

DROI MISSION TO MEXICO-CIVIL SOCIETY'S MAIN CONCERNS

Brussels, 26th of January 2016

1. Human Rights Defenders (HRDs) and journalists at risk

Facts:

- Several Human Rights organizations agree on the fact that during the 6-year mandate of President Enrique Peña Nieto, the number of human rights violations against HRDs has increased.
- Mexico is considered to be the most dangerous country in Latin America for journalists.
- Civil society and international organizations as the Inter-American Commission of Human Rights (IACHR) highlight that those attacks remain systematically unpunished.
- With regards to the situation of HRDs, the situation in the State of Oaxaca is particularly concerning, where the number of attacks has increased by 300% between 2012 and 2015. Therefore Oaxaca is the State where the inaction of authorities reaches the highest level.

Concerns and main recommendations of the Civil Society:

- Such a worrying situation requires a decisive response to solve the problem of systematic impunity for attacks against HRDs.

→ To take concrete actions to guarantee the independence of the judiciary and the specific training of judicial officers, ensuring that the prosecutions and investigations are carried out with impartiality and that direct as well as indirect perpetrators are duly prosecuted and convicted.

- The Federal Mechanism for the Protection of HRDs and Journalists still has significant failures and the coordination between the different authorities responsible for the implementation of the protection measures is deficient.

→ To strengthen the Federal Mechanism for the Protection of HRDs and Journalists and supply it with enough resources to ensure an effective protection, also including a gender- and ethnicity-based approach, ensuring the physical and psychological integrity of the HRDs and journalists under its protection.

- Some public policies contribute to reinforce and aggravate the worrying situation of HRDs. If this is not addressed, none of the Mexican authorities' responses will be reliable.

→ To ensure that HRDs can safely carry out their duties within a national legislative framework that does not criminalize social protest and to guarantee the repeal of those laws restricting social protests, which were adopted for instance in the Federal District and Quintana Roo.

→ To raise more awareness about the legitimacy of the work of HRDs, by publicly supporting them through public declarations and campaigns recognizing their contribution to the rule of law and democracy.

→ The militarization of the institutions and the territory as part of a security strategy has a direct link with the increasing of violence and attacks against HRDs. A timetable should be adopted to remove

the military from public security functions, in line with the recommendations of the UN High Commissioner for Human Rights.

2. Widespread and systematic torture in Mexico

Facts:

- Several international human rights mechanisms have raised their concerns on the practice of torture in Mexico and the UN Special Rapporteur on Torture defined torture in Mexico as widespread and systematic.
- The Mexican Parliament is currently discussing the draft of the future General Law against Torture, that will be mandatory at all three governmental levels.

Concerns and recommendations of Civil society:

- The current discussion over a General Law against Torture is an historical opportunity to make progress to achieve its eradication. Nevertheless, the draft text sent by the President Peña Nieto shows several shortcomings, since among other measures, it opens to the possibility for perpetrators to benefit from amnesties or pardons, and it does not investigate the chain of command. If the draft text does not improve and remains as it is, it is very likely that impunity will continue. Furthermore, instead of creating only one definition and sanction for the crime of torture and ill-treatment, as required by international standards, the draft establishes a difference between these two concepts and does not establish the exclusion of evidence obtained through cruel, inhuman and degrading treatment. Additionally, the definition of cruel, inhuman and degrading treatment is too narrow, since it excludes that such crime can be committed by others than public servants appointed for security tasks.

→ To include the highest international standards in the fight against torture with special focus on the definition of torture, the absolute prohibition of evidence obtained under torture, the correct implementation of the Istanbul Protocol, the end of impunity for perpetrators, the elimination of the concept of “*arraigo*” since it constitutes a form of arbitrary detention, the reform of the Military Code of Justice in line with the judgments of the Inter-American Court of Human Rights, ensuring that human rights violations are an exclusive competence of the civil or ordinary jurisdiction, and the establishment of guarantees for an effective redress of victims.

