

## **Civil society statement in the High-Level Dialogue on Human Rights between Mexico and the European Union**

Distinguished representatives of the European Union and the Mexican government, we address you on behalf of the 32 non-governmental organizations who participated in the Second Civil Society Seminar on Human Rights held in the framework of the Fourth High-Level Dialogue on Human Rights between Mexico and the European Union.

First, we wish to recognize the implementation of the agreements reached in the first Civil Society Seminar, held in 2012, regarding civil society participation, evident both in the EU Working Group of NGOs in Mexico and in this event. We recall that we continue to face the challenge of incorporating more civil society groups and increasing dissemination of the work being done here. It is also important that we consolidate follow-up mechanisms for the agreements reached between the EU and Mexico, including in relevant events beyond the High-Level Dialogue in Human Rights.

Regarding the human rights situation, the joint analysis carried out by European and Mexican civil society organizations shows that both regions face serious challenges. At the same time, the situation in Mexico in particular has reached crisis levels and requires the urgent attention of the international community, including the EU.

On this occasion, civil society had the opportunity to analyze three main issues: business and human rights, citizen security, and violence against women.

In Mexico, these three issues – and so many other problems that affect the country – are characterized by a common factor: the precariousness of the rule of law and as a corollary, near-universal impunity. The lack of professional investigations means that the structures of violence, exploitation, and discrimination can operate without consequences in Mexican territory, where the rate of impunity is between 98-99%. This climate of violence and impunity has led the country into a humanitarian crisis without precedent in its history, in which the statistics of abuses speak of the systematic and widespread violation of rights by police, military, and prosecutorial authorities who commit arbitrary detentions, torture, enforced disappearances, and extrajudicial executions, among other violations; by public and private actors who engage in acts of violence and discrimination against women; and by Mexican and transnational businesses that pollute, displace people, and exploit natural resources without consulting the affected peoples and communities.

In recent years we have documented how transnational and Mexican **businesses**, supported by federal and state authorities, have systematically violated the right to free, prior, and informed consultation and consent; the right to information; the right to property; the right to a healthy environment; the right to autonomy; and the right of indigenous peoples to participate in all levels of decision-making concerning their land and resources, provoking the theft of natural resources, forced displacement, pollution and over-exploitation of resources in Mexico. The legal framework regarding the protection and use of natural resources does not comply with the government's international obligations in these areas, and the so-called structural reforms of recent months in fields such as energy and the proposed agrarian reform seek to impose unsustainable environmental exploitation schemes. In the realm of extractive

industries, concessions are granted by the government and businesses arrive in communities without consulting, much less obtaining the free, prior, and informed consent of the affected peoples and communities. For this reason, there are an estimated 200 social and environmental conflicts related to resource exploitation projects in Mexico today. In this context, a growing number of organizations and movements have sprung up to denounce violations committed by businesses and authorities; these groups have won an increasing number of legal remedies, as well as obtaining recommendations from international bodies. However, by defending their rights, the members of these movements risk their lives, with 30 environmental and community defenders killed in the last few years and other exiled from their homes. In this sense, we recall that both Mexico and the countries of the European Union are responsible for respecting and protecting human rights in the framework of the activities of transnational businesses in Mexico.

In the realm of **citizen security** in Mexico, the militarization of public security has had a very severe impact on respect for fundamental rights. In 2013 the federal National Human Rights Commission (CNDH) received more than a thousand complaints of military human rights abuses. It also registered more than a thousand complaints of torture and cruel, inhuman, and degrading treatment, a problem that we have documented especially in the criminal justice system and in prisons. Civil society continued to denounce the widespread practice of arbitrarily detaining and imprisoning innocent people based on evidence that is invented or coerced, instead of carrying out professionalized investigations to find the true culprits of crimes. Additionally, more than 26,000 cases of people reported as disappeared, including thousands of cases of enforced disappearance, remain unsolved, with victims' families taking on the task of investigating despite the risks that this entails. Effective mechanisms to investigate and punish human rights violations do not currently exist, due to the lack of ability to investigate, generalized corruption, and the lack of a human rights perspective in the national and state human rights commissions created to respond to complaints. Finally, the route of south-north migration through Mexico continues to be the scene of tens of thousands of extortions, kidnappings, sexual attacks, cases of trafficking, and other grave abuses against the migrant population, a phenomenon that attracted international attention in recent years due to the fact that in 2011 the CNDH documented an average of more than 22,000 kidnappings of migrants per year.

As for human rights concerns regarding citizen security in the European Union and its member States, these include the complicity of EU countries in the rendition and torture of detainees in the context of the so-called war on terror, a framework in which we also express our concern over the lack of appropriate responses by governments to revelations of spying by domestic and foreign intelligence services on the civilian population, as well as other administrative measures that violate human rights.

Regarding **violence against women**, our analysis of both regions found that the pillars of a true structural transformation toward equality between men and women have yet to be consolidated. As of today, women continue to face an economic, social, cultural, and political system whose starting point is a patriarchal model based on stereotypes that hinder women's access to a life free from violence and inequality.

