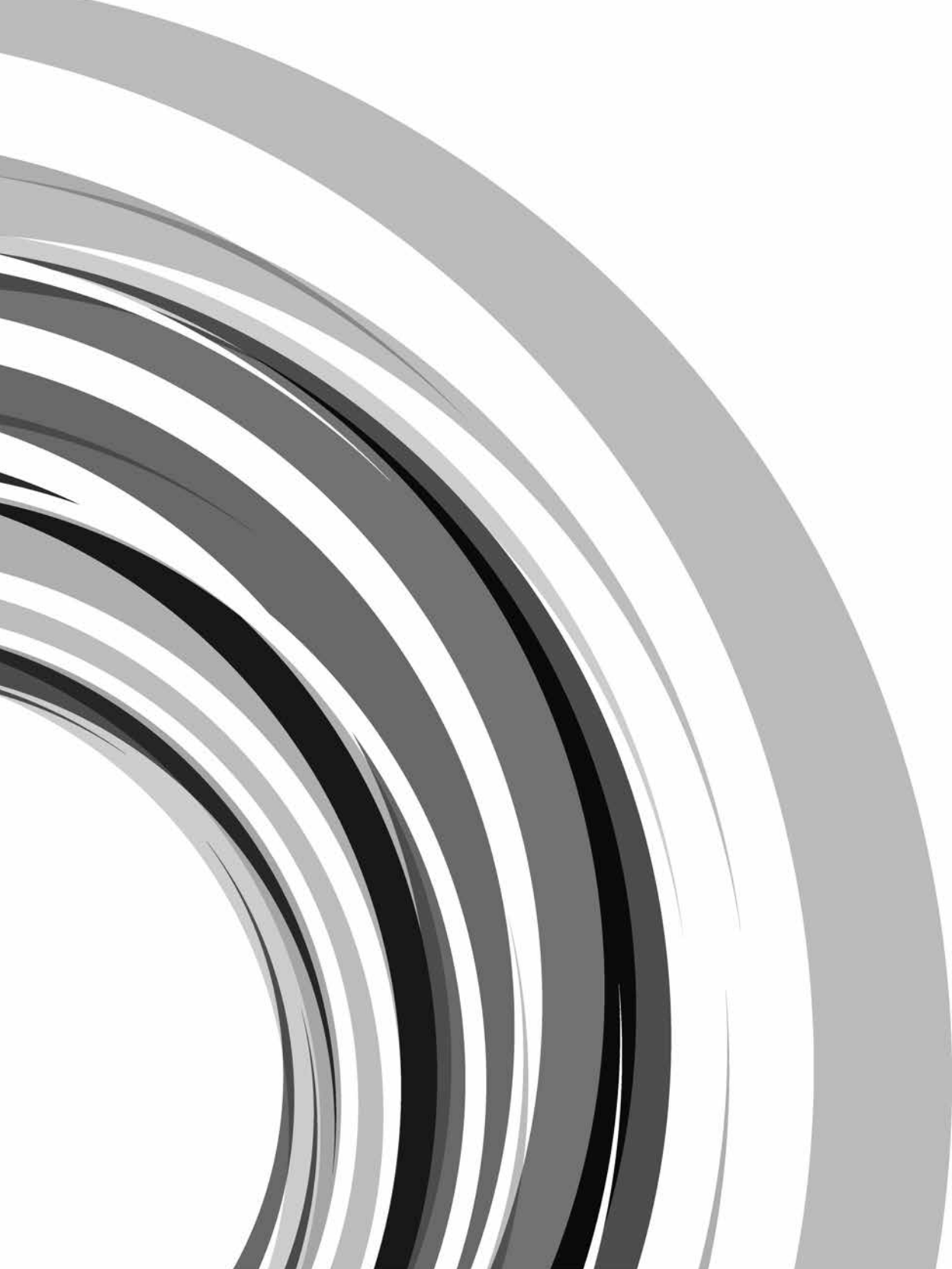
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Glossary

C169	Convention 169 of the International Labor Organization
CGI	General Coordination Unit of Investigation
CJM	Military Code of Justice
CNDH	National Human Rights Commission
ESCR	Economic, Social and Cultural Rights
FEADLE	Special Prosecutor's Office for Crimes against Freedom of Expression
FEMOSPP	Special Prosecutor's Office on Social and Political Movements of the Past
FEVIMTRA	Special Prosecutor's Office on Crimes of Violence against Women and Human Trafficking
HRDs	Human Rights Defenders
INM	National Migration Institute
LGAMVLV	General Law of Access for Women to a Life Free of Violence
OACNUDH	Office in Mexico of the UN High Commissioner for Human Rights
OCNF	National Citizen Observatory on Femicide
ILO	International Labor Organization
PGR	Federal Attorney General's Office
ICESCR	International Covenant on Economic, Social and Cultural Rights
SCJN	Supreme Court of Justice
SEDENA	Ministry of National Defense
SEGOB	Ministry of the Interior
SSP	Ministry of Public Security
UPR	Universal Periodic Review



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1. The period that covers the review of the second UPR cycle for Mexico has taken place in a context of generalized violence. Security policies based on the militarization of public spaces have been implemented, resulting in an exponential increase in human rights violations. It is impossible to ignore the numbers relating to the humanitarian emergency that has occurred in recent years in Mexico, which range between 60,000 to almost 100,000 persons killed, as well as 25,000 disappeared and missing persons, hundreds of thousands of displaced persons, journalists and human rights defenders killed and persecuted, etc.¹ In short, Mexico has seen a worsening situation in human rights.
2. Mexico has not complied with its international human rights obligations. In the context of the UPR, the Mexican State has not created any inclusive mechanism to follow up on the recommendations received. In the same way, there has been no change in the recommendations that were not accepted from the first UPR concerning military jurisdiction, *arraigo* detention and transitional justice. In relation to crimes of the past, these remain in impunity, after the majority of the investigations opened under the Femosp were transferred to the CGI.²

¹ Miguel Agustín Pro Juárez Human Rights Centre. Betrayed Transition. Human Rights in Mexico during the 2006 to 2012 government. Available at:<http://centroprodh.org.mx/comunicacion/Informe%20Sexenal%20150.pdf>

² In Mexico, the social effects of the crimes of the State during the 1960s and 1970s, during the so-called “Dirty War” remain present in current times; however, the State’s approach to this issue has been one of profound disregard. In 2002 the government created the Special Prosecutor on Social and Political Movements of the Past

3. Furthermore, the Mexican State has been subject to five rulings from the Inter-American Court of Human Rights during this period under review, in five emblematic cases that are representative of the structural causes of human rights violations in Mexico. Nevertheless, to date the Mexican State has not fully complied with these sentences.³

(Femospp), yet the work of this body was meagre and not very effective. Finally, the government announced its closure in 2006 after the publication of the “Historic Report to Mexican Society”. On the closing of Femosp, the criminal investigations were transferred to the General Coordination of Investigation (CGI), a department whose main role is to follow up on property crimes at a federal level and whose public servants lack specialized training in transitional justice. The transfer of criminal investigations to this unit has perpetuated the impunity for crimes committed by the State. The presidential term from 2006 to 2012 did not include any public statement by the Federal Executive providing details on the investigations nor its commitment to justice; on the contrary, by acting as a government centred on the fight against drug-trafficking, enforced disappearances, extrajudicial executions, torture and other crimes committed by the State in previous decades ceased to be a visible issue in public opinion. The report is available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB209/index.htm#informe>. It is worth highlighting that said report was an edited version of a previous report, which was filtered by informal means and in which the cases were detailed with more information concerning the crimes committed by the Mexican State, framing it within a generalized pattern of human rights violations and crimes against humanity.

