

OBSERVATIONS OF THE UNITED MEXICAN STATES TO THE DRAFT REPORT OF THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS ON ITS VISIT TO MEXICO

I. EXECUTIVE SUMMARY/PRELIMINARY REMARKS

The visits undertaken by the Inter-American Commission of Human Rights (IACHR) require a high degree of openness and cooperation on the part of the States concerned. It was in this spirit and convinced of the importance of international cooperation that the Mexican State invited the IACHR to undertake a visit in order to analyze the human rights situation in the country. The visit took place from the 28th of September until the 2nd of October 2015, and as a result the IACHR prepared a draft report on the visit which was sent to Mexico on the 24th of November.

The observations of Mexico to the aforementioned draft report are structured in three sections. The first section is comprised of general and methodological observations; the second analyzes and rejects the thesis proposed by the IACHR regarding the situation of violence in Mexico, its causes and consequences; and the third section is composed of specific observations to each of the issues considered in the draft report. In each of these sections, the State has made substantive observations to various aspects of the IACHR report, as well as formulating various queries that we believe should be carefully considered by the Inter-American organ before the final drafting and approval of the report in question.

In accordance with the spirit of the Rules of Procedure of the Commission, we urge the Inter-American organ to duly consider and include all the information provided before, during and at the closing of its visit to Mexico in its final report, as well as the information contained in the observations that follow. This is necessary to ensure the bare minimum of justice and legitimacy on behalf of that Commission and to ensure that the document at hand is useful to strengthen the efforts underway in Mexico for the promotion and protection of the human rights of all persons.

In this sense, we recall article 57 of the IACHR's own Rules of Procedure, where subsection *f* establishes that the observations of the Commission must be made on the basis of a series of precise rules, including that: "the State will provide (...) any document related to the respect for human rights that (...) it considers necessary for the preparation of its report." This means that not only does the State have the obligation to provide relevant information to the Commission - something which was duly complied with - but that, in addition, the State has the right to see the information properly considered before the IACHR defines the final draft of its report and the way it will eventually be published (article 60 of the Rules of Procedure). In light of this, there exists a legitimate expectation by the State that the IACHR will use and adequately identify the information provided, in particular related to the use of sources, the methodology, the material, spatial and temporal ranges of the report, and, of course, on the way that this information was considered.

Regardless of the above, Mexico believes that the visit had an initial bias which prevented the IACHR from giving adequate weight to the information provided and to the real situation of human rights in the country. Instead of monitoring the compliance of Mexico with its international obligations, the IACHR was focused in finding human rights violations, by declaring *ab initio* that the visit would be made "*with particular emphasis on enforced disappearances, extrajudicial executions and torture, as well as the situation of insecurity, access to justice, impunity, and the situation of journalists, human rights defenders and other specially affected groups.*" In our opinion, it is not appropriate for the IACHR to

declare that Mexico is undergoing a “serious human rights crisis” when only certain violations – and not rights – are analyzed, without a proper balance being made of the enjoyment of all or most of the rights contained in the American Convention on Human Rights and other international instruments, particularly considering the territorial and spatial considerations of a federal State such as Mexico.

Mexico is a dynamic and bustling country. Both its developments and challenges have varied depending on the changing context of the country, and an analysis that does not take due regard of this variable cannot be properly objective. The State observes that the draft report has a degree of ambiguity and a lack of objective criteria to justify its particular analysis both in the consideration of general and particular phenomena as well as in the use of numbers.

The Mexican State finds it particularly troubling that the IACHR reaffirms throughout the draft report that there is an alleged relationship of cause and effect between the current situation in the country and the so-called “dirty war”, going as far as stating that it has been repeated. The State considers that this reaffirmation – which is made without support or explanation – ignores over 50 years of advances, challenges, structural changes, learning experiences and complex processes undergone by a country, many of them which have been previously recognized by the IACHR itself, including during the visit it made to the country in the nineties.

