

**JOINT ALTERNATIVE REPORT OF THE CIVIL SOCIETY ORGANIZATIONS FOR THE  
SIXTH EXAMINATION OF MEXICO BEFORE THE CCPR, in Geneva, on the 16th  
and 17th of October 2019<sup>1</sup>**

**Human rights organizations that subscribe the joint Alternative Report:**

Acción Urgente para Defensores de Derechos Humanos A.C. (ACUDDEH)  
Action des chrétiens pour l'abolition de la torture (ACAT France)  
Alianza Sierra Madre A.C.  
Aluna Acompañamiento Psicosocial A.C.  
Asistencia Legal por los Derechos Humanos (Asilegal)  
Católicas por el Derecho a Decidir A.C.  
Centro de Derechos Humanos "Fray Bartolomé de Las Casas" (Frayba)  
Centro de Derechos Humanos "Fray Matías de Córdoba"  
Centro de Derechos Humanos Fray Vitoria  
Centro de Derechos Humanos "Miguel Agustín Pro Juárez" (Centro Prodh)  
Centro de Derechos Humanos de la Montaña "Tlachinollan"  
Centro de Justicia para la Paz y el Desarrollo (CEPAD)  
Centro de Investigación y Capacitación Propuesta Cívica (CIC, Propuesta Cívica)  
Colectivo Contra la Tortura y la Impunidad (CCTI)  
Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH)  
Comité de Defensa Integral de Derechos Humanos Gobixha (Código DH)  
Consortio para el Diálogo Parlamentario y la Equidad Oaxaca (Consortio Oaxaca)  
Equis, Justicia para las Mujeres  
Fundar, Centro de Análisis e Investigación  
Ideas Litigio Estratégico en Derechos Humanos A.C.  
Instituto de Derechos Humanos Ignacio Ellacuría, S.J. Universidad Iberoamericana - Puebla  
Instituto de Derecho Ambiental A.C. (IDEA)  
International Rehabilitation Council for Torture (IRCT)  
Observatorio Ciudadano Nacional Contra el Femicidio (OCNF)  
Organización Mundial Contra la Tortura (OMCT)  
Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER)  
Red por los Derechos de la Infancia en México (REDIM)  
Scalabrinianas Misión con Migrantes y Refugiados (SMR)  
Servicios y Asesoría para la Paz A.C. (Serapaz)  
Servicio Internacional para la Paz (SIPAZ)

Espacio OSC,

composed of: Acción Urgente para Defensores de los Derechos Humanos (ACUDDEH); Asociación Mundial de Radios Comunitarias, México (AMARC Mx); Casa de los Derechos de Periodistas A.C.; Casa del Migrante Saltillo; Centro Mexicano de Derecho Ambiental (CEMDA); Centro de Derechos Humanos de la Montaña Tlachinollan; Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh); Centro de Derechos Humanos Zeferino Ladrillero (CDHZL); Centro de Investigación y Capacitación Propuesta Cívica A.C. (CIC-PC); Centro Nacional de Comunicación Social (Cencos); Comité Cerezo México; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH); Comunicación e Información de la Mujer A.C.

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(CIMAC); Instituto de Derecho Ambiental A.C. (IDEA); JASS Asociadas por lo Justo; Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todas y Todos (RedTDT); SMR Scalabrinianas, Misión con Migrantes y Refugiados; Servicios y Asesoría para la Paz (Serapaz). El Espacio OSC está acompañado por Brigadas Internacionales de Paz (PBI) – Proyecto México.

Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos”  
(Red TDT),

comprised by 87 organizations in 23 states of the Mexican Republic: Academia Hidalguense de Educación y Derechos Humanos A.C. (ACADERH) (Hidalgo); Agenda LGBT (Estado de México); Alianza Sierra Madre, A.C. (Chihuahua); Aluna Acompañamiento Psicosocial, A.C. (Ciudad de México); Asistencia Legal por los Derechos Humanos, A.C. (AsiLegal) (Ciudad de México); Asociación Jalisciense de Apoyo a los Grupos Indígenas, A.C. (AJAGI) (Guadalajara, Jal.); Asociación para la Defensa de los Derechos Ciudadanos “Miguel Hidalgo” (Jacala Hgo.); Bowerasa, A.C. “Haciendo Camino” (Chihuahua, Chih.); Casa del Migrante Saltillo (Saltillo, Coah.); Católicas por el Derecho a Decidir, A.C. (Ciudad de México); Centro de Capacitación y Defensa de los Derechos Humanos e Indígenas, Asociación Civil (CECADDHI) (Chihuahua); Centro “Fray Julián Garcés” Derechos Humanos y Desarrollo Local, A.C. (Tlaxcala, Tlax.); Centro de Apoyo al Trabajador, A.C. (CAT) (Ciudad de México); Centro de Derechos de la Mujeres de Chiapas (San Cristóbal de Las Casas, Chis.); Centro de Derechos Humanos “Don Sergio” (Jiutepec, Mor.); Centro de Derechos Humanos “Fray Bartolomé de Las Casas”, A.C. (San Cristóbal de Las Casas, Chis.); Centro de Derechos Humanos “Fray Francisco de Vitoria O.P.”, A.C. (Ciudad de México); Centro de Derechos Humanos “Fray Matías de Córdoba”, A.C. (Tapachula, Chis.); Centro de Derechos Humanos “Juan Gerardi”, A.C. (Torreón, Coah.); Centro de Derechos Humanos “Miguel Agustín Pro Juárez”, A.C. (Ciudad de México); Centro de Derechos Humanos de la Montaña, Tlachinollan, A.C. (Tlapa, Gro.); Centro de Derechos Humanos de las Mujeres (Chihuahua); Centro de Derechos Humanos de los Pueblos del Sur de Veracruz “Bety Cariño”, A.C. (Tatahuicapan de Juárez, Ver.); Centro de Derechos Humanos Digna Ochoa, A.C. (Tonalá, Chis.); Centro de Derechos Humanos Paso del Norte (Cd. Juárez, Chih.); Centro de Derechos Humanos Toaltepeyolo (Orizaba, Veracruz); Centro de Derechos Humanos Victoria Diez, A.C. (León, Gto.); Centro de Derechos Humanos Zeferino Ladrillero (CDHZL) (Estado de México); Centro de Derechos Indígenas “Flor y Canto”, A.C. (Oaxaca, Oax.); Centro de Derechos Indígenas A.C. (Bachajón, Chis.); Centro de Investigación y Capacitación Propuesta Cívica A.C. (Propuesta Cívica) (Ciudad de México); Centro de Justicia para la Paz y el Desarrollo, A.C. (CEPAD) (Guadalajara, Jal.); Centro de los Derechos del Migrante (Ciudad de México); Centro de Reflexión y Acción Laboral (CEREAL-Guadalajara) (Guadalajara, Jal.); Centro Diocesano para los Derechos Humanos “Fray Juan de Larios”, A.C. (Saltillo, Coah.); Centro Juvenil Generando Dignidad (Comalcalco, Tabasco); Centro Kalli Luz Marina (Orizaba, Ver.); Centro Mexicano de Derecho Ambiental (CEMDA) (Ciudad de México); Centro Mujeres (La Paz, BCS.); Centro Regional de Defensa de DDHH José María Morelos y Pavón, A.C. (Chilapa, Gro.); Centro Regional de Derechos Humanos “Bartolomé Carrasco”, A.C. (BARCA) (Oaxaca, Oax.); Ciencia Social Alternativa, A.C. KOOKAY (Mérida, Yuc.); Ciudadanía Lagunera por los Derechos Humanos, A.C. (CILADHAC) (Torreón, Coah.); Colectivo contra la Tortura y la Impunidad (CCTI) (Ciudad de México); Colectivo Educación para la Paz y los Derechos Humanos, A.C. (CEPAZDH) (San Cristóbal de Las Casas, Chis.); Comisión Ciudadana de Derechos Humanos del Noroeste (Mexicali, Baja California); Comisión de Derechos Humanos y Laborales del Valle de Tehuacán, A.C. (Tehuacán, Pue.); Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C. (COSYDDHAC) (Chihuahua, Chih.); Comisión Independiente de Derechos Humanos de Morelos, A.C. (CIDHMOR) (Cuernavaca, Mor.); Comisión Regional de Derechos Humanos “Mahatma Gandhi”, A.C. (Tuxtepec, Oax.); Comité Cerezo (Ciudad de México); Comité Cristiano de Solidaridad Monseñor Romero (Ciudad de México); Comité de Defensa de las Libertades Indígenas (Palenque, Chis.); Comité de Defensa Integral de Derechos Humanos Gobixha A.C. (CODIGODH) (Oaxaca, Oax.); Comité de Derechos Humanos “Fr. Pedro Lorenzo de la Nada”, A.C. (Ocosingo, Chis.); Comité de Derechos Humanos “Sierra Norte de Veracruz”, A.C. (Huayacocotla, Ver.); Comité de Derechos Humanos Ajusco (Ciudad de México); Comité de Derechos Humanos de Colima No Gubernamental A. C. (Colima, Col.); Comité de Derechos Humanos de Comalcalco, A.C. (CODEHUCO) (Comalcalco, Tab); Comité de Derechos Humanos de Tabasco, A.C. (CODEHUTAB) (Villahermosa, Tab); Comité de Derechos Humanos y Orientación Miguel Hidalgo, A.C. (Dolores Hidalgo, Gto.); Comité de Familiares de Detenidos Desaparecidos “Hasta Encontrarlos” (Ciudad de México);

