

PERMANENT PEOPLES' TRIBUNAL

Founder: LELIO BASSO (ITALY)

President
FRANCO IPPOLITO (ITALY)

General Secretary
GIANNI TOGNONI (ITALY)

FREE TRADE, VIOLENCE, IMPUNITY AND PEOPLES' RIGHTS IN MEXICO (2011-2014)

Final hearing
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RULING

GENERAL SECRETARIAT: FONDAZIONE BASSO
VIA DELLA DOGANA VECCHIA 5 - 00186 ROME, ITALY
TEL: 0668801468 - FAX: 066877774
E-mail: tribunale@internazionaleleliobasso.it – filb@iol.it
Website: <http://www.internazionaleleliobasso.it>

In the shadow of Ayotzinapa

The days on which this final hearing of the Mexico Chapter of the Permanent Peoples' Tribunal was taking place coincided with one of the most dramatic moments in the history of Mexican society in social terms and one of the most critical for its institutions. The public sessions of the final hearing of the PPT-Mexico were brought to an end with the presence and witness of three representatives of the students and relatives of the young people disappeared at Iguala. For all its painful impact and the documented connivance of the public authorities and the involvement of their agents, what happened at Ayotzinapa is merely another chapter in the long list of violations of the rights to dignity and life of the peoples of Mexico. They are a dramatic, real and symbolic expression of the relevance and meaning of the PPT's proposals. This opinion is intended to be an integral part of the mobilisation and struggle emerging throughout the country. The judgment set out here on the causes and the perpetrators now also operates as a finding of guilt against the perpetrators of the events at Ayotzinapa and as a demand for life and justice for those who at this time are still disappeared.

At Iguala everything that has been documented in the Tribunal's over three years' of very hard work was distilled into a few hours of barbarity. In this realm of impunity that is today's Mexico, there are murders with no murderers, torture with no torturers, sexual violence with no abusers, in a constant abdication of responsibility, in which it would seem that the thousands and thousands of massacres, murders and systematic violations of the rights of peoples are always isolated acts or marginal situations rather than true crimes for which the State bears responsibility.

1. GENERAL INTRODUCTION

There is no need to summarise in detail the origins and long history of the Permanent Peoples' Tribunal (PPT) over its 35 years' work or the dozens of cases it has handled, which are easily accessible via the many publications available on the Internet (www.internazionaleleliobasso.it). Since the Universal Declaration of the Rights of Peoples (Algiers, 1976), the role of the PPT has been to provide an alternative for those peoples who find no responses in the (national and international) institutions which officially represent the law of States. The PPT seeks to become a forum for giving visibility and voice, for narrating the violations suffered, to analyse, evaluate and judge the causes and perpetrators of crimes aimed at turning men and women who are the holders of inviolable (individual and collective) rights into victims of spoil and pillage.

Because the PPT, by definition, has no power to translate its rulings into practical punitive decisions, it derives its legitimacy from two complementary qualities: a) its ability to guarantee effective representation for 'peoples' orphaned of their rights and victims lacking any hope of recognition or remedy; b) the fact that it uses the existing law with a vision guaranteeing and promoting interpretations and rulings which recognise victims as rights holders, which take up the challenge of treating the rights of individuals and of peoples as having inviolable hierarchical priority over the treaty law governing market commodities.

As has been documented in the 10 thematic and multi-thematic hearings (the fruit, in turn, of 40 preliminary hearings), participation by the affected groups included tens of thousands of people, with very active contribution from networks of professionals in the various disciplines involved in the proceedings, who, coordinated by the PPT General Secretariat, in the person of Simona Fraudatario, have ensured not only a vast amount of very high quality documentation, but also the presence over three years of a veritable public school of law. Here the PPT recognises, in the words of Andrés Barreda in the presentation introducing the final hearing, the fundamental prerequisite for its legitimacy and perhaps the most certain and effective result in terms of restoring rights to those whose rights have been violated with impunity:

'The Tribunal became a community space, not because it defined an overarching plan and a new faith to follow, but above all because it began a real process of communication, a procedural process, which allowed those of us who participated in this experience each to be transformed. In that experience we recreated each other, restoring our hope in the role of words, arguments and fair reasoning based on ethical principles. Therefore, even if only momentarily, we restored trust in the other. The Tribunal also gave scope for learning from each other. In short, it created a new kind of space in which to demand our right to a different Mexico and our right to define our own rights. It succeeded in doing so in a way which made it a very nascent real life demonstration that this better Mexico is something which is already here and now, as something immediately practical and ready for those of us who want things to be that way to keep working at it'.

In terms of the PPT's specific competence on a topic which explicitly, and as dramatically as it is possible to be, touches on the concrete rather than primarily doctrinal relationship between the binding nature of economic and commercial treaties and the hierarchy of human rights and the rights of peoples, the PPT's long experience includes, in other and varied contexts, all the topics in the Mexico Chapter. Specific reference needs to be made to the opinions on the International Monetary Fund and the World Bank (1988; 1994); impunity (1991); conquest and the origins of international law (1992); the sessions on Colombia (2005-2008); the rulings on European transnational corporations in Latin America and the role of the European Union (2006-2010); transnational corporations and the agrochemical sector (2011).

2. PROCEEDINGS AND JURY

The final hearing of the Permanent Peoples' Tribunal on free trade, violence, impunity and peoples' rights represented the culmination of a long journey which began on 21 October 2011 with the presentation of the charges at a public session at the UNAM (Autonomous National University of Mexico) and continued through seven thematic and three multi-thematic hearings systematically exploring and trying the complex, dramatic spectrum of violations of the fundamental rights of peoples which have occurred throughout the specific period examined in the PPT proceedings: 1982-2014.

At the preparatory stage, the detailed written, oral and visual documentation of the cases and reports examined at the PPT hearings was assessed in its original form, and at the public sessions of the final hearing through the submissions of the rapporteurs and prosecutors submitted and discussed at those hearings (see Annex 1, the programme and profiles of the prosecutors). The thematic and geographical profile of the hearings and of the members of the juries which prepared the intermediate opinions (the full texts, at the final drafting stage, will be available on the website of the Fondazione Basso <http://www.internazionaleleliobasso.it>) graphically illustrates the strong links with the different experiences and populations in the country, and we will comment below on what this means in methodological and procedural terms for the role and validity of this opinion.

The judges comprising the jury were:

Philippe Texier, France (President)

He is an honorary judge at the Cassation Court of France. He was a member of the Committee on Economic, Social and Cultural Rights of the United Nations High Commission for Human Rights from 1987 to 2008 and its Chairperson from 2008 to 2009. He was director of the Human Rights Division of ONUSAL (UN Mission in El Salvador) from 1991 to 1992, and an independent expert of the Human Rights Commission in Haiti from 1988 to 1990.

Monsignor Raúl Vera, Mexico

The Bishop of Saltillo, he is a prominent human rights defender in Mexico. He founded the Centro Diocesano para los Derechos Humanos 'Fray Juan de Larios' (Fray Juan de Larios Diocesan Centre for Human Rights) in Saltillo. He has supported coal miners in defending their labour rights and Central and South American migrants, encouraging the creation of two 'casas del migrante' migrant centres – 'Casa Emaús' in Ciudad Acuña, Coahuila and 'Belén Posada del Migrante' in Saltillo, Coahuila. He has defended the rights of minorities, such as women and children and the political prisoners in Oaxaca, San Salvador Atenco and Ayutla de los Libres, Guerrero. He participates in movements to protect biodiversity. He works for dialogue and ecumenical solidarity with the peoples of the world. He is the president of the Centro Diocesano para los Derechos Humanos 'Fray Juan de Larios' and of the Centro Nacional de Ayuda a las Misiones Indígenas (National Centre for Assistance to Indigenous Missions) (Cenami). Amongst civil society organisations, he is the honorary president of the Red Solidaria Década Contra la Impunidad (Decade against Impunity Solidarity Network), and is president of the Centro de Derechos Humanos 'Fray Bartolomé de las Casas' (Fray Bartolomé de las Casas Human Rights Centre). He has received numerous awards for his work for human rights.

Elmar Altvater, Germany

An economist and lecturer at the Free University of Berlin, Department of Political Science

(Otto-Suhr-Institut), and a visiting lecturer at numerous universities (in Mexico, Brazil, Canada, the US and elsewhere). He was president of the Lelio Basso Foundation for the Rights of Peoples in Rome.

Luciana Castellina, Italy

An Italian politician, journalist and writer, she was a member of the Italian Communist Party and of the Partito di Unità per il Comunismo (Party of Proletarian Unity through Communism). On various occasions she has been an Italian deputy and was a member of the European Parliament for two decades from 1979. She was vice-president of the European Parliament Permanent Commission on Latin and Central America.

Graciela Daleo, Argentina

A member of the Cátedra Libre de Derechos Humanos group at the Faculty of Philosophy and Letters of the University of Buenos Aires since 1996, she is a survivor of the clandestine concentration camp which operated at the Navy School of Mechanics (Buenos Aires) during the joint civilian-military dictatorship (1976-1983). She is a member of a group of legal-political activists who act in various legal cases being conducted in Argentina for large-scale human rights violations.

Alda Facio, Costa Rica

A lawyer and writer, she is a permanent adviser to Just Associates (JASS), an international feminist organisation which seeks to support local women's movements in their struggles for social justice. She was recently elected by the UN Human Rights Council to be one of the five members of the Group of Experts on the Issue of Discrimination against Women in Law and Practice. She is a founder and academic director of the Institute of Women's Human Rights of Toronto University and professor of human rights and gender at the United Nations University for Peace. She was a founder and director of the Women's Caucus for Gender Justice, an organisation which brought together more than 800 NGOs around the world to lobby for the inclusion of a gender perspective in the Rome Statute.

Daniel Feierstein, Argentina

A researcher at CONICET (National Council for Scientific and Technical Research), based at the Universidad Nacional de Tres de Febrero (Third of February National University), Argentina, where he founded and runs the Centre for Genocide Studies. He holds a chair in the Faculty of Social Sciences of Buenos Aires University, teaching 'analysis of genocidal social practices'. He is currently president elect of the International Association of Genocide Scholars (IAGS) and has been a visiting lecturer at universities in Spain, the United States, Germany, Uruguay and elsewhere.

Juan Hernández Zubizarreta, Spain

A doctor of law and lecturer at the Universidad del País Vasco-EHU (University of the Basque Country-EHU). He researches and writes on transnational corporations and their relationship with neoliberal globalisation, human rights and international justice, and has participated in the Permanent Peoples' Tribunal in various roles. He has been a member of the Economic and Social Council of the Basque Country and director of the School of Labour Relations at the University of the Basque Country-EHU.

Carlos Martín Beristáin, Spain

A medical doctor and holder of a doctorate in social psychology, he teaches on the European Masters in International Humanitarian Aid. He coordinated the 'Guatemala. Nunca Más' report and has advised truth commissions in Peru, Paraguay and Ecuador. He has worked as a mental health adviser for International Peace Brigades in El Salvador, Guatemala and Colombia. For 25 years he has worked with victims of violence and war in various countries in conflict, with human rights groups and displaced and refugee

communities, torture survivors and the relatives of the disappeared. He was the medical and psychosocial assessment expert in six cases before the Inter-American Court of Human Rights. In various cases he was a consultant to the International Criminal Court on working with victims. He is the author of many books on psychosocial work and care for the victims of human rights violations.

Antoni Pigrau Solé, Spain

Professor of public international law at the Universidad Rovira and Virgili in Tarragona, he has been the director of the Centro de Estudios de Derecho Ambiental de Tarragona (Tarragona Centre for Studies in Environmental Law) (CEDAT) (www.cedat.cat) since December 2007 and director of the journal *Revista catalana de derecho ambiental* (www.rcda.cat) since 2009. He is vice-president of the Instituto Catalán Internacional por la Paz (Catalan International Institute for Peace) (ICIP) (www.icip.gencat.cat). He has been the Spain correspondent of the *Yearbook of International Humanitarian Law*, published by the TPM Asser Instituut, The Hague, Netherlands, since 1988. He researches on matters of human rights, international criminal law and environmental law.

Silvia Rodríguez, Mexico

Mexican by birth, she has lived in Costa Rica since 1974. She is professor emeritus of the School of Environmental Sciences of the Universidad Nacional de Costa Rica (National University of Costa Rica). An activist working to recover collective control over biodiversity, her critical work has shown that the United States' approval of pro-privatisation intellectual property conventions and legislation is due to pressure from transnational corporations and the interests of the United States. Her research work and public contributions are one of the main reference points for criticism of free trade in Costa Rica.

Nello Rossi, Italy

Currently the Deputy State Prosecutor in Rome, since 2007 he has been responsible for coordinating the working groups specialising in economic crimes and information in the Italian capital. He is also the Ministry of Justice delegate to the FATF (Financial Action Task Force) set up by the OECD. From 2002 to 2007 he was a criminal judge at the Cassation Court, responsible for organised crime, crimes against public authorities, extradition and European arrest warrants. For nearly 15 years, to 2012, he co-edited the legal journal *Cuestiones de Justicia* under the auspices of Magistratura Democrática. He is the author of many articles and books on criminal law and criminal procedure

3. THE DEVELOPMENT OF MEXICO'S DEPENDENCE ON THE UNITED STATES AND THE ROLE OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

In order to give some general background to the proceedings at this hearing, it is essential to know the historical context, characteristics and general implications of the process by which Mexico entered the world of free trade, up to the time it became a veritable regional and global testing ground. Whilst not claiming to give an exhaustive account of the entire analysis presented at the thematic hearings, the following four points set out to describe:

1. The transformation of the structure of production in Mexico
2. Neoliberal transformations in Mexico and the North American Free Trade Agreement (NAFTA)
3. The genealogy of the criminal economy and drug trafficking in Mexico
4. The criminal economy and economic criminality.

3.1. The transformation of the structure of production in Mexico

The most significant economic damage caused by free trade has been the deindustrialisation of its relatively powerful manufacturing sector, which comprised major industrial value chains built up over 150 years. It was abruptly replaced with an aggressive process of re-industrialisation, which promoted mainly maquiladora (assembly) sectors, although also strategic sectors originating transnationally rather than in Mexico (such as one of the most powerful automotive industries in the world¹ and the electrical and computer sector).

Another fundamental factor is resource extraction which, with the advent of free trade, changed from being basically oil extraction into increasingly complex energy extraction (including conventional gas, shale gas, wind and solar energy), increasingly intense and complex mining extraction and likewise highly destructive hydrological extraction. All of these are directed at supplying the US markets and handing over strategic natural resources to US oil and gas companies, Spanish electricity companies and Canadian mining companies.

Traditional agriculture and the food sovereignty which existed before the signature of NAFTA were displaced by a distorted reconstruction of export-oriented agriculture. Mexico lost its sovereignty in most of its basic areas – grains, leguminous crops, vegetables, fruit, meat, processed foodstuffs, etc. Today the country imports ten million tonnes of maize, whilst subordinating the new agricultural production to the tastes of the US market – vegetables, berries, avocados, tropical fruits, marijuana, poppies, etc.

All the programmes supporting rural production have been dismantled, as has the principal legislation which used to protect *ejido* (collective) ownership of land, encouraging the privatisation of land which is progressing primarily in central Mexico. Even so, most rural land remains in the north and south of the country, owned by collective owners who are holding out against registering their land privately.

Symbolic here is the disappearance of the *ejido*, which NAFTA expressly requested even before it was discussed and approved, and the removal of indigenous peoples' rights to communal land. This is paving the way to losing the collective use of land, a fundamental principle underpinning Mexico's social organisation.

Land use has been reorganised in the interests of strategic new industrial corridors built between the eastern United States and the Pacific basin, re-utilising or developing a number of major industrial ports on Mexico's Pacific coast. A highly aggressive deregulated system of intermodal land and sea mobility was created as a result, in all cases planned to serve the just-in-time sectors operating in Mexico and which has made Mexican roads some of the most dangerous in the world.

¹ Whilst Mexico is the world's seventh largest producer of automobiles and the fourth largest exporter, it still aspires to continue increasing the size of the automotive industrial base, development plans which are emulated in the aerospace sector.

Domestic trade, the big State commercial agencies in the countryside (Conasupo) and small and medium-sized family producer and trading businesses have been destroyed, replaced by highly monopolistic undertakings, primarily of transnational origin, thereby contributing to increasing unemployment. Added to this, the financial system was destroyed. The place of the now destroyed domestic industrial and agricultural market was taken by an import market for all kinds of industrial inputs, means of subsistence primarily from the US and promotion of the export market.

Since 2012 wages in Mexico have been some of the lowest in the world in comparative terms, taking advantage of the oversupply of labour, although it is completely hidden, as is real unemployment, masked in the case of intermittent or casual workers (three out of four workers in Mexico are casual workers) and by the migratory flow to the United States (10.64 million of the 15.2 million Mexicans forced out since the signature of NAFTA), which is the largest migratory flow in the world.

Unemployment is also hidden because of all the workers who have started working within the criminal economy, primarily in drug trafficking, and by the enormous increase in the police, navy and army, where the workforce is growing on the pretext of containing the growth in the criminal economy.

How is it that all these factors we have mentioned have not brought about the complete destruction of the Mexican economy? The answer to this mystery is not only to be found in the restructuring of income sources which has started in the new Mexico, but in the billions of dollars of remittances (22 billion a year) sent by migrants, and the billions of dollars generated by criminal activities – trafficking drugs, drug precursors, arms, emigrants and migrants in transit, women and children of both sexes, organs, child prostitution, etc. Added to this is the income generated by the informal economy.

The ongoing US control of the Mexican economy, politics and armed forces has also favoured manipulation, electoral fraud and corruption as crucial structural features of the Mexican State. The combination of these factors is linked to the development of neoliberalism and Mexico's signature of free trade agreements. Without that combination of factors, it would be impossible to understand how it is that the illegal economy has come to represent, according to various academic estimates, 40% of Mexico's GDP² and how Mexican drug trafficking groups have come to be amongst the biggest criminal groupings in the world.