- ³ Interamerican Court of Human Rights. Gonzales and others (“Cotton Fields”) vs. Mexico. Corte IDH. Caso González y otras (“Campo Algodonero”) Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 16 de noviembre de 2009. Serie C No. 205 Corte IDH. Caso Radilla Pacheco Vs. México. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de Noviembre de 2009. Serie C No. 209. Corte IDH. Caso Fernández Ortega y otros. Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 30 de agosto de 2010 Serie C No. 215; Corte IDH. Caso Rosendo Cantú y otra Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2010 Serie C No. 216. Y Corte IDH. Caso Cabrera García y Montiel Flores Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 26 de noviembre de 2010. Serie C No. 220. Las sentencias pueden consultarse en: <http://www.corteidh.or.cr/casos.cfm>

I. Legislative harmonization

4. Despite the step forward that was taken with the constitutional reform on human rights of June 2011, the necessary secondary laws have not been passed, nor have state-level constitutions been harmonized with the new constitutional order. A counter-reform is currently being promoted, which would involve the elimination of the *pro homine* principle of interpretation and also would abolish the constitutional status given to all human rights treaties as supreme law.
5. The legal framework necessary to regulate and operate the constitutional reform on the *amparo* rights writs has not been approved, 16 months after the entry into force of this constitutional reform.
6. In November 2012 a regressive labor reform was passed which is contrary to human rights principles and drastically infringes upon the rights of workers.
7. The Federal Judicial Council established a caveat on the use of class action law suits against companies and the government regarding environmental legislation. This caveat forces affected organizations to be constituted by 30 members, instead of requiring at least 30 people to present class actions. In the case of indigenous peoples, Mexico still lacks federal legislation that fully takes into account C169 of the ILO, of which it is a party since 1990. In particular, the right to consultation is not regulated in line with this instrument.
8. Legislation on the issue of access to information regarding the democratization of media and limits to the concentration of media ownership and monopolies remains outstanding.
9. The practice of *arraigo* pre-charge detention was given constitutional status through the criminal justice reform of 2008, despite having been declared unconstitutional by the SCJN since 1999 for violating personal liberty and the right to freedom of movement. Since 2008, *arraigo*, forced entries and

automatic preventive detention have become the recurrent “techniques” of criminal investigation in Mexico. Nine international human rights mechanisms have recommended the Mexican State abolish *arraigo* in practice and in law, at federal and state level, for being contrary to international human rights standards.

10. In general, in both federal and state jurisdictions, cases of human rights violations are often faced with deficiencies in the codification of crimes that are not harmonized with international standards; for example, enforced disappearance is only codified in 15 states,⁴ with gaps and shortcomings in the definition and determination of the authors of the crime. In the case of torture, the state of Guerrero is the only state that has not codified this offense in its Criminal Code.
11. The Mexican State has still not ratified Conventions 98 and 138 of the ILO, nor has it withdrawn its reservation to article 8 of the ICESCR in relation to union freedom, nor has it ratified the Optional Protocol to said Covenant. To date Mexico continues to not guarantee the right to union freedom for public sector workers, as well as the right to a secret vote in union elections.
12. Mexico has not accepted the competence of the Committee on Enforced Disappearances to review individual complaints, as well as maintaining its reservation to article 9 of the Inter-American Convention on the Forced Disappearance of Persons relating to military jurisdiction, as well as maintaining its interpretive declaration to article 14 of the same Convention.

⁴ The states where enforced disappearance is codified are: Aguascalientes, Baja California, Campeche, Chiapas, Chihuahua, Coahuila, Durango, Distrito Federal, Nayarit, Nuevo León, Oaxaca, Puebla, San Luis Potosí y Zacatecas.

II. Poverty and ESCR

13. Structural and legislative shortcomings within the Mexican State in regards to violations to ESC rights limit access to justice and reparations for damages in this area. These violations also affect the right to free, prior and informed consent of those people and communities impacted by the implementation of mega development projects that give rise to forced displacement, exacerbated poverty, damage to the environment as well as denying the cultural rights of the populations affected. In these cases, governmental action and omission puts economic and political interests before human rights.
14. Despite the fact that the Constitution and various laws recognize the right to the environment, environmental policy in many instances is neither effective nor sustainable due to its technical deficiencies; it is not aligned with other sectors and social policies; there is complete impunity for environmental offences, affecting various human rights.⁵
15. The working conditions of Mexicans and the lack of benefits provided to them limit the access, exercise and enjoyment of other rights. The unemployment rate in 2012 was at 5.2%. Young people are the most affected. Those that have employment (formal or informal) lack a decent wage (2,378 pesos a month in urban areas and 1,523 pesos in rural areas). The State does not guarantee rights to food, education, health and housing for 57.7 million people without the income necessary to satisfy these needs on their own. Marginalized communities lack basic services such as electricity and drainage; 9.22% of residences at a national level do not have water. In addition, the lack of resources brings about absenteeism from school as age and schooling years increase. 21.2 million people in Mexico live in food poverty. Many

⁵ The World Health Organization reports that in Mexico 14,000 deaths each year are caused by poor air quality. Another issue is water – 95% of water bodies are contaminated; 29% are contaminated highly contaminated due to industrial causes.

families spend up to 47.21% of their available income on expenses in the case of an illness.

16. The population of indigenous seasonal agricultural workers suffers from conditions of poverty, marginalization and exclusion, which force them to migrate under the worst working conditions, without minimum guarantees of security; for example 90% work without a contract.⁶
17. In the case of women and maternal mortality, there are grave outstanding issues. From 2009 to 2011 alone, there were 3,432 deaths during pregnancy, childbirth, and post-natal circumstances.

III. Access to Justice and Judicial Reform

18. In June 2008 the Congress passed a constitutional reform to bring in an accusatory criminal justice system. The new system must be in place no later than 2016. To date, only 3 states have implemented the reform fully⁷ and 10 more have applied it partially.⁸ In the 19 remaining states, as well as at a federal level, there has been no progress on this issue.⁹ In some states, even those under the new system, torture continues to be used as a means for obtaining evidence.
19. Women in particular have been faced with obstacles to access justice. A sustained increase in feminicides has been registered throughout the country during recent years and

⁶ Office of the UN High Commissioner for Human Rights. Final Mission Statement – Mandate of the Special Rapporteur on the Right to Food, Olivier De Schutter, Mission to Mexico, 13 to 20 June 2011. Mexico City, 20 June 2011.

⁷ Chihuahua, State of Mexico and Morelos

⁸ Baja California, Durango, Zacatecas, Oaxaca, Yucatán, Chiapas, Guanajuato, Tabasco, Guanajuato and Puebla

⁹ <https://reformapenalmexico.org/principal>

the majority of these remain in impunity. Of 1,235 cases of women killed between January 2010 and June 2011 in just 8 states,¹⁰ only 4% of these cases have been sentenced; yet it is unknown if these sentences were guilty verdicts or not.¹¹ The FEVIMTRA has not facilitated access to justice for women: between 2008 and 2011, it only achieved one conviction and has reported an under-execution of funds by 65%.¹² Judicial authorities have not incorporated a gender perspective or international standards in their resolutions.¹³

20. In November 2012 the Federal Law on Adolescent Justice entered into force with the aim of substituting the paternalistic system for minors with a system founded on the respect of guarantees of due process for adolescents. However, the reform dictates that trials be carried out “in a written and formal manner”, which means the permanence of an inquisitorial system that is contrary to the new adversarial system that the criminal justice constitutional reform brought in in 2008.
21. Access to justice in environmental matters is not guaranteed in Mexico. Despite the constitutional recognition of the human right to the environment, adequate mechanisms for its litigation do not exist. The principle of relativity means that rulings often do not have wider effects, that is, they only apply for the case at hand. In the cases in which the suspensions or injunctions are granted, astronomical amounts of

¹⁰ Mexico State, Sinaloa, Tamaulipas, Nuevo León, Distrito Federal, Oaxaca and Sonora.

¹¹ Authorities inform that 60% of cases are in process and only 19% have been charged by the relevant authority, despite the fact that in 34% of cases the reasons for the killing are known. (Source: National Citizen Observatory on Femicide).

¹² CEDAW Committee, Responses to list of questions and answers concerning Mexico's 7th and 8th combined periodic reports, 14 March 2012, [CEDAW/C/MEX/7-8].

¹³ Of 240 sentences analysed, only 1.6% are founded upon the Laws of Access for Women to a Life Free of Violence, and only 7.5% refer to an international human rights convention. (Source: Sentences in Mexico in The Observatory of Judicial Sentences of the Regional Feminist Network, available in: <http://www.articulacionfeminista.org/a2/index.cfm?aplicacion=app003&cnl=41&opc=9>)

money are requested by way of guarantee, which makes this recourse inaccessible.