Comité Sergio Méndez Arceo Pro Derechos Humanos de Tulancingo, Hgo A.C. (Tulancingo, Hgo.); Consultoría Técnica Comunitaria AC (CONTEC) (Chihuahua); El Caracol, A.C. (Ciudad de México); Estancia del Migrante González y Martínez, A.C. (Querétaro, Qro.); Frente Cívico Sinaloense. Secretaría de Derechos Humanos (Culiacán, Sin.); Fundación para la Justicia y el Estado Democrático de Derecho (Ciudad de México); Indignación, A.C. Promoción y Defensa de los Derechos Humanos (Mérida, Yuc.); Instituto de Derechos Humanos Ignacio Ellacuría, S.J. Universidad Iberoamericana- Puebla (Puebla, Pue.); Instituto Mexicano de Derechos Humanos y Democracia (Ciudad de México); Instituto Mexicano para el Desarrollo Comunitario, A.C. (IMDEC) (Guadalajara, Jal.); Instituto Tecnológico y de Estudios Superiores de Occidente. Programa Institucional de Derechos Humanos y Paz (Guadalajara, Jal.); Justicia, Derechos Humanos y Género, A.C. (Ciudad de México); La 72, Hogar-Refugio para Personas Migrantes (La 72) (Tenosique, Tabasco); Mujeres Indígenas por la Conservación, Investigación y Aprovechamiento de los Recursos Naturales, A.C. (CIARENA) (Oaxaca); Oficina de Defensoría de los Derechos de la Infancia A.C. (ODI) (Ciudad de México); Promoción de los Derechos Económicos, Sociales y Culturales (PRODESCAC) (Estado de México); Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC) (Ciudad de México); Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER) (Ciudad de México); Red Solidaria de Derechos Humanos, A.C. (Morelia, Michoacán); Respuesta Alternativa, A.C. Servicio de Derechos Humanos y Desarrollo Comunitario (San Luis Potosí); Servicio, Paz y Justicia de Tabasco, A.C. (SERPATAB) (Villahermosa, Tab.); Servicios de Inclusión Integral, A.C. (SEIINAC) (Pachuca, Hgo.); Tequio Jurídico A.C. (Oaxaca, Oax.); VIHAs de Vida (Guadalajara, Jal.); Voces Mesoamericanas, Acción con Pueblos Migrantes A.C. (San Cristóbal de las Casas, Chiapas).

## 1. Introduction

The present document is the joint effort of several civil society organizations, both national and international, who in a coordinated fashion have identified a series of **structural and priority problematics** that cross the human rights crisis that still affects the Mexican Republic. Among these problematics we find some, such as impunity, militarization and the lack of adequate consultations to the indigenous peoples, that sadly have been present in the Mexican context for decades, although recently they have acquired particular characteristics, for example, with the creation of the National Guard. Other topics, like the General Prosecutor's Office (Fiscalía General de la República) or the indigenous consultations, are relatively novel in the Mexican scene, although they are connected to previous problematics or human rights violations pointed at by this Committee in previous occasions.

In this sense, we also highlight the lack of observance and implementation of the **recommendations** received by the Mexican State from different international instances, especially those belonging to the United Nations.

Since the beginning of 2019, Mexico has already been examined by the Committee Against Torture (CAT) and the Committee on the Elimination of Racial Discrimination (CERD). Many of the organizations that sign this Alternative Report also sent information to said committees through two joint alternative reports<sup>2</sup> that were used and mentioned both during the dialogue between the CAT and the CERD with the Mexican delegation in Geneva, as well as in the Final Observations and Recommendations documents. However, the exercise that has inspired the most the preparation of this Alternative Report is the Joint Report for the Third Universal Periodic Report of Mexico.<sup>3</sup>

Just like in that occasion, and due to the amplitude of the CCPR's mandate according to the International Covenant on Civil and Political Rights, the organizations that participate in this process have decided to elaborate this common document (which includes the transversal problematics and concerns to the very different topics that we work in our organizations), and, on the other hand, to also present a series of **Thematic Reports** that cover Articles 1 to 27 of the International Covenant, as well as the list of issues, updating the information included in the shadow reports already mentioned (sent to the UPR, CAT and CERD) and filling some of the holes, imprecisions or contradictions of the official report sent by the State. Each Thematic Report has been prepared by a group of expert organizations in the topic at hand: human rights defenders and journalists; States of exception and Right to life; freedom of speech, association and political participation; gender violence; equality and non discrimination, and rights of the people belonging to minorities; enforced disappearance and disappearance committed by particular individuals; rights of the migrant and refugee population.

## 2. Impunity

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<sup>2</sup> Informe Sombra de las organizaciones de la sociedad civil de México al Comité contra la Tortura de la ONU (2012-2019) Spanish version available at: <https://redtdt.org.mx/?p=13241>

Informe Alternativo Conjunto para el examen de México ante el Comité para la Eliminación de la Discriminación Racial de Naciones Unidas (CERD). Spanish press note and link to the UN website available at: <https://redtdt.org.mx/?p=13869>

<sup>3</sup> Informe conjunto para el Tercer Examen Periódico Universal de México por organizaciones de la sociedad civil mexicanas 2018. The bilingual version is available at: <https://colectivoepu.mx/>

The former Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, in his 2014 report on Mexico, documented a context of “**systemic and endemic**” impunity<sup>4</sup>. As the former Special Rapporteur on torture, Juan E. Méndez, mentioned the same year, “there are structural flaws, repeated on a federal and state level, that strengthen this impunity”.<sup>5</sup>

The almost absolute impunity constitutes the transversal axis that perpetuates violence and human rights violations. This lacerating reality grows worse in the case of violences suffered by sectors of society in a situation of **economic or social inequality**, and/or who are exposed to greater levels of vulnerability.

According to official statistics, in 2017 only 10.4% of all crimes were reported and a criminal investigation was started in 65.3% of all criminal complaints.<sup>6</sup> Some of the **main reasons not to report** are believing it is a waste of time and feeling distrust towards the authorities.<sup>7</sup> The investigations that resulted in the recovery of goods, the reparation of damage and/or bringing someone before a judge represent approximately 1% of the committed crimes.<sup>8</sup>

In 2008, it was published the **Constitutional reform in criminal justice matters**. Its main objectives are included in Article 20 of the Political Constitution of the United States of Mexico and can be translated into: clarification of criminal offences, protection of innocent people, sanction of culprits, and comprehensive reparation for the victims, which constitute the main elements of any justice system in a democratic State, that, if unattended, result in impunity.

The reform faced several challenges, such as corruption or the countless human rights violations in the processes of investigation, procurement and administration of justice, which is why its implementation was planned in a progressive manner. After 11 years of said reform, and 3 years after its application in the whole country, we are dealing with severe obstacles in terms of its implementation which still generate human rights violations, especially in the states. Moreover different normative, jurisprudential and institutional modifications have been made in the **new penal system** that are contrary to the postulates and the logic of the accusatory model of the 2008 reform, perpetuating its ineffectiveness.<sup>9</sup>

The study “Findings 2018, Follow up and Evaluation of the Criminal Justice System” (“Hallazgos 2018, Seguimiento y Evaluación del Sistema de Justicia Penal”) by México Evalúa, an organization that for 6 years has assessed the implementation of the penal system, shows devastating figures. In its National Ranking of Advancement in the Consolidation of the Criminal Justice System they evaluate the institutional actions generated in the federative entities towards the **consolidation of the 2008 reform**, according to their level of development and formalization, establishing a minimum score of 800 and an ideal score of 1000, reachable for 2018. From the 32 federative entities, none has reached the expected minimum for 2018 and only 12 reach 400 points or more, while the remaining

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<sup>4</sup> The Special Rapporteur also mentions that the present impunity has its precedents in the impunity that has been prevalent in the State crimes of the “Guerra Sucia” of the 1970s. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns: Mission to Mexico*, 28th of April 2014. Available at: <https://digitallibrary.un.org/record/799246?ln=es>

<sup>5</sup> *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez: Mission to México*, 29th of December 2014. Available at: <https://digitallibrary.un.org/record/793905?ln=es>

<sup>6</sup> Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública (ENVIPE) 2018, Principales Resultados, p. 29, [https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018\\_presentacion\\_nacional.pdf](https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018_presentacion_nacional.pdf).