→ To ensure that the General Law against Torture establishes the competence of the Federal Attorney General’s Office (Procuraduría General de la República) to investigate cases that have not been duly investigated by the State Attorney’s Offices.

→ To respect the time required by human rights organizations to coordinate themselves to provide commentaries on the draft law, rather than impose an “express process”. The State shall provide all necessary means to facilitate the effective participation of families, victims and the collectives representing them in the debates and the effective inclusion of their contributions to the law.

3. Enforced disappearances in Mexico

Facts:

- Official statistics registered 24.812 disappearances until December 2014. Impunity remains almost absolute for this grave crime.

- The Mexican Parliament is currently discussing the General Law on Disappearances, that will be mandatory at all three governmental levels. We welcome the fact that some spaces for dialogue have been facilitated between the Senate and civil society organizations in order to discuss the content and the format of the new Law.

- Fifteen months after the enforced disappearance of 43 students of the Rural Normal School Raul Isidro Burgos (Ayotzinapa), the facts remain still unclear and the relatives keep searching for their whereabouts.

- The Interdisciplinary Group of Independent Experts (GIEI) presented its report highlighting deficiencies in the investigation as well as rejecting the official line of investigation presented by the Attorney General's Office. Its mandate has been extended and the President has compromised to fully implement its recommendations and to answer the GIEI's requests.

Concerns and recommendations of Civil Society:

-The UN Committee on Enforced Disappearances and the UN Working Group on Enforced or Involuntarily Disappearances have highlighted the need to categorize disappearances in their broader definition under the Mexican Law.

→To incorporate the highest international standards in the fight against enforced or involuntarily disappearances and to guarantee its practical implementation effectively by different means, among which the creation of a specialized unity within the Attorney General's Office.

→ To establish a national registry of disappeared persons gathering information on whether there are signs of intervention of the State's security forces and to guarantee an efficient coordination at Federal and State level, which would allow to include all cases of enforced disappearances in a single comprehensive database.

→ The recent decision of the UN Committee against Torture condemning Mexico for the first time, after analyzing an individual complaint, shows the importance of opening the access to justice at international level in order to redress failures at national level. Against this background, Mexico should recognize the competence of the UN Committee against Enforced Disappearances to examine individual complaints.

→ To respect the time that human rights organizations may require to organize and coordinate themselves and avoid an "express process". The State shall provide the necessary means to facilitate the effective participation of families, victims and the collectives representing them in the debates and the effective inclusion of their contributions to the Law.

- After the events in Iguala, and despite the lack of investigations, groups of relatives and friends of the victims searching for their beloved ones have succeeded in finding several graves with the remains of dozens of disappeared people. Due to this search, they are exposed to great risk, facing continuous threats, defamation and even a case of killing.

→ To implement the recommendations of the GIEI.

→ To fulfil the agreements reached with the relatives of the 43 students.

→ To Guarantee the physical and psychological integrity of the relatives of the disappeared persons and of the human rights organizations and to investigate the aggressions perpetrated against them.

4. Recommendations on the format of the DROI Mission

→ To ensure the active participation of civil society, including human rights organizations and victims' organizations.

→ To ensure that the EU Delegation and the representatives of DROI meet the families from Ayotzinapa.

→ To request the EU Delegation in Mexico to be more proactive in following up human rights issues in Mexico and publicly show the EU concerns.

5. Follow-up measures to the DROI Mission

→ To ensure that the EU is making progresses in its joint work with Mexico as agreed in the Human Rights Dialogue 2015, including the strengthening of the work on HRDs, torture and disappearances.

→ To organize a public debate in the European Parliament with the GIEI experts in 2016, providing MEPs with information on the case of Ayotzinapa and more generally on enforced disappearances in Mexico. This will represent a clear message on the EP's commitment on this issue.

→ To promote the adoption of a new resolution as a follow-up to this Mission and to the resolution of the European Parliament from 2014.