3.2. Neoliberal transformations in Mexico and the North American Free Trade Agreement (NAFTA)

The witnesses who spoke at the final hearing confirmed that Mexico's inclusion in neoliberal globalisation has been associated with a remarkable increase in

²BUSCAGLIA, Edgardo. **Vacíos de poder en México** [Power vacuums in Mexico], *Debate*, Mexico, 2013, p. 245. Also, Buscaglia, Edgardo. 'La paradoja mexicana de la delincuencia organizada: policías, violencia and corrupción' [The Mexican paradox of organised crime: police, violence and corruption] in *Revista Policía and Seguridad Pública*, January-June 2012, p. 9.

suffering for the Mexican people. Neoliberal globalisation creates sharp imbalances between the market and human rights. The economy becomes globalised and the democratic institutions which protect the rights of the majorities operate in a subordinate marginal space. Globalised institutions replace democratic control with the opaque regulation of global trade.

Neoliberal law protects the accumulation of wealth and the concentration of economic and political power, whilst eliminating the 'losers'. It is based, also, on the architecture of impunity constructed in the interests of multinational corporations and capital. Inequality and asymmetry are constituent elements of that law.

The Mexican government has intervened to make it possible for wide swathes of the population of cities and the countryside regarded as 'unnecessary' or 'superfluous' to be forcibly transformed and eliminated by economic means. Mexican governments have used State power to speed up that elimination by acts directly depriving them of means of production and through distorting interventions in the subsistence economy.

Mexico is a prime example for many reasons. Above all, it was the first country to experience the global economic policies imposed by international financial capital from the end of the 1980s. NAFTA, the first experiment in creating an area of free trade and unconditional guarantees for capital investment, came into force on 1 January 1994.

It is an inherently singular agreement in terms of the profound inequality between the economies of its signatory countries – the mighty economy of the United States and the still robust economy of Canada on the one hand, and Mexico's very weak economy on the other.

By signing this agreement, furthermore, Mexico deprived itself of the opportunity to participate in the endeavours of a number of Latin American countries to establish a route for cooperation between more mutually similar countries, such as ALBA [Bolivarian Alliance for the Peoples of Our America] and Mercosur.

Since 1994, financial capital and in particular the United States Government, which is the main player, has tried to set up trade agreements with the same criteria as NAFTA in other areas. The United States is currently proposing new and even more exacting trade agreements, such as the Trans-Pacific Partnership (TPP) with a number of countries in the Pacific Basin and the Transatlantic Trade and Investment Partnership between the United States and European Union. Both are under negotiation, although facing considerable opposition both at grassroots level and in the parliaments.

NAFTA is part of this legal and political web of domination. There is no crossing of paths between human rights and corporate rights – the hierarchy of the system for protecting human rights and its pyramid of norms have been profoundly ruptured.

It is vital that we understand that NAFTA and the other neoliberal institutions are not designed to promote the social good. NAFTA, in particular, is not an agreement between the people of the three North American countries to take

advantage of the mutual benefits of exchanging products and services according to their comparative advantages. They are agreements which raise the legal status of major investors and, at the same time, bind the economic power of the State to their interests, whilst eroding the commitment of national States to protecting citizens and their options for doing so.

A central tenet of those trade agreements has been to disarm peoples by depriving them of the tools of identification, expression, resistance and transformative capacity which national sovereignty and the existence of a legitimate State can afford them. In the case of Mexico, the State's helplessness in the face of international corporate interests has reached tragic proportions. The curtailment of economic sovereignty began many years ago and has been taking place through various mechanisms. At times it has been simply by the State declining to take up that sovereignty, by abandoning the running of the economy, for example. On other occasions it has been by assignment, as in the case of subsoil resources and the generation of energy, and on yet other occasions by removing the government's ability to exercise sovereignty, as with the loss of territorial control in the face of the unstoppable advance of drug trafficking. The Peña Nieto government is taking this hollowing out of the State to the limit, and out of surrender, omission or impotence is gradually giving up sovereignty in all areas.

Analysing the devastating effects of this first experiment, of which Mexicans are bearing the brunt, is therefore hugely relevant to the whole world. It is here that national legislation and economic policy have for the first time been brought completely into line with the imperatives of the Agreement. All decision-making power has thereby been taken from the institutions which represent the interests of the Mexican people. The space occupied by public law has disappeared. The State has become the promoter and certifier of investors' private operations.

A particularly grave consequence is the rapid dismantling of the Mexican Constitution, approved in 1917 at the end of the Revolution, and which was an important example for other countries because it was the first to include social rights and to subordinate individual property rights to the common interest.

By reason of the transnational impunity it regulates, NAFTA can be said to be a tremendously violent Agreement. The structural violence of the capitalist system – which allows the few to accumulate wealth at the cost of poverty and the environmental and cultural destruction of peoples – runs right through the Agreement.

NAFTA clashes head on with international human rights law. We can adduce the primacy of a higher ranking norm. Article 53 of the Vienna Convention, for example, provides that a treaty which conflicts with a peremptory norm of international law is void. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international human rights and environmental treaties and conventions are peremptory norms of general international law.

There should be a review of whether treaties are constitutional and whether there are non-rectifiable defects in their conclusion and approval which render them void.

The territorial jurisdiction of the national courts needs to be re-established, the role of parliaments restored and grassroots legislative initiatives put in train to enforce international norms in order to reverse the marked asymmetry between the norms governing trade and investment and international human rights law, placing the rights of individuals and peoples above the interests of big business.

3.3. The genealogy of the criminal economy and drug trafficking in Mexico

Mexico's highly subordinate position to the United States has defined the course of its politics and its economy. Not even drug production in Mexico is untouched by its relationship with the United States. Although opium was introduced by Chinese immigrants for personal use, it shifted to a different scale during the Second World War when the '... the United States Government itself promoted the cultivation of the plant in Mexico, because its sources of supply in Asia had been cut off'. The opium produced was intended for the preparation of morphine as pain relief for those wounded in combat. Production was subsequently maintained during the Korean wars and the first part of the Vietnam war and opium cultivation displaced other products in the Mexican countryside such as apples, maize and tomatoes, particularly in the region known as the Golden Triangle, at the meeting of the states of Sinaloa, Durango and Chihuahua³.

Shortly afterwards, marijuana growing was added. Those in charge of both products were local chiefs ('caciques') closely linked to the politicians of the day. Over time the 'drugs cartels' took shape, although already as producers not of 'legal' but of illegal drugs. Those cartels were the Tijuana, Juárez and Gulf cartels which still exist today and which grew stronger when they formed alliances with the Colombian cartels, allowing them to move into cocaine trafficking.

Given that background, the cartels began to forge links with government at various political levels, essentially to support the election of mayors. As the mayors rose in their political careers, whether by elected office or otherwise, they provided drug trafficking with collaborators at ever higher levels in Mexican politics.

The drugs cartels also need to launder money, and they therefore began to forge links with actors in business and finance. If we add to this the fact that the economic model of dependent industrialisation was not creating sufficient formal jobs and that informal employment was growing, together with the falling purchasing power of wages, drugs money also began to penetrate various sectors of society.

³Alberto Nájjar (2013) 'La historia detrás del "boom" de la heroína mexicana' [The story behind the Mexican heroin boom], BBC Mundo, Mexico City, 2013, citing Luis Hernández, researcher at the Universidad Nacional Autónoma de México. http://www.bbc.co.uk/mundo/noticias/2013/08/130802_heroina_mexico_historia_narcotrafico_chapo_guzman_colombia_an.

The members of the cartels also want personal security and surveillance of their territory in order to control their 'turf', for which they recruit hired assassins with strong organisational and loyalty structures. People's lives in many areas have therefore become subject to control and the organised crime structures have given rise to powerful organised criminality.

3.4. The criminal economy and economic criminality

One of the specific features of the Mexico case, one with devastating effects, is the existence of this 'criminal dimension' of the economy, which has now reached such proportions that it determines and disrupts every field of the economic, social and political life of the country.

On the ground in Mexico, a 'criminal economy' of gigantic proportions coexists, interlocking with a diffuse, deep-seated 'economic criminality', and together they contribute to exacerbating all the adverse effects of the neoliberal policies which the country has adopted and make them less possible to control.

The 'criminal economy' is extraordinarily widespread. The extensive tentacular criminal economy in Mexico obtains its earnings from a wide spectrum of unlawful activities – the lucrative drug trafficking carried on by the various drugs cartels which operate in the country and generate huge illegal profits, the smuggling of firearms, the exploitation of migrants through kidnapping, extortion and blackmail and the recycling of the proceeds from drugs and other unlawful activities, primarily in the United States.

The operating methods of the actors in the criminal economy sector are: the systematic use of violence in internal conflicts with the aim of undermining the various forms of resistance by the population, and similarly the systematic corruption of political representatives and public officials.

The tragic toll of the persistent criminal offensive, which escalated dramatically from the 1980s, can be seen not only in the long list of civilian victims and the physical elimination of opponents, but also in the fact that public institutions have lost control of large areas of territory and in the existence of real impunity, including for the most horrific crimes.

As has been said already, the 'criminal economy' sector in the true sense, with its unprecedented size and the horrendous cruelty of its methods, coexists and cohabits with a diffuse 'economic criminality', the criminality of white-collar criminals.

The criminality of white-collar criminals encounters very few obstacles in Mexico, given the almost complete absence of any regulations governing monopolies, any effective rules on the operation of banks or financial transparency and any tools which would properly impede the laundering of dirty money and methods of manipulating the financial markets.

Admittedly, there is no part of the world where the tools for controlling and combating white collar crime function as effectively as might be desired, but their presence and the existence, in many states, of authorities independent of the

executive which are responsible for ensuring compliance with them, represent at least a first hurdle and a deterrent to economic criminals.

In Mexico, that first line of defence against the most common economic and administrative crimes (corruption, misconduct by public officials, tax offences, money-laundering) seems to be non-existent or ineffective, whilst the criminal justice system in the strict sense has had completely negative results and has led to an extremely high level of impunity.

As Luis Hernández Navarro eloquently put it before this tribunal, 'Mexico is like just one more state of the United States, but without their laws or rules'.

The minimum rules on the functioning of the commodities and financial services markets, which operate in the United States, Europe and other economically developed parts of the world, are not applied in Mexico, with the result that multinationals can take advantage of very extensive tax exemptions and have great freedom to take earnings from business done in Mexico out of the country, the jobs created are precarious and low cost and there is an almost complete absence of rigorous anti-monopoly legislation.

In such circumstances, one can understand why the major corporate groups present in the country are in no real hurry to eradicate the Mexican 'criminal economy', because they never clash with it head on, and because they have for decades accepted living with drug trafficking and its atrocious crimes in a relationship of perverse complementarity.

The only voices raised in protest and the only brave attempts to react have come from those who have suffered extortion and been oppressed and the organisations sympathetic to them. As everyone knows, those attempts have always been bloodily put down.

The attitude of those with economic power can be identified as one of the reasons why the criminal courts in the country are passive, reduced to effective impotence, and to inappropriately delegating to the military and the navy the fight against drug trafficking, with the long roll call of abuse, violence and crime which have been its trademark.

4. REBELLION BORN OUT OF PAIN IN MEXICO

In its three years' work in Mexico, the Permanent Peoples' Tribunal heard nearly 500 cases of individual and collective human rights violations, grievances and large-scale impacts affecting a large part of the population, which call into question the role of the State as a regulator of conflicts and protector of human rights, and cast the spotlight on a dramatic situation, which is often still endured in silence, but which at other times gives voice to a howl of pain which must be heard.

a. *Introduction*

The horrific nature of the events reported during these PPT proceedings and their impact on the victims have indeed been shocking, as Mexican society and the world have also been shocked by the case of the extrajudicial executions and enforced disappearance of 46 trainee teachers in Ayotzinapa. The PPT wants to acknowledge the victims, relatives and survivors in this and thousands of other cases experienced in the country, and those who have brought to the hearings many other cases of infringements of the rights to a decent life, to land, to work and to the protection of natural resources and of the natural world of which we are part. Analysis of all those real life situations has shown that Mexico is at a critical juncture, which cannot be postponed or hidden by evading the problems, by reducing them to isolated cases or by casting a veil of invisibility over the role of the State and the responsibility of its political elites. This situation not only represents a tragedy today, but seriously compromises the future of society. The PPT calls upon the State, society and neighbouring countries and those which are allies in its policies, some of which share direct responsibility for this situation, to give answers worthy of the scale of the tragedy. It also acknowledges the leading role of victims, society and the peoples which form part of the essential identity and wealth of this country, and their forms of resistance which this tribunal places on record and endorses as the basis of any process to reconstruct the fabric of society.

b. *Structural, environmental and direct violence before the Mexico PPT*

The human rights violations, threats and aggressions gathered by this Tribunal concern not only the rights of peoples to a decent life, the relationship with nature and environmental destruction, but the inequality, precarious conditions and poverty caused by a series of factors which are damaging living conditions, together with direct forms of violence against people, communities, human rights defenders, women and journalists. Furthermore, in terms of what a peoples' tribunal means conceptually and in practice, Mexican society cannot look at itself only in the now. Whilst States and international agencies buy and sell the future's resources on the stock market, pricing and mortgaging maize or rice for the coming decades, the future is also being sold when decisions are made limiting or commercialising rights to health or education, privatising services and making living and working conditions more precarious. The rate at which nature is being destroyed is increasing and this has consequences for the living conditions of the communities affected and the future of Mexico. According to the Instituto Nacional de Geografía (National Institute of Geography), in the 20 years since the FTA, Mexico has lost 34.68% of its woods and forests. A total of 211 complaints were made to this tribunal relating to

environmental issues benefiting Mexican and transnational corporations, affecting 433 municipalities in 21 states. Some of those complaints, such as those in Michoacán and Guerrero, relate to trafficking routes or the sites of the exploitation of natural resources and organised crime. The most commonly reported environmental damage includes the destruction of water sources, woods and farming life, overexploitation of aquifers and environmental pollution from toxic agrochemicals and genetically modified contamination, which latter gave rise to an application for interim measures to the Mexican courts, which is one of the few exceptions where there are judicial safeguards for the protection of life in relation to the environment. Those struggles have frequently led to persecution of environmental defenders, including arbitrary detentions and killings.

c. Social exclusion, migration and violence

The exclusion described above has led to a phenomenon of collective migration which particularly affects young people of both sexes, who are those with the best chances of joining the labour markets in the north, and at the same time deprives Mexico of human beings who have become investment capital for the economy of the United States, where there is a Mexican population of nearly 12 million, that is to say, 10% of the total population. In the meantime, Mexico has become a border country where thousands of migrants, particularly Central Americans, have become commodities, suffering extortion by criminal networks or State agents, in a dangerous region where their rights are of no value and where their lives fall into the hands of people trafficking networks on such a scale that it could not happen without the collaboration of State agents and authorities in various territories. The tribunal has found that situation to exist on the basis of hundreds of witness statements from migrant hostels, priests and volunteers who work with migrants and who, too, receive death threats and threats to their work. Whilst the State claims not to know, or blames it all on circumstances, the organisations working with migrants have documented their situation, clearly and at times dramatically. If there is a part of Mexico where rights no longer apply, it is the territory of the migration routes which cross the country from south to north. The State has not even listened to those victims and witnesses, much less put in place policies to prevent torture, provide services for migrants or protect the areas, and nor does it seem to have listened to the proposals and requests of those who know the problems at first hand.

d. Understanding the dynamic of violence

Understanding the practice and the scale of violence against the civilian population in Mexico is both vital and enormously challenging. Whilst the *raison d'être* of the political violence of the 1970s, particularly after the massacre of students at Tlatelolco, was to put an end to political opposition, subsequently in some areas of the country, particularly in Chiapas with the Zapatista uprising and also in Guerrero, the counterinsurgency rationale led to a policy of controlling the fabric of society as a new form of waging war, creating paramilitary groupings and fomenting division and inter-community confrontation, a State practice well-known in various countries which have experienced armed conflict or war – a strategy for controlling population and territory. In the last decade, the stories and cases heard by this tribunal demonstrate that the, always vague, accounts of obscure criminal

networks associated with drug trafficking also conceal the State's responsibility or its lack of response as necessary conditions for that large-scale horror. Mexico has become one big borderland with the United States, [representing] the traditional relationship of subordination, not only geographically but also economically and politically, and is in turn the border between north and south. Along that great border, which begins in Chiapas and ends in Baja California, much of Mexican territory has been turned into controlled corridors or failed states, where the involvement of the federal State is evident. However, descriptions of the violence and its impact have become something commonplace, where even the language has become a means of minimising the situation. Kidnapping is called lifting ('levantón'). Disappearance has become going missing. Murder comes in lurid crime reports and as part of a criminality which always appears to be at the hands of unknown networks and drugs lords, with all the paraphernalia of horror. The State should call things by their proper names, should not minimise the gravity of what is happening and should put in place effective mechanisms to investigate and acknowledge the problems the country is experiencing. Without a language which recognises them, victims' experiences remain in the gutter of history, instead of being part of a collective consciousness which can mobilise to action. The cases we have heard before this tribunal are an alarm call for humanity, although in only a few cases have they given rise to social mobilisation in sectors of society which have often seen these problems as nothing to do with them.

e. Femicide and women's living conditions

The relationship between inequality, precarious rights and direct violence is clearly apparent in the case of Ciudad Juárez and Chihuahua. Whilst next to the border the development of here-today-gone-tomorrow industry represented a strategy to maximise profits by unrestrainedly making the living conditions of the women workers more and more precarious, goods and people gradually became one and the same thing. The traffic in goods and the assembly industry have also brought a correspondingly unequal distribution of violence – for years Ciudad Juárez has been the most violent city on the planet, whilst only a stone's throw away El Paso was the safest city in the United States. Those levels of violence particularly affected young people and women, whose tragedy it has been to reveal the practice of femicide and the emblematic story of their struggle for life, as the victims in Chihuahua and Juárez, women's organisations and human rights groups have brought those facts to light.

f. The specific features of gender violence in Mexico

The systematic violence suffered by girls and women in Mexico today is however occurring in an historical and structural context in which women have been discriminated against in all areas of life. That context ranges from femicide and sexual torture to more subtle forms of sexism and misogyny, such as the erasure of women from official history. That misogyny is also at play when women's contribution to social movements goes unrecognised because women's lives and actions are undervalued. It is also due, however, to the language of exclusion, which not only renders those contributions invisible, but also fails to take into account that women specifically are victims of the damaging effects of neoliberalism and FTAs, such as

the fact that the privatisation of public services falls mainly on the shoulders of women, who have to take over caring for the sick, elderly and disabled. As pointed out at several hearings, the State is directly breaching its direct duty to eradicate all forms of discrimination against women and girls. In addition, one can see a pattern of impunity and social permissiveness, tolerance and even acquiescence to violence against women, adolescents and girls, underpinned by a culture which undervalues women's lives and roles. That culture is reflected in institutional and social misogyny which, in the case of lesbians and transsexual women, is legitimised and owned as a positive expression of Mexican identity.