<sup>7</sup> Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública (ENVIPE) 2018, Principales Resultados, p. 33, [https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018\\_presentacion\\_nacional.pdf](https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018_presentacion_nacional.pdf).

<sup>8</sup> Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública (ENVIPE) 2018, Principales Resultados, p. 32, [https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018\\_presentacion\\_nacional.pdf](https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018_presentacion_nacional.pdf).

<sup>9</sup> For example, we will later reference the pretrial detention due to a Constitutional reform approved in 2019.

entities are far behind in the consolidation of the penal system, which, according to México Evalúa, should have been gained by 2016.<sup>10</sup>

Querétaro is the entity with a better assessment, with a score of 625, while Guerrero maintains once again the worst score three years in a row with a total of 211 points, which translates into the perpetuation of **human rights violations**. A great part of the explanation of this lag is the deficit that the institutions in charge of its application still present. Although they operate under the new system, they still perpetuate the deficiencies of the previous system, such as the lack of adequate resources, lack of inter-institutional coordination, irregularities that go from omissions and negligence to corruption and collusion, and, because of all that, impunity. According to the **Impunity Index in the Criminal Justice System** of México Evalúa, the national average of impunity in the institutions in charge of applying the new penal system is 96.1%, which is directly linked to the lack of consolidation of the new system of penal justice.<sup>11</sup>

Regarding severe human rights violations, impunity is almost absolute. The **Special Prosecutor's Office for the Investigation of the Crime of Torture** of the General Prosecutor's Office (FGR), until February 2019, had 4,152 preliminary investigations and 662 investigation files open or in process, that is, 4,814 investigations for the crime of torture.<sup>12</sup> However, from January 2018 to January 2019, the same Prosecutor's Office only took penal action (brought charges before a judge) in 2 occasions.<sup>13</sup> In the third Universal Periodic Review (UPR) of Mexico in November 2018, the State informed the Human Rights Council that from 2013 to 2018 there had been 36 **federal sentences for torture**.<sup>14</sup> Actually, this number represents only 16 criminal cases, including several with a judgement of acquittal, and almost all of the guilty verdicts were revoked in the appeal.<sup>15</sup>

In matters of torture, we remind that the **Istanbul Protocol** demands that the investigation is undertaken by independent professionals and that the experts that are going to document the sequelae of a possible case of torture, besides independence, have an adequate training and knowledge to do their job following the norms and principles that this international standard establishes. However, a long list of international organisms, as well as organizations such as Amnesty International (2014, 2015)<sup>16</sup>, Centro de Derechos Humanos Fray Bartolomé de las Casas (2012)<sup>17</sup>, ACAT France (2012)<sup>18</sup>, OMCT (2012)<sup>19</sup> and Colectivo contra la Tortura y la Impunidad<sup>20</sup> have revealed that the **technical quality** of the medical-psychological examinations and judgements performed by the State experts (who usually lack structural independence) is extremely deficient, especially because of the omission of information, the lack of review of previous pertinent medical

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<sup>10</sup> México Evalúa. *Hallazgos 2018, Seguimiento y Evaluación del Sistema de Justicia Penal*, pág. 110. Available at:

<https://www.mexicoevalua.org/2019/08/07/hallazgos-2018-seguimiento-evaluacion-del-sistema-justicia-penal-en-mexico/>

<sup>11</sup> *Ibid.*

<sup>12</sup> Centro Prodh (2019) *Patrones de Impunidad: Deficiencias en la investigación de violaciones a derechos humanos y alternativas en el Poder Judicial*, p. 34. Quoting the request for information to the General Prosecutor's Office: 0001700029019.

<sup>13</sup> *Ibid.*, quoting the request for information to the General Prosecutor's Office: 0001700029219.

<sup>14</sup> Minute 1:16, [webtv.un.org/live-now/watch/mexico-review-31st-session-of-universal-periodic-review/5858796224001/?term=](http://webtv.un.org/live-now/watch/mexico-review-31st-session-of-universal-periodic-review/5858796224001/?term=).

<sup>15</sup> Table of sentences informes in the third UPR of Mexico, publicly available as a request of information to the Supreme Court of Justice: 0330000226918.

<sup>16</sup> Amnistía Internacional (2014). *Fuera de control, Tortura y otros malos tratos en México*.

Amnistía Internacional (2015). *Promesas en el papel. Impunidad Diaria, la Epidemia de la Tortura en México*.

<sup>17</sup> Centro de Derechos Humanos Fray Bartolomé de las Casas A.C. (2012). *De la Crueldad al Cinismo*.

<sup>18</sup> Action des chrétiens pour l'abolition de la torture ACAT-France (2012). *En Nombre de la Guerra contra la Delincuencia, un estudio del fenómeno de la tortura en México*.

<sup>19</sup> Organización Mundial contra la Tortura (2012). *Situación de la Tortura en México*.

<sup>20</sup> Colectivo contra la Tortura y la Impunidad (2017). *Implementación del Protocolo de Estambul: Arma de Impunidad en México*.

certifications or documents, the correlation of the psychological and physical impacts with the narrative of the facts, in the use of decontextualized psychological evaluations and in the formulation of superficial conclusions. Moreover, the proceedings of evaluation by the superficial personnel of the General Attorney's Office (PGR, currently the General Prosecutor's Office or FGR) are usually retraumatizing for the victims and do not comply with the rules of a collegiate and interdisciplinary work. In some cases, the **training** of the medical personnel is inexistent and they limit themselves to perform routine medical check ups. In this sense, principles related to investigation, impartiality, independence, promptness, privacy, security, trust and compassionate behaviour are not being applied. The report of the Interdisciplinary Group of Independent Experts (GIEI) points out the lack of awareness on the part of the experts of the most recent manuals about investigation and documentation of torture and mistreatment.<sup>21</sup>

The **main errors and omissions** in terms of the criminal investigation of torture and the appliance of directives of the Istanbul Protocol may be grouped in:

- *Principle of exhaustivity*: In many cases, the investigation of torture is reduced to the performance of the medical psychological dictamination, without taking into account other key forms of investigating torture.
- *Principle of thoroughness*: Related to the previous point, it is frequent that the authorities in charge of the investigation do not collect additional evidence or testimonies to investigate the reports and only consider that there is torture if there are physical injuries or that torture is confirmed if there is PTSD.
- *Principle of competence*: The technical quality of the medical psychological dictaminations is put aside to be evaluated in terms of the institutional affiliation of the experts and the forensic evidences provided by medical and psychological experts, ministerial police and others, are not coordinated and properly integrated.
- *Principle of promptness*: The victims have to wait for months or years before an evaluation. Most times, the investigation of torture under the directions of the Istanbul Protocol has to be demanded by the victim and his or her legal assistance, who also have to find proposals of independent experts.

On the other hand, in their last conclusions and recommendations the **Committee Against Torture** highlights the need of establishing measures so that the victims access to processes of **reparation and rehabilitation** process. In this sense, the State must make a comprehensive and long-term approach, and make sure that the specialized services for victims of torture are available, appropriate and easily approachable. These have to take into account the culture, the particularities, the history and the background of the victims.

In terms of **enforced disappearance**, from 2007 to 2017, 34,674 people were reported as disappeared (most of them during or after 2013), including 8,982 women, 364 foreigners and 7,908 people under 20.<sup>22</sup> From 2006 to August 2017, the General Attorney's Office of the Republic (PGR) prosecuted only 3.18% of its disappearance cases<sup>23</sup> and the State informed of 10 federal sentences

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<sup>21</sup> Cfr. <http://www.oas.org/es/cidh/actividades/giej/GIEI-InformeAyotzinapa2.pdf>, p. 603-604.

<sup>22</sup> Registro Nacional de Datos de Personas Extraviadas o Desaparecidas (RNPED), <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>

<sup>23</sup> General Attorney's Office of the Republic. Requests for information: 0001700295117, 0001700121517, 0001700018017, 0001700018117 y 0001700114417.

from June 2001 to January 2018.<sup>24</sup> As the former Special Rapporteur on Torture highlighted, “no soldier ha[d] been condemned for enforced disappearance until August 2015 despite the large number of cases of disappearances allegedly committed by members of the armed forces”.<sup>25</sup>

The cases of severe human rights violations in **Jalisco** are kept in almost complete impunity. The absence of exhaustive, serious and efficient investigations is highlighted by the fact that since the **legal classification of the crime of enforced disappearance** in the Criminal Code of the state of Jalisco in October 2013 and the entry into force of the **General Law on Disappearance** in January 2018, there has been only one guilty verdict for the crime of disappearance committed by private individuals and one guilty verdict for the crime of enforced disappearance<sup>26</sup>, where the people found guilty were condemned to a term of imprisonment of 12 years.<sup>27</sup> On the other hand, the cases of **torture** remain in complete impunity. According to the information provided by the Judiciary Council of the state of Jalisco through requests for information, on a state level there are no sentences for the commission of this crime.