22. *Arraigo* pre-charge detention continues to be widely and excessively used.¹⁴ *Arraigo* is used as a means for investigating suspects, which in practice is relied on by authorities to have more time to place criminal charges. In this way, detentions are used to investigate, rather than investigations being used in order to detain. The relevant legislation does not outline the locations in which this practice should be carried out, allowing for *arraigo* to be used even in military barracks. Added to this, there is no effective legal remedy against this practice, since *amparo* writs are not of use in this instance; of 324 *amparos* presented, 96% were denied.¹⁵
23. Authorities of the public security and criminal justice system at federal and state levels publicly present detained persons in the media, even before a determination from a judge or court that signals them as responsible for the crime. Even if a conviction proving the guilt of the person does not exist, this person is held up as if he/she were declared guilty. This practice constitutes a flagrant violation of due process and judicial guarantees, as well as of the presumption of innocence, personal integrity, privacy, honor and non-discrimination.
24. The prevalence of military jurisdiction to investigate and sanction soldiers responsible for committing human rights violations has allowed these acts to remain in impunity.¹⁶ Of 113 recommendations emitted by the CNDH against SED-

¹⁴ According to data available, the use of *arraigo* has reported a sustained increase of more than 100% per year: In 2009 it was at 218.7% and the years since then it has maintained constant growth of 120%. Data compiled by the CMDPDH illustrate the excessive use of this practice since June 2008, and to date an average of 2 people are placed into *arraigo* detention each day at a federal level and 1.12 at a state level.

¹⁵ Report presented by the CMDPDH and the OMCT before the Committee against Torture "Arraigo made in Mexico: Human rights violation". October 2012

¹⁶ It is worth highlighting that the performance of the CNDH regarding the increase in abuses committed by armed forces has been insufficient given the magnitude of the

ENA between 2006 and 2012, only a handful sentences have been issued, despite the fact that 68 of the cases pertaining to these recommendations have been reported as closed.

IV. Penitentiary system

25. Mexican prisons are characterized by a critical level of overpopulation (28.32%). From 2008 to 2012 the prison population increased from 219,754 to 239,941 inmates¹⁷, with a real capacity of the prison system for only 189,943 people. This situation has worsened problems such as overcrowding¹⁸, precarious conditions inside prisons and the lack of control of prison workers; conditions associated with self-government, prison violence and abuses from security forces. 60% of prisons are under a system of inmate-led government, which has led to an increase in violent incidents: between 2010 and 2011 more than 3,000 riots were registered, 922 fights and 316 deaths¹⁹, incidents that put the life and security of those deprived of liberty at risk under the responsibility of the State.
26. The complaints against the Federal Penitentiary System presented before the CNDH from 2009 to 2011 increased from

problem. Of 7,441 complaints presented before this body against the armed forces, the CNDH has only issues recommendations in 1.5% of these cases.

¹⁷ Statistics of the Federal Penitentiary System, Ministry of Public Security, September 2012.

¹⁸ Mexico's penitentiary system is at 124% occupation, this is considered as overcrowding. In some states the occupation rate is above 170%. A survey carried out by the Penitentiary Facility of Islas Marias shows that 34% of inmates surveyed share their dormitory with between 20 and 22 people and 16% among 12 inmates. Results of the First Survey directed at the Prison Population of Federal Prisons, by the Centre for Economic Teaching and Research, 2012. See: http://publiceconomics.files.wordpress.com/2013/01/encuesta_internos_cefereso_2012.pdf

¹⁹ Data from the National Human Rights Commission.

473 to 928²⁰, the more common ones relating to insufficient medical attention, irregularities in issuing early parole, conditioning of visits and arbitrary transfers of inmates.²¹ Nevertheless, there are inconsistencies between the number of complaints reported by the states and the real situation, since inmates believe that they cannot bring matters before the authorities because it will put them in an adverse position. This reality is proven by the lack of autonomy that state penitentiary bodies have in carrying out their functions. For this reason it is necessary that the Mexican State establishes and guarantees control and social oversight measures in relation to prison living conditions.

27. For 2011 it was registered that 40.33% of the total prison population was in preventive detention. This situation would decrease through re-examining the use of preventive detention²² and by increasing the use of alternative measures other than prison. Reforms are necessary to avoid punishing minor offences with penitentiary sentences²³, since 62% of crimes are generally associated with the theft of articles of little value.

²⁰ This figure corresponds to federal prisons, since state complaints are registered separately, for example the Federal District (Mexico City) Human Rights Commission registered 3,069 cases from people in detention.

²¹ Performance of the National Human Rights Commission in the attention to complaints against the Penitentiary System. ITAM, FLACSO. Mexico, March 2012.

²² "The Judge will order preventive detention, officially, in cases of organized crime, homicide, rape, kidnapping, crimes committed by violent means with firearms and explosives, as well as grave crimes that the law determines in line with national security, the free development of personality and health". Article 19 of the Constitution. This article allows for Mexico to continue to abusively use this preventive measure, leaving it to the whim of the judge to use prison before the trial. Related to Recommendation 38 from New Zealand.

²³ 62% of inmates are detained for thefts that do not exceed two thousand pesos, according to a study carried out by the Pastoral group on Penitentiary system of the Conference of the Mexican Episcopate.

28. The financial resources of the penitentiary system²⁴ have been mostly assigned to the system of corrections and maximum security, under the responsibility of the federal government. This means that 418 prisons administered by state governments are neglected, 50% of which report substandard infrastructure.²⁵ The Mexican State must prioritize the distribution of the budget to ensure dignified spaces for inmates, quality health services, more work and technical-professional training opportunities, education, recreation and respect for human rights, as these are conditions that contribute to dissuading further crimes in prison, from prison and after prison.
29. These shortfalls could be improved with the passing of a General Law of Social Corrections, Penitentiary Sentences and Security Measures, that contemplated respect, protection and defense of human rights in an integral way in regards to those serving time in prison.
30. Another challenge is the scarcity of penitentiary staff: the average at a national level is 7.3 inmates per prison guard²⁶; this proportion varies from 3.1 to 19.2 inmates per prison guard throughout the country. Added to this numerical deficiency is the lack of professionalization of staff in human rights and a gender-based approach.

²⁴ The budget designated for OAD Prevention and Social Correction to the month of July 2011 was 3,351,776.7 pesos. 5th Report of the SSP, p.76

²⁵ The governments of the states of Chihuahua and Oaxaca are considering the closure of by average 4 state prisons due to the deterioration of facilities and the overcrowding in them.

²⁶ Elias Carranza, Director of the UN Latin American Institute for the Prevention of Crime and the Treatment of the Criminal (ILANUD) highlighted that "the ideal ratio is one security staff per detainee". – "Overcrowding in prisons in Latin America and the Caribbean: situation and responses" "Criminal Justice and prison overcrowding. Possible Responses", Mexico, Siglo XXI, 2001. Related to Recommendation 29 from Portugal and Recommendation 51 from Switzerland.

V. Public Security and Militarization

31. The public security system has increased its reliance on military forces by 68% since 2007 with the commencement of the war on organized crime.²⁷ As a result, human rights violations have risen; the CNDH received 7,441 complaints of human rights abuses on the part of armed forces from 1 December 2006 to 30 November 2012.²⁸ In addition, militarization of police forces increased.²⁹
32. Violence has particularly affected children and adolescents. Approximately 1,701 persons in this group have died in incidents presumably linked to organized crime³⁰ and the mortality rate at a national level for minors under the age of 18 has risen to 4 deaths per 100,000 inhabitants.³¹

²⁷ According to the information from the Ministry of Defense, currently the deployment is at 48.77%, of the total operative force of the Army and Air force. At the commencement of the administration of Felipe Calderon, a deployment of 30,000 soldiers was registered, rising to 45,000 in 2011, with a higher estimation of 50,000 assigned to carry out tasks of public security, including forced entries, detentions and checkpoints.

²⁸ See SEDENA, Situation of Complaints and Recommendations. Available in: <http://www.sedena.gob.mx/images/stories/D.H/2013/Situacionquejasrecomendaciones210113.pdf>
See also: "Concentró Sedena recomendaciones de CNDH en 2012", La Jornada newspaper, 28 de enero de 2013. <http://www.jornada.unam.mx/2013/01/28/politica/019n1pol>

²⁹ Currently, in 14 of 32 states of the country the heads of public security departments have military background, and in 6 states the chiefs of police departments are soldiers; in addition, in at least 25 states there is the presence of active or retired soldiers in municipal police forces. In at least 17 of 50 municipalities with the highest levels of homicide in the country (the principal ones being Acapulco, Chihuahua, Ciudad Juarez, Culiacan and Tijuana), these municipalities have a soldier at the head of their security department, without this having been translated into a decrease in the number of killing reported.