The State also considers that the draft project presented by the IACHR does not take due account of a series of realities and challenges of the violence in Mexico, leaving aside highly transcendent factors as well as important advances which continue to be promoted every day.

In this sense, Mexico expresses its rejection for the general context developed by the IACHR in the report, as well as its surprise over the fact that the Commission did not adequately consider or ignored important elements such as:

- The geographic and regional context of Mexico and the complex problems of crime, drug trafficking, arms trafficking and illicit money flows.
- The efforts undertaken by Mexico to face those challenges, which have been made together with important advances in the strengthening of the legal framework for the prevention of violence and the protection of human rights. In the last few years, important and historic developments have been made, such as the reform to the criminal system of 2008, the constitutional reform of 2011 on human rights and, as a result of this, further normative and public policy initiatives, exemplified by the recent presentation to Congress of the draft laws on disappeared persons and the eradication of torture by the Government of President Peña Nieto.
- The role and prestige of the armed forces working to protect the population, and their role in assisting the work of police forces. In this regard, and contrary to the perception given by the draft report, the presence of armed forces in the country is neither permanent nor generalized, but is rather circumscribed to specific needs in certain areas. The deployment of armed forces has not been static but has rather adapted and has had important reductions and successes.
- It must be further highlighted that the armed forces operate under rules regulating the use of force which have been strengthened in accordance with international standards and have undergone human rights training. It must also be said that any alleged violation of human rights committed by

the armed forces is duly investigated and punished under civil jurisdiction, as demanded by international standards.

In addition to the above, it must be noted that the IACHR draft report arrives at conclusions that seem to have been made lightly, considering the lack of seriousness given to the methodology, sources and use of information that it has doubtlessly had access to over the years. When considering complex situations which must be explained while considering a multiplicity of factors, it is worrying that the draft report arrives at reductive determinations of cause and effect which have very little or no foundation. Furthermore, these determinations have been the subject of several debates in the spheres of government, civil society, experts and academics, who have not reached the conclusions which seem so apparent to the IACHR.

As a result of this bias and intent to accredit human rights violations, it is the opinion of the State that the IACHR did not adequately value the information sources it had and that it even used them with a certain predisposition. As regards this point in particular, Mexico considers that an important number of information sources and their use by the Commission do not comply with the requirements of credibleness and accuracy of the very Rules of Procedure of the IACHR, indispensable for arriving at sound and convincing conclusions.

Mexico would like to clarify to the IACHR that it works daily to deal with the issue of violence in the country, and that this is a permanent commitment. Every day, and in different ways, the Mexican state seeks to generate and improve in order to guarantee a safe society and to protect the human rights of its population. Mexico firmly believes that it has made significant advances in this context which were unfortunately not considered by the IACHR.

Mexico's commitment to the promotion of human rights and with the work of the inter-American system is permanent. Evidence of this is the fact that it has always prioritized the attention of information and public hearing requests made by the IACHR. It is thus particularly surprising that the information which has been sent to the Commission throughout the years is not reflected in the draft report, as is further detailed in each of the sections of observations by the State, and this is why we request that the IACHR consider this document carefully.

Finally, Mexico will study the recommendations that the Commission decides to issue in its final report. The current document includes information on the way that the draft recommendations have been considered and/or are being currently implemented.

II. GENERAL COMMENTS AND METHODOLOGY

In this section, the State questions the methodology and sources of information employed by the Commission. The present report was intended to reflect the results of a number of meetings that the Commission had with State institutions from the municipal, local and federal jurisdiction, however the State notes that the information that was provided to the Commission during these meetings is barely reflected in its report. The State kindly requests the Commission to objectively consider all the information that was provided by the Mexican authorities.