In the month of September 2018, it was discovered in the state of Jalisco that the local authorities were keeping **322 unidentified bodies** in two cooling trailers, piled up and kept in an inhuman and degrading way.<sup>28</sup> This situation emerges from a context of a severe forensic emergency, related to the accumulation of bodies of unidentified deceased people, as a consequence of the lack of effective implementation of a comprehensive policy to combat disappearance in recent years, a lack of coordination between local authorities, as well as a meaningful increase of violence in the state.

Moreover, from 2006 to 2016 state authorities cremated over 1,500 bodies of unidentified dead people, 1,430 of whom did not count with a sample drawing for **genetic tests**, which generated uncertainty in thousands of family members of disappeared persons, and concern about never knowing the truth about their fate and whereabouts.<sup>29</sup> It must be noted that most cremated bodies were lodged in the **common graves** of the municipal cemeteries, and from 2006 to the 31st of October 2018 140 cremated bodies have been delivered to their families, without the genetic evidence that can confirm their identity.<sup>30</sup> Finally, it should be underlined that from 1997 to 2017 in Jalisco 947 unidentified bodies of deceased people were donated to academic institutions.<sup>31</sup>

According to official numbers, from 2014 to 2016, there is only evidence of 49 sentences in a total of 5,824 **crimes committed against migrants** in the states of Chiapas, Oaxaca, Tabasco, Sonora, Coahuila and federally, which constitutes only the 0.84%. In this period, authorities were the main perpetrators in approximately 25% of the crimes committed against migrants, especially the Federal

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<sup>24</sup> Information presented by Mexico to the Committee on Enforced Disappearances in February 2018: [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_AFR\\_MEX\\_30336\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_AFR_MEX_30336_S.pdf).

<sup>25</sup> Follow-up report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his visit to Mexico, 17th of February 2017. Spanish only. Doc. ONU A/HRC/34/54/Add.4, par. 29. [Translation by Red TDT]

<sup>26</sup> Fiscalía del Estado de Jalisco. Expediente: LTAIPJ/FE/1773/2019.

<sup>27</sup> Cfr. Juan Levario (2019), “Aplican primera sentencia por desaparición forzada en Jalisco”, *El Diario NTR*, 22nd January, Available at: [https://www.ntrguadalajara.com/post.php?id\\_nota=117631](https://www.ntrguadalajara.com/post.php?id_nota=117631).

<sup>28</sup> Raúl Torres (2018), “Familiares de desaparecidos demandan ver cuerpos de tráiler de la muerte”, *El Universal*, 22nd of September. Available at: <https://www.eluniversal.com.mx/estados/familiares-de-desaparecidos-demandan-ver-cuerpos-de-trailer-de-la-muerte>

<sup>29</sup> Centro de Justicia Para la Paz y el Desarrollo, A.C. (2019) Incineraciones de cuerpos no identificados. Crímenes Sin Justicia, p. 30-31, <https://drive.google.com/file/d/11Rk4aaylze68OoyO-6mWhlrWazus76f/view>.

<sup>30</sup> Instituto Jalisciense de Ciencias Forenses, Oficio IJCF/UT/1329/2018, Expediente UT/542/2018.

<sup>31</sup> Instituto Jalisciense de Ciencias Forenses, Oficio IJCF/UT/1010/2019, Expediente UT/417/2019.

Police.<sup>32</sup> In terms of **crimes affecting almost exclusively children**<sup>33</sup>, according to official data from 2015, approximately only 1.4% results in a sentence.<sup>34</sup>

During the period 2012-2018, which corresponds to the presidency of Enrique Peña Nieto, 161 **human rights defenders** were murdered<sup>35</sup> and the organization Article 19 documented 2,530 attacks against **journalists**, including 47 homicides.<sup>36</sup> This situation continues even with the new government that took office on the 1st of December 2018. From January to August 2019, it has been reported the murder of 13 journalists and at least 18 human rights defenders.<sup>37</sup> Three of them were beneficiaries of protection measures of the Federal Mechanism for human rights defenders and journalists.<sup>38</sup> Currently, they face intimidation and harassment, smear campaigns, threats, physical and digital attacks, arbitrary detentions, criminalization, torture, disappearance, displacement and murder. These aggressions are still being designed and executed mainly by State agents and, on a lesser degree, by private individuals, such as security forces of companies and organized crime.<sup>39</sup> This puts Mexico in the map once again as one of worst countries for the exercise of the defense of human rights and the journalistic activity in the world.

These attacks and crimes committed against human rights defenders and journalists continue to be in impunity, since authorities have not investigated the material or intellectual culprits up until now. The **general context of impunity** has led to 99% of crimes against human rights defenders and journalists going unsolved. This is because the people in charge of carrying out the investigation do not do so, or because there is collusion between authorities and perpetrators.

From more than a thousand investigations of crimes committed against journalists (2010 to beginning of 2019) carried out by the **Special Prosecutor's Office of Freedom of Speech** (FEADLE), only in 12 cases there has been a guilty verdict, and among those, only one has to do with a crime of homicide.<sup>40</sup> This means that the 131 journalists murdered in Mexico and 21 disappeared from 2000 to 2019<sup>41</sup> are still in impunity, which amounts to 99.2% of the crimes not being investigated and the perpetrators not being sanctioned. This reveals that the institutions in charge of procurement and administration of justice do not work adequately to identify and process the culprits.<sup>42</sup>

As the **Special Rapporteur on the Situation of Human Rights Defenders**, Michel Forst, during his visit to Mexico in January 2017, as long as impunity is a generalized constant, there will not be a real improvement in the situation of human rights defenders and journalists. In this context, he urged the

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<sup>32</sup> Ximena Suárez, Andrés Díaz, José Knippen y Maureen Meyer (2017) *Acceso a la justicia para personas migrantes en México. Un derecho que existe sólo en el papel*, p. 4, [https://www.wola.org/wp-content/uploads/2017/07/Accesoalajusticia\\_Versionweb\\_Julio20172.pdf](https://www.wola.org/wp-content/uploads/2017/07/Accesoalajusticia_Versionweb_Julio20172.pdf).

REDODEM (2014), *Migrantes invisibles, violencia tangible*, p. 37, 41, <http://www.simmexico.org.mx/wp-content/uploads/2015/07/informe-migrantes-2014.pdf>.

REDODEM (2016), *Migrantes en México: recorriendo un camino de violencia*, p. 103, <http://migrare.org.mx/book/informe-2016-migrantes-en-mexico-recorriendo-un-camino-de-violencia/>.

<sup>33</sup> Such as child trafficking, child abduction, rape, incest, corruption of minors, prostitution of minors and child pornography.

<sup>34</sup> Analysis of the official data available in Censos de Procuración e Impartición de Justicia Estatal 2016 [http://www.inegi.org.mx/Sistemas/Olap/Proyectos/bd/censos/gobierno2016/CNPJE2016/PresDelitos.asp?s=est&prov=cnpje2016\\_presdelitos:p=cnpje2016](http://www.inegi.org.mx/Sistemas/Olap/Proyectos/bd/censos/gobierno2016/CNPJE2016/PresDelitos.asp?s=est&prov=cnpje2016_presdelitos:p=cnpje2016) y <http://www.beta.inegi.org.mx/proyectos/censosgobierno/estatal/cnaje/2016/> Analysis performed by Red por los Derechos de la Infancia en México (REDIM), <http://www.derechosinfancia.org.mx/>.

<sup>35</sup> Red TDT (2018), *Desde la memoria, la esperanza*, <http://laoms.org/informe-memoria-esperanza/>.

<sup>36</sup> <https://articulo19.org/periodistasasesinados/>

<sup>37</sup> Information provided by Propuesta Cívica, A.C.: <https://propuestacivica.org.mx/>

<sup>38</sup> Rubén Pat, 2018, Noé Jiménez Pablo, 2019, Rafael Murúa Manríquez, 2019 y Francisco Romero Díaz, 2019.

<sup>39</sup> Mecanismo Federal de Protección para Personas Defensoras de Derechos Humanos y Periodistas (2019), Informe mensual de actividades, marzo. Available at: <https://bit.ly/2OSwLSx>

<sup>40</sup> Fiscalía General de la República, informe estadístico, marzo 2019. Available at: <https://bit.ly/2GIO6XV>

<sup>41</sup> *Ibid.*, Article 19.