Examples were given throughout the preliminary hearings of the various types and forms of violence against women, as demonstrated by the cases relating to the poverty and marginalisation experienced by peasant and indigenous women (as occurred with the Acteal massacre, with the González Pérez sisters, with Inés and Valentina, amongst others): the overrepresentation of women workers in the informal economy, evictions, misappropriation of property, insufficient housing, illegal dismissals and the higher level of unemployment amongst women, and the cases of femicide in various states in the Republic, the lack of access to justice and the inability of the authorities to act with the appropriate diligence. Added to this is the ferocious physical and sexual violence committed by the security forces, paramilitaries and members of criminal organisations, the criminalisation of and attacks against all kinds of women human rights defenders, imprisonment and torture for terminating pregnancies, obstetric violence, morbidity and maternal deaths due to lack of access to medical care and protection from HIV, violence against women of diverse sexuality, rape and sexual torture of women detainees or prisoners, rapes and killings of migrant women and many other cases in which various kinds of violence are intertwined.

The preliminary hearings demonstrated that women are also victims as a result of their family and emotional relationships, the leadership positions they hold in their communities and organisations and their participation in social struggles, as occurred in the terrible events of San Salvador Atenco. Although in many cases that violence is part of a strategy intended to prevent other women joining social struggles, those victims do not receive the solidarity they deserve from their companions in the struggle, but quite the reverse. They are often victimised in turn by their own organisations, partners and families and by the media. The impact of threats, torture and rape on women is also magnified because they are often denied the right to mourn and the right to truth, to justice and to reparation as a result of violence.

That violence has had a particular impact on the mothers of disappeared sons and daughters, as illustrated by the emblematic case of Marisela Escobedo, murdered for seeking justice for her daughter, an example of what happens when guarantees of non-recurrence and adequate structural measures are not put in place: more women are still being murdered and their families, their mothers in particular, continue to suffer the pain of the loss and impunity. Had the measures resulting from the 'Campo Algodonero' case been taken and had the judgment delivered almost five years ago by the I/A Court H.R. been properly complied with, many of the disappearances, deaths and rapes spoken about at the hearings would certainly have been prevented.

g. The victims and survivors

The PPT has heard many testimonies of horror, in the voices of many women victims and survivors, journalists under threat, indigenous people whose land is coveted and whose lifestyles are in peril and communities affected by environmental devastation, amongst many others. The data relating to the horror too are subject to the shifting sands of statistics, which turn the life stories of millions of Mexican men and women affected by violence into numbers which reveal as much as they hide. The Tribunal has had access to official statistics provided by various governments, which talk of 50 000 people killed, or which one day refer to 20 000 people disappeared, another day to 16 000 and on yet another to 8 000, using numbers as a means of legitimising policies rather than of ascertaining the scale and impact of the problem. This struggle for the representation of reality has led to a lack of effective recognition, with the effect that, eight years after the policy christened the 'war on drug trafficking', there are no reliable records, no information about the data which refer to more than a million people internally displaced, nor proper treatment of victims, their testimonies or the situation their allegations reveal. Nor do those statistics ever refer to the impact on the younger generations, whilst tens of thousands of boys and girls have seen how their fathers, mothers and brothers and sisters were murdered or disappeared. Mexico needs a survey of the real level of the impact of the violence and of the policies which should be implemented to achieve an integrated approach to prevention and caring for victims.

h. Acceleration of the impact and long-term consequences

In the last decade Mexico has experienced the accelerating impact of violence, concentrated particularly in the younger population and which is mortgaging the future of society. Whilst governments end every six years, the impact of violence accumulates over time. The tens of thousands of disappeared are not something which happened in the past. They are violations which are still being committed in the present, whose impact lives on in the responsibility of the perpetrators and the need for the State to investigate and provide justice, which is not cancelled out as time passes, and they also have an ongoing impact in the psychological abuse and torture which disappearance represents for relatives. In Mexico that impact is still very fresh and has already become part of the permanent backdrop for victims who have spoken of the place still set at the table for the disappeared person, of the pain which will not go away, and also of the anger of family members who cannot come to terms with the senselessness and cruelty of the perpetrators and the lack of response from the State. We have systematically heard victims telling us stories of the contempt they experienced, where the common thread is the response of many State officials and agents, who often minimise the problem and advise relatives not to proceed or to leave things as they are, or who shelter behind red tape which sends them from pillar to post without any progress. In some cases, they send out messages which are part of the threat. In the meantime, indignation and mistrust grow. A state where a chasm of mistrust exists between the population and the State itself loses its legitimacy and undermines its fundamental commitment to respond to the needs of its people and to guarantee their rights.

i. *Media, violence and fear*

The Tribunal has witnessed how fear has become part of the strategy for controlling the population, whether in order to control social protest or as a result of the operation of organised crime and people trafficking or the exploitation of natural resources. What happened in other Latin American countries – the ‘they must have done something’, the ‘don’t get involved’ and the silence – have been spreading in very different parts of the country as part of the mechanisms which dictate behaviour. This Tribunal has heard many witness statements, but the dimension of silence has also been present, accounts of how fear gags whole communities in different regions of the country, from the Sierra Tarahumara to the mountains of Mexico City, from states like Tamaulipas to Michoacán. In many of these places, the media cannot even do their work and journalists and community radio broadcasters too live muzzled by death threats. That level of terror and silencing represents not only a large-scale violation of freedom of expression and the right to information, but also a politically-motivated level of information control. The near monopoly of the media and the fact that television stations are heavily concentrated in the hands of two corporations imply a huge capacity for controlling public information, which is at odds with democracy.

j. *Role of the State and dismantling of rights*

In neoliberal policies, communities' and individuals' time is treated as just one more commodity. In Mexico, in circumstances of natural resource wealth, systemic corruption, severe social inequality and poverty and criminal networks based on drug trafficking, the State has gradually been losing its role as a regulator and protector of the rights of the vast majority of the population and has been progressively abolishing the guarantees afforded to them. On the basis of the robust evidence repeatedly presented at the various hearings, the PPT finds the authorities of the various governments to be responsible for dismantling legal safeguards, particularly with successive and ongoing constitutional reforms, which have involved the loss of rights for the general population, whilst the safeguards for transnational corporations and the economic elites have increased. Political decisions which bind the future are made by authorities which are elected, but are often corrupt, or act according to criteria and interests which benefit themselves or which are part of the policies of transnational corporations seeking to maximise their profits at the expense of future generations. Of particular importance is the reform of Article 27 of the Constitution on the ownership of *ejido* and communal land, which involved expropriating rights over the use and ownership of land and its resources and the safeguards of those rights. Those policies and practices show how what are really acts of dispossession have been presented as purported development policies and have, subsequently, been enshrined in law. The law thereby loses its role as a protector and becomes a means of diverting power, expropriating it from the Mexican population and vesting it in trade agreements, pressure from transnational corporations and the interests of the economic elites. The recent prohibition by the Supreme Court of Justice on holding consultations or referenda on aspects relating to income and expenditure, which would concern essentially fiscal policy, any area of grassroots claims, means in practice a legal bar to the development of participation, and therefore on the power on which democracy in Mexican society is founded. What this Tribunal has heard at

this hearing demonstrates the need for an analysis of the social and environmental impact and the impact on future generations when discussing State policies.

k. *Justice and combating impunity*

Seeking justice is a universal impulse and the key demand of victims and survivors in Mexico. The vast majority of cases heard at this hearing have not seen the results of any effective investigation and remain in impunity. The Mexican authorities have a sorry record of non-existent or poor investigations which often starts right at the scene of the facts. In the view of this Tribunal, impunity is not only an absence of punishment, but also a mechanism which attempts to avoid acknowledging and accepting responsibility. In the case of Mexico, which tries to dilute responsibility between municipal, state and federal authorities, the mechanisms for ensuring accountability, such as official human rights commissions, are sadly ineffective. The fabric of impunity is also made up of roads which lead nowhere, as we have heard in the cases presented, combined with a mechanism of education and coercion which makes society feel impotent. The victims and survivors of the various cases presented at this hearing, and throughout the proceedings of this PPT more broadly, and the leading organisations which represent them, are the fundamental driver of this struggle against impunity and need support and recognition. This ruling is intended to be a way of endorsing their claims, based on that consciousness which represents the essential identity of the peoples.

4.1. Confronting the impact of violence

The Tribunal calls on society to confront this situation, which is both an emergency situation and one with serious chronic effects. The consequences of violence directly affect broad layers of society, particularly various sectors of the young population who are the direct victims. Yet it is also their relatives who suffer the impact of trauma and loss, of not knowing what happened to them and from the lack of a policy of providing assistance and reparation. None of this has yet been set in train in Mexico, beyond a few legislative initiatives and a number of partial measures. Furthermore, the institutional policies which are destroying the future could not give rise to systematic practices and social, political and legal impunity without the implicit or explicit connivance of professional associations which are responsible for analysing and working with data and experiences, such as those presented at this hearing, in such a way that the mechanisms and causes behind the underlying long-term processes, and the violations which have been reported, can be brought to light. In the fields of the environment, health and epidemiology and the interdisciplinary themes which determine the variables across law, the economy and individual and collective human rights, people's lives and stories are not included as key variables, but as factors of correction or confusion in the calculations made by professionals, in many cases seen as absent or adversaries of the most at risk groups or peoples. This Tribunal calls upon those sectors of society to become involved in these issues and to make them their own, to listen to the victims and to commit to ensuring that law, medicine, psychology and research take seriously the training of professionals with an ethical perspective and the skills needed to work in contexts of violence and the provision of assistance for victims and survivors.

5. THE STRUCTURAL RATIONALE OF THE OFFENSIVE AGAINST THE RIGHTS OF PEOPLES IN MEXICO

For decades, Mexico has been well-regarded in terms of international relations. From its resolute support for the refugees from the Spanish Civil War to its active participation in the movement of non-aligned states, its pro-global disarmament stance, its leadership in negotiations for the Tlatelolco treaty for a nuclear weapons free zone in Latin America and swift ratification of all kinds of international human rights agreements, Mexico's foreign policy was distinctive in maintaining an individual voice, often associated with the most socially progressive options.

Still today it retains some of that reputation, which seems to have been hardly tarnished by the frequent episodes of violence shown in the international media, normally linked generically to turf wars between the various agents involved in drug trafficking, or by data about poverty and corruption, although admittedly its voice in the major international debates has lost its independence.

What is in fact not realised abroad is how broadly and how gravely the political system has, for so long now, used a model of institutional violence to impose economic policies dictated by the interests of a minority and which erode all aspects of the rights and interests of large sectors of its population. What is not known sufficiently clearly outside Mexico, save in human rights forums, is the frequency with which threats, aggression, murders, disappearances, torture, the appropriation of land and forced displacements are used to crush those who are trying to defend their rights and those who lead resistance, and that, beyond the habitual recourse to the opaque violence of drug trafficking, it is the institutions of the Mexican State, at all levels, which together, by act or omission, plan, promote and contribute to maintaining this pattern of behaviour. The world must be told that the Mexican Government has a sunny face for the outside world and another one at home, because that is the only way that resolute support can be achieved for the necessary transformation.

In the Mexican situation, one can see a striking disconnect between the enormity of those crimes of State, of the systematic attack on the rights of peoples denounced throughout the years during which this tribunal has been working, and the impression people have of that situation in international and regional institutions, the governments of Latin America and the rest of the world, the international media and even social movements defending the rights of peoples throughout the globe.

Unlike other situations on a similar scale, the Mexican case is not a priority on the agenda of any international institution and neither governments of various stripes nor social organisations and human rights bodies themselves give the Mexican situation high priority in any of their campaigns or complaints.

However, there emerges from all the information received throughout the years of workshops, forums, preliminary hearings and thematic hearings of the Mexico Chapter of the PPT, in the thousands of documents reviewed and the thousands of witness statements presented, a picture which reflects the undeniable responsibility of all levels of the Mexican State apparatus for the offences and violations alleged and its absolute collusion with the interests of transnational capital, the policies of the

United States of America and even with the operation and interests of a large number of criminal organisations, in what the prosecution in this case has described as a process of 'abuse of power'.

That 'abuse of power'⁴ has been described as a transformation of the State apparatus which, whilst reinforcing, subcontracting and updating an awe-inspiring punitive capacity, is definitively abandoning any concern for the well-being of the population, using public power to further private interests, thereby encroaching upon every one of the historic gains achieved by the peoples in their long struggle.

That abuse of power, for its part, is occurring at all levels – political, legislative, judicial and even economic – of the functioning of the State, as an expropriation of the public apparatus which, stripped of the features intended to justify its legitimacy (representing the interests of the whole population), is now a hollow shell.

The anomalous position constituting an abuse of power as a criminal mechanism, as that non-statutory offence has been defined during the prosecutors' contributions, consists of governments, political representatives, authorities and de facto powers using the economic, political, cultural, legal and institutional capacities of the State in order to satisfy or benefit individual private interests, whether local or foreign, contrary to or to the detriment of the general public interest of the population, and at a price of failing to provide the minimum conditions for the life of society to reproduce and develop and of making exercise of the individual and collective rights of persons secondary to economic considerations divorced from their interests.

⁴The eminent jurists Eduardo García de Enterría and Tomás Ramón Fernández have stated that "every administrative act must be directed at the accomplishment of a purpose, which is always determined, either expressly or tacitly (and hence is subject to regulation), by the provision that confers the authority to act. If the administrative authority or organ departs from that purpose, which conditions the exercise of its competence, any act or decision it takes for a different purpose ceases to be legitimate...". Similarly, Alibery [sic] has said that "an agent of the administration commits an abuse of power when, in performing an act within his competence and respecting the forms imposed by legislation, he makes use of his power in cases, for motives and to purposes other than those for which this power was conferred upon him. The abuse of power is an abuse of mandate, an abuse of law. An administrative act may have been performed by the competent official with all the appearances of legality and yet this discretionary act, which the qualified official had the strict right to perform, may be rendered illegal if its author has used his powers for a purpose other than that for which they were conferred on him, or to speak in terms of jurisprudence, for a purpose other than the public interest or the good of the service". The Commission notes that, while it may appear that the law has been adhered to in all the procedures by which the accused has been detained, the above-cited investigations have been opened, and the subsequent criminal actions have been brought, nevertheless the Mexican justice authorities, whether regular or military, who are responsible together with the Judicial Police for the prosecution of crimes, pursuant to Article 21 of the Mexican Constitution, have used the public power to launch preliminary investigations, whether *ex officio* or *ex parte*, and to bring subsequent criminal actions, for purposes other than those established in Mexican legislation, and in so doing have abused that power, through a series of successive and seemingly legal acts that have tended to deprive General José Francisco Gallardo of his personal liberty. Those acts, as the Government has stated, have resulted in the opening of 15 prior investigations since 1988, and the initiation of 7 criminal proceedings, in none of which the accused has been found responsible, since the fact that two cases have been dismissed does certainly not imply any probable responsibility on his part: on the contrary, as the Dictionary of the Spanish Language states, dismissal is "an action that, because of the evident absence of a crime or of responsibility on the part of the accused, terminates the process with effect analogous to that of an acquittal." Inter-American Human Right Commission, Report No 43/96, Case 11.430, Mexico, 15 October 1996, paragraph 114.

In the case of Mexico, the multi-administration abuse of power has consisted of a programmed series of wilful actions by means of which neoliberal governments took the public life of the country hostage, raided its decision-making forums and, using the operating methods and authoritarian practices typical of the Mexican presidential regime, undertook an unprecedented transformation of the legal system, aimed at destroying the sovereign project of nationhood inherited by the social revolution of the beginning of the 20th century and the resulting deviant reconfiguration of the State, with the aim of favouring and legally guaranteeing satisfaction of the private privileges and interests of a small number of transnational corporations at odds with the historical needs and aspirations of the Mexican people.

To date, 220 decrees have been issued reforming the Constitution, 122 of which, 55.45%, have been issued under the auspices of neoliberal capitalism, giving rise to 238 amendments to various articles, particularly Articles 3, 27 and 123, although also to many others relating to the structure and scope of competence of public bodies, the territorial distribution of powers, the scope and content of municipal autonomy, electoral processes and the party system, citizen participation in the management of public policy, transparency and accountability, human rights, the review of constitutionality, national and public security, criminal justice policy and the administration and dispensing of justice, amongst other matters of key importance to the integrated development of the nation, the independence and democratisation of Mexican society, to upholding the rule of law and the full exercise of the freedom and dignity of persons.

On the basis of that abuse of power, the State's primary function has been reformulated to make it the organiser and/or implementer of the evictions and expropriations, the transformation and destruction of the structure of production and the massacres, repression and numerous violations of rights needed to break down the fabric of society in Mexico.

Although that process is, to one degree or another, common to many modern states in neoliberal contexts, Mexico's is undoubtedly an egregious case given the level that abuse of power has reached, the degree to which the State's representative and social functions have been hollowed out, in keeping with the fact that it has feigned business as usual, unlike the dictatorships where those functions are explicitly abandoned. It is that, amongst other factors, which has masked the gravity of what has happened in Mexico.