³⁰ From December 2006 to 2012, the Network for Children's Rights in Mexico has produced a demographic survey in which the death of approximately 1,701 children in incidents presumably linked to organized crime has been calculated (<http://infancia-sinviolencia.org/>)

³¹ 7 out of 10 homicides against adolescents between 15 and 17 years use firearms. In the last 5 years, this homicide rate has tripled, going from 5.3 in 2007 to 15.7 in 2011. Since 2008, the death rate for the population under 18 increased, reaching 4 deaths per 100,000 inhabitants.

33. Police officers are frequently involved in abuses as internal and external controls are not adequate to provide for accountability. The case of “1DMX”³² of 1 December 2012 in Mexico City demonstrates arbitrary detentions and the disproportionate use of public force as part of police operatives that aim to repress protestors.³³ The “Ayotzinapa” case³⁴ is a paradigmatic example of police brutality, torture, excessive use of public force and firearms to repress protestors and

³² The “1DMX” case refers to the events that occurred on 1 December 2012. A large number of persons that protested against the inauguration ceremony of current President Enrique Peña Nieto were brutally repressed.

³³ The Human Rights Commission of the Federal District (CDHDF) opened a number of investigations of 88 people (12 adolescents) presumed as victims of aggression. Multiple cases of arbitrary detention and even torture have been documented. The Prosecutor’s office freed 12 adolescents and 17 seniors. 70 people were charged (11 women and 59 men). Press release in relation to the Preliminary Report on the Investigation carried out into the detentions of 1 December 2012 <http://www.cd hdf.org.mx/index.php/comunicados/2888-comunicado-222012>

³⁴ The incidents occurred on 12 December 2011 in the city of Chilpancingo, Guerrero, where 300 students between 18 and 21 years old from the Rural School “Raul Isidro Burgos” were repressed and criminalized, including with torture, in the town of Ayotzinapa, Guerrero. In these events three people lost their life, two students due to firearm wounds from police forces, as well as an employee of petrol station that sustained burns after trying to put out a petrol bomb. Furthermore, members of different police forces detained approximately 42 persons, 24 of which were subjected to beating with poles and clubs. In this group there were four minors and one woman. Additionally, a case of torture of a student of 19 years old was registered, as well as being subjected to false accusations of unlawfully detonating a firearm of high calibre (AK-47). In addition, the CNDH documented how members Federal, Investigative and state police, respectively, used inhumane treatment on victims with the aim of getting them to self-confess to having fired a gun against his peers. Gerardo Torres Perez, 19 years old, a student of the Raul Isidro Burgos School, was accused of firing an AK-47, with the aim of blurring the facts. The CNDH concluded that he presented signs and symptoms of having been tortured, assigning responsibility for the HR violations to the investigative police under the charge of the State Attorney’s office of the state of Guerrero that had custody of the student; however, to date no official has been convicted for these acts. It is worth mentioning that the investigations of these acts were not opened as torture crimes, since torture is not codified in Guerrero’s criminal code, and that examined by the CNDH was not considered sufficient evidence; nor was the Istanbul Protocol applied. Furthermore, the lack of due diligence of the prosecutor and their omissions in emitting security measures meant that the victims received threats and harassment to withdraw his complaint.

the lack of protocols or guidelines for anti-riot operations.³⁵ To date no state agent has been sentenced for these acts. The “Atenco” case of sexual torture that at least 11 women suffered in a police operative is evidence of the impunity in which these cases remain. Despite recommendations from the United Nations³⁶, the Mexican State has not guaranteed access to justice for these women or a proper and swift investigation to lead to convictions for those responsible.³⁷

³⁵ After investigating the facts, on 28 March 2012 the National Human Rights Commission (CNDH) issued a Special Recommendation 1 VG/2012, the first of its kind. According to the information compiled by the CNDH, during the police operative there were 239 agents from the Federal Public Security Ministry and of the Ministry of Security and Civil Protection and the General Attorney's Office, both from the State of Guerrero. Of this total, 91 were carrying firearms; while it was proven that the protestors were not carrying firearms. The human rights violations committed in the Ayotzinapa case demonstrate that torture continues to be a means for obtaining illegitimate confessions in cases of high impact; it shows the involvement of the prosecutor and the police responsible for investigating these crimes; it demonstrates way that in states such as Guerrero, investigations are not opened for torture; it brings to light the lack of probative value given to the actions of the HR Ombudsman system and finally, it shows the lack of control and accountability in relation to security forces.

³⁶ CAT Committee, Examen de los informes presentados por los Estados Partes en virtud del Artículo 19 de la Convención, Conclusiones y observaciones del Comité contra la Tortura (6 de febrero de 2007), 37º periodo de sesiones, U.N.Doc. CAT/C/MEX/CO/4, párr. 14, 16, 19 y 20; CEDAW. Observaciones finales del Comité para la Eliminación de la Discriminación contra la Mujer: México (25 de agosto de 2006), 36º periodo de sesiones, U.N. Doc. CEDAW/C/MEX/CO/6, párr. 14 y 15.

³⁷ In the federal justice system, on 15 May 2006, the Special Prosecutor for Crimes relating to Violence against Women (FEVIM, that later changed to the Special Prosecutor for Violence against women and Human Trafficking, FEVIMTRA), opened a file for the investigation of the incidents. Nevertheless, despite the existence of a recommendation of the CEDAW Committee in the sense that the State should ensure that the Special Prosecutor's office has jurisdiction to investigate and convict the responsible parties, on 13 July 2009, the FEVIMTRA declined jurisdiction in favour of the state attorney's office of Mexico State. According to the Special Prosecutor, this action corresponded to the fact that this issue was of “exclusive competence” of the state attorney. This means that for the FEVIMTRA, of the reports or registries that were on file, there was no evidence that federal agents had been involved; that there was no evidence to presume that federal agents had been involved in sexual torture. However, it is essential to highlight that 700 Federal Police agents participated in the

34. Military jurisdiction has allowed human rights violations committed by armed forces to remain in impunity. In the sentences in the cases of Radilla Pacheco; Fernandez Ortega; Rosendo Cantu; and Cabrera Garcia and Montiel Flores³⁸, the Inter American Court of Human Rights ordered the Mexican State to carry out legislative amendments to ensure that human rights abuses are investigated and tried under ordinary civilian jurisdiction. Nevertheless, those responsible have not been convicted and the legislative reforms have not been passed. Although there have been advances from the SCJN³⁹, by declaring article 57 of the CJM unconstitutional⁴⁰,

incidents, enough reason for under Mexican law for the FEVIMTRA to have taken on the investigation of this police operative.

Faced with a total lack of will from the Mexican State over the years, the complainants have decided to go before regional organisms to seek justice. On 29 April 2008 eleven women that were victims of sexual torture decided to present a petition before the Inter American Human Rights Commission against the Mexican State for sexual torture, lack of access to justice and the violation of other human rights. This petition was admitted on 2 November 2011, the date on which the Commission published its admissibility report on the case. Now the case is in the merits and analysis stage.

The grave human rights violations perpetrated in San Salvador Atenco have not been punished, nor have reparations been issued. In particular, in the case of the 11 women that denounced sexual torture, no authority has been held accountable and some public servants have even been promoted, while the investigation remained frozen for an extended period and only in July 2012 were two police arrested.

³⁸ Corte IDH. Caso Radilla Pacheco Vs. México. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de Noviembre de 2009. Serie C No. 209. Corte IDH. Caso Fernández Ortega y otros. Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 30 de agosto de 2010 Serie C No. 215; Corte IDH. Caso Rosendo Cantú y otra Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2010 Serie C No. 216. Y Corte IDH. Caso Cabrera García y Montiel Flores Vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 26 de noviembre de 2010. Serie C No. 220. Las sentencias pueden consultarse en: <http://www.corteidh.or.cr/casos.cfm>.

³⁹ On 4 October 2011 the judicial case Various 912/2010 was published in the Official Gazette, in which the SCJN determined that in regards to military jurisdiction: "Military jurisdiction cannot operate under any circumstance in situations where the human rights of civilians are violated". National Supreme Court, Various File 912/2010, Paragraph 44.