<sup>42</sup> Propuesta Cívica, Justicia ausente. Diagnóstico Fiscalía Especial Delitos cometidos contra la Libertad de Expresión, (2018), p. 14. Available at: <https://bit.ly/2OVkGvX>

Mexican State to inform about the current state of the investigations of crimes committed against both populations.<sup>43</sup>

Impunity also characterizes **violations against economic, social, cultural and environmental rights**, including the behaviour of private and public companies. As was expressed by a coalition of 84 NGOs and networks before the CESCR in 2017, impunity is “heightened [...] when the lawsuit is between a victim or community against a company and/or the State that protects the interests of the company, since there is an imbalance of strength between the actors”; even if the affected communities (many times, indigenous) obtain favourable resolutions, “the authorities of the Executive branch, on the federal or the local level, have systematically disobeyed or hindered the execution of the court decisions”.<sup>44</sup>

The lack of punishment before the control and dispossession of large extensions of land for forest, mineral, monoculture, water and other types of exploitation has prompted the affected communities to generate strategies of defense of their rights, risking their security.<sup>45</sup> From July 2016 to December 2017, there were 88 attacks against human rights defenders of environmental rights, including 17 cases of homicide, where 29 people were murdered.<sup>46</sup> The unpunished violence provokes, for many victims and communities, **internal forced displacement**. In 2016, 29 mass displacements were documented, with an impact on at least 23,169 people in 12 states: Chiapas, Chihuahua, Durango, Guerrero, Hidalgo, Jalisco, Michoacán, Oaxaca, Sinaloa, Tamaulipas, Veracruz and Zacatecas.<sup>47</sup> Women and indigenous communities are the most affected sectors of the population.<sup>48</sup>

On the other hand, as a consequence of the negative or negligence of the authorities, it is very common that victims, their families or their representatives make their own investigation diligences, are revictimized, and, in many cases, their integrity is in danger, which has led to the murder of several **family members**, including a dozen mothers and fathers of disappeared people.<sup>49</sup>

Finally, it is important to underline that the percentage of crimes that results in the **prosecution and sanction** of the true culprit is even lower than the quoted figures throughout this chapter, due to the countless cases of **arbitrary detentions and criminal cases** against innocent people.<sup>50</sup> According to Amnesty International, based on the documentation of cases and interviews with State agents, the

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<sup>43</sup> Preliminary report of Michel Forst available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E>

<sup>44</sup> *Joint submission Mexican CSOs and networks in coalition on ESCR- Full report (spanish)* (2017). Available at: “CESCR - International Covenant on Economic, Social and Cultural Rights: 63 Session (12 Mar 2018 - 29 Mar 2018): México: Info from Civil Society Organizations (for the session)”, p. 160, 161, [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MEX/INT\\_CESCR\\_CSS\\_MEX\\_28752\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MEX/INT_CESCR_CSS_MEX_28752_S.pdf). (Translation Red TDT)

<sup>45</sup> Cfr. Red TDT (2017), *La Esperanza no se agota. Situación de las personas defensoras de derechos humanos durante la Presidencia de Enrique Peña Nieto*, p. 44, <http://redtdt.org.mx/acciondefensores/index.php/2017/09/05/personas-defensoras-en-el-periodo-de-epn/#page/6>.

<sup>46</sup> Centro Mexicano de Derecho Ambiental (CEMDA) (2017), *Informe anual sobre la situación de personas defensoras de los derechos humanos ambientales en México*, p. 17-18, <http://www.cemda.org.mx/wp-content/uploads/2018/03/DERECHOS-HUMANOS-AMBIENTALES.pdf>.

<sup>47</sup> Data provided by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH). These and other data are available at: <http://cmdpdh.org/temas/desplazamiento-interno/>.

<sup>48</sup> <http://cmdpdh.org/temas/desplazamiento-interno/>.

<sup>49</sup> Paris Martínez (2017) *Ellas y ellos son las madres y padres asesinados por buscar a sus hijos desaparecidos*, *Animal Político*, 15th of May. Available at: <https://www.animalpolitico.com/2017/05/madres-padres-hijos-desaparecidos/>.

<sup>50</sup> Centro Prodh (2015), *La magnitud de la crisis de derechos humanos en México* (2015), [http://www.centroprodh.org.mx/index.php?option=com\\_docman&task=doc\\_details&gid=214&Itemid=28&lang=es](http://www.centroprodh.org.mx/index.php?option=com_docman&task=doc_details&gid=214&Itemid=28&lang=es). Open Society Justice Initiative (2016, 2ª ed.), *Atrocidades innegables: confrontando crímenes de lesa humanidad en México*, p. 16, <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-esp-2nd-edition.pdf>.

Mexican police “arbitrarily arrests people as a routine to extort them. Moreover, agents usually put false proof as an attempt to prove that they are doing something to deal with crime...”.<sup>51</sup> That is, the problem of impunity in Mexico has two sides: on the one hand, the overwhelming majority of culprits remain in impunity. On the other, the criminal justice system is full of fabricated charges against innocent people, especially poor people.<sup>52</sup>

In light of the prevalence of arbitrary detentions in Mexico, we are deeply concerned that on the 12th of April 2019 Article 19 of the Mexican Constitution was reformed<sup>53</sup> to increase the list of crimes that deserve **pretrial detention**, that is, crimes where the judicial authority is not allowed to make an individualized analysis of the case, but by Constitutional mandate is forced to automatically order pretrial detention for everyone accused of such crimes. The list includes non violent crimes, such as the most imputed crimes on a federal level.<sup>54</sup> The foreseeable results of this reform are catastrophic, since it will imply the automatic imprisonment of countless victims of arbitrary detentions, especially people of scarce resources (and, thus, limited or null access to an adequate defense against fabricated accusations). Moreover, this is a factor that contributes to impunity, since it discourages criminal investigation: it suffices with building an accusation against someone so that the person goes to jail for a long period of time, and even if s/he eventually is acquitted due to lack of evidence, it would be after suffering a brutal punishment.<sup>55</sup>

For years, **victims** had been ignored by Mexican authorities in the processes of justice, reparation and attention in general. In 2013, thanks to the movement of victims in itself, the **General Law of Victims** was created, and with it, the National System of Attention to Victims, the **Executive Commission of Attention to Victims** (CEAV) and the state commissions, institutions that are in charge of victim attention in the country.

Since its creation, the CEAV and the state commissions presented several obstacles and deficiencies which, despite the series of reforms in the matter, still exist. The lack of real political will for victim attention, the shortage of funds, the bureaucratization of the proceedings, the lack of trained and sensitized personnel, are some of the elements that keep preventing the existence of an adequate victim assistance.

The new Mexican government has shown more openness towards dialogue and a public commitment towards the victims. However, significant change has not been achieved and, on the contrary, it seems that the transition, the cuts in personnel and **austerity policies** are factors that are putting at risk the real attention to victims. In June 2019, Jaime Rochín, former Executive Commissioner of Attention to Victims, quit his job and pointed as one of his main concerns the

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<sup>51</sup> Amnistía Internacional (2017), *Falsas sospechas: detenciones arbitrarias en México* (2017), <https://www.amnesty.org/es/documents/amr41/5340/2017/es/>.

<sup>52</sup> Amnistía Internacional, Informe Anual 2017/18, p. 313, <https://www.amnesty.org/es/documents/pol10/6700/2018/es/> (“The arbitrary detentions and confinements were still generalized.... The arbitrary detentions many times included putting false evidence, generally guns and illegal drugs, on the part of the agents in charge of enforcing the law. The authorities seemed to have as an objective historically discriminated people, especially young men that lived in poverty.”) (Translation Red TDT)

<sup>53</sup> CPEUM, art. 19, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_090819.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_090819.pdf).

<sup>54</sup> Cfr. Poder Judicial de la Federación, Informe anual de labores 2018 (versión ejecutiva), p. 540, [http://www.cjf.gob.mx/resources/InformeAnual/2018/Informe\\_Anuar\\_Labores\\_2018.pdf](http://www.cjf.gob.mx/resources/InformeAnual/2018/Informe_Anuar_Labores_2018.pdf).

<sup>55</sup> We should not forget that the pretrial detention goes directly against the design of the new system of criminal justice, which contemplates a low standard to initiate a criminal trial precisely because the use of the pretrial detention should be the exception to the law. Código Nacional de Procedimientos Penales, párr. 316, [http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP\\_250618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP_250618.pdf).

austerity policy of the new administration, which is directly translated into a reduction of the quality of the attention.<sup>56</sup>

The lack of access to this victim attention is mostly suffered by **vulnerable groups** since the commissions still do not attend the multiple realities and contexts of the victims. One example of this are indigenous peoples who not only face a Western gaze that does not represent them, but also usually have to deal with a lack of interpreters, the long distance between the institutions and their communities, as well as the lack of the necessary resources to constantly go to the city to report and follow up on the process of registry in the National Registry of Victims (RENAVI).