It has fallen to countless Mexican social movements to shoulder the burden not only of the many forms of suffering described in the tribunal's proceedings, but also the difficult task of drawing back the cloak of silence and forgetting which surrounds the present situation, of documenting, classifying, analysing and also understanding the enormity, complexity and gravity of the State crimes carried out in Mexico between 1982 and 2014, and tracing their origins back to earlier massacres and processes of repression such as those of 1968 and 1971.

That Herculean task, often performed alone, faced with the silence and indifference of international institutions, most governments, the vast majority of international and national media and even most grass roots organisations in other countries, has nevertheless been turned into an enriching space thanks to its

capacity to coordinate social movements. As an example of this it is worth citing the motto of the Mexico chapter of the PPT. 'We travelled without seeking each other, but knowing that we travelled in order to find each other'.

The Tribunal represented a space for encounter, dialogue, mutual enrichment and for building up an enormous body of information and documentation, and an opportunity for trying to understand the fact that the systematic organised destruction of the rights of peoples in Mexico is a structural phenomenon.

The process of the structural transformation of Mexican society has brought together the practices of four kinds of actor:

- a. Transnational corporations
- b. The countries of origin of those corporations (essentially the US and Canada)
- c. International institutions such as the WTO, the IMF, the World Bank and WIPO, amongst others, which act as representatives of the transnational corporations
- d. The Mexican State itself, by abusing its power, allowing itself to be used to guarantee and protect the interests of transnational corporations, their countries of origin and national and transnational criminal groups.

6. COMPLAINTS RELATING TO THE SITUATION IN MEXICO FILED WITH THE INTERNATIONAL AND REGIONAL SYSTEMS

6.1. United Nations bodies

In its most recent periodic review of the human rights situation in Mexico, between 2013 and 2014, the United Nations Human Rights Council made 176 recommendations to the Mexican State⁵. Those recommendations correspond to a series of violations reported and analysed at the PPT's preliminary and thematic hearings. This ruling does not attempt to list them all, but highlights the principal violations, by theme.

In relation to justice, the Council recommended in particular harmonising national legislation with the obligations arising from the Rome Statute, abolishing the practice of 'arraigo' (preventive custody) at federal and state level and ensuring that all detentions are carried out legally; strengthening the criminal justice system, in particular so that it can promptly and effectively investigate all alleged cases of enforced disappearances; guaranteeing the procedural rights of accused persons; fighting impunity, especially in relation to violence against women, children and human rights defenders, by conducting exhaustive investigations of all allegations of human rights violations.

In relation to gender, it recommended, amongst other things, harmonising the General Act on Women's Access to a Life Free of Violence and relevant federal legislation and ensuring implementation of the legislation on gender equality, combating all forms of discrimination against women; ensuring full effective application of the legislation and policies in force to combat violence against women and adopting effective measures to reduce violence and impunity; increasing measures aimed at ensuring equal opportunities for men and women in the labour market. The Committee on the Elimination of Discrimination against Women also expressed concern at the number and gravity of the crimes of femicide and asked that this crime be codified on the basis of objective criteria.

In relation to torture and enforced disappearance, the State should ensure that complaints in cases of torture, arbitrary detentions and enforced disappearances are duly investigated, and in particular that investigations of alleged torture should not be carried out by the same authority as is accused of committing acts of torture; institutional and legal measures should be taken to provide an effective response to the problem of enforced disappearances and unpunished international homicides; an in-depth systematic investigation should be carried out of all allegations of forced disappearance, the perpetrators should be brought to justice and it should be ensured that all victims, in particular the families of disappeared persons, obtain reparation.

In relation to people trafficking and the smuggling of migrants, Mexico should adopt measures to end the impunity of public officials complicit in trafficking, reinforce measures to combat the smuggling of migrants and people trafficking, including violence against migrants; it should work towards the protection and

⁵Human Rights Council. Report of the Working Group on the Universal Periodic Review. Mexico. Doc. A/HRC/25/7, 11 December 2013.

defence of the rights of migrants and effectively protect and guarantee the safety and human rights of migrants, especially women and children, including those in transit in national territory.

In relation to the security forces and the armed forces, it should ensure transparent adjudication of members of the security forces for human rights abuses and reform the civilian police; it should intensify its efforts to fight corruption at all levels of public administration, and amend Article 57 of the Code of Military Justice to ensure that human rights violations committed by the armed forces against civilians, and all human rights violations in general, are tried in civilian courts.

As regards the protection of journalists, media practitioners and human rights defenders, Mexico should establish effective protection for civil society and journalists, including the prompt and efficient investigation and prosecution of all threats and attacks made against these individuals; it should strengthen the federal mechanism for the protection of defenders and journalists and provide it with preventive capacity, taking into account the threat posed by organized crime networks against freedom of speech and the press, and reinforce legislative and institutional guarantees for human rights defenders and journalists exercising their right to freedom of expression and strengthen the fight against impunity in this regard.

In relation to poverty and social inclusion, the Council recommended prioritising the eradication of poverty, focusing on marginalised groups and disadvantaged sectors of society and emphasising measures to improve health and education, and making efforts to design schemes to finance housing.

In relation to indigenous peoples, Mexico should ensure that indigenous peoples are fully and effectively consulted on economic and development policies and projects affecting them, in accordance with ILO Convention No 169; greater participation by indigenous peoples should be encouraged by drafting a law regulating the rights to prior consultation.

The Council also recommended that the Mexican State should sign and ratify the Optional Protocol to the International Convention on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; it should recognise the competence of the Committee on Enforced Disappearances, ensure that the Convention is incorporated into the national legal framework and should set up an official register of disappeared persons; Mexico should ratify various ILO Conventions, including Convention No 189 on decent work for domestic workers.

6.2. Complaints made to the Inter-American system

The Mexican State's failure to comply with its human rights obligations, and the impunity and lack of any adequate response from the bodies responsible for administering and dispensing justice in Mexico have led victims also to resort to the regional human rights bodies.

According to the annual reports of the Inter-American Commission on Human Rights (IACHR), in less than 15 years, from being in twelfth position (in 2000), Mexico has become the country with the continent's highest number of petitions (complaints) for human rights violations to that international body⁶. The IACHR has published **16 reports on the merits**, condemning the Mexican State for violations of various Inter-American instruments⁷. To date it has not complied fully with any of those reports.

Between 2007 and the present time, the IACHR has also adopted **39 precautionary measures**, both for individuals and for communities whose rights are at risk (the most recent being PM 409/14, Students of the rural school 'Raúl Isidro Burgos' in Guerrero)⁸.

The Inter-American Court of Human Rights has also issued **seven judgments** condemning Mexico: Case of Castañeda Gutman (2008); Case of Radiilla Pacheco (2009); Case of 'Campo Algodonero' (2009); Case of Inés Fernández Ortega et al. (2010); Case of Valentina Rosendo Cantú et al. (2010); Case of Rodolfo Montiel and Teodoro Cabrera, 'ecologists' (2010); and Case of Juan García Cruz and Santiago Sánchez Silvestre (2013)⁹.

The only judgment which has been fully complied with is the judgment in the Castañeda case¹⁰, whilst the Inter-American Court itself has found that various points remain outstanding in the other cases, many of which concern structural measures and guarantees of non-recurrence:

⁶In its 2012 annual report, the IACHR reported receiving a total of 1 936 complaints, of which 431 (22.25%) related to Mexico. In the 2013 annual report, the IACHR received 2 061 petitions, 660 (32.02%) of which related to Mexico. See: IAHR. Annual Report 2012, Chapter III (the petition and case system), section B (statistics); and Annual Report 2013, Chapter II (the petition and case system), section B (statistics). Available at: <http://www.oas.org/es/cidh/informes/anales.asp>.

⁷See: IAHR. Resolution No 1/90, Cases 9768 – Case relating to the July 7 1985 electoral process to elect deputies in the State of Chihuahua; Case 9780 on the July 6 1986 municipal elections in the capital of the State of Durango and Case 9828 on the July 6 1986 elections for governor of the state of Chihuahua; Report No 14/93, Case 10.956 - Luis Felipe Bravo Mena; Report No 43/96, Case 11.430, José Francisco Gallardo; Report No 49/97, Case 11.520, Tomás Porfirio Rondín, 'Aguas Blancas'; Report No 48/97, Case 11.411, Severiano and Hermelindo Santiz Gómez, Sebastián Santiz López 'Ejido Morelia'; Report No 130/99, Case 11.740 - Víctor Manuel Oropeza; Report No 50/99, Case 11.739 - Héctor Félix Miranda; Report No 49/99, Case 11.610 - Loren Laroye Riebe Star et al.; Report No 48/99, Case 10.545 - Clemente Ayala Torres et al.; Report No 2/99, Case 11.509 - Manuel Manríquez; Report No 1/98, Case 11.543 - Rolando Hernández Hernández; Report No 42/00, Case 11.103, Pedro Peredo Valderrama; Report No 53/01, Case 11.565, Ana, Beatriz and Celia González Pérez; Report No 2/06, Case 12.130, Miguel Orlando Muñoz Guzmán; Report No. 117/09, Case 12.228, Alfonso Martín Del Campo Dodd; and Report No 51/13, Case 12.551, Paloma Angélica Escobar Ledezma et al.

⁸Information about precautionary measures can be found at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

⁹In that case the I/A Court of H.R. approved the agreement concluded between the Mexican State and the victims in the case.

¹⁰That order contained three operative paragraphs: amendment of the legislation infringing the Inter-American Convention on Human Rights, publication of the judgment and payment of costs. See, I/A Court H.R. Case Castañeda Gutman v. Mexico. Order monitoring compliance with judgment of 28 August 2013.

Radilla Pacheco¹¹: investigation and punishment of those responsible for the enforced disappearance of Rosendo Radilla in 1974; genuinely search for and locate Rosendo Radilla; adequately define the crime of the enforced disappearance of persons under Article 215A of the Federal Penal Code and provide free psychological and/or psychiatric treatment immediately, adequately and effectively, through its specialised public health institutions¹².

Campo Algodonero¹³: justice in the cases relating to the femicide of the victims and punishment of those responsible; investigation of the neglectful conduct of officials; investigation of the harassment of family members who reported the human rights violations; upgrade the Alba Protocol or implement a new similar mechanism; put into operation a database with personal genetic information on disappeared persons and their relatives, and on any unidentified bodies of women or girls killed in Chihuahua, and free medical, psychological or psychiatric treatment provided immediately, adequately and effectively, through its specialised public health institutions to victims' relatives.

Ecologists¹⁴: investigate and punish the torture of the victims in 1999; strengthen the register of detainees and adopt legislative reforms of the law on *amparo* (injunctive relief) and the military courts (reforms which were approved subsequently to the order issued by the I/A Court H.R.).

No orders on compliance have yet been made in the Valentina Rosendo, Inés Fernández¹⁵ and Juan and Santiago¹⁶ cases.

Lastly, the Inter-American Court has adopted **seven provisional measures** relating to Mexico, which are as follows: Digna Ochoa et al.; Pilar Noriega et al./Leonel Rivero; Rosa Isela Torres (witness in the Campo Algodonero case); Fernández Ortega et al.; Valentina Rosendo Cantú et al.; Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera; and Luz Estela Castro Rodríguez.

¹¹ Order monitoring compliance with judgment of the I/A Court H.R. of 28 August 2013.

¹² The order monitoring compliance also included reform of the Military Justice Code, which has already taken place.

¹³ Order monitoring compliance with judgment of the I/A Court H.R. of 21 May 2013.

¹⁴ Order monitoring compliance with judgment of the I/A Court H.R. of 21 August 2013.

¹⁵ Both these cases include investigation of the facts, punishment of the perpetrators, disciplinary penalties against officials, reforms to the military courts and the law on *amparo*, publication of the judgments, public acts acknowledging international responsibility, standardisation of the operating protocols in cases of gender crimes, capacity building of officials, medical and psychological care for victims, study grants, community centres, social awareness raising campaigns, providing adequate treatment to all women victims of sexual violence and the payment of compensation and costs, amongst other measures.

¹⁶ The agreement approved by the Inter-American Court includes: investigating the torture of the victims in 1997; expunging the victims' criminal records; providing medical and psychological care; providing the victims with housing and grants; a public act acknowledging international responsibility; publishing the judgment; arranging a seminar; publishing the judgment in the *amparo* action ordering the victims' release; capacity building of administration of justice officials; compensating the victims and paying costs. See, I/A Court H.R. Case García Cruz and Sánchez Silvestre v. United States of Mexico. Judgment on the merits, reparations and costs of 26 November 2013. Series C No. 273.

7. LEGAL CLASSIFICATION OF THE CRIMES COMMITTED IN THE CONTEXT OF THE STRUCTURAL OFFENSIVE AGAINST THE RIGHTS OF PEOPLES IN MEXICO

At the hearings held and by means of the numerous oral and written witness statements received, which document around 500 cases, the Tribunal has been able to ascertain the extreme gravity of human rights violations in Mexico, to the point that one can speak of a widespread humanitarian crisis affecting very broad sectors of the population and which has led to a crisis of State.

Those violations, many of which already appear in the opinions from the successive hearings, cannot be set out in exhaustive detail here. However, this ruling will give a general description of the various forms of violation found and highlight a number of the most serious or emblematic cases.

7.1 Crimes against humanity

Article 7 of the Rome Statute of the International Criminal Court, ratified by Mexico on 28 October 2005, defines crimes against humanity. That category includes various types of crimes which become crimes against humanity when they are committed 'as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'. 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of such crimes against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack or further that policy. In that regard, the Pre-Trial Chamber has particularised that there must be a regular pattern, which must be performed in implementation of a common policy, that the pattern does not have to be explicitly defined or formalised and that it is sufficient if it is merely planned.

The term 'widespread', for its part, refers both to the large-scale nature of the attack and to the number of victims. The term 'systematic' refers to the 'organised nature of the acts of violence and the improbability of their random occurrence'¹⁷.

7.1.1. Whether crimes against humanity have been committed

In some of the crimes documented, there is a nexus between State institutions, police or military forces and paramilitary groups and criminal organisations, which therefore involves the various federal, state or local levels of the State, whilst, in others, such crimes can be attributed separately to various structured forms of organised crime.

It emerges from the documents and declarations submitted during the hearings of the Mexico Chapter of the PPT as a whole that there is sufficient evidence, in the opinion of this Tribunal, to say that the following types of crimes against humanity have been committed: a) murder; b) extermination; c) enslavement; d) deportation or forcible transfer of population; e) imprisonment or other severe deprivation of

¹⁷International Criminal Court, No: ICC-02/11, Date: 3 October 2011, Pre-Trial Chamber III, Situation in the Republic of Cote d'Ivoire.

physical liberty in violation of fundamental rules of international law; f) torture; g) rape; h) persecution against any identifiable group or collectivity on political grounds; i) enforced disappearance of persons.

There are many examples and so only a few cases of each type of crime are referred to here.

a. Murder

Although the data vary, the number of people killed since the beginning of the six-year presidency of Felipe Calderón Hinojosa is estimated at 37 000¹⁸, increasing inexorably, and these are, in very many cases, extrajudicial executions.

In 2009 it was the State of Chihuahua which reported the highest number of violent deaths, reaching a total of 3 250 in that year alone and, within Chihuahua, the municipality which recorded the highest number of violent deaths was Ciudad Juárez with 81% (2 630).

The phenomenon which has become known as 'femicide' is particularly striking. Between 2011 and 2013 at least 1 889 murders of women were documented by the Observatorio Ciudadano Nacional de Femicidio (National Citizens Observatory of Femicide). In recent years, femicide has spread to all states in Mexico. In particular, cases have been documented in the states of Chiapas, State of Mexico, Michoacán, Morelos, Sinaloa and the Federal District.

Many murders have been documented before the PPT. These include the murder of Marisela Escobedo Ortiz, in Chihuahua on 16 December 2010 in a paradigmatic case of femicide, criminalisation of human rights defenders and wilful omission by the State in response to a death foretold.

b. Extermination

Massacres, defined as attacks on a group of five or more victims in a single act, either by State forces or by other armed agents, have been frequent in Mexico. The following massacre cases, amongst others, have been remembered at the hearings: the Ocosingo, San Cristóbal and Chicomuselo massacres in Chiapas (in January 1994 and in 1995), the Aguas Blancas massacre, in Guerrero (28 June 1995), the massacre at Acteal, Chiapas (22 December 1997), the Charco, Guerrero, massacre (7 June 1998), the massacre at El Bosque in Chiapas (10 June 1998).

Over time, there have been other attacks on groups with a common thread, including, amongst others, the repression and murders at Atenco (2001 and 2006), repression of the teachers' movement in Oaxaca and the subsequent repression of the popular movement in Oaxaca with more than 20 murders (throughout 2006), repression against the indigenous communities of Cherán and Ostula, Michoacán, with over 10 murders (between 2011 and 2012), and repression of the struggle against a Canadian mining company at San José del Progreso, Oaxaca with two murders and several woundings (in 2012).

¹⁸Data provided by the organising committee of the Mexico Chapter of the Permanent Peoples' Tribunal in the formal request to set up the Mexico Chapter, February 2011.

In other massacres, the State appears not to have been the direct perpetrator, such as those of 72 Central and South American migrants who were executed in the municipality of San Fernando, Tamaulipas (2010), or the case of 49 decapitated and mutilated corpses abandoned on a road between Monterrey and the US border (2012), or the 18 bodies found in a tourist area near Guadalajara (2012), or the 23 corpses which appeared decapitated or hanging from a bridge in the border town of Nuevo Laredo (2012), amongst other similar incidents.

