MEXICO

LAWYERS FOR LAWYERS, THE LAW SOCIETY OF ENGLAND AND WALES & LAWYERS RIGHTS WATCH CANADA JOINT SUBMISSIONS TO THE UN UNIVERSAL PERIODIC REVIEW (SECOND CYCLE)

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LAWYERS FOR LAWYERS (L4L), THE LAW SOCIETY OF ENGLAND AND WALES, LAWYERS' RIGHTS WATCH CANADA

JOINT UPR SUBMISSION – MEXICO, MARCH 2013

1. Signatory organisations are submitting this report on the state of human rights in Mexico with recommendations to the OHCHR for the 17th session of the UPR Working Group in the UN Human Rights Council in 21 October – 1 November 2013.

2. L4L is an independent and non-political Dutch foundation with the status of 'institution for the promotion of the public interest', which seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. L4L does this by supporting lawyers worldwide who are threatened or suppressed in the execution of their legal profession.

3. The Law Society of England and Wales is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world.

4. Lawyers Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger.

LEGAL AND INSTITUTIONAL MECHANISMS FOR PROTECTING AND PROMOTING HUMAN RIGHTS AND HUMAN RIGHTS INITIATIVES

5. The adequate protection of human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services. These legal services can only be provided effectively by an independent legal profession. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that has been signed and ratified by the Mexican government on 23 March 1981.

6. In its task of promoting and ensuring the proper role of lawyers, the Mexican government should respect and take into account the UN Basic Principles on the Role of Lawyers ('Basic Principles')[i] that provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles are considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal services.

7. However, reports gathered by the signatory organisations and information that they received from lawyers in Mexico, demonstrate that the Mexican government does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession and see their personal life heavily impacted. This will be explained in more detail below, focussing on three main themes:
   I The execution of precautionary measures

II The investigation of crimes against HR defenders
III 'Arraigo' / arbitrary detention

I. Precautionary and provisional measures

8. According to Article 16 of the Basic Principles on the Role of Lawyers, the Mexican government must ensure that lawyers '(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics'. Article 17 stipulates that '[W]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.' However in many situations the signatory organisations were informed about, the Mexican authorities' failure to do so. Some of these situations are described below.

9. Precautionary or provisional measures to protect Mexican lawyers – in many cases ordered by the Inter- American Commission or Court of Human Rights - are not always executed correctly by the Mexican government. On the topic of these precautionary measures in general, during the last UPR on 29 May 2009 Mexico received recommendations 23 and 58, which read: 'Set up structural measures to address systematically violence and violation of fundamental rights, of which women and human rights defenders are victims' and 'Increase the effectiveness of the "precautionary measures" to protect human rights defenders, including through adopting effective and comprehensive prevention strategies, at central and local levels, to prevent attacks and protect the life and physical integrity of human rights defenders and journalists, and ensure that such programs are backed by a strong political commitment and provided with adequate resources'. These recommendations have been examined by Mexico and enjoy the support of Mexico.

10. The signatory organisations have found that the Mexican government raised efforts to improve the protection of human rights defenders, including lawyers, since the previous UPR. One of the major progresses in legislation is the Bill for a Mechanism of Protection for Human Rights Defenders and Journalists, which went into effect in 2012. The signatory organisations want to compliment the Mexican government on this improvement.

11. The signatory organisations emphasize however that it is very important that this Bill is implemented and executed properly. This importance is underlined by the following examples of situations that the organisations learnt of in the last years.

12. First, the signatory organisations received information on the situation of lawyers working at Centro de Derechos Humanos de la Montaña "Tlachinollan" in the Costa-Montaña region of, Guerrero.[ii] On 9 April 2009 the Inter American Court of Human Rights (IACtHR) ordered the Mexican government to provide provisional measures to these lawyers. These measures were ordered after various attacks and threats had taken place against those lawyers and other indigenous organisations who had provided assistance to Inés Fernandez and Valentina Rosendo, indigenous women denouncing sexual abuses before the IACtHR committed by military elements in 2002. On 28 June 2011 the IACtHR reviewed the situation of the beneficiaries of the measures to see if the precautionary measures were effective. At this review it came clear that the security measures were far from effective, for example, none of the satellite communication systems that

the Mexican government had provided were functioning properly. All this despite the continuing and documented threats to the beneficiaries of the measures.

13. Second, the signatory organisations were informed about the situation of Ms. Alba Cruz, a lawyer working at the Comite Integral de Defensa Derechos Humanos Gobixha (CODIGO-DH).[iii] To both Ms. Cruz and her organisation different precautionary measures are assigned, including visits of guards, security cameras and pre-paid phones with credit for emergencies. With respect to the visits of guards we learnt from CODIGO-DH and Ms. Cruz that they only appear at the office of CODIGO-DH very irregularly. With respect to security cameras CODIGO-DH and Ms. Cruz reported many times that the cameras at the office of CODIGO-DH do not work since March 2012. Nothing is done to repair them, although the cause is known. Moreover, a number of the telephones that have been granted don't work properly and have not been replaced. CODIGO-DH and Ms. Cruz have reported these shortcomings to the Mexican Federal Government. However no action has been taken.