In entities such as **Guerrero** this situation is even more catastrophic because of the severe crisis of violence that the state is living and that has left a countless number of victims, as well as a collapse of the institutions. The State Executive Commission of Attention to Victims of Guerrero (CEEAVG) follows up on cases since the period known as “Guerra Sucia”: murders, kidnappings and, mostly, enforced disappearances. However, it does not even cover the economic assistance for the victims, much less does it provide a comprehensive assistance that would also attend psychosocial impacts, so the victims are virtually alone.<sup>57</sup>

### 3. Militarization

The participation of the military in **police tasks** during the last 12 years has not been efficient as a **strategy of public security**; among the expressions of the increase of violence in these years,<sup>58</sup> the yearly rate of homicides has reached historical levels in the period covered by this report.<sup>59</sup> At the same time, militarization has increased the illegal and indiscriminate use of force, arbitrary deprivation of liberty, arbitrary executions, enforced disappearances and torture.<sup>60</sup> This has been documented and pointed out by several instances of the UN and the OAS, including emblematic sentences of the Inter-American Court.<sup>61</sup>

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<sup>56</sup> However, the collapse of the CEAV and the state commissions is not new. In the last decade, more than 200,000 people have been officially reported as murdered, and 40,000 as disappeared, and that is without taking into account the victims of other crimes. From these alarming numbers, very few people can access the CEAV or the state commissions. On the 31st of May 2019 the National Registry of Victims reported 27,331 victims registered in the CEAV and 4,877 in the state commissions; that is, a total of 32,208 cases of direct and indirect victims against hundreds of thousands that exist in the country.

<sup>57</sup> Documentation by Centro de Derechos Humanos de la Montaña “Tlachinollan”.

<sup>58</sup> Comisión Interamericana de Derechos Humanos (2016), *Situación de derechos humanos en México*, p. 11. Available at: <http://www.oas.org/es/cidh/informes/pdfs/Mexico2016-es.pdf>.

<sup>59</sup> Senado de la República, Instituto Belisario Domínguez, Dirección General de Investigación Estratégica (2018) *Temas estratégicos 54 Mapas y Tendencias de Homicidios en México*, p. 7, Available at: [http://bibliodigitalibd.senado.gob.mx/bitstream/handle/123456789/3833/Reporte54\\_Homicidios.pdf?sequence=1&isAllowed=y](http://bibliodigitalibd.senado.gob.mx/bitstream/handle/123456789/3833/Reporte54_Homicidios.pdf?sequence=1&isAllowed=y).

<sup>60</sup> CMDPDH (2018), *La propuesta del Presidente Andrés Manuel López Obrador de militarizar la seguridad pública a través de la creación de una guardia nacional*, p. 3-5, Available at: [www.cmdpdh.org/publicaciones-pdf/cmdpdh-propuesta-amlo-militarizacion-con-la-guardia-nacional-completa.pdf](http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-propuesta-amlo-militarizacion-con-la-guardia-nacional-completa.pdf). The military are involved in most of the severe human rights violations: the National Commission of Human Rights (CNDH) has registered 185 complaints against the Ministry of National Defense (SEDENA) and 116 against the Ministry of the Navy (SEMAR) for enforced disappearance; 4,604 complaints against SEDENA and 1,107 against SEMAR for torture and cruel, inhuman or degrading treatment or punishment; and 12 complaints against SEDENA for summary or extrajudicial execution.

<sup>61</sup> *Radilla Pacheco Vs. México*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentence of the 23rd of November 2009. Serie C No. 209.

*Cabrera García y Montiel Flores Vs. México*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentence of the 26th of November 2010. Serie C No. 220.

*García Cruz y Sánchez Silvestre Vs. México*. Fondo, Reparaciones y Costas. Sentence of the 26th of November 2013. Serie C No. 273.

*Fernández Ortega y otros. Vs. México*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentence of the 30th of August 2010. Serie C No. 215.

*Rosendo Cantú y otra Vs. México*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentence of the 31st of August 2010. Serie C No. 216

Despite this, in the Constitutional reform which creates the **National Guard**, a model suggested by the President Andrés Manuel López Obrador, it was proposed the creation of a National Guard of military characteristics, which was contrary to Article 4 of the International Covenant of Civil and Political Rights.<sup>62</sup> On the 26th of March 2019, the Political Constitution of the United States of Mexico was reformed<sup>63</sup> to create the National Guard. The reform that creates the National Guard<sup>64</sup> establishes that it will be a civil force, ascribed to the Ministry of Security and Citizen Protección (SSPC), a civil dependency.<sup>65</sup> However, the transitional articles of the reform reveal the military character of the National Guard, since it is constituted by agents coming from the military, navy and federal police, and the Armed Forces participate in the design of its structure, rules and proceedings.<sup>66</sup> Additionally to the National Guard, the **Armed Forces** will continue participating in public security tasks for the next five years.<sup>67</sup>

The **sentences of the Inter-American Court** mentioned previously were useful to promote reforms in the **Code of Military Justice**. In 2014, the **military jurisdiction** was restricted so that it would not be able to deal with cases of human rights violations against civilians. However, this reform does not completely fulfill with the measure ordered by the Inter-American Court in terms of the harmonization of the national norm according to international standards. The Inter-American Tribunal pointed out for the cases *Radilla Pacheco*, *Fernández Ortega y otros*, *Rosendo Cantú y otra* and *Cabrera García y Montiel Flores* that:

*Since the article 57.II.a) of the reformed Code of Military Justice still authorizes the intervention of military jurisdiction in the crimes where the defendant and the victim are both military personnel and a civilian is not the passive subject of the crime or holder of the legal asset, the Court estimates that the current legislation still does not adapt partially (supra Considerando 17 and 20) to the following jurisprudential standards:*

- a) *the military jurisdiction is not the competent jurisdiction to investigate and, when applicable, judge and sanction, the perpetrators of human rights violations, even when the active and passive subjects are both military personnel, and*
- b) *the military jurisdiction is reserved to judge the commission of crimes or offences (committed by active military personnel) that in their nature go against legal assets of the military order.*

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<sup>62</sup> Cfr.

<http://cmdpdh.org/project/la-propuesta-del-presidente-andres-manuel-lopez-obrador-de-militarizar-la-seguridad-publica-a-traves-de-lacrecacion-de-una-guardia-nacional/>

<sup>63</sup> [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_090819.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_090819.pdf).

<sup>64</sup> [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_235\\_26mar19.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_235_26mar19.pdf).

<sup>65</sup> CPEUM art. 21, par. 11 y 12, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_090819.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_090819.pdf).

<sup>66</sup> The transitional articles are available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_235\\_26mar19.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_235_26mar19.pdf).

**Second.** The National Guard will be constituted when the present Decree comes into force with the elements of the Federal Police, the Military Police and the Navy Police that the President of the Republic determines in agreements of a general character. [...]

**Sixth.** [During five years] the Ministries of the branches of National Defense and Navy will participate, according to the law, with the branch of security, for the establishment of its hierarchical structure, its regimes of discipline, of fulfillment of responsibilities and tasks, and of services, as well as for the instrumentation of the rules of admission, education, training, professionalization, promotion and services, that could be accredited as conducive to the suitable dispositions in the field of the permanent Armed Force. (Translation Red TDT)

<sup>67</sup> *Ibid.*, transitional 5.

<sup>68</sup> *Casos Radilla Pacheco, Fernández Ortega y Otros, y Rosendo Cantú y Otra vs. México*. Resolución de Supervisión de Cumplimiento de Sentencia de la Corte Interamericana de Derechos Humanos, considerandos 22 y 23. 17th of April 2015. Available at: [http://www.corteidh.or.cr/docs/supervisiones/radilla\\_17\\_04\\_15.pdf](http://www.corteidh.or.cr/docs/supervisiones/radilla_17_04_15.pdf). Corte IDH.

*Cabrera García y Montiel Flores Vs. México*. Supervisión de Cumplimiento de Sentencia. Resolución de la Corte Interamericana de Derechos Humanos, considerandos 22 y 23. 17th of April 2015. Available at: [http://www.corteidh.or.cr/docs/supervisiones/cabrera\\_17\\_04\\_15.pdf](http://www.corteidh.or.cr/docs/supervisiones/cabrera_17_04_15.pdf). (Translation Red TDT)

That is, the Inter-American Court considers that the simple modification of the Article 57 of the Code of Military Justice, excluding from the military jurisdiction the cases tied to civilians, without a complete harmonization of said regulation, leaves an opening for severe human rights violations still being judged in the military jurisdiction, which is why, in the same resolution, the Court resolved that Mexico had to harmonize this legislation. Actually, there are even cases of severe human rights violations after the 2014 reform where the military jurisdiction has investigated the deprivation of life of civilians.<sup>69</sup> Nonetheless, the Mexican state, instead of trying to align itself with the international standards in the matter to fulfill said sentences, has given even more faculties to the Armed Forces, as is the case with the National Guard.