Given that the Rules of the Inter-American Commission do not contemplate thorough criteria on the elaboration of reports as a result of *in loco* visits, the State based its comments on the report that the Commission issued in 1998 after a visit to Mexico that took place in 1996. In that report, the

Commission used a complete different structure based on the rights as enshrined in the American Convention rather than in very specific human rights violations, as was the present report structured. From the State's view, this new structure reflects a clear bias on the situation of human rights in the country and does not allow the Commission to objectively consider the existing and ongoing institutional efforts on the promotion and protection of human rights. Additionally, in terms of methodology, the Commission's conclusion regarding the existence of a "grave crisis on human rights" cannot be reached analyzing only a limited number of rights enshrined in the American Convention.

The State raises some comments on the use of authorities that support a number of conclusions throughout the report, both in terms of quality and quantity, and questions whether these conclusions meet the threshold of "reliable and convincing" information that the Rules of the Commission enshrine.

III. COMMENTS ON THE CHAPTER RELATED TO THE SITUATION OF VIOLENCE IN MEXICO

The State welcomes the fact that the Commission dedicated a chapter to the context that gives rise to the situation of violence in the country. However, it is important to consider this context in its due dimension; the challenge that Mexico faces to prevent and end violence is extremely complex and involves a number of elements that need to be considered, thus to consider only certain elements tending to point out the State's responsibility, naturally results into a biased perspective.

The Commission highlights three main sources of violence: a) state actors, b) organized crime, and c) other actors. In this section, the State questions the fact that firstly, the Commission considers state actors as a source of violence, and secondly the fact that the Commission links the involvement of military personnel in public safety during the "dirty war" with the actual context. These statements show that the Commission does not consider any progress regarding the situation on human rights in Mexico whatsoever since that time.

IV. COMMENTS ON SPECIFIC ISSUES

In this section, Mexico considers each of the specific issues highlighted by the IACHR in its draft report, highlighting different sections where the information reported is incomplete or uses inadequate sources, as well as including important information on advances and efforts undertaken by the Mexican State which was not properly considered.

Mexico finds it surprising that the draft report is presented through a structure that highlights "human rights violations" rather than "human rights under protection" as established by the Inter-American Convention, and it is worrying that throughout the document the IACHR makes affirmations that lack a real and objective basis.

1) Enforced disappearance

One clear example of this is affirming that the problem of disappearances in Mexico has reached critical levels and stating that this is in part due to impunity from crimes committed during the "dirty war", without mentioning that the Office of the Attorney General (PGR) is currently processing 275 investigations on the disappearance of 485 people during the sixties, seventies and the beginning of the eighties.

It is also concerning that, while recognizing that clear certainty does not exist regarding the number of disappeared persons in Mexico, the IACHR reaffirms that the number of disappeared persons leads it to conclude that there exists a “context of generalized disappearances in large parts of the territory, many of which can be classified as enforced disappearances.” In this sense, it is important to clarify that the figure of 26,000 missing persons in the National Registry of Missing or Disappeared Persons (RNPED) includes persons who have gone missing for any reason whatsoever. Thus, the Registry does not constitute yet an adequate tool to evaluate, fully comprehend and draw sound conclusions regarding the extent of the problem of enforced disappearance in Mexico (and that is why the State works in its continuous improvement and strengthening).

Furthermore, Mexico notes that important efforts are underway to combat the problem of enforced disappearance in the country, such as the creation on 10 October of the Special Prosecutor’s Office for Enforced Disappearance, the use of the AM/PM Data Base by prosecutorial authorities and, most recently, the presentation by President Enrique Peña Nieto of a draft “General Law on Enforced Disappearance” which was prepared through consultations with civil society, relevant authorities and with the support of the ICRC.

2) Extrajudicial killings

It is concerning that the IACHR uses the total number of homicides committed in Mexico to conclude the existence of “systematic and endemic” impunity regarding extrajudicial executions. It must be recalled that, in accordance with international law, an extrajudicial execution is defined as the arbitrary deprivation of life committed by State agents, and all homicides committed in a State cannot be classified as extrajudicial executions wholesale. In this sense, considering all homicides in Mexico under the issue of extrajudicial executions is confusing and leads to an inadequate diagnosis of the problem of extrajudicial executions in the country.

