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Committee on Economic, Social and Cultural Rights

Information received from Mexico on follow-up to the concluding observations on its fifth and sixth periodic reports*, **

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* The present document is being issued without formal editing.
** The annexes to the present document are available on the Committee's website.



Introduction and rationale

1. The Government of Mexico is committed to contributing to an open and constructive dialogue with the Committee on Economic, Social and Cultural Rights and with other treaty bodies and non-treaty mechanisms of the universal system for the protection of human rights, in order to implement the highest standards in this area.

2. The combined fifth and sixth periodic reports of Mexico (E/C.12/MEX/5-6) were reviewed by the Committee on Economic, Social and Cultural Rights at its second and third meetings (E/C.12/2018/SR.2 and E/C.12/2018/SR.3), on 12 and 13 March 2018. In follow-up to those reports, and in compliance with the recommendation contained in paragraph 76 of the concluding observations adopted by the Committee at its twenty-eighth meeting, on 29 March 2018, the present document contains information on the progress of Mexico with regard to the recommendations made by the Committee in paragraphs 8 (The situation of defenders of economic, social and cultural rights), 13 (Rights of indigenous peoples) and 44 (Family members of disappeared persons).

Follow-up to the recommendation contained in paragraph 8 (a) of the concluding observations

3. The Mechanism for the Protection of Human Rights Defenders and Journalists is attached to the Ministry of the Interior and is the federal body responsible for protecting the life, freedom, integrity and security of any human rights defenders or journalists who are attacked in the course of their work.

4. Between 1 December and 30 June 2019, the Mechanism handled the cases of 977 individuals: 640 human rights defenders (66 per cent) and 337 journalists (34 per cent).

5. On 10 September 2018, a collaborative meeting was held with the Mechanism's state-level protection units to collect information on the shared needs of local governments in providing support to human rights defenders and journalists who experience attacks.

6. The Executive Commission for Victim Support has created a dedicated directorate within the federal legal advice service to provide support to human rights defenders and journalists. In coordination with the First Response Unit, the directorate provides assistance to those human rights defenders and journalists requiring comprehensive support.

7. At the meetings of its governing board, the Mechanism for the Protection of Human Rights Defenders and Journalists is engaged in ongoing coordination with the Office of the Special Prosecutor for Offences against Freedom of Expression and with the programme within the National Human Rights Commission that is responsible for dealing with violations of the rights of human rights defenders and journalists.

8. At its own instigation, the Ministry of the Interior worked with the Office of the United Nations High Commissioner for Human Rights in Mexico to conduct an analysis of the functioning of the Mechanism (see annex 1) with a view to improving it.

9. According to the Ministry, the recommendations will be reviewed, with the main focus being on ensuring that the Mechanism's operations are allocated sufficient financial, human and material resources from the Fund for the Protection of Human Rights Defenders and Journalists.¹

Follow-up to the recommendation contained in paragraph 8 (b) of the concluding observations

10. The Mechanism shares information with the Prosecutor General's Office for use in investigations of attacks on the life, physical integrity or freedom of human rights defenders and journalists.

¹ Financial situation of the Fund for the Protection of Human Rights Defenders and Journalists, as at 30 June 2019; includes a table with the historical contributions the Fund has received from the federal budget between 2012 and 2019. <https://www.gob.mx/defensorasyperiodistas/articulos/fideicomiso-1032>.

11. The Executive Commission for Victim Support assists the Prosecutor General's Office by presenting evidence, providing guidance to victims, facilitating proceedings and submitting requests to the Mechanism for protective measures for victims.

12. The Office of the Special Prosecutor for Offences against Freedom of Expression works with local authorities to investigate reports of offences against freedom of expression made via telephone or email, in writing or in person. Federal prosecutors can carry out checks and initiate ex officio investigations on the basis of news reports from electronic media.

13. In December 2018, the Organic Act on the Prosecutor General's Office was published in the Official Gazette. The Act regulates the organization, operation and powers of the Federal Prosecution Service, which is an autonomous public body with its own legal personality and assets.

14. When conducting investigations, the Prosecutor General's Office must observe the principles of equity, substantive equality and non-discrimination and safeguard the rights and freedoms established in the Constitution and international treaties.