#### **4. General Prosecutor's Office of the Republic**

Since 2014, the Constitution envisions the creation of the General Prosecutor's Office of the Republic (FGR), to substitute the General Attorney's Office (PGR).<sup>70</sup> This change, now in force, mainly consisted in removing the former PGR from the Executive branch (to which it was ascribed), giving it the **political autonomy** it required to operate.

In the year 2016, several actors grouped in the collectives #FiscalíaQueSirva and #VamosPorMás began to urge the Federal Executive to guarantee the final step of a model of procurement of justice that would end impunity and guarantee that everyone could trust in justice in Mexico. Three steps were suggested then: a Constitutional reform, a new Organic Law of the Prosecutor's Office, and a transparent and efficient process of appointment of the titleholder of the General Prosecutor's Office and the Specialized Prosecutor's Offices. All this would serve to create a model of justice that would guarantee the rights and put the victims in the center of the discussion.

In the juncture created by the change of government in the second half of 2018, an open and participative **space of interlocution** was built to create the new **Organic Law of the General Prosecutor's Office of the Republic (LOFGR)**, which was finally approved on the 20th of December 2018.<sup>71</sup> Among the key elements of the law are: the autonomy of the new titleholder of the General Prosecutor's Office to have all the necessary political and institutional tools to have a worthy standard of criminal investigation; also the creation of the Specialized Prosecutor's Offices (especially Human Rights and Internal Affairs), Units of Context Analysis (key for the diligent investigation of the crimes of disappearance, for example), Professional Career Service (which ensures the professionalization of the personnel and gives incentives to avoid co-opting by organized crime), the faculties of referral of cases from state jurisdiction (key in local contexts of impunity), Investigative Police and another series of institutional mechanisms that came out of the collective ingenuity and the need of the victims of having institutions up to the task of the challenges of the human rights crisis. Although not all the suggestions of the collectives were included in the law and the series of Constitutional reforms in the matter were excluded (specifically regarding Articles 21, 73, 76, 89, 102, 116, 123) the approval of the LOFGR was necessary and relevant for an access to justice without impunity for all in Mexico.

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<sup>69</sup> This happened, for example, in the case of the extrajudicial execution of civilians in Tlatlaya (2014). Cfr. <http://centroprodh.org.mx/impunidadayeroy/2017/02/27/tlatlaya/>.

<sup>70</sup> Cfr. Constitución Política de los Estados Unidos Mexicanos, art. 102, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_090819.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_090819.pdf).

<sup>71</sup> [http://www.diputados.gob.mx/LeyesBiblio/pdf/LOFGR\\_201218.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LOFGR_201218.pdf)

On the 18th of January 2019, Alejandro Gertz Manero was appointed as the **first General Prosecutor of the Republic**. This appointment generated many expectations since it is his responsibility to implement the transitionals of the Organic Law, among which are: the creation of the Strategic Plans of Transition and Criminal Prosecution Plan, the appointment of the titleholders of the Specialized Prosecutor's Offices, and, in general, leading the whole transition process for the creation of a Prosecutor's Office that is useful. Without the due implementation of the transition process and the general setting up of the LOFGR, everything that has been gained on the legislative level can become mere **simulation**, which is the worst that can happen in the context of criminality, impunity, and lack of guarantee of rights in the country.

#### 4.1 Identified problems

The General Prosecutor's Office of the Republic (FGR) has produced two documents which give us elements to express a series of concerns about the transition of the FGR and the implementation of the Organic Law. These documents are the **100 days Report** presented by the General Prosecutor on the 6th of May 2019<sup>72</sup> and the **Provisional Criminal Prosecution Plan**.

The diagnosis presented both in the Report and the Provisional Plan shows that key elements of the Organic Law (transparent appointment of the titleholders of the Prosecutor's Offices, public call for the creation of the Criminal Prosecution Plan, faculties of referral of cases of the state jurisdiction) are presented as obstacles for the correct performance of the Prosecutor's Office.

In terms of the appointments of the **titleholders** of the Specialized Prosecutor's Offices, in February 2019 came the announcement of the appointments of the Specialized Prosecutor's Office to Fight against Corruption and the Specialized Prosecutor's Office in matters of Electoral Crimes. Later, the appointment of the Anti-Corruption Prosecutor was contested due to irregularities in the process.<sup>73</sup> For the designation of the titleholder of the Specialized Prosecutor's Office of Human Rights a campaign began for an open and transparent appointment that would focus on a dialogue with the victims of human rights violations and their families.<sup>74</sup> Almost three weeks after the due date for the appointment according to the law, without following the legal standards and not answering to the demands put forward, the Special Prosecutor for Human Rights was ratified without having the certainty up to this date of the type of appointment that she has (permanent or temporary).<sup>75</sup>

On the other hand, the General Prosecutor's Office has pointed out in different occasions the need to reform the Organic Law: in the 100 days Report presented by the General Prosecutor it is said that, as actions for the future, "a new and solid normativity must be generated through the New Organic Law of the Prosecutor's Office and fundamentally with a project of an immediate New National Law of Civic Culture and Justice (...) an initiative which is practically finished".<sup>76</sup> The **modification of the current Organic Law** would represent a **great setback** for the access to justice, since besides representing a consensus among different social groups (especially victims of human rights violations and their families), it could imply a step back in such matters as:

- Autonomy of the General Prosecutor's Office of the Republic.
- Implementation of the new system of criminal justice in the General Prosecutor's Office.

<sup>72</sup> <https://noticieros.televisa.com/ultimas-noticias/gertz-manero-fiscales-anticorrupcion-electoral-nombrar/>

<sup>73</sup> <https://www.elfinanciero.com.mx/nacional/impugnan-designacion-de-maria-de-la-luz-mijangos-como-fiscal-anticorrupcion>

<sup>74</sup> <http://fiscaliaquesirva.mx/wp-content/uploads/2019/07/Carta-FGR.pdf>

<sup>75</sup> <https://www.eluniversal.com.mx/nacion/seguridad/ratifican-sara-irene-herrerias-como-fiscal-de-derechos-humanos>

<sup>76</sup> Alejandro Gertz Manero, *Informe a 100 días de la Fiscalía General de la República*, p. 8. (Translation Red TDT)

- Fulfillment of the General Laws against torture and disappearance.
- Regression to a model of criminal investigation based on cases that attract the interest of the media.

In the particular case of the Specialized Prosecutor's Office of Human Rights, it has in turn a **Specialized Prosecutor's Office for the Investigation of the Crimes of Enforced Disappearance**, which transitioned from a Search Unit to a Prosecutor's Office. It has organized **working sessions** with different victim collectives, where it has been noted:

- *The budgetary decrease for search tasks*: the Specialized Prosecutor's Office had a 29% reduction from 2018 to 2019 according to the data of the Budget of Egress of the Federation ("Presupuesto de Egresos de la Federación") of 2018 and 2019.<sup>77</sup> The budgetary decrease is added to the absence of the Prosecutor's Office in the work of the National System of Search of Disappeared Persons ("Sistema Nacional de Búsqueda de Personas Desaparecidas").
- *Actions without due diligence*: In the political accompaniment that the NGO Fundar gives to the Colectivo en Búsqueda de Verdad y Justicia,<sup>78</sup> they have documented the lack of plans of search, lost basic diligences, search diligences without follow-up and, in general, deals that were not fulfilled by the Public Ministries assigned to the cases.
- *Saturation of the working sessions with the collectives with an increasingly lower impact*: While during the first years of the working sessions the meetings were monthly or bi-monthly, during the present year there have been only two working sessions (with another due for August), under the justification that the sessions are saturated by different collectives (more than 60 according to the Prosecutor of Enforced Disappearance).

## 5. Consultation

The **Convention 169** of the International Labour Organization (ILO) expresses that the consultation must be conducted through adequate proceedings and institutions that represent the indigenous peoples and communities, such as agrarian assemblies, that it must be conducted in good faith, without the existence of the will to crowd around or pressure the communities to make a decision that does not adequately correspond to the feeling of the majority and the circumstances. On the other hand, the Inter-American Court, in its jurisprudence, has established that the right to consultation implies the effective participation of the communities, according to their customs and traditions, in every plan of development, investment, exploration or extraction that is going to take place inside their territories.

The practice in Mexico differ strongly from what is established in the international treaties, since indigenous communities constantly face the approval of laws that hurt them and mega-projects that end with their territories.

