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EXECUTIVE SUMMARY

The realisation of human rights and the EU-Mexico Agreement: challenges, implications and recommendations¹

World Organisation Against Torture (OMCT) contribution to the
EU-Mexico Civil Society Forum, Working Group on Political
Aspects

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¹ The content of this document reflects the personal opinion of the author and not that of the European Commission

PART ONE: HUMAN RIGHTS AND THE EU-MEXICO AGREEMENT

As an essential element, human rights shall represent, therefore, an overall objective for both parties -in term of their effective enjoyment- , a framework for implementation of the said agreement -regarding the modalities and the impact- a criteria shaping other actions not directly related to the agreement, as well as a fundamental guarantee that the policies undertaken by both parties –as part of the agreement or not- do not lead to human rights violations. Moreover, article 1 specifies that human rights and democratic principles are, indeed, the basis of the EU-Mexico agreement. As such, the nature, scope and object of the agreement, -which entails the strengthening of commercial, economic and financial relations by means of liberalisation of trade and investment flows- shall be rooted, developed and guided in the respect for human rights and shall contribute to their effective realisation.

PART TWO: THE NEGATIVE DIMENSION OF THE HUMAN RIGHTS CLAUSE

Article 3 of the EU-Mexico Agreement specifies that human rights shall orientate and structure the political dialogue between the parties. Practically, the placement of human rights at the centre of the political dialogue requires the establishment of concrete mechanisms and procedures, which should go well beyond the simple mention of human rights during the Joint Council or Joint Committees meetings. Indeed, specific mechanisms, procedures and indicators allowing to structure the political dialogue and to operationalise the human rights clause entailed in article 1 of the EU-Mexico agreement shall be put in place.

PART THREE: THE POSITIVE DIMENSION OF THE HUMAN RIGHTS CLAUSE

One of the objective of the EU-Mexico agreement, if not the main one, entails the liberalisation of trade in goods, services, as well as of investment flows. In this respect, further decisions clarify the agenda and scope of liberalisation in these matters.

As mentioned, another principle and objective that underpins the EU-Mexico agreement is the promotion and protection of human rights. This commitment entails the promotion and protection of economic, social and cultural rights. Consequently, within the EU-Mexico agreement, EU member States and Mexico hold the concurrent responsibilities to promote and protect human rights and to implement trade and investment rules. In this respect, while the placement of human rights as an essential element and the basis of the agreement implies the necessity to implement all other provisions of the agreement accordingly, problems can emerge in practice.

Consequently, there is therefore a crucial need to guarantee that developments towards the liberalisation trade in services and investment flows between Mexico and the EU do not lead to a zero sum game where human rights are being marginalized in the process. The EU-Mexico agreement, which in this respect differs from the international framework regulating trade, investment and human rights law, offers the interesting setting of having trade, investment and human rights incorporated in a single instrument. Consequently, special procedures and mechanisms must be put in place in order to give adequate human rights considerations in trade and investment rules and to guarantee that the trade and investment

objectives will not be realised at the expense of human rights. In this task, human rights shall not be viewed as disguised protectionism or additional conditionalities but rather as essential safeguards guaranteeing social justice and sustainable development.

These challenges underline that the agreement's human rights clause (article 1) does not only entail a negative dimension, allowing the implementation of sanctions to those governments responsible for grave and persistent violations of civil and political rights, but also a positive one.

Indeed, the positive dimension of this human rights clause entails the necessity to take effective measures in order to contribute to the enjoyment of human rights in the territory and under the jurisdiction of the respective parties. While article 39 of the EU-Mexico agreement recognises a positive dimension to the human rights clause, it is limited to the development of civil society, support to the rule of law and institutions, as well as to the promotion of democratic principles and human rights.

In this respect, it remains urgent and essential to expand the scope of this positive dimension in order to encompass the following elements: 1) an ongoing assessment and monitoring of the effects that liberalisation of trade in services and of investment flows have on the enjoyment of all human rights; 2) the adoption and implementation of a human rights approach to liberalisation of trade in services and of investment flows

This expansion of the positive dimension is related to the placement of human rights as the basis of the EU-Mexico agreement and as one of its fundamental element. In this respect, it is also interesting to recall that the United Nations Committee on Economic, Social and Cultural Rights asked to both Nepal and Algeria to take into account their obligations under the ICESCR in all aspects of their negotiations with the WTO in order to ensure that economic, social and cultural rights are duly protected.²

Consequently, OMCT would recommend the creation of a Social Observatory through a Mixed Consultative Committee (MCC), whose mandate will imply, among others: (1) the assessment and monitoring of the impact of the EU-Mexico agreement and subsequent Decisions on the enjoyment of economic, social and cultural rights with a particular focus on the liberalisation of trade in services, the liberalisation of investment flow and the activities of transnational corporations and other business entities; (2) the formulation of concrete proposition on the basis of this monitoring and assessment; (3) the establishment of adequate safeguards, regulations and proposals allowing for the adoption and implementation of a human rights approach to liberalisation of trade in services and of investment flows.

² U.N. Doc. E/C.12/1/Add.66, para 38, September 2001; U.N.Doc. E/C.12/1/Add. 71, para 43, November 2001