Follow-up to the recommendation contained in paragraph 8 (c) of the concluding observations

15. All official acts of the Mechanism are performed in strict compliance with the Human Rights Defenders and Journalists Protection Act, which provides an opportunity for strengthening prevention activities and coordination with state authorities.

16. If beneficiaries launch legal challenges or *amparo* proceedings, the guidelines for the application of the Act are reviewed by the Mechanism and other bodies such as the federal judiciary.

17. Between July 2017 and May 2019, entries were made in the National Registry of Victims relating to 39 journalists: 24 under federal jurisdiction (20 direct victims – 17 men and 3 women; 4 indirect victims – 1 man and 3 women) and 15 under local jurisdiction (12 direct victims – 6 men and 6 women; 3 indirect victims – 2 men and 1 woman). Entries were also made relating to 342 human rights defenders: 332 under federal jurisdiction (200 direct victims – 122 men, 77 women and 1 other; 132 indirect victims – 57 men and 75 women) and 10 under local jurisdiction (7 direct victims – 3 men and 4 women; 3 indirect victims – 2 men and 1 woman).

18. In the area of comprehensive reparations, between July 2017 and May 2019 the Executive Commission for Victim Support settled 7 compensation cases relating to human rights defenders and journalists who had been direct victims of human rights violations, as well as 38 cases of subsidiary compensation relating to 6 direct and 32 indirect victims. It also settled 14 cases of relief measures for human rights defenders and journalists (4 direct and 10 indirect victims).

Follow-up to the recommendation contained in paragraph 8 (d) of the concluding observations

19. Analysis of open sources is used to identify situations of risk for human rights defenders and journalists without the need to activate the Mechanism for the Protection of Human Rights Defenders and Journalists. The British Government provides support in the analysis of the situation of human rights defenders and journalists to shape public prevention policies. In addition, the United States Agency for International Development (USAID) has provided the Mechanism with assistance in the areas of operational assessments, specialized consultations on risk assessments and the incorporation of a differentiated approach and a gender perspective.

20. The Executive Commission for Victim Support has also published analyses intended to strengthen the Mechanism and apply a gender perspective and a differentiated approach.

Follow-up to the recommendation contained in paragraph 8 (e) of the concluding observations

21. In January 2018, the governing board of the Mechanism for the Protection of Human Rights Defenders and Journalists approved the guidelines on the recognition of the work of

human rights defenders and journalists (see annex 3)² which were developed with the support of the Office of the United Nations High Commissioner for Human Rights and Espacio OSC, a coalition of civil society organizations. The guidelines are a public policy tool for public servants and are intended to establish criteria, content and procedures that provide explicit recognition of the work of human rights defenders and journalists and contribute to protecting them and preventing attacks against them, as well as to strengthening the rule of law and democracy.

22. The guidelines include a series of actions to be taken and recommendations to be implemented by the authorities at all three levels of government. They include the condemnation of attacks, threats or acts of harassment against human rights defenders and journalists, the imposition of sanctions on public servants who stigmatize or obstruct the work of such persons and the public denouncement of actions intended to discredit them.

23. Article 44 of the Human Rights Defenders and Journalists Protection Act mandates the Federal Government and the federative entities to promote public and social recognition of the activities of human rights defenders and journalists and to condemn, investigate and punish attacks against them.³

Follow-up to the recommendation contained in paragraph 13 (a) of the concluding observations

24. Mexico recognizes the right of indigenous peoples to free, prior and informed consultation in accordance with the international conventions to which it is a party and the jurisprudence of the Inter-American Court of Human Rights.

25. In December 2018, the Act establishing the National Institute of Indigenous Peoples was passed. The objective of the Institute, which replaced the National Commission for the Development of Indigenous Peoples, is to define, regulate, design, establish, implement, coordinate, promote, monitor and evaluate public policies, programmes, projects, strategies and actions in order to guarantee the exercise of the rights of indigenous and Afro-Mexican peoples and provide support for the recognition, protection, defence and conservation of land, property and natural resources, in accordance with the applicable regulations.