In 2013, a series of reforms to the Political Constitution of Mexico was approved, known as "**Energetic Reform**", creating for its implementation a package of secondary laws where the

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<sup>77</sup> Presupuesto de Egresos de la Federación, 2018, Ramo 17: Procuraduría General de la República:

[https://www.pef.hacienda.gob.mx/work/models/PEF2018/docs/17/r17\\_aae.pdf](https://www.pef.hacienda.gob.mx/work/models/PEF2018/docs/17/r17_aae.pdf)

Presupuesto de Egresos de la Federación, 2018, Ramo 17: Procuraduría General de la República:

[https://www.pef.hacienda.gob.mx/work/models/PEF2019/docs/17/r17\\_aae.pdf](https://www.pef.hacienda.gob.mx/work/models/PEF2019/docs/17/r17_aae.pdf)

<sup>78</sup> Literally "Collective in Search of Truth and Justice". It is a collective of victims that results from the Movimiento por la Paz con Justicia y Dignidad ("Movement for Peace with Justice and Dignity").

extraction of natural resources is prioritized over any other use of the land.<sup>79</sup> These reforms answer to particular economic interests and are inserted in a **politics of dispossession** of the indigenous territories promoted by megaprojects, which violate the rights to consultation and self-determination of the indigenous peoples. On par with these reforms, there are a series of laws and public policies that are contrary to the rights of the indigenous communities and that have been in existence for years, such as the Mining Law. This law exists since 1992 and contains a series of dispositions that allow mining concessions for 50 years without respecting the right of indigenous communities to consultation, previous consent and preservation of their territories.

This type of laws did not go through a process of consultation with the indigenous communities, and they legalized dispossession. In the face of this, the communities have had to go to the tribunals as their only option, and, through writs of amparo, demand respect for their rights. However, this means fighting for years, which sometimes can end in attacks against the community leaders.

The current administration has put itself - at least discursively - on the part of the indigenous communities and has manifested that they are being heard. However, their right to consultation is still not being respected and it has even been violated in specific cases of **megaprojects**, where the standards of ILO and the Inter-American Court in terms of respecting customs, institutions and community authorities are unattended. The current government has tried pass as valid consultations carried out digitally, consensus or shows of hands, without the communities having real representation and through media that do not represent their cosmovision.

In terms of the laws that violate the rights of the indigenous peoples and communities, and specifically their right to consultation, they are still in force, and the model of dispossession legalized by these laws still seems to be promoted. Moreover, the Mexican state has not ratified the **Optional Protocol of the International Covenant of Economic, Social and Cultural Rights** yet, which would provide greater opportunities to the indigenous peoples and communities to defend their rights.

## **6. Fulfillment of international recommendations**

When comparing the recommendations issued by this Committee in 2010 with the information presented for this exercise in 2019, it becomes evident that several recommendations remain unfulfilled, or that underlying problems are still the source of severe human rights violations in the country. Therefore, we request the Committee to set an **initial term of one year** to receive a follow-up report about priority recommendations adopted as a result of the present evaluation, and that, according to the provided information, it asks for **periodic follow-up reports every year** until the Committee can verify that the respective recommendations have been fulfilled.

To guarantee that there is a sustained and efficient work internally to achieve the fulfillment of the Committee's recommendations, the internal process of follow-up and fulfillment will have to involve all the governmental institutions in charge of implementing the recommendations; this effort should also seek the participation of the civil society and the OHCHR-Mexico. The goal would be to build and execute a roadmap for the fulfillment of the recommendations through concrete and, if possible, calendarized, actions.

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<sup>79</sup> Ley de Hidrocarburos ("Hydrocarbons Law"), art. 96, par. 2, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro\\_151116.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro_151116.pdf). Cfr. also Ley de la Industria Eléctrica ("Electrical Industry Law"), art. 71, par. 2, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LIElec\\_110814.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LIElec_110814.pdf).

## Recommendations directed to the Mexican state

- Prioritize the adequate implementation of the Organic Law of the Prosecutor's Office of the Republic, avoiding the creation of new normativity and sticking to the standards of transparency and social participation established in the Law for the definition of the Plans established there, as well as the appointment of the titleholders of the Specialized Prosecutor's Offices.
- Ensure an adequate implementation of the General Law to Prevent, Investigate and Sanction Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and General Law in matters of Enforced Disappearance of People, Disappearance Committed by Private Individuals and National System of Search of Persons, in articulation with the Specialized Prosecutor's Office for the Investigation of the Crime of Torture, the Specialized Prosecutor's Office for the Investigation of the Crime of Enforced Disappearance, ascribed to the new Specialized Prosecutor's Office in matters of Human Rights. A needed measure is the participation of the victims in the definition of the plans of investigation and follow up of the cases, as well as the participation of the Prosecutor's Office in the National System of Search Disappeared Persons.
- Define the national investigation priorities based on the social impact of the criminal phenomena in a Criminal Prosecution Policy and Plan, as a means of guaranteeing the combat of impunity.
- Guarantee that the authorities in charge of procurement and administration of justice have not been reported as authors of human rights violations, for example, in recommendations issued by public human rights organisms.
- Guarantee that the acts of torture are investigated adequately and impartially, that the culprits are sanctioned, and that the victims and survivors receive an integral reparation. In this sense, we urge the State to follow up the most recent recommendations of the Committee Against Torture to Mexico.
- Guarantee that the cases of disappearance are investigated adequately and impartially, the culprits are sanctioned, and the direct and indirect victims receive an integral reparation.
- Guarantee an exhaustive, impartial and prompt investigation in all the cases that present severe omissions in terms of the processes of investigation of human rights violations and processes of forensic identification, and sanction the public officials in charge.
- Investigate the cremation of unidentified by State authorities and sanction those responsible. Generate a mechanism that contributes to guaranteeing the rights to truth, justice and non-repetition in cases of cremation of unidentified bodies of deceased people, with the participation of national and international independent specialists, collectives of family members of disappeared people and civil society organizations. Said mechanism must guarantee the process of exhaustive review of each preliminary inquiry and investigation file related to the deaths of the unidentified cremated people, as well as the complete technical and scientific review of all the cremated bodies and corresponding evidence.
- Strengthen the forensic and expert services. Guarantee that the recuperation, forensic identification, notification and delivery of bodies (or body parts) of the deceased people to their family members are done scientific rigour, in a respectful and dignified way, according to the highest standards in the matter.

- Urge the Mexican state to present a report about the current state of the investigations, as well as the criminal prosecution plan that the General Prosecutor's Office will carry out to investigate and sanction the crimes committed against human rights defenders and journalists in Mexico.
- Guarantee the effective functioning of the Unit of Investigation for Human Rights Defenders created by the General Prosecutor's Office, equipping it with human, economic and technical resources adequate for the performance of its work, ensuring also that the Specialized Prosecutor's Office for Crimes Against the Freedom of Speech continues being a Specialized Prosecutor's Office inside the structure of the General Prosecutor's Office.
- Perform an information and sensibilization campaign about the key work performed by human rights defenders, to promote an environment of tolerance that allows them to carry out their work free of any kind of intimidation, threats or reprisals.
- Develop an assessment methodology of the given trainings but also of the medical psychological dictaminations performed by official experts in cases of reports of torture, as well as establishing specific norms for the performance of medical forensic certificates by official experts that include detailed descriptions, the way in which it was produced and a possible causality.
- To combat impunity, sanction the health professional that do not fulfill their obligations in terms of documentation and exams to detained people and people who have reported torture.
- Ensure that the every public human rights organism have medical and psychological personnel to fulfill the international standards of the Istanbul Protocol, according to the investigation rules established nationally and internationally, strengthening the right of the victim to be accompanied by a trusted person during any examination and to refuse any examination under re-victimizing conditions or proceedings.
- Create an independent monitoring committee with the necessary faculties to evaluate and supervise efficiently and transparently the work of the health and law professionals who investigate possible events of torture in the public human rights organisms, from a diagnosis about the level of knowledge about the topic, including its impact on the affected people and how their acting has been in the investigations.
- Perform the necessary adaptations in legislative and practical terms of the General Law of Victims and the National System of Attention to Victims, as to ensure that all the contexts and realities are considered when giving attention to the victims. That is, consider such criteria as ethnicity, gender, disability, resources, among others.
- Allocate the necessary budget to the Executive Commission of Attention to Victims and the state commissions, to ensure the adequate assistance to victims.
- Establish a date for the adequate consolidation of the new system of criminal justice on a federal and state level, overcoming the deficiencies and lags in its implementation, and providing a work plan to fulfill the established schedule.
- Allocate an adequate budget to the State Prosecutor's Offices and the institutions in charge of implementing the new system of criminal justice.
- Reform the Code of Military Justice to guarantee that only civilian authorities have competence to investigate human rights violations.
- Reform Mexican normativity to guarantee that the tasks of public security are in the hands of civilian authorities.

- Suspend and cancel every grant, license or permission for the harnessing of natural goods or the implementation of any development project where the indigenous communities have not been consulted.
- Propitiate a consultation process about the legislations that affect the rights of the indigenous peoples so that their Constitutionality can be defined, and, if the case may be, repeal those that are clearly unconstitutional.
- Ratify the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights.