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HUMAN RIGHTS COUNCIL

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Oral Statement by the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh), non-governmental organization with consultative status roster

Military jurisdiction in Mexico: A system that violates international standards and promotes a pattern of grave human rights violations

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Of the recommendations addressed to Mexico in its Universal Periodic Review that remained pending consideration by the State in February of this year, the majority are recommendations that the government investigate and prosecute cases of alleged human rights violations in civilian jurisdiction, rather than in military jurisdiction as currently occurs in Mexico.

Before this Honorable Council, we emphasize the urgent need for Mexico to comply with these recommendations, as the government's current use of military jurisdiction in human rights cases denies victims access to justice and promotes impunity in a climate characterized by an alarming rise in the number of serious human rights violations committed by the country's soldiers.

Since taking office in December 2006, Felipe Calderón has implemented a strategy of militarization of public security, centered on the deployment of tens of thousands of soldiers to Mexico's streets, in militarized security operations marked by the violation of fundamental human rights.

Documented military abuses include: attacks with firearms, torture, arbitrary detentions, and extrajudicial executions. The number of reports of violations received by the National Human Rights Commission against Mexico's Defense Department has sextupled in this period, passing from 182 in 2006 to 1,230 in 2008.² This alarming increase in reported violations has not been accompanied by justice for the victims, due to the use of military jurisdiction to investigate these crimes, in contravention of international standards and of Mexico's own Constitution.

Article 13 of the Mexican Constitution establishes that "military jurisdiction subsists for crimes and offenses against military discipline..." However, "military discipline" is defined by the army, in Article 57 of its Code of Military Justice, in an expansive manner that includes even crimes that violate civilians' basic human rights. For this reason, the investigation of grave human rights violations remains in the hands of the armed forces. Such investigations invariably end in opacity and impunity.

According to data obtained through a freedom of information request by Center Prodh, between January 2006 and November 2008, military authorities opened 174 investigations in military jurisdiction into crimes committed against civilians. Of these, only 11 – approximately 6% – resulted in anyone being charged with a crime, and we do not know of any case in which military courts have punished soldiers for human rights violations during this time.

² See the corresponding Annual Reports of the National Human Rights Commission, available at www.cndh.org.mx.

Numerous UN special mechanisms and treaty bodies have explained that Mexico's use of military jurisdiction in human rights cases is not permissible under international law. These include the Special Rapporteur on Torture, the UN Committee Against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Arbitrary Detention.³ Mexico remains in total non-compliance with these recommendations.

I close by reiterating that it is urgent for the Mexican government to end the cycle of impunity that has characterized the serious, systematic human rights violations committed by the armed forces in the last two years. If it does not, then in the coming years we cannot expect anything other than a national panorama in which the military violates Mexicans' fundamental rights. Only through the investigation and punishment of these crimes by independent, civilian authorities, supported by attention and pressure from the international community, can we begin to reverse the current pattern of grave abuses committed against Mexico's population.

³ *Report of the Special Rapporteur, Mr. Nigel Rodley*, E/CN.4/1998/38/Add.2, Jan. 14, 1998, para. 86 ("Military personnel appear to be immune from civilian justice and generally protected by military justice") and para. 88j ("Cases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice"); Committee Against Torture, *Concluding Observations*, CAT/C/MEX/CO/4, Feb. 6, 2007, para. 14 ("The State party should ensure that cases involving violations of human rights... committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related"); Committee Against Torture, *Report on Mexico Produced by the Committee Under Article 20 of the Convention*, CAT/C/75, May 25, 2003, para. 220g ("The application of military law should be restricted only to offences of official misconduct and the necessary legal arrangements should be made to empower the civil courts to try offences against human rights"); *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, E/CN.4/2006/61/Add.4, Jan. 13, 2006, para. 69a(vi) ("Ensure... that all cases of violence against civilians committed by military personnel are investigated by civilian authorities, prosecuted by civilian authorities and adjudicated by independent and impartial civilian courts"); *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen*, E/CN.4/2004/80/Add.2, Dec. 23, 2003, para. 90 ("Any offence by a member of the military committed against a civilian should without exception be heard in the civil courts"); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir*, E/CN.4/2000/3/Add.3, Nov. 25, 1999, para. 107f ("Initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts"); *Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Cumaraswamy*, E/CN.4/2002/72/Add.1, Jan. 24, 2002, para. 192d ("With regard to the military and military courts: Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities...") Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, E/CN.4/2003/8/Add.3, Dec. 17, 2002, para. 72f ("as the forced disappearances committed by the military in the past constitute serious human rights violations; they should be dealt with by the ordinary civil courts").