26. The Institute is the technical body that participates in free, prior and informed consultation processes whenever federal legislative and administrative measures are proposed that might affect the rights of indigenous and Afro-Mexican peoples. To that end, it developed the protocol for the holding of consultations with indigenous peoples and communities in accordance with the standards of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

27. Consultation processes are initiated ex officio by the relevant authority or at the request of the parties that might be affected. An initial analysis is conducted to establish the provisional basis for launching the procedure and to open the way for initiating dialogue. The central objectives of the analysis are the identification of the project's impacts and of any individuals who might have an interest in or influence over it.

28. Next, the consultation stakeholders are identified, namely the indigenous peoples and communities and their representative authorities, the authority responsible for carrying out the consultation and the technical advisory body (the National Institute of Indigenous Peoples or the body with responsibility for matters relating to indigenous peoples and communities in the relevant federative entity). The subject matter and objectives of the consultation are then determined. The next step is to reach an agreement with the communities, through their representative authorities, on a specific protocol outlining the five stages for a suitable consultation process: (i) previous agreements; (ii) information; (iii) deliberations; (iv) consultations; and (v) monitoring of agreements.

29. National legislation includes regulatory provisions for the consultation procedure which are based on the standards of the inter-American human rights system, ILO

² https://www.gob.mx/cms/uploads/attachment/file/297580/Lineamientos_para_el_Reconocimiento_a_la_Labor_de_Personas_Defensoras_de_Derechos_Humanos_y_Periodistas.pdf.

³ The Mechanism has issued a number of statements of recognition which are available at <https://www.gob.mx/defensorasyperiodistas/articulos/reconocimiento-a-las-personas-defensoras-de-derechos-humanos>.

Convention No. 169 and the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, notably in the regulation of the energy sector (the Hydrocarbons Act, the Electricity Industry Act and the Geothermal Energy Act). All energy projects must have a social impact assessment. If risks are identified, the Ministry of Energy is obliged to conduct a consultation process.

30. According to information provided by the Ministry, at the beginning of each project a technical committee is set up that includes representatives of the various ministries related to the project's subject matter. Once a consultation protocol has been drawn up, it is examined by the committee and then presented to the community assembly for revision and approval. Between 2017 and July 2019, the Ministry of Energy conducted 18 consultations with indigenous communities, 9 of which have been completed.

31. With regard to environmental rights, the Ministry of the Environment and Natural Resources, in coordination with the National Institute of Indigenous Peoples, conducts consultations with indigenous peoples and communities as part of the environmental impact assessment process.

32. In March 2017, the Agreement on the identification of cases requiring prior consultation with indigenous peoples and communities in connection with activities and/or projects of the Ministry for Agrarian, Territorial and Urban Development, including the Coordinated and Clustered Sector, was published in the Official Gazette. In accordance with the Agreement, in March 2019 the Ministry worked with the Ministry of Defence, the Ministry of the Interior and the National Institute of Indigenous Peoples, in its technical capacity, to conduct a consultation process with the community of Xaltocan, in Nextlalpan, State of Mexico, regarding the conversion of Santa Lucía Military Air Base No. 1 into an international airport to be used for civilian and military purposes. Under the process, the project obtained unanimous approval.

33. With regard to the release of genetically modified organisms, the Interministerial Commission for Biosafety of Genetically Modified Organisms is working to update the basic protocol on consultation and participation of indigenous peoples and communities in areas where genetically modified organisms are to be released, in accordance with international standards.

34. In accordance with the provisions of ILO Convention No. 169, between June and November 2018 the Ministry of Energy conducted a study for the preparation of a protocol on consultations with indigenous peoples and communities prior to the issuance of mining permits. The study was comprised of three stages: (i) legal framework; (ii) preliminary analysis mechanism; and (iii) the protocol on consultations with indigenous peoples and communities on mining.

35. With respect to rural roads and supply routes, coordination, consultation and consensus-building activities are carried out in indigenous municipalities, and mechanisms for participation are set up with local authorities. At the same time, and as part of the implementation of infrastructure projects, the establishment of committees is encouraged in order to interact with communities and hear their opinions.