In Mexico, legislative advances co-exist with generalized and deeply rooted patterns of abuses and violence committed by both state and non-state actors. There is a lack of inter-institutional coordination and coherence in state actions, especially at the state and local level. Mechanisms such as the Gender Alert and protection orders have not proven effective and their usefulness has been limited by authorities themselves. Feminicides (gender-based killings of women) have continued to rise in multiple regions of the country. In Oaxaca, from December 1, 2010 to November 30, 2013, 267 women were killed and 78 reported as disappeared. In Nuevo León, between 2000 and 2008, 788 feminicides occurred. In Querétaro, according to official statistics, from January to March 2014, 89 women were listed as disappeared, including 53 girls and adolescent women. From January 1993 to February 2014, there have been approximately 2,200 killings of women in Chihuahua. The disappearance of women in the context of the “war on drugs”, including girls and adolescents, is an especially serious problem in Mexico, where the trafficking of women is an additional factor behind disappearances. In addition, in states such as Guerrero, the Inter-American Court of Human Rights found in the cases of Inés Fernández and Valentina Rosendo Cantú that women live in a context of poverty, discrimination, and institutionalized violence by the military.

A further phenomenon that is cause for alarm is the increase in attacks against women human rights defenders. In 2013, civil society documented 242 attacks against women human rights defenders, more than double the annual total for prior years, while the government failed to design and implement protection measures with a gender or ethnicity perspective. Finally, the high rates of maternal mortality, obstetric violence, and the criminalization of abortion in most states produce a serious situation of discrimination and human rights violations.

In the European Union, we are especially alarmed by the situation of violence against women documented in a recent study carried out by the EU Agency for Fundamental Rights, which demonstrated that 1 in 3 women in the EU had suffered physical or sexual violence. In this context, many EU countries’ policies and legislation do not meet standards to prevent violence and protect women, among other reasons, due to lack of appropriate shelters and hotlines for victims of gender violence and due to the restrictive definition of rape in criminal codes.

One final and over-arching topic that demands attention in Mexico is the situation of human rights defenders and journalists. The rise in violence and militarization has had a direct impact on the work of defending human rights, with increased attacks against those who speak out against the abuses of powerful actors. As numerous international bodies have found, defending human rights in Mexico has become a high-risk activity, especially for those who defend migrants, women, the LGBTTTI community, indigenous peoples, and the environment, who have been the most frequent targets of attacks.

In Mexico, the best strategy to change the situation described in preceding paragraphs – reflected as of now in the Constitution and the creation of government institutions but not yet in reality – is the reform of the State and in particular of the justice system that is mandated by the constitutional reforms regarding criminal justice (2008) and human rights (2011). In the three areas analyzed here – businesses, citizen security, and violence against women– our organizations have documented time and time again how the authorities either do not respect human rights or

obey the law; or do not investigate; or apply discriminatory judicial reasoning that violates human rights. If we are to advance in the respect for human rights in these areas, it is not enough to have a pro-human rights discourse. Rather, the priority must be ending the current situation of corruption, precarious rule of law, and impunity, and ensuring that all state policies and actions comply with and implement the constitutional reforms related to human rights.

## **Recommendations for Mexico and the European Union**

### *In general:*

- **In the renegotiation of the Global Agreement between the EU and Mexico, place human rights at the heart of the agenda**, establishing indicators that measure human rights results in both regions in light of the specific problems identified here.
- Establish **concrete indicators and effective follow-up mechanisms for the agreements reached in the High-Level Dialogue on Human Rights**, including civil society participation in such follow-up. The results should be presented in the next Dialogue.
- **Maintain and strengthen civil society participation** in general in bilateral fora between Mexico and the EU.

### *In the realm of business and human rights:*

#### *To Mexico and the EU:*

- Guarantee the implementation, dissemination, and respect for the **UN Guiding Principles on Business and Human Rights**.
- Support the proposal for the creation of a **binding international instrument** on Business and Human Rights in the Human Rights Council, as well as strengthening the mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, seeking for this body to have jurisdiction to receive individual complaints.

#### *To the European Union and its member States:*

- **Suspend public funding** for development projects or other investments in which there are credible allegations of human rights violations.
- Guarantee **access to justice** through the adjudication of human rights violations committed in Mexico by businesses headquartered in the European Union and guarantee reparations for victims.
- Comply with the directive of the European Commission to adopt, implement, and disseminate **National Action Plans** in EU member States to ensure compliance with the UN Guiding Principles. In this context, there should be mechanisms in place to sanction businesses that do not respect the Guiding Principles and the OECD Guidelines for Multinational Enterprises.