⁴⁰ Last 21 August, the Supreme Court in a historic case regarding Bonfilio Rubio Villegas, declared unconstitutional article 57 of the Military Code of Justice and pro-

no firm jurisprudence has been defined on this matter, a situation that is made more grave by the context of militarization.⁴¹

35. Reforms that have abolished the SSP and transferred its functions to the SEGOB are of concern, since this move does not contemplate a technical and professional police model; in addition this means that only one body with excessive power and a mandate without adequate controls or accountability measures is given all responsibility in this area.⁴²

VI. Enforced Disappearances and Torture

36. In Mexico torture is commonly utilized as a means to extract illegal evidence that is later accepted by judges and relied upon in order to hand down condemnatory sentences. The PGR has reported that its specialized exam, which is supposedly in line with the Istanbul Protocol, has been applied by

vided precedent for access to justice for family members of victims, giving them legal standing within amparo trials and ordering the case that had been opened in relating to Villegas's homicide to be transferred to federal civilian jurisdiction. Bonfilio Rubio Villegas, a nahua indigenous man from the mountains of Guerrero, was extra judicially executed in June 2009 by soldiers of the Mexican army in a military checkpoint near Huamuxtitlán, Guerrero, when soldiers opened fire on a passenger bus that he was travelling in.

⁴¹ It is worth noting that Mexico, in the context of the last UPR, considered that the following recommendations "did not apply" or "had been resolved", regarding: Giving civilian courts jurisdiction over incidents and human rights violations committed by members of the armed forces in the exercise of their duties to safeguard public order; in the case that military elements are needed in the fight against organized crime, compensate UN Doc. A/HRC/11/37.

⁴² Law of the Federal Public Service, article 27, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/153.pdf>

its experts⁴³ in more than 300 occasions since 2003⁴⁴, torture having been confirmed in more than 120 cases.⁴⁵ This has not been translated into an equal number of criminal convictions.⁴⁶ In Chihuahua state there has been no case of torture

⁴³ The PGR has 185 forensic staff; according to official information, “all experts under the General Directorate of Experts are trained for the application of the Medical/Psychological exams for possible torture and/or ill-treatment”, PGR, Oficio No. SJAI/DGAI/08166/2012, 23 August 2012, in response to the Information request 0001700151212 obtained by the Human Rights Centre Tlachinollan.

⁴⁴ PGR, Oficio No. SJAI/DGAI/08166/2012, 23 August 2012, in response to the Information request 0001700151212 obtained by the Human Rights Centre Tlachinollan.

⁴⁵ Of these 302 instances in which, according to the PGR, the official experts have carried out specialized torture or ill-treatment exams, “there are 128 cases with wounds that are possibly derived from torture or ill-treatment”. On the other hand, the PGR counted 174 “negative cases (without the existence of wounds)”. PGR SJAI/DGAI/08224/2012, 27 August 2012, response to the Information request 0001700152112 and PGR 0001700152112, of 27 August 2012, response to the Information request 0001700152212 obtained by the Human Rights Centre Tlachinollan.

⁴⁶ According to the figures from the General Inspector of the PGR, from January 2002 to June 2012, “39 investigations were opened for the crime of torture, of which 3 were concluded without criminal proceedings, and in 0 investigations criminal proceedings were issued. As such, there has been no arrest by the authorities”. Furthermore, the Sub-Attorney General for the Investigation of Federal Crimes “informed that 29 investigations were found for the crime of torture” regarding acts that related to 111 public servants, of which none had been charged, without clarifying the time period comprising this information. PGR, Oficio No. SJAI/DGAI/09028/2012, 17 September 2012; PGR, Oficio No. SJAI/DGAI/9030/2012, 17 September 2012, response to Information Request 0001700151112; y PGR, Oficio No. SJAI/DGAI/9082/2012, 18 September 2012, Response to Information Request folio 0001700150712. Obtained by the Human Rights Centre Tlachinollan. Equally, the Sub Attorney General of Regional Control, Criminal Proceedings and Amparo has one investigation registered for the crime of torture in the period from 2006 to 2011 and three during 2012; for its part, for the period between 1 January to 31 December 2011, the Coordinator for Planning, Development and Institutional Innovation (COPLADII) of the PGR reported 23 investigations that were opened for the crime as per article 3 of the Law to Prevent and Sanction Torture. Furthermore, the General Inspector of the PGR outlined that in the period from 1 August 2011 to 1 August 2012, 10 investigations were initiated. PGR, Oficio No. SJAI/DGAI/09029/2012, 17 September 2012, response to Information Request folio 0001700151012; PGR, Oficio No. SJAI/DGAI/09081/2012, 18 September 2012, response to Information Request folio 0001700150612, obtained by Human Rights Centre Tlachinollan.

that has been followed up; there are no existing sentences for this crime; there is only one investigation that is open.

37. Even in the states that have adopted the Istanbul Protocol, the state attorneys offices do not usually require it to be used and as such proper torture investigation procedures are not performed. Many states do not have qualified forensic experts to carry it out; the technical quality of the exams is deficient and the truly independent experts face constant obstacles to carry out their work.
38. The lack of independence of the professionals that apply the Istanbul Protocol is also a factor that contributes to its ineffectiveness; the very same institution that has carried out the torture may be the one investigating the practice. Furthermore, there is no alignment of methodology between the CNDH and the PGR. The public does not have access to the reports and relevant data regarding the application of the Istanbul Protocol.
39. The Mexican State is not certain about the number of victims of enforced disappearance, especially given that in many cases authorities prefer to classify the crime as a distinct offence. In addition, the fear of reprisals and the impunity that is a constant factor in these cases⁴⁷ discourages family members from denouncing the crime. In many cases the demand for justice has brought with it consequences such as persecution, harassment and constant threats that force those affected to relocate themselves from their homes and communities.

⁴⁷ Paragraph 2 in the section on “Security” of the preliminary observations of the UN Working Group on Enforced and Involuntary Disappearances, after its mission to Mexico, see: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=S>

40. In Chihuahua in the period from January 2008 to March 2012, 171 complaints of disappeared persons were presented⁴⁸, however to date no judicial sentence is known of.
41. Enforced disappearances follow two patterns that demonstrate the systemic nature of the practice, essentially in two ways: deprivations of liberty on the part of organized crime groups that operate throughout the country, that generally act with the complicit acquiescence of the State; and, on the other hand, arbitrary detentions carried out directly by police and military forces. The Mexican State has not provided official figures concerning the number of victims of enforced disappearances.
42. The Mexican State has failed to comply with the guarantees of non-repetition of great importance as ordered by the Inter-American Court on Human Rights, such as legislative reforms to restrict military jurisdiction and to codify enforced disappearance in line with international standards.

⁴⁸ Information obtained from the General Prosecutor of the State of Chihuahua, by the CEDEHM, through freedom of information request in May 2012, folio 021132012.

VII. Indigenous peoples

43. The conditions of poverty and marginalization of Mexico's indigenous peoples⁴⁹ continue to be characterized by inequality⁵⁰, illustrated by the lack of access to health and education.⁵¹ The funds assigned to policies and public programmes continue to be used in a clientelistic and paternalistic fashion. The State must create programmes that tackle directly the

⁴⁹ The indigenous population of the country represents 14.9% of the total population. According to official figures, 79.6% of the indigenous population lives in poverty; the 257 indigenous municipalities in Mexico —municipalities where more than 70% of the population speaks an indigenous language— have levels of poverty above 55% and in 251 of these the poverty level is at more than 70%. The 15 municipalities with the largest number of shortcomings in terms of poverty are indigenous ones. INEGI, Principales resultados del Censo de Población y Vivienda 2010, INEGI, 2011 y Consejo Nacional de Evaluación de la Política de Desarrollo Social. Informe de Pobreza en México 2010: el país, los estados y sus municipios. México, D.F. CONEVAL, 2012. p.47, 71, 81. The indicators do not reflect advances. 21.5% of the indigenous population is illiterate, 19.1% without education, 41.8% are not registered with a health service, 27.5% live without potable water 36.4% without drainage and 7.5% without electricity. Comisión Nacional para el Desarrollo de los Pueblos Indígenas. Indicadores socio demográficos de la población total y la población indígena. Nacional 2010.

⁵⁰ United Nations Development Programme. Report on the Indigenous Peoples of Mexico. The challenge of unequal opportunities. México D.F.PNUD, 2010. p.16. For example, the per capita average monthly income of indigenous people was at 1,247 pesos while the non-indigenous population was at 3,072 pesos, which is 2.5 times that of indigenous people. By disaggregating the areas of income both monetary and non-monetary, gaps exist between one population and the other. For example, the income for property rent is 9.5 times higher in the non-indigenous population than the indigenous one, the remuneration for work is 3.1 times higher, the monetary transactions are 1.5 times higher and the in-kind transfers are 2.1 times higher. Consejo Nacional de Evaluación de la Política de Desarrollo Social. Informe de Pobreza en México 2010: el país, los estados y sus municipios. México, D.F. CONEVAL, 2012.