36. Hydroelectric projects are currently suspended; no activities have been carried out in this area since July 2017.

Follow-up to the recommendation contained in paragraph 13 (b) of the concluding observations

37. In 2018, through the Programme for the Improvement of Indigenous Production and Productivity, the National Institute of Indigenous Peoples provided support for activities to adapt to climate change and mitigate its effects, with the aim of protecting natural resources and restoring flora, fauna and soil at the participating locations. A total of 60.6 million Mexican pesos was spent on the development of 417 projects that benefited 33,105 indigenous persons (14,877 women and 18,228 men).

38. Since 2016, the Interministerial Commission for Biosafety of Genetically Modified Organisms has launched 76 consultation processes with indigenous peoples and communities in areas where genetically modified organisms are intended to be released into the environment. Of those processes, 34 have been concluded in seven federative entities

and 8 are still in progress; the remainder ended without identifying the individuals to be consulted.

39. Between July 2017 and December 2018, the Rarámuri people in Chihuahua were consulted about the San Julián storage dam project.

40. The Office of the Agrarian Affairs Advocate, in its capacity as Ombudsman, ensures that indigenous peoples and agricultural centres are consulted in areas to be affected by the Tren Maya rail project, that their rights are fully respected and that the benefits are fairly distributed. Approximately 400 *ejido* assemblies have been held to present programmes that will benefit the agrarian, campesino and indigenous populations.

Follow-up to the recommendation contained in paragraph 44 of the concluding observations

41. On 17 November 2017, the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Missing Persons System was passed, allowing for the creation within the Prosecutor General's Office of the Office of the Special Prosecutor for the Investigation of Offences of Enforced Disappearance.

42. The Office of the Special Prosecutor is responsible for initiating, directing, coordinating and supervising investigations relating to the offences defined in the General Act. It also facilitates the participation of family members in investigations and provides them with information on the progress made.

43. In 2018, the Office of the Special Prosecutor had direct contact with 51 civil society organizations and groups of relatives of disappeared persons in the various federative entities. A total of 119 round tables were held, at which 1,524 indirect victims were provided with support, and federal prosecutors reported on the progress made in the investigations.

44. In March 2019, the National Missing Persons System was reactivated, bringing together relatives of disappeared persons, civil society organizations, academics and federal and state-level authorities. The System will issue guidelines on coordination between authorities in the search for missing persons and on the operation of the unified information technology system.

45. The Executive Commission for Victim Support and its local branches are responsible for providing support and assistance in coordination with other competent institutions. The National Commission for the Search for Missing Persons provides advice and guidance to family members on the support measures established in the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Missing Persons System.

46. The National Commission for the Search for Missing Persons has the power to request the Executive Commission for Victim Support and state-level commissions to activate the necessary mechanisms to cover the cost of assisting the families of missing persons, through the Aid, Assistance and Comprehensive Reparations Fund.

47. When a search is initiated, it is the responsibility of the National Commission for the Search for Missing Persons or its local branch to direct the relatives of missing persons to the Executive Commission for Victim Support or its local branch. If the person is located, the National Commission for the Search for Missing Persons must immediately notify the Executive Commission for Victim Support so that immediate assistance measures can be granted as appropriate.

48. In addition to their right to the truth, victims of enforced disappearance and disappearance perpetrated by individuals who are found alive have a right to have access to justice, compensation for damages and guarantees of non-repetition to ensure respect for their economic, social and cultural rights. They are also entitled to the restoration of their property and rights.

49. The relatives of victims must also have access to aid, assistance and support measures, particularly those that facilitate their participation in the search, including psychosocial support measures. They can also have access to protection programmes or activities.

50. The General Victims Act provides for provisional assistance to meet the needs of victims with regard to food, medical and psychological care, emergency transport and temporary accommodation in dignified and safe conditions from the moment of the commission of the offence or rights violation or from the time the authorities become aware of the offence.

51. Assistance and support are provided, with a cross-cutting gender perspective and differentiated approach, for as long as necessary to ensure that the victim's immediate needs are met.

52. The Executive Commission for Victim Support has provided psychological, medical, social work and comprehensive support to families of missing persons on more than 6,500 occasions involving more than 11,000 measures relating to food and shelter.
