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Human rights situations that require the Council's attention

Joint written statement* submitted by Lawyers' Rights Watch Canada and Lawyers Without Borders Canada, non- governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Statement to the fifteenth session of the Human Rights Council regarding the protection of human rights defenders in Mexico**

I. Recommendations

Lawyers' Rights Watch Canada, Lawyers Without Borders Canada and the Bar Human Rights Committee of England and Wales call on the Human Rights Council to fulfil its duty to promote and protect the rule of law and fundamental rights and freedoms in Mexico by monitoring and recommending:

- That the government of Mexico take all necessary measures to permit lawyers to practice their profession without intimidation, harassment or undue interference in accordance with the UN Basic Principles on the Role of Lawyers.
- That Mexican authorities actively protect human rights defenders and guarantee that they are able to carry out their work without restrictions, reprisals or criminalization, or the threat thereof.
- That the Mexican government conducts prompt, impartial and effective investigations of allegations of harassment or intimidation of human rights defenders.
- The immediate release of Raúl Hernández and all other Mexican prisoners of conscience.
- The effective implementation of protective measures to safeguard lawyers and human rights defenders whose safety is threatened as a result of their work.

II. Background

Mexican human rights lawyers and human rights defenders effectively advocate on behalf of the most vulnerable portions of the population. Their work can place them in difficult positions vis-à-vis state authorities because it sometimes requires challenging the status quo. Unfortunately, Mexican human rights defenders routinely face intimidation at the hands of state authorities. These threats most commonly take the form of threats to their lives and bodily integrity. However, authorities also utilize other forms of repression, including misuse of the criminal justice system as a means of silencing dissent.

Human rights defenders play key roles in the international human rights regime. The United Nations Declaration on Human Rights Defenders provides that:

“[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.”¹

** Bar Human Rights Committee of England and Wales, an NGO without consultative status, also shares the views expressed in this statement.

¹ UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, article 1, U N Doc.A/Res/53/144, art. 1 (8 March 1999)
<<http://www.unhcr.ch/huridocda/huridocda/huridoca.nsf/%28symbol%29/a.res.53.144.en>

Article 2 of the UN Declaration on Human Rights Defenders provides that states are responsible for protecting, promoting and implementing human rights and fundamental freedoms.² As a General Assembly Resolution the UN Declaration on Human Rights Defenders is not legally binding in and of itself, however it summarizes applicable international legal standards and instruments which Mexico is party to.

Recent legal and political reforms in Mexico such as those included in the federal government's National Programme of Human Rights 2008-2012³ have not addressed the situation of human rights defenders on the ground. To fully comply with its international human rights obligations, the Mexican government must not only protect the lives and physical security of defenders, it must also safeguard the ability of human rights defenders to do their work.

Persistent oppression can shut down human rights organizations and stifle legitimate dissent. For example, the Organization of the Me'phaa People (OPIM) and the Organization for the Future of the Mixteco People (OFPM) have effectively ceased their operations after the murder, torture, arbitrary arrest and detention, threats and intimidation of many of their members. The lawyers at Tlachinollan Human Rights Centre were forced to close their office in Ayutla de Los Libres as a result of fears for their safety. These case studies are set out in greater detail below.

III. Criminalization of social protest

Criminal sanctions are frequently improperly applied to Mexican human rights defenders as a means to silence dissent. The charges laid range from minor offences to murder. Another method of intimidation is by issuing but not implementing an arrest warrant, so defenders live in constant fear of arrest.

For example, an arrest warrant was issued against Yessica Sánchez, a human rights lawyer practicing in Oaxaca, in 2006 but was never implemented. Ms. Sánchez reports that she lives with fear and uncertainty, particularly when representing clients in sensitive cases.⁴

Raúl Hernández, a member of OPIM, was falsely accused of murder in April 2008. He has been in prison for over two years. The Prosecution's case is based on inadequate witness testimonies and hearsay evidence. There has been a lack of serious investigation on the part of authorities. Mr. Hernández has consequently been declared a prisoner of conscience by international human rights organizations and other investigatory groups.⁵

² Ibid., Art. 2.

³ Programa Nacional de Derechos Humano 2008-2012, adopted 28 August, 2008 by the President of Mexico, the Minister of the Interior, the Minister of the Treasury and Public Credit, and the Minister of public Service, http://www.derechoshumanos.gob.mx/archivos/anexos/PROGRAMA_NACIONAL_DE_DERECHOS_HUMANOS_2008-2012.pdf (in Spanish), see strategy 1.4, aimed at guaranteeing reliable and effective spaces for the participation of civil society in the drafting of public policies, at page 68.

⁴ Recalling the Rule of Law: Report on the lawyers' delegation to Mexico, A report on the protection of human rights defenders and the rule of law in the status of Guerrero and Oaxaca, Mexico, July 2010, Bar Human Rights Committee of England and Wales at page 37.

⁵ See, e.g., Recalling the Rule of Law: Report on the lawyers' delegation to Mexico, A report on the protection of human rights defenders and the rule of law in the status of Guerrero and Oaxaca, Mexico, July 2010, Bar Human Rights Committee of England and Wales, at page 39 and Mexico: Amnesty International adopts five indigenous rights defenders as prisoners of conscience, 11 November 2008, AI Index: PRE01/281/2008 <<http://www.amnesty.org/en/for-media/press-releases/mexico-amnesty-international-adopts-five-indigenous-rights-defenders-pri>>.

Restrictions on freedom of expression, association and assembly are only lawful when they are clearly delineated in law and have been established with a legitimate aim of protecting national security, public safety or public order, public health, morals or the rights and freedoms of others. They must be necessary for their intended purpose and any harm must be proportionate to the perceived benefits.⁶ Peaceful human rights lawyering and advocacy does not legally justify restrictions. Mexico's practice in this area is not consistent with its human rights obligations.

IV. Attacks on human rights defenders

Article 2 of the UN Declaration on Human Rights Defenders establishes that states must ensure that human rights are implemented within their jurisdictions. This includes accountability for attacks committed by the authorities, the prompt and effective investigation of threats and human rights abuses, and legitimate efforts to stop them. The Mexican government has not fulfilled these obligations.

The Office of the UN High Commissioner for Human Rights (OHCHR) in Mexico published a report on human rights defenders in 2009. The OHCHR reported 127 alleged attacks from January 1, 2006 to May 30, 2009, ten of which were assassinations.⁷ Only two of the 127 attacks on human rights defenders resulted in prosecution, which translates to an impunity rate of 98%.

OPIM and OPFM, the indigenous rights organizations mentioned above, are sister organizations which work together to promote the realization of the fundamental human rights of the Me'phaa (Tlapaneca) and Na Savi (Mixteco) indigenous peoples. Members of OPIM and OPFM have been subjected to false criminal accusations, threats, theft, attacks, torture, forced disappearance and murder.

Lorenzo Fernández Ortega, a member of OPIM, was kidnapped in February 2008. His body was found bearing signs of torture on February 9, 2008. He died shortly before he was scheduled to present complaints of human rights abuses against his community to the UN High Commissioner for Human Rights. No one has been arrested in his murder.

Raúl Lucas Lucía and Manuel Ponce Rosas were respectively the President and Secretary of OPIM. They were kidnapped at a public ceremony on February 13, 2009 by armed persons who identified themselves as police officers. Their families filed complaints with state authorities but no investigation was opened. Their bodies were found with evidence of torture a week later. Investigation has been inadequate and no one has been charged.

Obtilia Eugenio Manuel, the current President of OPIM, has been the victim of continuous threats and has been forced to leave the region where she lives. The authorities have not investigated the threats.

The Inter-American Court of Human Rights granted protective measures in favour of forty members of OPIM and 26 members of OFPM in order to guarantee their security. The

⁶ UN General Assembly Declaration on Human Rights Defenders, supra note 1 at article 17, International Covenant on Civil and Political Rights, articles 29, 21 and 22.

⁷ Defender los derechos humanos: entre el compromiso y el riesgo: Informe sobre la situación de las y los defensores de derechos humanos en México, Naciones Unidas Derechos Humanos, Oficina del Alto Comisionado para los Derechos Humanos Mexicano, 2009 (in Spanish).

measures have not been satisfactorily implemented and the defenders continue to live in fear.⁸

The Tlachinollan Human Rights Centre (THRC) works with members of the indigenous population in Guerrero state in southern Mexico. Among their other duties, they provide legal representation to members of OPIM and OFPM. On March 18, 2009 the Centre had to close its office in Ayutla, Guerrero, as a result of threats received by its members.

Throughout March 2009, THRC staff and their families were subjected to threats and harassment. The police have not investigated these threats. The Inter-American Court of Human Rights ordered provisional measures for the protection of 107 persons including all staff of the Tlachinollan Human Rights Centre in the spring of 2009.

On November 17, 2009 the Director of THRC, Abel Barrera, filed a complaint with the Guerrero Attorney General against a member of the Mexican armed forces. The member of the armed forces repeatedly requested details regarding Mr. Barrera's working hours and professional activities. He also photographed Mr. Barrera on numerous occasions when he was leaving the THRC offices and his home in Tlapa, Guerrero State. It appears that these measures are intended to intimidate Mr. Barrera in response to his work with the legal clinic. Members of the clinic maintain lists of threats received and have provided them to the police. Despite this, authorities have not investigated the threats.

There has been inadequate police investigation in all of the above cases. This violates Mexico's international human rights obligations. It is not acceptable for state authorities to vigorously prosecute human rights defenders for minimal offences or arbitrary purposes while concurrently failing to act to protect defenders from real threats, assault, and even murder.

V. UN Human Rights Council mandate

The Human Rights Council is mandated to promote and protect human rights by, inter alia, preventing violations, removing obstacles to enforcement, engaging states in dialogue and making recommendations for the protection of human rights.⁹

The UNHRC must act effectively to encourage and promote remedies necessary to protect human rights defenders and the rule of law in Mexico.

⁸ Recalling the Rule of Law: Report on the lawyers' delegation to Mexico, A report on the protection of human rights defenders and the rule of law in the status of Guerrero and Oaxaca, Mexico, July 2010, Bar Human Rights Committee of England and Wales.

⁹ General Assembly Res. A/RES/48/141 20 Dec. 1993, articles 3 (a), (f), (g) and General Assembly Res.A/RES/60/251, 3 Apr. 2006, art. 5(i).