14. Both examples show the importance the permanent attention of the Mexican government for the protection of human rights defenders and lawyers. To this aim the signatory organisations recommend the Mexican authorities to provide all the resources required for the successful implementation of the aforementioned Bill for a Mechanism of Protection for Human Rights Defenders and Journalists. They urgently request the Mexican authorities to ensure that the legislative and executive powers jointly promote the implementation of the bill and make sure the various state authorities of the Mexican Federation comply with it.

II. Investigation of crimes against Human Rights Lawyers and defenders

15. On the basis of the aforementioned Article 17 of the Basic Principles on the Role of Lawyers and Article 2 of the UN Declaration on Human Rights Defenders, the Mexican government is obliged to investigate threats and abuses against human rights defenders, including lawyers. The Mexican government as a whole has failed to uphold obligations, but the signatory organisations learned that the problem of impunity and lack of research is particularly severe in Guerrero and Oaxaca, both at state and at municipal levels.

16. On the topic of investigation of crimes against HR defenders, during the last UPR on 29 May 2009 recommendations 58 and 59 were made and have been examined by Mexico and enjoy the support of Mexico. These recommendations read: 'Investigate cases of attacks / violence and threats against journalists and human rights defenders, in order to bring the perpetrators to justice' and 'Ensure that crimes and violations against human rights defenders, journalists and lawyers are effectively investigated and prosecuted; that those responsible are punished; that complaints of threats, harassment and intimidation of human right defenders, journalists and lawyers receive a prompt response and that adequate measures for their safety are taken'.

17. The signatory organisations have received information indicating that threats and other crimes that are directed against lawyers are not always investigated with the priority needed. Furthermore, a lack of investigation and high degree of impunity are reportedly prevalent in many cases of crimes directed against human rights defenders, including lawyers. In 2009 the Mexico Office of the High Commissioner for Human Rights (OHCHR) published a report on the situation of human rights defenders in Mexico, in which it has been stated that the high degree of impunity in cases of crimes directed against human rights defenders constitutes "the factor that increases

the risk of attacks against human rights defenders the most, since it leaves them in a situation of helplessness and vulnerability"[iv].

18. Furthermore, the Special Rapporteur on the independence of judges and lawyers reported this impunity and lack of investigation in her report of 18 April 2011, stating: "The Special Rapporteur believes that widespread impunity, which has come to be seen as commonplace, is one of the major challenges to be faced by Mexico. Its causes appear to include a flawed system of crime investigation and repeated jurisdictional disputes between federal and state authorities which hinder the State's efforts to mount an effective response"[v]. Furthermore: "The Special Rapporteur notes that the extent of government involvement in the effort to combat impunity is a reflection of the extent of a State's commitment to the full enjoyment of human rights" [vi].

19. The signatory organisations specifically want to point out two situations that they were informed about. First they learned[vii] that in the state of Oaxaca, which is one of the states with the highest level of threats or crimes against human rights defenders, of all violence against women human rights defenders that was registered in 2012 (48 cases), at the end of November no perpetrator had been arrested yet. This despite the fact that several victims had identified the perpetrator.

20. Furthermore, the signatory organisations learned that with regard to the situation of Alba Cruz, lawyer for the organisation CODIGO-DH, no action has been taken to investigate the threats and attacks that she has filed. These include a chase and burglary of her mobile phone and damage at her residence in the spring of 2010 and a threatening text message that she received in January 2011 and in April 2012.

21. Moreover, with regard to Tlachinollan in the state Guerrero, the signatory organisations were informed that no investigation has been done into the many aggressive assaults against these human rights defenders and lawyers. On 4 May 2012 for example, Vidulfo Rosales Sierra, lawyer at Tlachinollan and beneficiary of provisional measures ordered by the IACtHR, received written threats at their office in Chilpancingo. These threats had a clear relation to his work as a lawyer investigating the circumstances of death of two students who were killed in a demonstration in January 2012 and with other cases brought before the IACtHR. Despite the fact that he reported this to the police, no one has been held accountable for the threats.

22. The signatory organisations emphasize that research into the aggressions directed at lawyers is the best means to prevent such threats in the future. They further indicate that crimes against lawyers that relate to the exercise of their profession, do not only touch those lawyers themselves and their family, but also make an obstruction for the access to justice of their clients. This justifies that precisely in the investigation of these crimes should be given a high priority also at state and municipal levels. They urge the federal and local authorities to improve the coordination with respect to this investigation.

III Arbitrary detention

23. On the topic of investigation of arbitrary detention, during the last UPR on 29 May 2009, the following recommendation was made "Abolish the practice of "arraigo" as soon as possible". This recommendation was rejected by Mexico.