⁵¹ 37.9% of the indigenous population only has access to basic social security and only a fifth of the indigenous population is signed up to one of the social security systems that cover formal sector workers. A third of indigenous children of schooling age do not attend their school. The average schooling age of speakers of an indigenous language (5.1 years) is much lower than the average for non-indigenous (9 years) and the self-identified indigenous people (7.9 years). Comisión Nacional para el Desarrollo de los Pueblos Indígenas. Indicadores socio demográficos de la población total y la población indígena. Nacional 2010.

structural causes of poverty in indigenous communities, with a gender and ethnicity perspective.

44. The Constitution recognizes the rights to self determination and autonomy of indigenous peoples⁵², however these rights are left to the states to regulate in sub-national laws, which strips them of their true constitutional character.⁵³ The struggles for autonomy have brought about extreme violence in communities, with the complicity of the Mexican State and state governments.⁵⁴ The State must guarantee the respect and full enjoyment of the rights to self-determination and autonomy of indigenous peoples, to preserve and decide on their forms of government, norms and systems as well as their priorities for economic, social, cultural and environmental development.
45. In addition, the Constitution does not provide for mechanisms that protect indigenous peoples from state and non-state actors that seek to occupy their indigenous territories⁵⁵, under false arguments based on the promotion of develop-

⁵² Article 2, section A, first paragraph. Mexican Constitution.

⁵³ In this way the same error was being committed that was sought to be avoided before the constitutional reform, since many state constitutions recognized self-determination to varying degrees, creating a type of legal discrimination. López Bárcenas, Francisco, *Legislación y derechos indígenas en México*, Centro de Estudios para el Desarrollo Rural Sustentable y la Soberanía Alimentaria.

⁵⁴ For example, the case of the Triqui people, in the autonomous municipality of San Juan Copala and other autonomous expressions such as the Community Police of the state of Guerrero.

⁵⁵ For example, the case of the community landholders of Tila, who for 25 years have fought for the recognition of their territory as indigenous Choles. In 2008 an amparo sentence was handed down in their favour – the sentence protects them against actions of domination on the part of the municipality of Tila, and from the Public Registry of Property and Commerce, including the illegal purchase and sale of community land. The federal judge ordered the state government and the municipal authorities to restore the community landholders with their full rights to land that had been taken from them, as well as damages paid. However, the authorities have refused to implement this federal judicial sentence. For these reasons the Tila community brought forth a writ for the contempt of court before the Supreme Court of Justice, under number 1302/2010, which is pending discussion in Mexico's highest tribunal.

ment.⁵⁶ Of particular interest is the expansion of mega-development projects of extractive industries⁵⁷, dams⁵⁸ and wind farms, promoted by the private sector and the State, directly affecting the rights of indigenous peoples.⁵⁹ As a

⁵⁶ An example of this is that in the period from 2005 to 2010 alone, the Federal Government issued mining concessions for up to 50 years covering 200,000 hectares of indigenous territory of the Mountains and Chica Coast of the state of Guerrero so that multinational companies carry exploration and exploitation of minerals with open cut mining without obtaining the free, prior and informed consent of the affected peoples.

⁵⁷ In the case of Wirikuta, the Mexican State issues 79 mining concessions within territory where the indigenous Wixarika peoples have traditionally carried out their customs, without prior informing them or consulting them, also violating the right to cultural identity, as is recognised by the CNDH in its recommendation 56/2012. See: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC_2012_056.pdf

⁵⁸ In the case of the indigenous Yaqui people, a mega development project “Aceducto Independencia” was designed in 2010 and will take 70 million cubic metres of water from the Yaqui River, traditionally used by the Yaqui peoples. The project was approved and concessioned without sufficient information nor consultation of the affected population, as was recognized by the 4th District Judge of the Auxiliar Centre of the 5th Region on May 4th, with the issuing of an amparo suit in favour of the Yaqui people, recognizing environmental impact of the Acueducto Independencia. See Amparo writ 461/2011 – Cuaderno Auxiliar 106/2012, Sentencia del 4 May, 2012 del Juzgado Cuarto de Distrito del Centro Auxiliar de la Quinta Región. Nevertheless, this judicial decision did not succeed in suspending the construction of the Aceducto despite the Mexican legal framework. The case has currently been taken up by the Supreme Court. See: <http://www.cemda.org.mx/01/la-suprema-corte-debe-reconocer-violacion-de-derechos-humanos-en-construccion-del-acueducto-independencia/> Equally, the case of the Council of Community Landholders against the Parota Dam (CECOP) who have led a movement of more than ten years against the imposition by the state electricity company and other state actors, of a hydroelectric project that is legally, environmentally and socially unviable, close to Acapulco, Veracruz. <http://www.tlachinollan.org/NoaLaParota/noalaparota.html>

⁵⁹ Hard data on this subject can be consulted at: Discrimination of Indigenous Peoples in Mexico, presented as additional information from the National Network of Civil Human Rights Organizations “All rights for all” , presented to the CERD committee, Mexico D.F., 2012, pp. 25-29.

Further references in Fundar, Centre for Analysis and Research, Minería, comunidades y medio ambiente. Investigaciones sobre el impacto de la inversión canadiense en México, 2002, <http://www.fundar.org.mx/mexico/pdf/mineria.pdf> MAPDER, Justice for peoples, Justice for Rivers, Tribunal Permanente de los Pueblos. Capítulo México, Informe de la Mesa de devastación ambiental y derechos de los pueblos.

consequence, judicial harassment and criminalization of social protest have increased, as a result of local resistance to these projects, putting at risk the physical integrity and safety of community human rights defenders.⁶⁰

46. The State should adopt necessary measures to guarantee the right to adequate consultation for indigenous peoples in affected communities, respecting their lands, territories and natural resources, with the aim of obtaining their free, prior and informed consent regarding the effects caused by development projects, in line with C169 of the ILO.
47. Limitations to access to justice for indigenous people still exist; adequate defense lawyers are not available⁶¹, the absence of interpreters during the whole criminal process⁶²; the lack of guarantees of accessible bail conditions⁶³; and the abuse

Audiencia "Presas, Derechos de los Pueblos e Impunidad", Temacapulín, Jalisco, Guadalajara, Noviembre, 2012.

⁶⁰ See, among others, the case of San Dionicio, a community that since the 29 January 2012 has organized itself to resist the imposition of a wind farm, which has the backing of the municipal president, the commissioner of public lands and the government of the state. This has resulted in a situation of internal confrontation, the denial by the municipality of public services to the opponents of the project, including health, water and social services; unfounded criminal allegations against the most visible opponents of the project, seeking to intimidate them, as well as physical attacks, threats and a smear campaign in the media against the leaders of the movement and the Peoples' Assembly of the Isthmus of Tehuantepec, among these Isaul Celaya, Carlos Beas, Bettina Velásquez y Rodrigo Peñaloza.

⁶¹ The inexperience of legal aid lawyers and the lack of consideration to all possible lines of defense means that the process is delayed without the defense being effective to work in the interests of justice, and a such failing to urge the judicial organ to work diligently. See for example Human Rights Committee, Pinto vs Trinidad Case, par. 12.5.

⁶² According to official information, in Mexico 6 out of 100 inhabitants above 5 years old speak an indigenous language, of which there are 89. <http://cuentame.inegi.org.mx/poblacion/lindigena.aspx>. In a study carried out regarding only 2.5% of cases of accused indigenous women, they referred to receiving assistance from an interpreter only in their declarations before judicial authorities. *Mujeres Privadas de la Libertad ¿Mujeres sin Derechos? Asilegal*. p.68.

⁶³ This guarantee remains out of reach since judges frequently decide on inaccessible amounts. Even when the crime allows for release during the process, indigenous

of the legal period under which a detainee must be tried⁶⁴, are all problems facing indigenous people.

48. Indigenous women face multiple discrimination from judicial authorities, due to their sex, ethnicity, language and socio-economic situation. An analysis of judicial sentences shows that these decisions are based on cultural stereotypes of gender⁶⁵, added to the fact that the majority of detained women are unaware of the most basic information on their case⁶⁶, which is a violation of the right to equality and non discrimination, due process, and the principle of legality. The State must prioritize efforts to combat these obstacles and incorporate a gender and ethnicity approach in their implementation mechanisms for the criminal justice reform.

peoples are often without the possibility to cover the amount due to their economic circumstances.