The State was indeed, however, the perpetrator, more recently, of the massacre in the rural community of San Pedro Limón, in the municipality of Tlatlaya, State of Mexico, in which 22 people were murdered on 30 June 2014.

c. Enslavement

Evidence has also been presented of the use of slave labour in a number of cases and a number of areas. This occurred with the tomato company Bioparques de Occidente S.A. de C.V., based in the municipality of Tolimán, Jalisco (which ironically in 2010 won an award of 10 million pesos from the Secretariat for Social Development (SEDESOL) for its social responsibility). On 10 June 2013, 272 casual labourers – 191 men, 45 women and 36 minors – were released, having been exploited in crop fields belonging to the company, and forced to live in quasi slavery.

Further exploitative conditions were later found in the companies Empaques Casillas and Bonanza, at Autlán, where the most fundamental rights of a further 280 casual labourers were being infringed.

d. Deportation or forcible transfer of population

Forced displacement is a real phenomenon in Mexico and affects hundreds of thousands of people. The reasons for it include the impact of mining and hydroelectric megaprojects and the effects of militarisation and violence unleashed by the 'war on drugs'.

There are allegations of dwellings being destroyed to force families and communities to move in order to free up land for various industrial, mining, tourism or road infrastructure projects. The alleged cases of forcible transfer of population, which are customarily accompanied by the occupation of communal land, include those of the Ejido Benito Juárez, Chihuahua, and in indigenous territory, in cases of mining projects approved without prior consultation, and the cases reported by UPREZ (Emiliano Zapata Revolutionary Popular Union), including the appropriation of land which had been bought from the State, in the State of Mexico, and by the community of San Antonio de Ebulá, Campeche, and the community of Bacalar, Quintana Roo.

e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

The judicialisation of abuses by bringing false accusations that various crimes have been committed has been a constant practice of the Mexican State to impede and attempt to neutralise community leaders and human rights defenders, as in the cases of the Consejo de Ejidos y Comunidades Opositores a la Presa de la Parota (Council of *Ejidos* and Communities opposing La Parota Dam), in Guerrero, the case of Nestora Salgado at Olinala, Guerrero and of the Nahua indigenous community of

San Pedro Tlanixco, State of Mexico. In those cases, judicial safeguards proved clearly ineffective.

An exemplary case, but one which is also representative of many cases of imprisonment without due process, is that of Alberto Patishtán Gómez, a schoolteacher belonging to the Tzotzil indigenous group, in the community of El Bosque, Chiapas. He was sentenced to 60 years' imprisonment, accused of being the perpetrator of a massacre of seven police officers, in a trial which was so flawed that the accused was not assisted by translators, even though he does not speak Spanish. Alberto Patishtán remained in prison for 13 years and his case was silenced by the media. The miscarriage of justice was so evident that he was finally pardoned by the executive, but did not accept the pardon which involved admitting guilt. Congress therefore ultimately passed a special law to release him, changing the requirement for consent in order to grant the pardon. He was released on 31 October 2013.

f. Torture

The Tribunal heard many witness statements revealing repeated systematic practices of torture, facilitated and carried out by State agents. These include the community of Aquila, Michoacán, the case of Claudia Medina in Veracruz and the brutal attack in May 2006 on the community of San Salvador Atenco.

Those statements also showed that there are common patterns of torture. One of those statements on the torture of leaders of the Unión Popular de Vendedores Ambulantes '28 de Octubre' ('28 de Octubre' People's Union of Street Traders), indicated that State agents detain people arbitrarily, blindfold them, guard them, take them to special rooms where the torture occurs, place plastic bags over their heads, asphyxiate them, beat them constantly, ask them to confess, make them listen to the cries of pain of other people asking for the torture to stop, put their heads under water, mistreat them constantly with acts such as treading on their heads, threatening to kill them, to harm relatives and falsely accusing them of crimes, putting a rifle to the back of their head and even giving them worms and live cockroaches to eat. If they complain, the torture continues, and they put them into high security or psychiatric cells. People are kept incommunicado whilst the torture is taking place.

g. Rape

Rape and other forms of sexual violence are an extremely serious phenomenon in Mexico and occur in very different contexts, ranging from interpersonal gender violence (for example, 14 566 rapes were reported in 2012 alone, 13 504 in 2013 and 9,806 to September 2014) to political repression, so that some of them could therefore be described as crimes against humanity.

We would draw attention to the complex case of the trafficking of women and girls for sexual exploitation documented in Tlaxcala where, for several decades, the neglectful conduct, complicity and pretence by the authorities has created a culture which legitimises and glorifies the sexual exploitation of women, primarily adolescents and vulnerable young women.

Rapes have been reported in particular after the large-scale detentions carried out during the repression unleashed in May 2006 against the inhabitants of the town of San Salvador Atenco.

Mexico was the first country to be found responsible by the Inter-American Court for three cases of rape by members of the army, and is the subject of two of the first reports by the Inter-American Commission on sexual violence as part of counterinsurgency operations.

h. Persecution against any identifiable group or collectivity on political grounds

It should be noted here that one of the persecuted groups is that of human rights and environmental defenders, intended to eliminate the main centres of resistance to human rights violations and the destruction of the environment and to create fear as the basis on which communities can be forced to accept various measures and projects.

According to data from the Comisión Nacional de Derechos Humanos (National Human Rights Commission), between 2005 and 2011 it recorded 523 attacks on human rights defenders. According to data from the Centro Mexicano de Derecho Ambiental (Mexican Environmental Law Centre), from 2009 to 2012, 54 cases of attacks on environmental defenders were recorded.

Journalists are another of the groups which have been victims of violent attacks and who have seen limitations placed on the conditions under which they can work. Since 2000, 102 journalists have been murdered and 18 disappeared, in addition to an unknown number displaced or exiled. In the last 20 months, 11 journalists have been murdered and in the first nine months of 2014 201 attacks on journalists were recorded.

The same can be said of persecution of the leaders of teachers' trade unions in Guerrero, and of the PEMEX oil workers' unions.

i. Enforced disappearance of persons

In 2012 the federal Government acknowledged that between 2006 and 2012 there were more than 26 000 people disappeared or whose whereabouts were unknown, an unknown number of which were enforced disappearances. It must be pointed out that Mexico has not accepted the jurisdiction of the Committee on Enforced Disappearances to hear individual petitions, and has maintained its reservation in respect of Article 9 of the Inter-American Convention on Forced Disappearance of Persons relating to the military jurisdiction. Those restrictions limit the ability to prevent further disappearances.

In its 2011 visit, the Working Group on Enforced Disappearances wrote a damning report reflecting the impact of disappearances on the country, including the responsibility of the State, and made a large number of recommendations relating to investigations, the search process, how to prevent disappearances and reparation for victims, which have not yet been implemented.

It would be wrong, at this time when the final session of the PPT is being held, not to mention in this context the disappearance of 43 students of the 'Raúl Isidro Burgos' Rural Training College in Ayotzinapa, Guerrero, on 26 September 2014, after being detained by the security forces, an event which has shocked the whole country and the world.

7.1.2. Individual responsibility for international crimes

The facts proven at this hearing cannot be understood as a series of more or less numerous isolated crimes. By reason of their context, they seem to fall instead within the category of serious crimes of international concern, which give rise to international criminal responsibility on the part of the individuals who commit them or help to commit them.

Mexico signed the Rome Statute of the International Criminal Court on 7 September 2000 and, once it had amended Article 21 of the Constitution, ratified it on 28 October 2005. That amendment added a sentence to Article 21 which allows the federal executive, with the authorisation of the senate, to recognise the Court's jurisdiction in each case. That reservation is contradictory, because the Statute does not allow for reservations, and it conflicts with the objectives and purposes of the Court.

According to Articles 11 and 126 of the Statute, the Statute came into force for Mexico on 1 January 2006. The International Criminal Court (ICC) therefore has jurisdiction to hear, amongst other matters, crimes against humanity committed after that date in Mexico or by Mexican nationals.

The Court's Office of the Prosecutor can initiate an investigation into Mexico at the initiative of a State Party to the Statute, at the initiative of the UN Security Council or at the initiative of the Prosecutor him or herself, with the authorisation of the Pre-Trial Chamber. A group of citizens accordingly delivered a communication to the Prosecutor's Office back on 25 November 2011, with the support of more than 20 000 individual signatures, applying for an investigation to be commenced which would determine whether crimes against humanity and war crimes were being committed, and the potential responsibility of Felipe Calderón Hinojosa, President of Mexico from 1 December 2006 to 30 November 2012, his Secretaries of State for Public Security, Defence and the Navy, Genaro García Luna, Guillermo Galván Galván and Francisco Sáñez Mendoza respectively, and Joaquín Guzmán Loera, the alleged leader of the Sinaloa cartel.

More recently, on 12 September 2014, a group of human rights organisations submitted to the Prosecutor's Office of the International Criminal Court (ICC) a report on torture, serious deprivations of liberty and enforced disappearance committed in Baja California between 2006 and 2012 by State armed forces and security forces. The communication provides evidence that those crimes were systematic and widespread, that they were the result of government policy, implemented by the military authorities, primarily, and by police forces, by means of attacks on civilians, with the aim of showing 'progress and achievement' in the fight against organised crime. It is the second communication which the International Federation for Human Rights and the Mexican Commission for the Defence and Promotion of Human Rights have filed with the Prosecutor's Office of the ICC relating to crimes against

humanity committed in Mexico in the context of the so-called 'war on drug trafficking' and supplements a first communication submitted in October 2012.

Although the information available shows that many crimes which would be within the Court's jurisdiction *ratione materiae* were committed before its Statute came into force for Mexico, such instances also occurred after 1 January 2006.

7.2 Civil and political rights

A series of violations of civil and political rights, such as the following, were proven throughout the hearings:

7.2.1 General obligation to respect human rights

Article 1 of the Political Constitution of the United States of Mexico (hereinafter 'PCM') acknowledges that the State has a duty to prevent, investigate, punish and make reparation for violations of human rights. That duty is also enshrined in Article 1 of the American Convention on Human Rights (hereinafter ACHR) and in Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to both of which Mexico is a party.

The Tribunal has heard dozens of cases which refer to thousands of victims of human rights violations occurring in various parts of Mexico in the last 50 years, in which the Mexican State has failed to comply with its general obligations in relation to human rights.

7.2.2 Right to life

The right to life and the prohibition on depriving a person of his life are enshrined in Article 6 ICCPR and Article 4 ACHR. In the Mexican Constitution, it appears in Article 29, which governs states of emergency and makes it clear that the right to life and personal integrity cannot be suspended and must be respected even where there are serious disturbances of public order or of any other kind.

This Tribunal has heard many witness statements about people killed by State agents, paramilitary groups and in various social conflicts, such as the death of the teacher Edmundo Navas.

Right to physical integrity

The right to physical integrity and the prohibition on torture are enshrined in Article 7 ICCPR and Article 5 ACHR.

In his report on Mexico published in November 2014, the Human Rights Council Rapporteur on Torture, Juan Méndez, stated that there is still widespread use of torture and ill treatment in Mexico, particularly during detention before detainees are brought before a court.

This correlates with the documentation and witness statements received, which have referred to the practice of torture by State agents in relation to trade unionists,

migrant workers, human rights defenders and prisoners. Torture is also a widespread practice by organised crime groups. In many cases, the extreme cruelty of the torture leads to death.

7.2.3 Right to equality and non-discrimination

According to Article 3(B) and Article 5 PCM, equality of opportunity and rights for all must be promoted, any discriminatory practice must be abolished and privileges for any race, religion, group or individual must be prevented. Article 3 PDCP and Articles 2 and 24 ACHR provide likewise.

The Tribunal has found from the accounts heard that there are differences in treatment depending on the beliefs of people and groups, how they assert rights, membership of a particular human group and proximity to political power.

The unequal treatment meted out by the State can also be seen if one realises who the victims of its repressive power are – those who are members of groups which protest, which dissent from government policy, which complain of abuses of power. Repression is therefore selective and that practice is discriminatory. On the other hand, not only are people close to those exercising political, policing and economic power never subjected to repression, but they enjoy police protection for their activities, whether these be legal or illegal. That is to say, one group of people suffer repression for exercising their rights, and others enjoy impunity for illegal acts.

7.2.4 Freedom of expression and opinion

Articles 6 and 7 PCM, in line with Article 9 ICCPR and Article 13 ACHR, recognise the right of persons to freedom of expression and to impart opinions, information and ideas.

Public protest, understood as a public act of collective expression, is one of the manifestations of the right to freedom of expression and opinion. Public protest is expressed in streets, town squares and other public spaces. The protests which took place and which the tribunal examined were peaceful and related to calls to uphold human rights enshrined in the Constitution and international human rights instruments which have been infringed by acts and omissions by the State, such as the right to unrestricted, free education, to land, freedom of association, labour and trade union rights, the right to a healthy environment, to be consulted, to participate in the profits from the exploitation of the natural resources belonging to communities, to electoral transparency, to the non-privatisation of public services, improvement of living conditions, freedom of expression for media practitioners and for society, the right of indigenous peoples and communities to land and autonomy, against free trade agreements and in favour of victims' rights to truth, justice and reparation.

The cases heard and analysed by the Tribunal showed the extent to which the public authorities are intolerant of protest, through the frequent use of repressive mechanisms, public defamation, delegitimisation of social demands, the use of police roadblocks, arbitrary detention, physical aggression and beatings, the use of gas and teargas canisters, which end with legal proceedings and charges, as found in the case of the Movimiento Urbano Popular (Popular Urban Movement), where its

members were beaten, defamed, tortured, detained and tried. The protocol on crowd control (Resolution 16/2013) and the use of the Penal Code (Article 362 on 'attacks against public order') to try people who protest are particularly serious practices in that respect.

7.2.5 Right to freedom of association

Article 9 PCM enshrines the right of freedom of association and provides that 'an assembly or meeting whose purpose is to submit a petition or make a protest by means of any act, to an authority, shall not be treated as illegal, and may not be dispersed, unless insults are directed at that authority or violence or threats are used to intimidate the authority or force it to decide in the way desired'. This accords with the terms of Article 22 ICCPR.

The Tribunal found and noted the repression, criminalisation and imprisonment of the leaders of professional associations, trade unions and associations, such as members of the '28 de Octubre' People's Union of Street Traders of Puebla, social activists and people who associated or still associate to seek better living conditions, to assert rights and to call for justice.

7.2.6 Freedom of movement

The right to freedom of movement is enshrined in Article 11 PCM, Article 9 ICCPR and Article 7 ACHR. According to the Constitution and international instruments, a person can be detained only for crimes committed in flagrante delicto, in which case the person must be brought immediately before a competent court, or on the order of a competent court.

In the vast majority of cases, the Tribunal found that people were detained for protesting, in many cases peacefully, conduct which does not amount to crimes committed in flagrante. Much less were they shown court orders. Detentions were normally accompanied by beatings and ill treatment. Those facts are explicit in the accounts of, amongst others, oil workers, given by the UNTyPP (National Union of Oil Technicians and Professionals), education workers, given by the CNTE (National Coordinating Body of Education Workers), and electricians, given by the SME (Mexican Union of Electricians).

7.2.7 Right to due process and a fair trial

The right to due process and a fair trial includes the right to legality, to an independent and impartial tribunal established by law, the right to a defence and the right to be heard and to present contradictory evidence, the right that no evidence obtained unconstitutionally or illegally be obtained or assessed, a prohibition on forced entry, detention on the order of a competent court, a prohibition on incommunicado detention, access to prompt, full and impartial justice, the right that custody during proceedings be restricted and imposed only exceptionally, the right not to be judged twice for the same act and the right to appeal. All those rights are enshrined in Articles 13 to 23 of the Constitution and are supplemented by and accord with Article 14 ICCPR and Articles 8 and 25 ACHR.

As we heard at the hearings, the legal proceedings brought against people who protest lacked due process. Many people were not given a hearing, had no defence lawyer, were held incommunicado and did not know the charges against them, and their cases lasted many years and the courts unquestioningly upheld the case put by the police or the law enforcement apparatus. Nor was due process observed when the victims appeared before the courts and called for the violation of human rights to be investigated and punished. They were not given a hearing, there was no judicial response, no evidence was heard and lastly there were no convictions. That is to say, they did not enjoy due process, either as defendants or as victims seeking justice.

The difficulties in accessing justice have been documented in, for example, the case of the Luz y Fuerza del Centro workers and that of the relatives of the miners killed in the Pasta de Conchos mining accident.

7.3 Economic, social and cultural rights

The neoliberal policies of recent decades have had a devastating effect on the quality of life and the dignity of most of Mexico's population.

According to CONEVAL (National Council for the Evaluation of Social Development Policy), 53.3 million people were below the poverty line in Mexico in 2012, almost half of whom were women. Wages are currently equivalent to a quarter of what they were in 1975 and up to 60% of employment is recorded as informal.

That being so, it is not surprisingly that a series of violations of economic, social and cultural rights, such as the following, were demonstrated at all the hearings:

7.3.1 Labour and trade union rights

As a result of the hearings held and the witness statements received, the PPT has found widespread infringement of the labour and trade union rights enshrined in Article 123 of the Mexican Constitution and in Articles 6 to 9 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the 1988 Protocol of San Salvador. Those rights are also enshrined in numerous provisions of the Federal Labour Law, and in the main international labour conventions, including: freedom of association (Convention 87); the right to organise and collective bargaining (Convention 98); equal pay for men and women (Convention 100); non-discrimination (Convention 111); minimum age relating to the abolition of child labour (Convention 138); forced labour (Conventions 29 and 105); minimum wage (Convention 131); women's work (Conventions 45, 89 and 103); maximum working time (Conventions 1, 30, 43, 47 of 1935 — on a 40 hour week —, 49 and 153); health and safety at work (Conventions

31, 97, 155 and 161); workers' representatives (Convention 135); maternity protection (Convention 183); health and safety in agriculture (Convention 184); spare time (Recommendation 21 of 1924 on the utilisation of workers' spare time); Social Security (Convention 102, 118 and 157), and also the conventions and recommendations on the right to work: Convention 122 on employment policy and 158 on the termination of employment, Recommendation 122 on employment policy and Recommendation 169 of 1984 containing supplementary provisions on employment policy.

It is worth pointing out that Mexico has not ratified some of the Conventions referred to above, including Convention No 98 on the right to organise and collective bargaining (it is one of the 23 ILO Member States out of 183 which have not done so). Nor has it ratified Convention No 138 on the minimum age relating to the abolition of child labour.

However, the Mexican State has an obligation to report to the ILO the measures it adopts to give effect to the conventions (Article 19, paragraph (5)(e) of the ILO Constitution) and to comply with them (Declaration on Fundamental Principles and Rights at Work, approved by the International Labour Conference 1998).

The main rights infringed are the following:

Right to work

Infringement of the right to work has an impact going beyond the realm of work, because it degrades each individual's life itself and destroys the equilibrium of the family and the fabric of society. The Tribunal has found unfair and constructive dismissals to be a very common practice as a result of company privatisations or as a response to workers claiming their labour rights and particularly their right to freedom and independence of association. The following cases have been documented: the workers at Atento; the Sindicato Independiente de Trabajadores de la Secretaría de Seguridad Pública Federal (Independent Union of Employees of the Federal Public Security Secretariat) (SINTSSPF); CYCSA; CONALEP DF (College of Technical Vocational Education in the Federal District); railway workers, thousands of whom were dismissed when the company FNM (Mexican National Railways) was privatised; the employees of the public body DIF (System for the Integrated Development of the Family) in the Federal District; the professional workers and trade union leaders of the oil company PEMEX, the employees of Mexicana de Aviación and the workers at the company Luz y Fuerza del Centro. All the cases heard by this Tribunal alleged the use of public force to silence social discontent and any voice critical of State decisions on labour issues, as in the case of the SME workers held as political prisoners and the murders of school teachers belonging to the Coordinadora Nacional de Trabajadores de la Educación (National Coordinating Body for Education Workers) in Guerrero, Chiapas, and Oaxaca.

Freedom to join a trade union

There is also a clear practice of impeding the exercise of freedom of association and trade union freedom, with cases where trade union activities have been persecuted very severely. This occurred in the case of the workers at Atento, Section 187 of the Sindicato de Telefonistas de la República Mexicana (Union of

Telephone Workers of the Republic of Mexico) (STRM); SINTSSPF; the company Construcciones S.A de C.V. CYCSA, a subsidiary of Telmex; the workers belonging to the Sindicato Independiente Nacional de Trabajadores de Salud (Independent National Union of Health Workers) (SINTS), the employees of the Instituto de Educación Media Superior (Higher Intermediate Education Institute) (IEMS); the employees of Mexicana de Aviación; the employees of the College of Technical Vocational Education CONALEP DF; the members of the Sindicato de la Unión de Trabajadores del Instituto de Educación Media Superior (Union of Workers of the Higher Intermediate Education Institute) (SUTIEmps) and those of the State company PEMEX.

Right to collective bargaining

The Tribunal has also documented refusals to allow collective employment contracts, which means that workers cannot define and regulate aspects of employment relationships such as wages, working time, rest times, dismissal arrangements and working conditions in general. Attention is drawn here, amongst the cases heard, to that of the workers at Atento, the case of the employees of CYCSA and of SUTIEmps, the case of employees of the Sistema Nacional para el Desarrollo Integral de la Familia (National System for the Integrated Development of the Family) (SNDIF) in the Federal District and the case of Mexicana de Aviación.

The right to a pension

It has been found that the 'outsourcing' arrangements encouraged by the State undermine labour rights and in particular the right to receive a pension. The successive governments in the period in question have justified privatising public services arguing, amongst other grounds, that paying pensions to retired workers would represent too great a burden. They have therefore increasingly promoted subcontracting arrangements, which in practice not only 'release' the State from the need to give an adequate response to the right to a pension, but have meant that the 'subcontractor' companies do so in such a way that they too avoid upholding that right. This has been reported, for example, by the women workers of the Institute of Higher Intermediate Education (IEMS) in the Federal District. Another particularly significant case is that of the over 30 000 pensioners of Mexican National Railways.

Decent working conditions

Poor working conditions are an underlying feature of the situation of workers in Mexico. In general, in addition to low wages, workers are exposed to risks during working time, all manner of restrictions, poor health and safety conditions and a lack of medical facilities in the event of emergencies. In many cases, that of the Atento employees for example, already precarious conditions have been made worse by constant sexual and other harassment at work. Workers work longer than their contracted hours, for example the women at the DIF in the Federal District, the Atento employees, those of the CONALEP college and SINTSSPF, the women ticket office employees of STC Metro DF and IEMS workers.

Furthermore, exhausting working hours and the lack of safety measures cause repeated accidents at work throughout Mexico. UNTyPP workers have documented the accident which occurred on 30 June 2011 at the Tula Hidalgo refinery in which three workers died and an unknown number of people were injured, and the accident at the coalmine known as Mine 8, Pasta de Conchos Unit, owned by Industrial

Minera Mexico, S.A(b) de C.V. (IMMSA), belonging to Grupo Mexico, in the State of Coahuila, as a result of an explosion at the mine on 19 February 2006, which killed 65 miners and injured 8.

Specific rights of women workers

The Tribunal has also found a high level of discrimination affecting women at work. The types of discrimination documented include, in addition to the genuine opportunity of finding work, discrimination in relation to pay and occupational segregation. Women are also victims of sexual harassment, intimidation and high-handed treatment at work. This is found in cases such as that of the women workers at the IEMS, the DIF in the Federal District, those at AVON and the women workers at INMUJERES (National Women's Institute) (Federal District).

The precarious conditions, harassment and criminalisation of women sex workers by municipal, state and federal governments have been documented, as has their reluctance to validate the judgment in *amparo* action 212/2013, delivered by the federal courts, which obliges the government of the Federal District to recognise female sex workers as self-employed workers.

7.3.2 Rights of migrant workers and their families

The issues surrounding the violation of the human rights of migrants involves the responsibility of migrants' states of origin, transit and destination, that is to say: the US, Canada and the countries of origin of the victims of the massacre of San Fernando: Guatemala, Honduras, El Salvador, Ecuador and Brazil.

The human rights aspects are governed by the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The criminal aspects are brought together in the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air (ratified by Mexico on 4 March 2003), supplementing the United Nations Convention against Transnational Organized Crime of the same year, which establishes the offence of the illegal trafficking of migrants, consisting of facilitating the illegal entry of a person into a State Party of which the person is not a national or a permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit. Both instruments are in force in Mexico.

The hearing on 'Migration, forced displacement and refugees' (29 and 30 September - 1 October 2014) looked at the situation of various groups of migrants, both Mexicans migrating to United States and Canada and migrants from other countries who cross Mexico heading for the United States. They are all extremely vulnerable and suffer various violations of their rights, although their experiences differed depending on variables such as their legal status (documented or undocumented), the type of stay and the length of their stay (temporary or permanent workers), ethnic origin (indigenous or mixed-race), sex (male or female), age (adults, young people or children), economic sector (agricultural, industrial or services), employment experience, level of education, social networks, region of origin and the region in which they intend to work. The data provided by human rights defenders associated with migrant assistance hostels showed the extreme vulnerability of migrants in transit, who found they had become illegal and were

criminalised when the legal requirements in Mexico were tightened as a result of the United States' security requirements.

Documentation has been provided concerning the violation of many rights, such as the right to life, to physical and mental integrity, to freedom, to due process, to their few precious goods, and to health. There are homicides (including for organ trafficking), kidnappings, extortion, physical aggression, rape and all kinds of sexual abuse, deprivation of liberty, torture and cruel, inhuman and degrading treatment, forced labour, etc. All this is committed both by State officials (immigration authorities, federal, state and municipal police forces) and by organised crime in complicity and/or with the acquiescence of the State authorities themselves, in the same way that private companies based in the United States (the train known as 'the Beast' and money transfer companies such as Western Union, EleKtra and MoneyGram), which channel international money transfers, participated in the dynamic of the crimes committed against migrant populations.

In the most extreme cases, many examples have been placed on record of the large-scale kidnapping of migrants and massacres such as those already mentioned elsewhere, one of the most significant of which is that at the San Fernando ranch in Tamaulipas in August 2010, in which 72 migrants were murdered. However, that was only one of the over 200 collective kidnappings of migrants which occurred in 2010.

Even though Mexico adopted a 'Procedural protocol for those who dispense justice in cases affecting migrants and persons requiring international protection' in October 2013, migrants do not enjoy effective legal protection.

Nor do the migrants' countries of origin (Mexico, Guatemala, El Salvador, Honduras and Nicaragua) comply internally with their obligations to guarantee the exercise of human rights and prevent violations. Furthermore, when people migrate and are either in transit or at the place of destination, the states of origin do not comply with their obligations arising from rights relating to consular services.

7.3.3 Right to health

This right is enshrined in Article 10 of the San Salvador Protocol to the ACHR.

Despite the very likely serious impact on health of the changes in eating habits and the high degree of soil, water and air pollution being experienced in Mexico, there is a notable lack of a specific public policy taking a systematic and integrated approach to tackling the various scenarios in which human activity impacts upon, damages and threatens the environment, and this can therefore be regarded as a manifest violation by omission of the right to health, enshrined in Article 2 of the Mexican Constitution, in relation to the indigenous peoples, and in Article 4 in general terms.

Amongst the many cases reported, we can draw attention to that of the Endhó dam, built in the 1970s without the consent of the communities. The dam became the reservoir for waste water from the Federal District, contaminating the Tula river. Representatives of the Federación Independiente de Obreros Agrícolas and Campesinos (Independent Federation of Agricultural Workers and Peasants)

(FIOAC) alleged that, in the area around the dam, thousands of people suffer from various gastrointestinal, respiratory, dermatological and carcinogenic conditions.

7.3.4 Right to food

The right to food is enshrined in Article 4 of the Mexican Constitution and Article 12 of the San Salvador Additional Protocol to the ACHR.

In 1983, President Miguel de la Madrid announced that one million peasant farmers would no longer have access to official credit. The following year, a further million were added. The decision to end subsidised official credit was the beginning of a progressive dismantling of the system of government support for the countryside.

President Salinas speeded up that dismantling and in 1992 pushed through the constitutional reform which enabled *ejido* land to be put on the market. Agroindustry gradually took control of a substantial proportion of the *ejidos*. In the ensuing presidential terms, the process has not stopped but has in fact intensified.

In reality, what is becoming apparent is a clear intention to make it impossible for the peoples and communities to support themselves and their way of life independently, in order to force them to integrate into the globalised agroindustrial markets.

Maize is emblematic in that context and its significance goes beyond Mexico. In 1971, Mexico exported maize. As a result of government policies, it currently produces just over 20 million tonnes of maize a year. Production has stagnated in the last decade, whilst imports of just over 10 million tonnes have increased year on year. The cost of maize imports reached 2 500 million dollars in 2011 and was even higher in 2012.

According to the opinion of the hearing on 'Violence against maize, food sovereignty and the autonomy of peoples' (Mexico City, 19-21 November 2013): 'One of the main factors in the loss of food sovereignty which this policy has caused is the resulting change in the Mexican diet, which is having catastrophic effects. Mexico has one of the highest rates of obesity, diabetes and high blood pressure in the world. It is the world leader in consumption per head of cola drinks and one of the highest consuming countries for "junk food". The consumption of maize products has also started to decline for the first time in history'.

Added to this is the strategy of introducing the genetically modified maize promoted by the big corporations in the sector, with the resolute support of Mexican governments and some of the scientific community, embodied in imports and legislation (Genetically Modified Organisms Biosecurity Law of 2005 and its implementing Rules of 2008 and the 2007 Law on the Production, Certification and Marketing of Seeds), which has led to the contamination of native maize, as reported to the tribunal by the Zapotec community of Sierra Norte de Oaxaca and the representatives of the municipal agency of El Porvenir, municipality of San José el Progreso, District of Ocotlán, Oaxaca and those of the Mixteca region, and in the study by the Red en Defensa del Maíz (Maize Defence Network), and endangers its

survival and is therefore, quite apart from food sovereignty, having an impact on the very cultural identity and the ways of life of peasant and indigenous communities.

GM contamination has had other effects, such as that caused by genetically modified soya to beekeepers in the Yucatán Peninsula.

Attention must be drawn to the decision of Judge Jaime Manuel Marroquín, judge of the Civil Division of District Court 12 in the Federal District, who, in October 2013, ordered the suspension of all sowing of genetically modified maize in Mexico, and halted the grant of permits for experimental, pilot and commercial release of genetically modified seed.

According to the opinion of the hearing on 'Violence against maize, food sovereignty and the autonomy of peoples' (Mexico City, 19-21 November 2013): 'the imposition by the Mexican State and agribusinesses such as Monsanto, Dupont, Syngenta, Bayer, Dow, Basf and Cargill, of an intensive agroindustry model – in which GM crops are one of the most extreme tools – is not only an attack on a culture, but also a veritable war against subsistence farming, driven by laws devised to prevent the defence of peasant agriculture and independent production and which represent an abuse of power as defined by the IAHRC in the Gallardo case'.

7.3.5 Right to education

The right to education is enshrined in and guaranteed by various international legal instruments such as the Universal Declaration of Human Rights (Article 26), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Articles 13 and 14) and the International Covenant on Economic, Social and Cultural Rights (Article 13), as it is in Article 3 of the Mexican Constitution.

The education policy pursued by Mexico's neoliberal governments, however, has favoured a deterioration of public education to the benefit of privatisation, which tends to exclude a large majority of Mexican society living in rural and indigenous towns and communities. They have also exerted constant pressure on teachers' groups, both in terms of their working conditions and in order to limit freedom of expression and association and the freedom to hold meetings, and to suppress any protest by teachers, parents or students.

7.4 Right to the environment

The right to a healthy environment is enshrined in Article 11 of the San Salvador Additional Protocol to the ACHR.

The hearings, in particular that on environmental devastation, have demonstrated what the prosecution correctly referred to as 'structural violence unleashed against nature and against indigenous, agricultural and low income urban population centres, which have been annihilated, displaced or forced to live in degraded environments, with the intention of carrying out the large-scale land clearance which the private corporations need in order to pursue their irrational use

of the country's natural resources, their voracious pillaging and speculation with the ensuing potential business opportunities’.

As the Opinion on Environmental Devastation and the Rights of Peoples (Mexico City, 15-17 November 2013) states:

[...] the expansion of the neoliberal commercial world view is unprecedented and is completely out of control. This world view does not see trees, rivers, land and mountains as beings with their own dignity and rights, but as part of the world of “natural resources” and “natural capital”, that is to say, goods and services which are waiting to be developed by investment so that they can be exchanged on the market and consumed productively. The purpose of that process is an accumulation of capital unparalleled in human history, and its devastating result has been the almost complete destruction of the planet and its land, seas, rivers, lakes, woods, meadows, basins and other sites, and of the native communities which inhabit them and their ways of thinking, living and interrelating with the universe’.

The allegations presented at the preliminary hearings and the supplementary hearing on environmental devastation described socio-environmental problems in 433 municipalities in 21 states in Mexico, home to some 40 million people, that is to say, a third of its population. Mexico is experiencing an environmental crisis of huge proportions: 70% of the country's rivers are severely polluted; in 30 years, the number of overexploited aquifers has tripled; the country has one of the world's highest levels of biodiversity and woodland loss; over 80% of hazardous industrial waste is not properly treated and only 15% of urban waste holding areas comply partially with environmental regulations. There is therefore large-scale systematic infringement of the right to a healthy environment, enshrined in Article 4 of the Mexican Constitution, and implemented by the 1988 ‘General Law on Ecological Balance and Protection of the Environment’.

According to data from PROFEPA (Federal Attorney for Environmental Protection), in the 632 days between 1 December 2012 (when Enrique Peña Nieto became President of Mexico) and 25 August 2014, 1 124 environmental emergencies were recorded, of which 45% were attributable to Petróleos Mexicanos and the rest to private companies – primarily chemical, petrochemical and mining companies – with the greatest impact in the States of Veracruz, Guanajuato, Tamaulipas, Puebla and Tabasco.

The situation relating to water, throughout the whole of Mexico, is particularly serious, as reported in various cases such as that of the Cuenca de la Independencia, Guanajuato. Priority is not given to human consumption, food sovereignty and the environmental flow, in the model of fair, sustainable use established by the Mexican Constitution (Article 4), whilst preference is given to mining, the petrochemical industry, industrial and agroindustrial projects – projects which not only monopolise water, but which make it unusable by their discharges into the environment.

The monopolisation and destruction of water catchment areas and the overexploitation and pollution of dozens of aquifers means that millions of cubic

metres of water already have to be moved between catchment areas at prohibitive economic, energy and environmental cost, causing forced migrations in the ravaged catchment areas and the disappearance of communities and cultures, poisoning and destroying the health of thousands of people in the ravaged regions and destroying water-related natural, cultural and sacred goods and heritage which sustain the life of the peoples. This model renders nugatory the peoples' right to access to and use and preservation of their land, water and biocultural practices, and encourages the elimination of local subsistence economies. This situation is even more serious if one bears in mind that Mexico is one of the world's two most diverse countries, in terms of its combined biodiversity, ethnodiversity and agrobiodiversity.

At the time of drafting this ruling, there are disputes relating to 8 major projects to transfer water between catchment areas in Mexico: 1] the Independencia aqueduct, to benefit, amongst other companies, the Ford transnational automotive corporation, in Hermosillo, Sonora; 2] the Monterrey VI project, to divert the course of the Pánuco river, between the States of Tamaulipas and Veracruz to Nuevo León, essentially in order to extract shale gas; 3] the El Zapotillo project, between Jalisco and Guanajuato, to supply the automotive industry in the León-Silao industrial corridor; 4] the Costa de Oro project to extract water from Nayarit and divert it to southern Sinaloa for the agroindustry export sector; 5] the Bandera Blanca project, to appropriate the headwaters of the Atoyac river, at Amatlán de los Reyes, for industry in Córdoba, Veracruz; 6] the aqueduct project to supply the Huexca thermal electricity plant in Morelos with water from the Cuautla river; 7] stage four of the Lerma-Cutzamala System, to extract water from the Temascaltepec river and divert it to Mexico City and 8] the Lázaro Cárdenas Dam-La Laguna aqueduct, in Durango, to supply the predatory mining and dairy industries at Torreón, Gómez Palacio and Lerdo, in Coahuila and Durango respectively.

In recent months, separate accidents have resulted in serious episodes of water pollution: on 6 August 2014, the company Buenavista del Cobre, owned by the Mexican transnational mining corporation Grupo Mexico, spilt 40 million litres of copper sulphate and other toxic substances (such as arsenic, aluminium, cadmium, chromium, iron, manganese and lead) into a stream which feeds the Bacanuchi river and subsequently the Sonora river before reaching the El Molinito dam, which supplies water to the city of Hermosillo, Sonora, the State capital. The spill also affected the aquifers and 322 wells which supply communities in nine municipalities in Sonora, meaning that it affected nearly 840 000 people. On 14 August 2014, the mining company Proyecto Magistral spilt 2 million litres of water containing cyanide into the La Cruz stream, in the municipality of El Oro, Durango, and on 17 October 2014 the mining company Dos Señores, in the municipality of Concordia, Sinaloa, spilt 10 800 tonnes of toxic mud (with high levels of lead and iron) from a mine tailings dam illegally constructed over 8 kilometres of the Pánuco stream, a tributary of the Baluarte river, which supplies various communities in the municipalities of Concordia, Rosario and Escuinapa. Although Book II, Title 25 on 'offences against the environment and environmental management', of the Mexican Federal Penal Code establishes environmental offences, the Code is completely ineffective.

Another fundamental aspect is the acceleration of a general process involving the plundering of land, water, coasts, minerals, energy resources, territory, space and public services and infrastructure, which the Mexican State is implementing for

the benefit of corporate interests by approving laws making it possible to privatise the heritage of the nation and of its peoples. The recent energy reform is a clear example of this tendency.

The role and the responsibility of national and transnational companies are crucial in this sphere, in so far as they enabled, exacerbated or facilitated the devastation of the environment and environment-related human rights, obtained huge profits and shifted the environmental costs of their activities onto the communities.

The aforementioned opinion on environmental devastation refers expressly to the following companies: Pfizer, Suez, Halliburton, Monsanto, Exxon Mobil, Kraft, the mining company Fresnillo, the mining company Nuevo Monte de Zimapán, Los Azufres geothermal electricity company (Hidalgo, Michoacán), Arcelor Mital (Michoacán), Humeros geothermal electricity company at Chignautla, Puebla, José Aceves Pozos thermal electricity plant (Sinaloa), Sovay Flúor Mexico (Chihuahua), Ideal Standard (Nuevo León), Empresas Ca Le de Tlaxcala, ADM Bio Productos (Sonora), Minera Bismark (Chihuahua), Pemex-Petroquímica Morelos, Cobre de Mexico (Federal District), Prym Fashion Mexico (State of Mexico), Power Sonic (Baja California), Arteva Specialities (Querétaro), Acabados de Calidad Tecate, Aceites, Grasas y Derivados (Jalisco), Vivsil (Querétaro), Enerya (Nuevo León), Austin Bacis (Durango), Productos y Diseños de Mármol (Baja California), Forjas Spicer (Tlaxcala), Balatas Mexicanas (Tamaulipas), Pemex-Matapionche gas processing complex, Layne de Mexico (Sonora), the construction companies OHL and TRADECO, property companies Casas Geo and Ara, Sadasi, Caabsa Eagle SA de CV, cement companies Cruz Azul, Tolteca-Cemex, Lafarge, Clarimex, Cargill, FUD, Teck Comico Ltd, the mining company Esperanza Silver de Mexico, maquiladora companies in various industrial corridors, Wall-Mart de Mexico, Soriana, Chedraui, Comercial Mexicana, Oxxo, 7-Eleven, Costco, Office Depot, Office Max, Home Depot and HomeMart.

7.5 Collective rights of indigenous peoples

Article 2 of the PCM enshrines indigenous peoples' rights to free determination and autonomy, including the right to be freely consulted and informed (IX), although in the last subparagraph of section A, it inappropriately leaves the characteristics of those rights to be defined by the constitutions and legislation of the states, and it can therefore be regarded as a serious restriction on genuine constitutional recognition of the right to free determination and autonomy. The rights of the indigenous peoples are therefore regulated and restricted, which in the Tribunal's view makes them objects of rights rather than true collective right holders. In any event, in so far as Mexico has recognised international treaties, the State must be understood to have a duty to recognise those rights which goes beyond the conflicting constitutional restriction. The instruments which clearly set out those rights are International Labour Organisation (ILO) Convention No 169 concerning indigenous and tribal peoples in independent countries and the United Nations declaration on indigenous peoples.

Many of the witness statements heard by the Tribunal cast light not only on the complex ethnic diversity in Mexico, but also on the historic, repeated and constant violations of the rights of indigenous peoples.

The statements given by Tarahumara, Triqui, Nahuatl, Nahuatl, Purhépecha and Tzotzil indigenous witnesses clearly expressed the damaging interference of western culture through political parties, economic interests and the extraction of natural resources, which has generated internal division, eroded the self-determination of peoples and caused territorial disputes, deaths, internal confrontations and harassment. The State's connivance with or at least passivity in relation to the conduct of private agents in indigenous territories is often very obvious in this regard.

7.6 General framework of impunity

In its ruling in the case of Colombia, in 2008, the PPT stated:

'It must be found on the basis of all the evidence submitted to the tribunal at the hearings that impunity is widespread, to the point of being structural in Colombia, as a result of the State's systematic failure to comply with its obligations to investigate, punish and make reparation for human rights violations'.

It also called to mind the PPT's 1991 ruling on 'Proceedings against impunity for crimes against humanity in Latin America', in which the Tribunal noted 'the establishment of a veritable culture of violence. Violence appears normal and politically-motivated death loses its true enormity, particularly for the media which publish those facts daily. Fear of reporting crimes and those responsible leads to the silence of those affected. Destroying the fabric of society in that way turns into cultural disintegration' (paragraph 64).

Those statements are fully applicable to the situation in Mexico. To give two figures, according to Amnesty International, between the end of 2006 and 2012 there were 7 441 complaints relating to abuses committed by the armed forces, which have only given rise, however, to 27 convictions. According to Mexican official sources, in 2013, out of 33.1 million crimes only 6.2% were cleared up. At exactly the same time as this final hearing was being held, the Supreme Court of Justice freed a further three people convicted of the massacre of indigenous people from Chiapas at Acteal in 1997, meaning that only two remain in prison, out of a total of 102 indigenous defendants tried for the murder of 45 members of the Las Abejas community. The instigators of the massacre have never been identified by the courts.

Impunity is a violation of the rights of victims enshrined in, amongst other instruments, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by United Nations General Assembly Resolution 40/34 of 29 November 1985, in Resolution 2004/34 of the Commission on Human Rights on The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms and in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross

Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, approved by the Commission on Human Rights on 19 April 2005.

The Inter-American Court of Human Rights has defined impunity as ‘the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention’, and has held that ‘the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defencelessness of victims and their relatives’¹⁹. The well-known Barrios Altos case established that ‘impunity for crimes is in itself a violation of human rights ... States cannot waive the duty to investigate, try and punish by means of amnesty or other practices which establish impunity’; and that ‘all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law’.

The Inter-American Court of Human Rights has found impunity in the case of Mexico in relation to the murders of women in Ciudad Juárez, in the judgment in the González et al. case, amongst others.²⁰ In that case, the Court found that the State had failed to comply with its duty to investigate and with its duty to guarantee various rights embodied in the American Convention, concerning Articles 1(1) and 2 of that Convention and Articles 7(b) and 7(c) of the Convention of Belém do Pará, and that it had violated the rights of access to justice and to judicial protection embodied in Articles 8(1) and 25(1) of the American Convention, in conjunction with Articles 1(1) and 2 thereof and Articles 7(b) and 7(c) of the Belém do Para Convention, to the detriment of the victims' relatives. The Court added that ‘the impunity of the crimes committed sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice’ (paragraph 400).

The Court also found impunity in the case of Radilla Pacheco v. Mexico, in its 2009 judgment in which it is stated that ‘it does not escape the Tribunal that 35 years after Mr. Rosendo Radilla-Pacheco was detained and disappeared, and 17 years after the first criminal accusation in this regard was formally filed (*supra* para. 183), there has not been a serious investigation leading to both determine his whereabouts and to identify, prosecute and, if it were the case, punish those responsible for those facts’ (paragraph 214).

¹⁹ Inter-American Court of Human Rights. Case of the ‘White Van’ (Paniagua-Morales et al.) v. Guatemala. Judgment of 8 March 1998 (Merits), paragraph 173; Inter-American Court of Human Rights. Case of Loayza-Tamayo v. Peru. Judgment of September 17, 1997 (Merits), paragraphs 168 and 170.

²⁰ Inter-American Court of Human Rights. Case González et al. (‘Campo Algodonero’) v. Mexico. (Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009, (paragraphs 164; 378, 388-389, amongst others).

Those findings of the Inter-American Court can be applied to the vast majority, if not all, of the cases reported to the PPT.

The theme of impunity was therefore present in 11 of the recommendations made by the Human Rights Council Working Group, which carried out the universal periodic review of human rights in Mexico in December 2013, both in general terms and with specific reference to violence against women, children, human rights defenders and journalists²¹.

Lastly, as the PPT held in its opinion at the introductory general hearing, in Ciudad Juárez, Chihuahua, in May 2012:

‘Furthermore, the Mexican State is the party primarily liable for infringement of the rights of victims and their relatives flowing from that impunity, by reason of the shocking lack of respect it shows them in most cases and by reason of the of the re-victimisation often meted out to them when they report those violations, in breach of internationally recognised principles of the rights of victims of human rights abuses to truth, justice and reparation’.

²¹ Human Rights Council. Report of the Working Group on the Universal Periodic Review. Mexico. Doc. A/HRC/25/7, 11 December 2013.

8. RULING:

DETERMINING RESPONSIBILITY

In legal terms 'responsibility' means the characteristic of an agent which makes it liable to incur a penalty. In philosophical terms, it is the obligation or ability to bear the consequences of one's own actions. In respect of the allegations it analysed, this tribunal has found widespread impunity, understood as the absence of any effective investigation or the imposition of penalties on those responsible. However, one can also see historical impunity, a failure by various branches of the State to assume political responsibility, leaving victims in a situation where their rights are unrecognised, deprived of any possibility of reparation.

After analysing the witness statements and other evidence submitted, the Tribunal has found that four actors have legal responsibility: the Mexican State, transnational corporations, third countries (such as the United States of America and Canada, amongst others) and international institutions (of which we should mention the WTO, the IMF, the World Bank and WIPO, amongst others). The responsibility is of a different kind in each of the four cases.

8.1. Responsibility of the Mexican State:

The Mexican State, at municipal, state and federal level, has strict international responsibility for infringing its obligation to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination (Article 1(1) Inter-American Convention on Human Rights: obligation to respect rights; Article 2 United Nations International Covenant on Civil and Political Rights). These are specifically the rights to life, physical integrity, collective ownership of land, freedom of expression, health, a healthy environment, decent housing, social protest, freedom of association, decent work, self-determination, identity, language, to one's own uses and customs, to defend territory, access to justice, the presumption of innocence (for example in the case of environmental defenders subject to legal proceedings) and the right to give free, prior, informed consent. It therefore has responsibility for violating its duties to prevent, investigate, punish and make reparation for the violations of those human rights.

The Mexican State, at municipal, state and federal level, also has responsibility for violating the rights contained in the Mexican Constitution itself. It has responsibility for abuse of power (as defined by the Inter-American Human Rights Commission in the Gallardo case, Report 43/96), embodied in lack of institutional protection, the irresponsible delegation of essential functions, the privatisation of public spaces and services with grave consequences for health and integrity (as witnessed by the Guardería ABC case), relinquishment of the role of protecting economic, social and cultural rights which are undervalued or reduced to mere expressions of charity, excessive use of public force to repress social expression (assault units and forced displacement), and acquiescence and complicity in the criminal activities of the transnational corporations found responsible in this ruling, amongst others.

Lastly, the three levels of the Mexican State have specific responsibility by reason of their acts and omissions in relation to the right to a healthy environment, which have led to environmental catastrophe. The State acted as guarantor of environmental impunity, thanks to policy paying lip service to defending human rights whilst issuing laws which damage them to the point that the environmental institutions now serve merely to process environmental impact formalities and permits for private businesses.

In so far as the allegations made before this Tribunal involve many terms of government, the ruling has sought to group the most serious offences by the relevant administration, and finds the following responsible:

1. The relevant people in the government of Carlos Salinas de Gortari (1/12/1988 to 30/11/1994) for crimes against humanity (for acts of extermination) and for crimes against the right to food.

2. The relevant people in the government of Ernesto Zedillo Ponce de León (1/12/1994 to 30/11/2000) for crimes against humanity (for acts of extermination).

3. The relevant people in the government of Vicente Fox Quesada (1/12/2000 to 30/11/2006) for crimes against humanity (for acts of extermination, torture, persecution against any identifiable group or collectivity on political grounds, enforced disappearance of persons and deprivation of liberty).

4. The relevant people in the government of Felipe Calderón Hinojosa (1/12/2006 to 30/11/2012) for crimes against humanity (for acts of murder, extermination, rape, persecution against any identifiable group or collectivity on political grounds and individual responsibility for international crimes); for crimes against the right to food and the existence of a widespread culture of impunity.

5. The relevant people in the government of Enrique Peña Nieto (1/12/2012 to the present) for crimes against humanity (for acts of murder, extermination, enslavement, rape, persecution against any identifiable group or collectivity on political grounds, enforced disappearance of persons). Individual responsibility for international crimes, for offences against economic, social and cultural rights, for offences against the environment and by reason of the existence of a widespread culture of impunity.

8.2. Responsibility of transnational corporations

In international law as it currently stands, the classic paradigm of human rights protection has been overwhelmed. The international protection instruments refer only to the responsibility of the national State, but do not involve transnational corporations, which are often more powerful than states themselves. Added to this is the fact that transnational corporations usually operate in countries where the human rights criteria are much less stringent than in those in force in their own countries of origin. This is precisely what is happening with the North American and Canadian corporations (amongst others) operating in Mexico.

The International Commission of Jurists' Report on 'Corporate Complicity and Legal Accountability', established parameters for judging transnational corporations, and was designed to apply to any corporation, whether transnational, national, State or private, large or small, and in relation to both criminal and civil liability.

In relation to criminal liability, the Report identifies three factors in liability: causation, knowledge and proximity. Three types of conduct give rise to a corporation's liability: that which enables, that which exacerbates and that which facilitates human rights violations.

In terms of civil liability or the law of civil remedies, the Report establishes three parameters: knowledge, precautionary measures and causality. It firmly establishes that a company can be liable even though the conduct was not intentional or negligent – strict liability. Liability can arise not only from causing damage, but also from doing nothing to prevent it or keeping silent. Companies must not only refrain from certain acts, but must also do something proactive to protect someone: 'across jurisdictions the law of civil remedies recognises that under certain circumstances a duty to act can be imposed'. The Report also established that a corporation's liability to monitor risk does not end simply once it has sold its product, but persists as long as the product is used, and that it cannot rely on the fact that another company would have caused the damage: 'It is irrelevant to establishing causation that there may have been a line of other companies waiting to step into the company's shoes'.

Applying those parameters in the case of the transnational corporations which committed many crimes against humanity, violated various human rights and caused environmental devastation on Mexican soil provides grounds for holding them liable, in so far as they enabled, exacerbated or facilitated those violations, obtained huge profits and shifted the environmental costs of their actions onto the communities.

Although it has not been able at the hearings to establish all elements of corporate liability, the Tribunal has found that a large number of them were involved, to differing degrees, and the allegations were made out in relation to the following companies: 7-Eleven, Acabados de Calidad Tecate, Aceites, Grasas y Derivados (Jalisco), ADM Bio Productos (Sonora), Ajusco S.A.; Arcelor Mital (Michoacán), Arteva Specialities (Querétaro), ATENTO; Austin Bacis (Durango), AVON Cosmetics S.A.; Balatas Mexicanas (Tamaulipas), Basf, Bayer, Bioparques de Occidentes S.A. de C.V., Caabsa Eagle SA de CV, Cargill, cement companies Cruz Azul, Tolteca-Cemex, José Aceves Pozos thermal electricity plant (Sinaloa), Chedraui, Clarimex, Cobre de Mexico (Federal District), Comercial Mexicana, Compañía Mexicana de Aviación; the mining company Fresnillo, the mining company Nuevo Monte de Zimapán, CONALEP-DF; the construction companies OHL and TRADECO; Costco, CYCSA; Dow Chemical, Dupont, Eliabra (formerly MILSA S.A de C.V.); Empaques Casillas y Bonanza, Empresas Ca Le de Tlaxcala, Enerya (Nuevo León), Exxon Mobil, FMN; Forjas Spicer (Tlaxcala), FUD, Los Azufres geothermal electricity plant (Hidalgo, Michoacán), Humeros geothermal electricity plant in Chignautla, Puebla, Halliburton, Home Depot and Home Mart, property companies Casas Geo and Ara, Ideal Standard (Nuevo León), IEMS; Industrial Minero Mexico; INMUJERES (DF), Kraft, Lafarge, Layne de Mexico (Sonora), Minera Bismark (Chihuahua), the mining company Esperanza Silver de Mexico, Money Gram, Monsanto, Nestlé, Office

Depot, Office Max, Oxxo, Pemex, Pemex-Petroquímica Morelos, Pemex-Matapionche gas processing complex, Pepsico, Pfizer, SNDIF del DF; Power Sonic (Baja California), Productos y Diseños de Mármol (Baja California), Prym Fashion Mexico (State of Mexico), Sadasi, Soriana, Sovay Fluor Mexico (Chihuahua), SSPF; Suez, Syngenta, Teck Comico Ltd, Vivsil (Querétaro), Wall-Mart de Mexico and Western Union.