*To Mexico:*

- Provide sufficient and appropriate information and ensure the **free, prior, and informed consultation and consent** of communities affected by development projects to guarantee the technical, economic, environmental, and social sustainability of any proposed project, as well as the right of the community to reject the project.
- Put in place a legal framework regarding **consultation of indigenous and rural (campesino) communities**, with the direct participation of these populations, in line with the highest international human rights standards. Reform or repeal laws that do not respect this framework, especially those pertaining to forestry and mining.
- Strengthen the **Federal Prosecutor for Environmental Protection** and the system of prosecution of environmental crimes so as to ensure effective, opportune, and independent action in this area, and reform the contents of **Environmental Impact Assessments** to include standards on human rights and transparency.
- **Suspend the implementation of development projects that have been challenged in court** in order to safeguard the human rights of affected communities.

*In the realm of citizen security:*

*To the EU and Mexico:*

- **Jointly seek alternatives to current international drug policies** and in particular to the current security strategy in response to organized crime.
  - At the domestic level, the governments of the EU and Mexico should implement policies that **end criminalization** of drug users, putting health at the center of drug policy rather than national security and prioritizing prevention and harm reduction policies.
  - In the Human Rights Council, support the creation of a **Special Rapporteurship** on the protection of human rights in the context of the fight against organized crime.
- **Strengthen institutions in order to advance in the investigation of grave human rights violations.**
  - The Mexican government should create an autonomous and independent body of health professionals trained in, and available to apply, objective examinations following the **Istanbul Protocol**.
  - The Mexican government should create an **inter-institutional mechanism to seek victims of enforced disappearance (both Mexicans and foreign nationals)**. The EU should lend any technical assistance requested by Mexico in this area.

- The Mexican government should **reform the Code of Military Justice according to the sentences of the Inter-American Court, as well as complying with its obligations under the Rome Statute.**
- The governments of both regions should generate **statistics that measure the impact of criminal violence, domestic violence, and grave human rights violations on the population, with a focus on women and other groups in situations of vulnerability.**
- The EU should strengthen the application of the **Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment.**
- **The member States of the European Union should investigate and punish the perpetrators of rendition and torture** in the context of the so-called war on terror, as well as sanction cases of spying on the civilian population.
- **Change the focus of migration policies** from a national security approach to a human rights perspective, in particular seeking alternatives to detention.

*To Mexico:*

- **Avoid the participation of the Armed Forces in policing tasks** and concentrate instead on social development and on **training civilian authorities to carry out professionalized investigations**, ending the use of arbitrary detentions, torture, and invention of evidence.
- **Monitor the implementation of the new criminal justice system** using indicators that measure its impact and whether actors in the new system are complying with its constitutional requirements, including in particular the presumption of innocence and the exclusion of evidence obtained illegally.
- **Eliminate arraigo from the Constitution**, ensuring it is not used in relation either to organized crime or serious crimes.

*In the realm of violence against women:*

*To the EU and Mexico:*

- Create follow-up mechanisms to monitor and evaluate the implementation of **international treaties** on the eradication of gender violence.
- Implement the recommendations of the **“Urgent Motion for a Resolution: Femicide in the European Union and Latin America”** from the EUROLAT inter-parliamentary assembly.
- Broaden **civil society participation in the fight against gender violence** in bilateral fora and political dialogue between Mexico and the European Union.

- **Provide appropriate training to authorities who interact with victims of violence against women, from health professionals to the justice system.** In particular, work with judicial authorities to ensure the incorporation of a gender perspective in their judgments.
- In the discourse and actions implemented to prevent, respond to, and eradicate gender violence, explicitly include **girls and adolescent women**, recognizing that targeted actions will only have an inter-generational impact if women are included throughout their life cycle and not only as adults.

*To the European Union and its member States:*

- Ratify the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention).
- Design and implement a **European year against gender violence**.

*To Mexico:*

- Establish a mechanism to publicize and seek feedback on the **rape investigation protocol** mandated by the Inter-American Court on Human Rights in the cases of González et al. (the Cottonfields Case), Valentina Rosendo, and Inés Fernández vs. Mexico.

*In the realm of human rights defenders:*

*To the European Union and its member States:*

- Continue to implement the **European Union Guidelines on Human Rights Defenders**, with particular attention to community-level defenders, promoting the recognition of their work.
- Discuss updating these Guidelines and incorporating a **gender perspective** that draws attention to women human rights defenders and their specific risks, as well as the protection measures that they require. In this sense, it is important to take into account the **EU guidelines on violence against women and girls and combating all forms of discrimination against them**.

*To Mexico:*

- Strengthen and immediately apply at all levels the **Protection Mechanism for Human Rights Defenders and Journalists**.
- **Guarantee the safety and protection of community human rights defenders** whose work focuses on the rights to land, collective property, and the environment, making use of both individual and collective protection measures.
- Create a database of human rights defenders who have registered their cases with the Mechanism broken down by age, sex, and ethnicity, and create a guide for implementing

**protection measures with a gender perspective and gender-sensitive indicators for women human rights defenders.**

- Apply international standards regarding freedom of expression and communication through a secondary law that allows for the operation of **community and indigenous radio stations**, recognizing that these actors play an important role in defending human rights.