⁶⁴ This increases the risk that judges, being pressured by the responsibility that is implied in a delayed process, emit sentences that justify the prolonged duration of precautionary measures, although clearly the evidence is not sufficient to come to such a criminal conviction See IACHR, *Bronstein vs. Peru*, par. 48; *Gimenez vs. Argentina*, par. 88.

⁶⁵ "Mujeres Indígenas en el Observatorio de Sentencias Judiciales sobre los Derechos de las Mujeres", Equis: Justicia para las Mujeres, Diciembre 2012. Available in: www.equis.org.mx

⁶⁶ *Mujeres Privadas de la Libertad ¿Mujeres sin Derechos?* Publicación ASILEGAL p.68

VIII. Human Rights Defenders and Journalists

49. Since 2009 the situation of human rights defenders and journalists has worsened due to the constant increase in attacks⁶⁷ against them, the stigma and criminalization on the part of authorities of all levels of government⁶⁸ and constant impunity.⁶⁹ According to the OHCHR, at least 98% of the attacks and aggressions against journalists and human rights defenders remain in impunity. Despite the existence of a Special Prosecutor's Office (FEADLE), there is only one conviction for attacks against journalists.⁷⁰
50. Between 2009 and May 2012 there were 44 extrajudicial executions, 25 disappearances and 309 deprivations of liberty of HRDs.⁷¹ In 2011 alone at least 128 HRDs suffered 209 attacks.⁷² In some states, despite international alerts,⁷³ the

⁶⁷ Some of the most frequent attacks against human rights defenders are arbitrary detentions, disproportionate use of force, intimidations, threats, harassment, killings, military operations, arbitrary trials, criminalization of protest, violent evictions and confiscation of personal property, torture and disappearances.

⁶⁸ Declaration of the Minister of the Navy, 26 July, 2011, see: <http://mexico.cnn.com/nacional/2011/07/28/las-declaraciones-de-la-marina-tensa-la-relacion-activistas-gobierno>

⁶⁹ Human Rights Watch, World Report 2013, visible in <http://www.hrw.org/world-report/2013>

⁷⁰ Annual Report, Human Rights Watch 2013 - MEXICO

⁷¹ Urgent Action for HRDs – Accuddeh, NGO, 2013

⁷² In particular, between 2009 and November 2012, HRDs of migrants were subjected to a total of 111 security incidents, environmental defenders were subjected to 54 attacks, with 23 killings and 2 disappearances. Among defenders of housing rights, 52 cases of harassment and criminalization have been reported. Acción Urgente para Defensores de los Derechos Humanos (Accuddeh AC), Informe de violaciones de derechos humanos cometidas contra las personas defensoras de los derechos humanos en el periodo 2011-primer trimestre de 2012, 2012

⁷³ In April 2009, the Inter American Court on Human Rights ordered the Mexican state to adopt provisional measures in favour of two indigenous organizations on the Coastal-Mountainous region of the state of Guerrero, as well as for Ms. Ines Fernandez Ortega and her family and the members of the Tlachinollan Human Rights

gravest risks against HRDs exist, as is the case of Chihuahua where from 2009 to 2012 there were 17 HRDs killed.⁷⁴

51. Killings of human rights defenders, social leaders and police chiefs have risen in an alarming manner. It is concerning that impunity persists in a situation where killings can be repeated.
52. In 2010 there were at least 139 attacks against 21 media outlets in 25 states of the country reported.⁷⁵ Specifically, 13 of these were the target of explosives or firearms. Attacks against women journalists have risen, with 4 cases in 2008 to 31 cases in 2011.⁷⁶
53. There is no official database that is disaggregated by sex or by the specific circumstances faced by women human rights defenders and journalists, despite various international recommendations in this regard.⁷⁷
54. In this context, the Law for the Protection of Human Rights Defenders and Journalists entered into force in 2012, a law which however does not include adequate measures for the investigation and sanction of those responsible for attacks.

Centre, with the aim of safeguarding their integrity and safety. Also, in February 2010 the Court ordered the same for Ms. Valentina Rosendo Cantu and her family.

⁷⁴ Ismael Solorio Urrutia and his wife Manuela Martha Solis Contreras, defenders of the right to the environment and water, were killed on 22 October 2012; Marisela Escobedo was killed on 16 December 2010 in front of the Town Hall while she demanded justice on the femicide of her daughter Rubi Frayre Escobedo; Josefina Reyes had denounced grave human rights violations committed on the part of soldiers and was killed on 3 January 2010 in Ciudad Juarez, Chihuahua - during the same year four more members of her family were killed; among others. CIMAC. "Violencia contra las mujeres periodistas: México 2010-2011"

⁷⁵ Center for Journalism and Public Ethics, *De la autocensura a la interlocución con los victimarios, situación de la libertad de expresión en México 2010*, Mexico D.F., 2011.

⁷⁶ CIMAC. "Violencia contra las mujeres periodistas: México 2010-2011"

⁷⁷ Concluding observations of the CEDAW Committee, 52nd session, 9 to 27 July 2012, page 9: http://132.247.1.49/PAPIME306511/pdfs/Anex2_ObservcsfinalesCocedaw.pdf

A Protection Mechanism was established at the end of 2012 however it has so far not been fully and effectively implemented. Shortcomings persist regarding inter-institutional coordination as well as between federal and state governments. Sufficient training to public servants that staff the Mechanism has not been carried out.

55. The Mexican State must guarantee the implementation of protection measures that include integral measures —not only police protection— and ensure a gender perspective. A broad publicity campaign directed at the general public is necessary so that the work of the mechanism is known. Ensuring a sufficient and permanent budget for the mechanism is still a challenge, as well as ensuring accountability for the body.

IX. Migrants

56. Since 2009 there have been a number of noteworthy migratory law reforms⁷⁸, brought on by the worsening of human rights violations against migrant persons in the country. Despite this, the implementation of the new legal framework by authorities in charge continues to perceive migration as a matter of national security instead of a social phenomenon that requires holistic policies with a human rights approach. These changes have also limited the opportunity for migrants and refugees that decide to stay in Mexico to regularize and document themselves.
57. Violence against migrants in Mexico on the part of organized crime groups that often act with acquiescence from authorities has been a phenomenon on the rise. Some paradigmatic abuses include kidnapping, extortion and disappear-

⁷⁸ In May 2011 the first Migration Law as such in the history of the country was passed; more than a year after, its 2879/12 Regulations; and in January 2011 the Law for Refugees and Protection was passed.

ances. This critical situation has brought about such grave incidents as the massacre of 72 people in August 2010 and the subsequent discovery of hidden graves in San Fernando in the state of Tamaulipas, where the State did not comply with its obligation to identify the migrant victims that were found. These violations can include brutal acts of torture, mutilation, frequent rapes, extraction of organs, human trafficking, slavery, enforced disappearance and murder. The lack of investigations has forced family members of victims to take up the search for the loved ones, despite the risks that this implies.

58. There are no advances in the adoption of necessary measures to protect the rights of migrant workers and their families, in particular the need to guarantee their access to justice.⁷⁹ Migrants, including minors, that are primarily arrested by agents of the INM, are faced with extortion from the agents once they are freed, or during their detention in migrant detention centres.⁸⁰ In these places there have been a number of human rights violations documented including to rights to due process and fundamental rights such as physical and psychological health, good and legal security, among others. The deprivation of liberty at times can become unlimited in duration, in cases where a migrant decides to exercise her/his right to access to justice.⁸¹
59. The shared policy between the USA and Mexico of mass persecution and deportation of migrants is generating negative changes not only in their living conditions in their places of arrival but also in the way in which they return to their places of origin. Racism, violence and discrimination are elements that accompany deportation and that especially affect the indigenous population. Domestic workers on the southern border, especially indigenous Guatemalan women, report often being physically and sexually abused. The majority of

⁷⁹ Recommendation 81, from the State of Uzbekistan.

⁸⁰ So called Migratory Stations.

⁸¹ It is so established in art. 111.5 of the Migration Law of May 2011.

agricultural workers do not enjoy even one day of rest; they suffer the withholding of their wages and days unpaid; withholding of their documents on the plantations, among other abuses. This situation of exploitation and discrimination and their structural causes is shared by people that migrate within the country, primarily indigenous people from the states of Guerrero and Oaxaca.

