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The National Network of Human Rights Organizations “All Rights for All” Mexico (RED TDT)

Observations on the document presented by the Mexican State to the Human Rights Council entitled:

“Complementary Response of the Government of Mexico to the Recommendations in the Report of the Working Group on the Universal Periodic Review (A/HRC/11/27 – June 2009)

September 2009

Constitutional Human Rights Reform:

The Government of Mexico offered as a response to the issue of incorporation of international standards the bill of constitutional human rights reform passed by the House of Representatives of the Mexican Congress, which is currently under revision by the Senate. This reform falls short of the recommendations communicated to the Mexican State in the sense of guaranteeing that international treaties enjoy constitutional status. It fails to include the *pro persona* principle in the Mexican constitution. It also fails to guarantee the right to due process for foreigners in the country.

National Human Rights Program:

In the responses offered by the Government of Mexico, constant references are made to the National Human Rights Program (PNDH). The National Network RED TDT has indicated on numerous occasions that the PNDH fails to fully comply with the obligations contracted by the Mexican State as part of the 1993 Vienna Conference.

Constitutional and Public Security and Criminal Justice Reforms:

There are number of elements of this reform, passed in June 2008, that are incompatible with international human rights standards:

- Incorporation of *arraigo* (pre-charge detention) in the Constitution, which completely ignores UN reports classifying *arraigo* as a form of arbitrary detention¹ and recommending its removal from national legislation. A period of 80 days pre-charge detention is now permitted prior to indictment². The Mexican government informed the UN HRC that the figure of the “control judge” suggests that the function of the authorities is to ensure that the rights of detained suspects are not violated, whereas in

1 Report of the Working Group on Arbitrary Detentions concerning its visit to Mexico (October 27 to November 10, 2002) E/CN.4/2003/8/Add.3, paragraph 50 (criticizing *arraigo*); Committee against Torture (2006), Conclusions and Recommendations CAT/C/MEX/CO/4, paragraph 15 (recommending that *arraigo* be abolished)

2 Article 16 of the Constitution

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- reality they are forced to apply norms that, such as *arraigo*, violate human rights per se.
 - “Automatic” preventive imprisonment is still used for certain crimes. This provision violates the fundamental principle of the presumption of innocence.
 - Establishing a state of exception with restrictions on basic guarantees of due process for people accused of involvement with organized crime represents not only an attack on due process rights but also on the principle of equality, recognized in Article 1 of the Constitution.

President Calderón has proposed a further modification to this law to allow for further participation and contributions of the Armed Forces in internal security matters, the objective of which is to implement a de facto procedure for declaring a threat to national security that would be outside of constitutional requirements. This project for modification of the General Law on the National Public Security System represents a step that would further the militarization of the country that has been on the increase in recent years.

The Military Justice System

The State argues that all resolutions of military courts can be revised by a civil court; however, this affirmation is false with respect to the victims of human rights violations committed by military personnel. The statistics presented by the Mexican government concerning the 558 petitions for protection of the court (*amparo*) in district courts and the 400 direct petitions for protection of the court in full circuit courts against resolutions of military tribunals and the Supreme Military Court refer, unless there is proof to the contrary, to *amparos* lodged by military personnel charged or tried as part of military legal jurisdiction.

According to data obtained through freedom of information requests by the Miguel Agustín Pro Juárez Human Rights Center, between January 2006 and November 2008, 500 prior investigations have been sent to military justice by civil authorities; of these, 381 are from 2008. In the same period the Attorney General for Military Justice accepted that charges were laid in fewer than one in ten cases. The information received confirms that military abuses continue to increase and that, in the face of this situation, military justice tends to perpetuate impunity in cases of the violation of the human rights of civilians.

Definition of Organized Crime

Mexican legislation differs from the United Nations Convention Against Transnational Organized Crime (Palermo Convention) regarding the definition of an “organized criminal group” since the definition used in the Mexican Constitution goes beyond the requirements established by the Convention for defining an “organized criminal group”.

Special Prosecutor’s Office for Past Political and Social Movements (FEMOSPP for its title in Spanish)

The destination of information and work performed by the now extinct FEMOSPP is now housed under the direction of the General Coordinating Office for Investigations (CGI for its initials in Spanish) which is a dependency of the Deputy Attorney General’s Office for the Specialized Investigation of Federal Crimes. This office conducts investigations of tax crimes, fraud and crimes covered by special laws related to the financial system and its lack of specialization and resources for the investigation of State human rights violations indicates the low priority given to this issue by the current administration. In three years the CGI has not only failed to bring a single case, it has also failed to preserve the archive of the now disappeared FEMOSPP. As such Mexicans continue to be denied the right to truth and transitional justice.

Combating Torture

Since 1991 the Federal Law for the Prevention and Punishment of Torture has been in force in Mexico together with state laws that define the crime of torture and establish punishment for those responsible for such acts.

Despite the existence of a legal basis it has not been possible to avoid the systematic use of torture in Mexico and for this reason the recommendations of numerous international bodies as well as countries participating in the UPR focus on the need for the efficient implementation of these laws.

Countering Discrimination and Rights of Specific Groups

Women: The General Act on Women's Access to a Life Free From Violence (LGAMVLV for its initials in Spanish) is a piece of federal legislation that establishes the principles to guarantee respect for women's right to a life free from violence. At the state level numerous provisions of the general act have been omitted when approving local laws, such as feminicide, or these local laws have eliminated protection orders. The Special Prosecutor's office for crimes of violence against women and trafficking in persons (FEVIMTRA for its initials in Spanish) of the Federal Attorney General's Office lacks the authority to deal with and resolve cases of violence against women such as feminicide or rape committed by agents of the State. According to the report by the National Citizen's Observatory of Feminicide, from January 2007 to December 2008 more than 1,250 feminicides were registered in 13 states.

Indigenous Peoples: While the Mexico's Constitution recognizes that the nation is pluricultural and constructed on the basis of its indigenous peoples, it does not fully recognize the rights of these indigenous peoples. The system of law enforcement and administration of justice is obliged by law to provide interpreters and lawyers with knowledge of indigenous languages and cultures. Legal processes involving indigenous people are riddled with irregularities from the moment investigations by public prosecutors begin to the administration of justice by the Judiciary. This is not only due to the lack of interpreters or ignorance of the legal standards of indigenous peoples, but also because the system itself discriminates against indigenous people since they are required to submit themselves to a legal system alien to their culture and worldview.

Economic, Social and Cultural Rights

The Right to Work

With respect to the response of the government concerning problems faced by agricultural workers and their families, the Government of Mexico established the Program of Attention for Agricultural Workers (PAJA for its initials in Spanish) to address the situation. The PAJA is designed to provide a more participative service by means of a social promotion program. Nevertheless, in 2008 the operating rules of the PAJA failed to stipulate that certain funds had to be provided directly for development projects in agricultural worker communities while the social promotion committees continue to be of central importance in the PAJA strategy. In addition, it has been shown that there is a lack of supervision of community programs. Despite the initiatives of the Government of Mexico designed to end the exploitation of children, the problem has yet to be eradicated. Nor does there exist an exhaustive study of the direct and indirect incorporation of migrant children in agricultural work.

Dissemination of and Follow-up to the Recommendations Derived from the Review

Among the responses of the Government of Mexico, the existence of a Subcommittee to Evaluate and Follow-up on the 2008-2012 National Human Rights Program is mentioned. Nevertheless, more than six months after its creation this Subcommittee still lacks a working methodology and has yet to commence its own Evaluation and Follow-up work.

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