Furthermore, while a General Law on the Use of Force has not been adopted, the IACHR did not give adequate weight to the several legal and statutory instruments that regulate the use of force by the armed forces and the police in the country.

3) Torture

Similarly, the IACHR reaffirms that there exists a “generalized problem” of torture in the country while admitting that it is currently impossible to determine the magnitude of this problem since official registries are not reliable. It is once again worrisome that the Commission makes this determination while admitting that there is a lack of sufficient and reliable information to support its conclusion.

It is furthermore important to reaffirm that Mexico maintains its full commitment to the prevention and eradication of the use of torture. Among the most important advances in this regard, we can highlight the Agreement under which it is an obligation for all prosecutorial authorities to apply the Istanbul Protocol; the amendment to article 57 of the Code of Military Justice; the creation of a Special Investigation Unit for the Crime of Torture within the Office of the Attorney General; and most recently, the presentation before Congress of a draft “General Law on Torture and Other Cruel, Inhuman and Degrading Treatment” by President Peña Nieto.

4) Specific groups

The IACHR draft report also highlights issues dealing with the following specific groups:

a. Women

- b. Indigenous peoples
- c. LGBT
- d. Children and teenagers
- e. Migrants and forced displacement

In its response, Mexico highlights several advances made for the promotion and protection of the human rights of each of these groups which were not adequately considered by the IACHR.

V. PERSONS DEPRIVED OF THEIR LIBERTY

The Commission expresses its concern on the existence of the precautionary measure of “arraigo” and requests the State to abolish this practice which it considers to be incompatible with the American Convention on Human Rights. In this chapter, the State explains the limitations and exceptional nature of this measure, which since a constitutional reform is only applicable to cases of organized crime. The Commission does not consider in its report that there has been a significant decrease in its application from 2012 to 2015.

The State is also surprised by the fact that the Commission raises some issues of concern regarding the degree of prison overcrowding, corruption, self-government, and violence in detention centers; however, it does not recognize that there have also been some significant advances such as the creation of a National Conference for the Penitentiary System. This Conference is in charge of coordinating the cooperation between prisons and other public and private institutions, and of the promotion and implementation of public policies within the penitentiary system. In fact, within the works of the Conference, several Technical Committees have been created, such as the Technical Committee on Corruption, on Prison Overcrowding and Persistent Perpetrators, on Respect of Intern’s Human Rights, and on Gender Equality in Prisons.

VI. PROTECTION OF HUMAN RIGHTS DEFENDERS, JOURNALISTS AND FREEDOM OF EXPRESSION

In this chapter, the Commission points out that although there have been some efforts from the State to protect the work of human rights defenders and journalists, they continue being victims of threats and other grave violations of human rights. The Commission emphasizes on the need to investigate and sanction those responsible of these acts.

As in other chapters, the Commission fails to include relevant information regarding the institutional efforts that have been carried out by the State. For instance, it would have been worth to provide more information on the works of the Protection Mechanism for Human Rights Defenders and Journalists. Therefore, in this section of comments, the State provides detailed information on the structure and works of the Protection Mechanism, which includes a Governing Council, an Advisory Council, and a National Coordinative Office. Information regarding the ordinary and extraordinary procedures is also included along with information on the creation of a trusteeship to ensure the effective implementation of precautionary measures to protect human rights defenders and journalists. In addition, the State provides information on the Strengthening process of the Protection Mechanism.

VII. COMMENTS ON CONCLUSIONS

The Inter-American Commission concludes that the main challenge of the State is to end up with the impunity cycle, and issues a number of recommendations regarding public safety, enforced

disappearance, torture, extrajudicial killings, access to justice, the special vulnerability of certain categories of persons, and freedom of expression.

The State highlights that a great number of these recommendations are phrased in a general fashion, which presents challenges as it regards to implementation, particularly in what relates to reaching positive result strengthening legislative processes and public policies that are being implemented already to improve the human rights situation in the country. Some of the recommendations are repetitive, they were previously issued by other international human rights organs, and are being implemented already. Information is provided in that regard.