X. Women

60. The vulnerability of women has increased due to the armed conflict⁸² and the public security strategies⁸³, giving rise to extreme violence against women such as sexual violence by soldiers and organized crime groups.
61. The OCNF reported 2,976 women and girls were disappeared between January 2011 and June 2012 across 15 states⁸⁴. Of these, 54% occurred in the states of Chihuahua and Mexico State⁸⁵ and in 51% of the cases the victims were between 11 and 20 years old. Despite this, the reports of disappearances of women and girls are not a priority for the State⁸⁶. Mean-

⁸² Sullivan and Elkus, 2009 *Cártel vs. Cártel: Mexico's Criminal Insurgency*, in *Small Wars Journal*, at: <http://smallwarsjournal.com/blog/journal/docs-temp/358-sullivan.pdf>

⁸³ This strategy does not include specific situations like the discrimination and historic inequality of power, much less the foundation on protection of human rights defenders with a mainstreamed gender perspective.

⁸⁴ Chihuahua, Coahuila, Colima, State of Mexico, Durango, Hidalgo, Jalisco, Morelos, Puebla, Quintana Roo, Sinaloa, Sonora, Tamaulipas, Zacatecas and Veracruz.

⁸⁵ 1,200 occurred in Chihuahua and 955 in the State of Mexico.

⁸⁶ The public servants in charge of searching for and investigating these disappeared people ask about the private life of the victim in order to arbitrarily and discriminatorily determine if the case is of "high risk" or not. In the majority of cases no search mechanism is activated despite the existence of the "Cotton Fields" ruling of the Inter American Court which establishes that in all cases of alleged disappearances of women or girls such mechanisms must be activated.

while, the context of insecurity has generated an increase in the sale and exploitation of women.⁸⁷

62. From 2007 to June 2012, the OCNF registered 4,112 *feminicides* in just 13 states⁸⁸, a large proportion of which were carried out with the excessive use of physical force such as beatings, mutilations, wounds with piercing or cutting instruments, or asphyxia. The major problem with this type of violence against women is the impunity and the institutional violence of the authorities that do not investigate the cases and do not have expert protocols, or police or detective investigations with a human rights approach.
63. Abortion is a crime that includes some exceptions on responsibility grounds, these exceptions varying depending on the state. The Federal District is the only difference, where abortion is legal in the first 12 weeks of pregnancy, as well as throughout all the country in cases of rape. However, the effective access by women to services for safe abortions in legal circumstances is very precarious, above all for victims of sexual violence. This situation has worsened since 2008, due to legal reforms in 16 state constitutions that now protect the right to life from the moment of conception⁸⁹, a situation that has generated a climate of criminal persecution against women⁹⁰ and of confusion on the part of public servants regarding the provision of reproductive health services.

⁸⁷ In the majority of cases the women are victims of trafficking, kept in captivity during short or long periods and raped prior to their murder.

⁸⁸ Chihuahua, Distrito Federal, State of Mexico, Durango, Guerrero, Morelos, Nuevo León, Guanajuato, Oaxaca, Colima, Tabasco, Sinaloa and Jalisco.

⁸⁹ Baja California (26 December 2008), Chiapas (20 January 2010), Colima (12 March 2009), Durango (31 May 2009), Guanajuato (26 May 2009), Jalisco (2 July 2009), Morelos (11 December 2008), Nayarit (6 June 2009), Oaxaca (11 September 2009), Puebla (3 June 2009), Querétaro (18 September 2009), Quintana Roo (15 May 2009), San Luis Potosí (3 September 2009), Sonora (6 April 2009), Tamaulipas (23 December 2010) y Yucatán (7 August 2008).

⁹⁰ According to data obtained through freedom of information requests by GIRE, from 2007 to 2012 a total of 127 sentences condemning abortion exist according to information from state level courts.

64. According to the data of the SSP⁹¹, only approximately 15,000 rapes occur per year. The OCNF documented 3,834 cases of sexual violence between January 2011 and June 2012⁹² attended to in health services of 16 states⁹³, and in the same period a total of 6,602 complaints presented for rape in 13 state attorney's offices.⁹⁴ This reflects the lack of a national registry nor much less real statistics on the context of sexual violence, all of which hides and neglects the causes, consequences and victims of this problem.
65. 11,682 girls aged between 10 and 14 years old were registered as giving birth to a child. Of these, 244 were 10 years old.⁹⁵ Adolescent pregnancy is one of the causes of school drop-outs that bring about a diminishing of opportunities for girls and adolescents.⁹⁶ The majority of these cases are the result of sexual abuse, rape and social isolation.⁹⁷
66. The protection mechanisms for women outlined in the LGAMVLV do not function adequately. The Declaration of Gender Alert⁹⁸ has to date been requested in Guanajuato,

⁹¹ According to data obtained through freedom of information requests by GIRE, from 2007 to 2012 a total of 127 sentences condemning abortion exist according to information from state level courts.

⁹² It is worth noting that in general they are not cases of sexual violence.

⁹³ Aguascalientes, Coahuila, Chihuahua, Distrito Federal, Durango, State of Mexico, Guanajuato, Guerrero, Hidalgo, Nuevo León, Oaxaca, Querétaro, Quintana Roo, Sinaloa, Tlaxcala and Zacatecas

⁹⁴ Aguascalientes, Campeche, Chihuahua, Distrito Federal, Durango, Guerrero, Morelos, Nayarit, Nuevo León, Quintana Roo, San Luis Potosí, Veracruz and Zacatecas

⁹⁵ Estimates based on Official birth rate statistics from the INEGI

⁹⁶ According to the Network for Children's Rights, 9 out of 10 that become mother leave school.

⁹⁷ An example of this is the case of a girl of 12 years old from the state of Jalisco that became pregnant of constant rape from her stepfather, and during labour a subdermic contraceptive device was placed on her. Added to this type of criminalization, the child has been revictimized through the presentation of her stepfather to the media saying that the acts were "consensual".

⁹⁸ The Gender Alert is a unique mechanism considered an urgent action of immediate application, when a context of grave violence presents itself, with the aim of imple-

State of Mexico, Monterrey and Hidalgo, the emission of the Alert being denied due to the legal structure of this mechanism and the accreditation of evidence which makes the issuing of an Alert impossible, even when resources exist to be able to do so.⁹⁹ Protection Orders¹⁰⁰ are insufficient and inapplicable in nature given that they demand a woman victim of domestic violence to bring a criminal complaint against her aggressor to obtain protection for only 72 hours, putting her in further risk and vulnerability.

XI. Young people and children

67. Mexico, despite being a country of young people¹⁰¹, lacks public policies sensitive to their needs.
68. Girls, boys and young people are affected by the security policies carried out by the Mexican State, violating their rights to life, a life free of violence and to personal liberty and security. 994 children lost their life from 2006 to 2010 in the war against organized crime.¹⁰² At the same time, young people are criminalized, violating their rights to non-discrimination and freedom of expression, especially when they protest for

menting a series of temporal responses to attend to the violence against women when a specific problem has been identified.

⁹⁹ In the period from 2008 to 2011, 19 million pesos were assigned for the National Fund for the Declaration of Gender Alerts for Gender Violence, yet only 1.3 million pesos were used, 6.84%, which resulted in the 2012 and 2013 budgets not including special earmarked funds for this purpose. http://www.apartados.hacienda.gob.mx/presupuesto/temas/pef/2013/temas/tomos/04/r04_afpe.pdf

¹⁰⁰ Urgent and immediate actions to safeguard the life and security of women.

¹⁰¹ Around 50% of the population is younger than 26. There are 96 men for every 100 women between 15 and 29 years old.


¹⁰² Infancia y Conflicto Armado en México. Informe alternativo sobre el Protocolo Facultativo de la Convención de los Derechos del Niño relativo a la participación de los niños en los conflictos armados. Red por los Derechos de la Infancia en México. 2011.

the protection of a certain right, as occurred during “1DMX” when 95 arbitrary detentions took place, 77 of which were young people.

69. The stigmatization that young people as well as children are subject to means that they are not seen as right-bearers, but rather subjects that need to be under guardianship, violating their rights to participation and to decide for themselves.¹⁰³ In the case of young people, they are also subject to violence due to their sexual orientation.¹⁰⁴

¹⁰³ Derechos Humanos de las Juventudes en México 2010. Centro de Derechos Humanos “Fray Francisco de Vitoria O.P.” A.C. página. 33.

¹⁰⁴ In the Federal District alone, 148 hate killings of LGBT people have been registered; of these, 8 were between 15 and 20 years old. Alejandro Brito y Leonardo Bastida; Informe de crímenes de odio por homofobia: México 1995-2008.



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