The charges, which were different for each company, were:

- * Participation as perpetrators, accomplices, instigators, accessories after the fact or abettors, in crimes against humanity, specifically in the form of the following: murder; extermination; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape; persecution against any identifiable group or collectivity on political and ethnic grounds, in connection with other crimes referred to above, and enforced disappearance of persons;

- * Serious large-scale of violations of labour rights, specifically freedom of association;

- * Fraud against their shareholders and consumers by giving social responsibility undertakings which they blatantly breached in Mexico;

- * Participation in damaging the environment in Mexico;

- * Infringement of collective rights to land, to natural resources, to self-government and to the right of native peoples to participation and to control their own development.

Without prejudice to the foregoing, the individual criminal liability of the directors of those corporations will also have to be clarified.

8.3. Responsibility of third countries

The Tribunal has also found third countries, in particular the US, Canada and Germany, to have international responsibility outside national territory for the conduct of companies originally based in those countries, on the following legal grounds.

The theory that states have responsibility outside national territory has assumed an important role in human rights academic thinking and case-law in recent years. Now that it is established that states must ensure that companies operating within their territory do not violate human rights, is it acceptable for them to allow those rights to be violated outside their territory?

The answer to those questions follows from the interpretation of the legal term 'jurisdiction'. States have an obligation to respect the human rights of all persons subject to their 'jurisdiction'. The obligation is not based merely on territory, but also on jurisdiction. It means that states must respect the human rights both of the individuals within their territory and of persons under their jurisdiction.

In Report 38/99 on the *Saldaño v. Argentina* case, the Inter-American Human Rights Commission (IACHR) held that the term 'jurisdiction', within the meaning of Article 1(1), is not confined to national territory, but '[r]ather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state's own territory'. It clarified that this interpretation of 'jurisdiction' had also been adopted by the European Court and Commission of Human Rights, when they analysed the scope and meaning of Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the *Cyprus v. Turkey* case.

In the same vein, the International Law Commission (ILC) 'Draft Articles on the Responsibility of States for Internationally Wrongful Acts' provided that a State will have responsibility outside national territory where it fails to take reasonable measures to prevent and sanction an aggressor which is subject to its authority or control.

Similarly, General Observation No 31 of the Human Rights Committee (HRC), interpreting the scope of the obligations under the ICCPR, established that: 'States Parties are required by Article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party ... regardless of the circumstances in which such power or effective control was obtained ...' (2004).

For example, the monitoring committee on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) found that both countries, Canada and the United States, do have responsibility outside national territory for violations of the rights of indigenous peoples committed by their transnational corporations in other countries (Canada Conclusions 2007, United States Conclusions 2008).

The trend internationally is in fact moving towards an increasingly broad notion of when obligations are applicable outside national territory in cases of human rights violations, within the meaning established by the International Court of Justice (ICJ) in its Advisory Opinion on the legal consequences of the construction of the wall in occupied Palestinian territory and in the *Democratic Republic of Congo v. Uganda* case. In both cases, the ICJ found that the states' responsibility outside their national territory had been engaged under the ICCPR, ICESCR and the Convention on the Rights of the Child (CRC). The ICJ also established that states have human rights obligations outside their national territory under all the international human rights and international customary law instruments, whether or not they occupy the territory where the violation occurred.

In short, the Permanent Peoples' Tribunal finds all those grounds to be applicable to the states of origin of the transnational corporations operating in Mexico, and they can therefore be found responsible outside national territory.

Lastly the Tribunal finds that this responsibility can exist even where the crimes are crimes against humanity, under the Rome Statute of the International Criminal Court, ratified by the Mexican State. Crimes against humanity are those committed in the context of a widespread systematic attack against the civilian population, which is the case of the murders, massacres, arbitrary detentions, torture and disappearances of persons committed on a large scale in Mexico.

8.4. Finding on the responsibility of international institutions:

The mandate of the international system of which the UN forms part is to protect human rights and it gauges its legitimacy by the currency of those rights, but practices exist in agencies belonging to the system itself which openly contradict human rights. This is borne out in the case of Mexico, in relation to the World Bank and the International Monetary Fund, which are governed by rules and practices in flagrant violation of human rights.

Other agencies such as the World Trade Organisation are governed exclusively by the rules of the market and do not take human rights into consideration.

Free trade and investment agreements, treaties and provisions, together with the provisions, austerity policies and conditional loans approved by international economic and financial institutions, work in favour of the power of transnational corporations and undermine citizens' sovereign decision-making ability.

The Permanent Peoples' Tribunal points out that, as international legal persons, those institutions are legally accountable, as are the members of their decision-making bodies – whether single or multi-member – for the violations of civil, political, social, economic, cultural and environmental rights which they commit or help to commit, by act or omission.

9. RECOMMENDATIONS

9.1. International and regional bodies

1. To the Human Rights Committee and other bodies monitoring the conventions, in particular the Committee against Torture, the Committee on Economic, Social and Cultural Rights and the Committee on Enforced Disappearances, to make a careful analysis of the periodic reports submitted by Mexico and by Mexican civil society and to follow up the recommendations already made to Mexico. To the Subcommittee on Prevention of Torture, to carry out a visit to Mexico to ascertain the situation in the country at first hand.

2. To those in charge of special procedures (working group on arbitrary detention, working group on enforced disappearance, special rapporteurs on extrajudicial executions, on the promotion and protection of the right to freedom of opinion and expression, on the independence of judges and lawyers, on the situation of human rights defenders and the rights of women, on torture and other cruel, inhuman or degrading treatment, amongst others), to analyse the situation in Mexico, recommend appropriate measures and carry out rigorous follow up.

3. To the Prosecutor at the International Criminal Court, to ask the Court's Pre-Trial Chamber for authorisation to commence an investigation into the situation in Mexico as of 1 January 2006, relating to whether crimes against humanity have been committed, on the basis of the information supplied on the crimes committed by the Mexican State or for which it has responsibility.

4. To the Inter-American Human Rights Commission and Court of Human Rights, to monitor the human rights situation in Mexico, in addition to the individual cases, and to ensure application of their decisions and judgments respectively. The recently-created investigatory commission under the auspices of the IACHR must perform its work with full national and international support and make recommendations and provide guidelines in order to embark on the processes for locating disappeared persons and making full reparation to the victims.

5. The United Nations Food and Agriculture Organisation (FAO) should act in accordance with its responsibilities in relation to the protection of native and peasant maize and the threat represented by genetically modified contamination at the centre of origin, which cannot be treated as a Mexican domestic matter. The UN/FAO World Food Security Committee must act immediately to safeguard the centres of origin and diversity of crops and to protect peasants' rights. The World Intellectual Property Organisation must also refrain from claiming intellectual property rights in plants, animals or any living being and ensure that no form of intellectual property right is applied to them. The Convention on Biological Diversity must carry out special research with the participation of indigenous peoples and peasants into how the international community can ensure the integrity of the centres of origin and genetic diversity of crops and the rights of indigenous, peasant and local communities.

9.2. International civil society and international media

1. To include Mexico on their agenda of immediate monitoring and informative activities, and to put pressure on international institutions and the Mexican Government to respect human rights and the rights of peoples.

9.3. Mexican civil society

1. To coordinate processes of resistance and struggle and to act in solidarity with threatened peoples, uniting in the struggle to protect Mother Earth. To end irresponsible unchecked consumption and resist despoilment by transnational corporations by creating responsible demand which is sustainable for the land and communities.

2. To strive to democratise the media and the media sector in Mexico. To strengthen existing media organisations and social networks and cooperation between the various actors making up the grassroots media sector throughout the country, and alliances with those within the media who express and demonstrate their commitment to genuine democratisation of the media in Mexico. To create social observatories and audit bodies in order to provide properly documented monitoring of the behaviour of State, public, commercial and grassroots media, and to ensure the necessary public dissemination of their findings.

9.4. To make progress in reshaping Mexico

In response to a crisis of legitimacy and of institutions in the Mexican State, which has been emerging for some time and whose extreme gravity has been demonstrated in recent weeks following the events at Iguala, the PPT perceives an imperative need to make progress in reshaping Mexico, starting from new parameters which include full and effective recognition of human rights and the identity and space of indigenous peoples, implementing the San Andrés Accords which have been deferred for many years, and recognising the role of women in that process. It is a matter of halting and reversing the abuse of power, which seeks to impose an unsustainable model serving only the short-term economic interest of the few and which excludes the vast majority of the population, condemning it to dependency, poverty, emigration, social violence and defencelessness and depriving it of both a present and a future. It is a matter of placing human rights and environmental sustainability at the centre of political activity and rebuilding Mexico's economic and social fabric centred on development and welfare objectives based on equality between and within the peoples of Mexico.

The PPT therefore wishes to highlight a series of critical issues vital to that reshaping, without prejudice to the more detailed recommendations already included in the various reports from the previous hearings throughout the whole Mexico Chapter.

A reshaped Mexico should:

1. At all levels of its political structure and sources of authority, resume its basic function of serving the public interest, protecting the rights of citizens and implementing all the measures needed to ensure the human development and dignity of everyone in Mexico.

2. Guarantee human rights and prevent their violation, in accordance with its international obligations.

3. Implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to its full extent, in terms which include the great diversity of women in Mexico, including ethnic and economic inequalities, amongst others, and acting on all the recommendations made to Mexico by the CEDAW Committee and others, putting into operation an integrated programme to combat the various forms of violence against women.

4. Guarantee freedom of association, effective recognition of collective bargaining and the right to strike; provide a safe and healthy working environment and pay both male and female workers remuneration which ensures a decent life, and ratify the International Labour Organisation conventions to which it is not yet a party, in particular Convention No 98 on the right to organise and collective bargaining, Convention No 138 on the minimum age relating to the abolition of child labour and Convention No 189 on decent work for domestic workers.

5. Give effective recognition to the rights of indigenous peoples in Mexico, enshrined in ILO Convention No 169 and the United Nations Declaration on the Rights of Indigenous Peoples, in particular their rights to political autonomy, ownership of their land and resources and to be consulted in relation to projects which may directly affect them.

6. Comprehensively readdress issues relating to migration both in relation to policies to reduce forced migration for economic reasons, and to safeguarding the rights of both male and female migrant workers and their families, with particular emphasis on protecting migrants in transit through Mexico.

7. Uphold the right to information and to freedom of expression and freedom of communication, including freedom to produce and disseminate information, establishing the measures necessary to ensure both plurality of means of communication and that those means do not reproduce or foster misogyny, or racial/ethnic, age or gender stereotypes or prejudice or contribute to criminalising social protest.

8. Stop practices which repress, criminalise and judicialise dissent, social movements, journalists and environmental defenders and human rights defenders.

9. Reverse the process in which the State is losing control of its territory, including the subsoil and natural resources.

10. Implement the mechanisms needed to withdraw from the North American Free Trade Agreement, in the light of the many adverse effects it has had on Mexico.

11. Halt the process of privatising industry and rebuild the industrial base to serve the interests of the country.

12. Safeguard the communal and *ejido* systems of property ownership, eliminating practices which discriminate against women, and revive or create policies to support both male and female small producers in order to revitalise the agricultural sector, reduce dependency and foster food sovereignty.

13. Assume its responsibility to past, present and future generations as the centre of origin of maize and take all measures needed to ensure that native maize is conserved as the staple food source and as a cultural element of cohesion and social linkages. Given the very serious risks threatening the global centre of origin of maize, the staple of the peoples who created it for the good of humanity as a whole, and since Mexico is the gene pool of this pillar of world food security, it should prohibit the sowing of genetically modified maize in Mexico.

14. Undertake a comprehensive programme to restore the environment, thereby also encouraging the creation of public sector jobs with equality between men and women in the soil decontamination, water treatment, waste management, woodland conservation and renewable energy sectors.

15. Regulate the authorisation of economic activities establishing assessment procedures focusing on gender and social and environmental impact, appropriate tax regimes, effective monitoring mechanisms and a system for responsibility and reparation for damage to the environment and human rights.

16. Remove all institutional and legal obstacles and all practices which contribute to perpetuating impunity.

17. Comply with its obligations to investigate serious human rights violations, punish those responsible and ensure reparation for victims. It should set in train effective investigation mechanisms and redesign the systems for protecting and monitoring human rights.

18. Transform the judicial system, both in terms of defining policies to prosecute crimes and the principles governing criminal proceedings, and of the training and selection of judges, providing them with appropriate resources and restricting the military jurisdiction to the appropriate sphere in accordance with internationally accepted criteria.

19. Embark on a policy of reconstructing the social fabric, which addresses the extremely serious impact of violence and human rights infringements suffered by broad sectors of the population with consequences which will last into the future.

20. Amend or repeal all legal provisions which present obstacles to the implementation of the measures referred to above.

It is appropriate to conclude this ruling with the words of Luis Hernández Navarro: 'The Mexico Chapter of the Permanent Peoples' Tribunal is both witness to this new reality and its midwife. It is them, up there, who have the clock. It is us, down here, who have the time'.

10. ACKNOWLEDGEMENTS

To conclude this Mexico Chapter, held over more than three years in so many places, the PPT feels that it must express its gratitude above all to those people who have courageously and uprightly presented charges based on solid evidence and witness statements of the facts, who have made it possible to reconstruct what happened, reliving through their words the suffering and pain caused by dramatic events.

The PPT expresses its profound concern at the vulnerability of those who fight for human rights, who bravely and with propriety fulfil their role as citizens committed to the dignity, freedoms and rights of all Mexicans.

The Tribunal wishes to thank everyone who attended the preliminary hearings and the hearings, for their continuous, attentive and engaged presence, as representatives of groups and peoples, as part of a broad movement committed to the struggle to prevent any attempt to forget, to maintain victims' demands for justice and truth and to call on the institutions to take human rights seriously.

Their presence and the extraordinary citizen participation which has accompanied the work of the Tribunal have taught the judges that, when a movement emerges to struggle against injustice and inequality, international roll calls of rights and national constitutions cease to be merely catalogues of rights on paper and become instruments for the assertion of personal and social rights and democratic change.

Lastly, the Tribunal notes that it was profoundly struck to find that, despite a tragic situation which has continued for decades, there remain alive a powerful resistance to injustice and a resolute commitment to working ceaselessly to overcome the culture of conflict and to help to transform society in order to bring about a true social and democratic state subject to the rule of law.

The Tribunal is committed to voicing and broadcasting to the world not only a message about the serious situation in Mexico today and the risk that the violence against the population could intensify, but also the feeling of optimism apparent from the evident willingness to fight, which is a source of great hope in these decisive times for the future of Mexico.

In view of the magnitude and significance of the calls for justice which have accompanied the presentations, the Tribunal has resolved to send the case file, opinion and recommendations not only to the government institutions, but also to the following people and institutions, so that they can act in accordance with their competences, powers and functions:

- The Prosecutor at the International Criminal Court
- United Nations Economic and Social Council

- Monitoring bodies of the international human rights conventions

- United Nations Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the right to food, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on human rights defenders, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the rights of indigenous peoples, Special Rapporteur on the human rights of migrants, Special Rapporteur on the human right to safe drinking water and sanitation, Special Rapporteur on the human rights of internally displaced persons, Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Working Group on arbitrary detention, Working Group on the issue of human rights and transnational corporations and other business enterprise, Working Group on enforced or involuntary disappearances and the Working Group on discrimination against women in law and practice.

- European Court of Human Rights

- Inter-American Commission and Court of Human Rights

- President of the Supreme Court of Justice

- Governments of the Member States, the Commission and the Parliament of the European Union

DONE IN MEXICO CITY, MEXICO 15 NOVEMBER 2014

Biographies of the experts responsible for the expert's reports presented to the Tribunal

Elena Álvarez Buylla

Holder of a doctorate in molecular genetics from the University of California, Berkeley, currently coordinator of the UNAM Plant Development and Evolution Molecular Genetics Laboratory of the Ecology Institute. Former member of the Consultative Board of the Mexican Biosecurity Commission (Cibiogem). She is a founder and member of the executive board of the Mexican Unión de Científicos Comprometidos con la Sociedad (Union of Socially Committed Scientists) (UCCS) and a world scientific authority on the effects of genetically modified maize in Mexico, its centre of origin.

Raymundo Espinoza

Lawyer and political scientist, specialising in constitutional law. Former adviser at the International Labour Organisation in Geneva, Switzerland, and at the Asociación Latinoamericana de Integración (Latin American Integration Association) in Montevideo, Uruguay. Founder of the Socially-Committed Lawyers' Collective CAUSA and a member of the group of lawyers which coordinated the legal work of drafting the tribunal's charges.

Jorge Fernández Sousa

Lawyer, coordinator of the law department at UAM (Autonomous University of Mexico) Azcapotzalco, a judge at the Federal District contentious-administrative court and adviser to the CONAI – National Commission for Indigenous Affairs. As a judge, he has fought against corruption from within the judiciary.

Raúl García Barrios

Biologist, holder of a doctorate in economics from the University of Berkeley, expert in political ecology and institutional management of environmental issues. Adviser to social organisations and rural and urban communities. Researcher at the UNAM Regional Centre for Multidisciplinary Research.

Magda Gómez

Lawyer, member of the board of guarantors and founder of the Universidad Pedagógica Nacional (National Pedagogical University), of which she was the academic secretary and rector. She has participated in projects relating to social policy and justice for indigenous peoples and is a distinguished contributor to the La Jornada newspaper.

Luis Hernández Navarro

Anthropologist and historian of social movements in Mexico, former director of the Movimiento Magisterial Democrático (Democratic Teachers' Movement), well-known journalist and leader writer at the La Jornada newspaper.

Primavera Téllez

A media specialist, she belongs to the Asociación por el Derecho al a Información (Association for the Right to Information). She is an activist working to democratise the media. She has done much to publicise the damaging telecommunications reforms and directs alternative media projects.