24. “Arraigo”, is a form of preventive custody. This preventive custody was incorporated into the Constitution in 2008, in article 16, which states: “When dealing with organized crime, the judicial authority, at the request of the prosecutor, may order that a person be held in preventive custody in a facility and for a period of time as provided for by law, up to a maximum of 40 days, if such detention is necessary for the success of the investigation or for the protection of persons or property, or if there is a well-founded risk that the suspect will abscond from justice. This time period may be extended if the Public Prosecution Service demonstrates that the original grounds for preventive custody are still valid. The total period of preventive custody may not, however, exceed 80 days.”

25. The Special Rapporteur on the independence of judges and lawyers speaks in her report on Mexico of May 2011 about the need to eradicate practice of arraigo, affirming the arbitrary nature of the preventive custody and “its incompatibility with the principle of the presumption of innocence and the right to personal liberty. Cases of preventive custody were found to be a form of arbitrary detention”. Moreover, the use of arraigo was found to be “inherently at variance with the oral, adversarial model adopted by Mexico for use in its system of criminal procedure”.

26. The use of arraigo(especially the fact that a) usually no information is given about if and where people are detained and b) the quick movement of people in custody that the signatory organisations learned of), is a violation of the rights stipulated in Article 7 of the Basic Principles on the Role of Lawyers “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest and detention.” and in Article 8 of the same Basic Principles “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate to and consult with a lawyer, without delay (...)”

27. The signatory organisations received information from lawyers in Tijuana, Baja California, that the use of arraigo severely complicated her work as a lawyer. They also received information that lawyers of Tlachinollan, that tried to assist clients that were taken into arraigo on 12 December 2012 in relation to student protests in Chilpancingo, Guerrero, were severely hindered in their work by several representatives of the Procuraduría General de Justicia del Estado de Guerrero. This was also acknowledged by the Comisión Nacional de Drechos Humanos.[viii]

28. Moreover, the signatory organisations have received information that human rights defenders and lawyers have been taken into arraigo. Specifically they have been informed about the arbitrary detention of Nataniel Hernandez Nuñez, director of Centro de Derechos Humanos Digna Ochoa in the city of Tonela Chiapas on 7 February 2012 by the PGR. On this day sr. Hernandez was arrested during a meeting without any warrant. The police that took him did not mention what he was accused of and did not inform any of the persons present at the meeting where they would take Sr. Hernandez. Only because of immediate intervention by several human rights organisations it was prevented that Mr. Hernandez was moved to another city without anyone being informed.

29. Preventive custody in the form that it is used in Mexico (arraigo) is an arbitrary measure that is incompatible with the principle of the presumption of innocence and the right to personal liberty. The signatory organisations therefore want to emphasize that this legal institution should be abolished.

The signatory organisations' recommendation's to the government, also for the consideration of this Council:

30. fully comply with the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990;

31. consistently condemn all forms of harassment against lawyers publicly, at all levels and in strong terms;

32. provide all the resources required for the successful implementation of the Bill for a Mechanism of Protection for Human Rights Defenders and Journalists, to ensure that the legislative and executive powers jointly promote the implementation of the bill and make sure the various state authorities of the Mexican Federation comply with it;

33. promote better efforts to coordinate between federal and local authorities in order to carry on better investigations, to coordinate the implementation of security measures in the local arena and to promote those local mechanisms in;

34. ensure that crimes and violations against human rights defenders and lawyers are effectively investigated and prosecuted;

35. abolish the legal institution arraigo;

36. take all other measures needed to guarantee the proper functioning of the rule of law.

END NOTES:

[i] Basis Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
[ii] 'Desde el Grito mas hondo y digno, informe XVIII, junio 2011 – mayo 2012', p 130, available on: http://www.tlachinollan.org/en/Informe-de-actividades/desde-el-grito-mas-hondo-y-digno.html
[iii] Information from a letter op 10 August 2012 of CODIGO-DH to the Comision Interamericana de Derechos Humanos
[iv] http://www.hchr.org.mx/documentos/libros/informepdf.pdf
[v] Report of the Special Rapporteur on the independence of judges and lawyers, available on: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/129/33/PDF/G1112933.pdf?OpenElement
[vi] Report of the Special Rapporteur on the independence of judges and lawyers, available on:http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/129/33/PDF/G1112933.pdf?OpenElement
[vii] 'Violencia e impunidad contra mujeres activistas y defensoras de derechos humanos en Oaxaca', available on: http://consorciooaxaca.org.mx/wp-content/uploads/2012/12/InformeEspecial_2012_MujeresActivistasyDefensoras_Oaxaca.pdf
[viii] 'Desde el Grito mas hondo y digno, informe XVIII, junio 2011 – mayo 2012', Tlachinollan, p 24-30. http://www.tlachinollan.org/en/Informe-de-actividades/desde-el-grito-mas-hondo-y-digno.html